

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "G" BENCH: NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.2605/Del/2022
[Assessment Year : 2016-17]**

Shri Shalabh Kumar Goel, D-72, Delhi Citizen Apartment, Sector-13, Near D.C.Chowk, Rohini, New Delhi-110085. PAN-AMKPG9295R	vs	DCIT, Central Circle-7, New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Gautam Jain, Adv. & Shri Parth Singhal, Adv.	
Respondent by	Ms. Jaya Chaudhary, CIT DR	
Date of Hearing	02.12.2024	
Date of Pronouncement	13.12.2024	

ORDER

PER RENU JAUHRI, AM :

This assessee's appeal is directed against the order of Ld.CIT(A)-24, New Delhi dated 31.08.2022 passed in respect of order u/s 153C r.w.s. 143(3) of the Income Tax Act, 1961 ("the Act") for Assessment Year 2016-17.

2. The assessee raised the following grounds in the instant appeal:-

1. *"That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the assumption of jurisdiction u/s 153C of the Act and, framing of assessment u/s 153C/143(3) of the Act.*
 - 1.1 *That both the notice issued u/s 153C of the Act and assessment framed u/s 153C of the Act were without satisfying the statutory preconditions contained in the Act and therefore without jurisdiction and therefore deserves to be quashed as such.*
 - 1.2 *That while upholding the assumption of jurisdiction the learned Commissioner of Income Tax (Appeals) has failed to appreciate that*

since no money, bullion jewellery or other valuable article or thing or books of accounts or documents belonging to the appellant were seized as a result of search on M/s Jindal Bullion Ltd., notice issued u/s 153C of the Act was illegal, invalid and unsustainable.

- 1.3 *That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding the assumption of jurisdiction despite the fact that in absence of any valid satisfaction having been recorded both in the case of searched person and, the appellant action u/s 153C of the Act was in excess of jurisdiction.*
- 1.4 *That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that documents as seized from the searched person are disclosed documents of appellant and are not incriminating documents and as such, could not otherwise be made a basis in law or on fact to initiate proceedings under section 153C of the Act.*
- 1.5 *That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in failing to appreciate that notice u/s 153C of the Act issued in a mechanical format was without jurisdiction.*
2. *That since no valid approval has been obtained u/s 153D of the Act, order of assessment made u/s 153C of the Act is invalid and deserves to be quashed as such.*
3. *That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding an addition of Rs. 26,60,000/- representing alleged unexplained money and brought to tax u/s 69A of the Act.*
- 3.1. *That while confirming the above addition, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the factual substratum of the case, statutory provisions of law and as such, addition so made and sustained is highly misconceived, totally arbitrary, wholly unjustified and therefore, unsustainable.*

4. *That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding an addition of Rs. 200/- representing alleged undisclosed profit on alleged unaccounted transaction of Rs. 10,000/-, made by the appellant.*
5. *That both the lower authorities have failed to appreciate that additions made and sustained without rejection of books of accounts u/s 145(3) of the Act are illegal, invalid and, untenable.*
 - 5.1. *That the learned Commissioner of Income Tax (Appeals) Tax has failed to appreciate that material found from a premises of a third party in absence of corroborative evidence could not be ipso-facto a ground or basis to assume that there is unexplained money taxable in the hand of appellant u/s 69A of the Act.*
 - 5.2. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that in absence of section 65B of Evidence Act, soft/digital data recovered from third party cannot be made a foundation of addition.*
 - 5.3. *That further, the alleged enquiries conducted by the various income tax authorities have no evidentiary value as has been done behind the back of appellant and without granting any fair, meaningful and proper opportunity and cross examination to the appellant and thus, could not be made a basis in law to sustain the addition.*
6. *That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding the levy of interest of Rs. 16,440/- u/s 234A of the Act and interest of Rs. 5,67,181/- u/s 234B of the Act which are not leviable on the facts of the appellant.”*
3. Brief facts of the case are that the assessee a proprietor of M/s. Rishabh Trading Company, had filed its original return declaring total income of INR 5,16,920/- on 25.09.2016. He is running retail trading business of bullion. Subsequently, a search and seizure operation was conducted u/s 132 of the Act on M/s. Jindal Bullion Ltd. (“JBL”) Group on 05.01.2017. During the

course of search, digital data maintained in a software called Hazir Johri, was seized from the premises of the promoter and Director of JBL. The analysis of the said software data revealed cash transactions with several entities, mostly bullion traders and jewellers. The data contained both cash transactions as well as transactions through banking channels. Only the transactions through banking channels were reflected in the Tally books of account of JBL on the basis of which returns had been filed by JBL. On deciphering the said data, it was found that ledger accounts 'Anuj-Shamli & Shyamli' pertained to the assessee wherein both the cash and banking transactions were recorded. Statements of Sh. Parul Ahluwalia, Director, Ms. Ekta Soni, Executive Assistant were also recorded during the course of search. On receipt of this information, Ld. Assessing Officer ("Ld.AO") of the assessee recorded his satisfaction on 02.03.2021 and issued notice u/s 153C of the Act for Assessment Years 2011-12 to 2017-18. In response to this notice, return of income was filed on 31.05.2021, declaring income of INR 5,16,920/- the same as shown in original return. During the course of assessment proceedings, the assessee was asked to explain the transactions reflected to these accounts specifically the cash payment of INR 26,60,000/- to JBL and also cash receipt of INR 10,000/- from JBL. While the assessee accepted the transactions made through banking channels with the JBL, however, above-mentioned transactions in cash were denied. The assessee also challenged the re-opening proceedings and sought opportunity to rebut the material/documents collected and utilized for issuance of notice u/s 153C of the Act. He also demanded an opportunity to cross-examine the searched persons based on whose statements, the notice was issued to the assessee. The assessee's objections

were disposed off by the Ld.AO vide letter dated 15.12.2021. Thereafter, the assessment was completed vide order dated 30.12.2021 after making addition of INR 26,60,000/- on account of unexplained money u/s 69A and INR 200/- on account of undisclosed income computed @ 2% on total cash transactions of INR 10,000/-.

4. Aggrieved with the assessment order, the assessee preferred appeal before Ld.CIT(A). Vide order dated 31.08.2022, Ld.CIT(A) dismissed the appeal of the assessee on merits as well as on the legal issues.

5. Aggrieved with the said order, the assessee is in appeal before the Tribunal.

6. During the course of hearing, Ld.AR of the assessee submitted that the legal grounds i.e. Ground Nos.1 & 2 are not being pressed and may be kept open and argued factual Ground Nos.3 & 4 on merits.

7. Ld.AR demonstrated through copies of replies submitted before the Ld. AO on 09.07.2021, 15.12.2021 & 23.12.2021 that the assessee had repeatedly sought copies of the statement of the person based on which satisfaction had been recorded as well as opportunity to cross examine the counter party. However, neither the copies of statements or other material relied upon by the AO was provided to the assessee nor any opportunity to cross-examine Sh.Parul Ahluwalia, Director and Ms. Ekta Soni, Executive Assistant was afforded. In this regard, Ld.AR of the assessee relied upon on the decision of the Co-ordinate Bench in the case of other assessee connected to the JBL Group wherein additions made under similar facts and circumstances have

been deleted. Some of the decisions relied upon by the Ld.AR of the assessee are as under:-

[i] Anoop Kumar Soni vs DCIT in ITA No.1641, 1642 & 1643/Del/2021 [Assessment Year 2015-16, 2016-17 & 2017-18] order dated 02.08.2023; and

[ii] Surender Kumar Jain vs ACIT in ITA No.1314 & 1315/Del/2023 [Assessment Year 2016-17 & 2017-18] order dated 07.03.2024.

8. In all these cases in similar circumstances, entries found in the digital data seized during the course of search on the premises at the JBL Group were utilized to make the additions. However, all these cases were set aside by the Co-ordinate Benches mainly on the ground that neither the documentary evidences relied upon was provided to the assessee concerned nor any opportunity to cross-examine the concerned directors/employees of JBL was given, based on whose statements the proceedings had been initiated.

9. On the other hand, Ld.CIT DR for the Revenue strongly relied on the order of the lower authorities. She also pointed out that the assessee was provided copies of requisite documents during the course of appellate proceedings and, therefore, it cannot be said that the assessee's case is covered by the decisions of Co-ordinate Benches relied upon by the assessee. It was claimed that the additions were not made solely a statement of Sh.Parul Ahluwalia, Director and Ms. Ekta Soni, Executive Assistant. She also sought to distinguish the assessee's case on the ground that in this case the entries in ledger account exactly tallied with the assessee's books except for the two cash transactions whereas this was not so in any of the cases relied upon by the Ld.AR.

10. We have heard the rival submissions and perused the material available on record. Admittedly, the proceedings were initiated based on the information gathered during the course of search at the premises of JBL. While the show cause notice was issued with regard to cash transactions mentioned against 'Anuj-Shamli & Shyamli' the assessee denied any link with these names. Neither copies of the documents/statements were provided to the assessee nor he was given an opportunity to cross-examine the persons concerned based on whose statement proceedings in the case of the assessee had been initiated. The assessee has all along maintained that he is in no way connected to the names 'Anuj-Shamli & Shyamli'. We also note that while coming to the conclusion that these entries belonged to the assessee, Ld.AO has relied upon the statements recorded during the search and has also reproduced relevant portions thereof in the assessment order. As such, the assessee ought to have been provided relevant documents, copies of statements as well as an opportunity to cross-examine these persons. We have also perused the decisions of the Co-ordinate Benches in this regard. Relevant portions of the order passed by the Co-ordinate Bench of the Tribunal in the case of **Surender Kumar Jain vs ACIT in ITA Nos.1314 & 1315/Del/2023** (supra) are reproduced as under:-

9. *"We have given our careful thought to the submission of the parties and perused the records. The facts are not in dispute. During assessment proceedings the common plea of the assessee in both the AY(s) was that merely entries found in the Hajir Johri ledger of M/s. JBL supposedly in the name of M/s. S.K. Impex, the proprietary concern of the assessee does not tantamount to actual transactions having taken place in the absence of any corroborative*

evidence such as bills, invoices, challans etc. There is no inkling in the order of the Ld. AO/CIT(A) that the alleged cash transactions are substantiated by any supporting evidence as claimed by the assessee. On the contrary, the impugned additions are based purely on conjectures and surmises solely relying on the statement of Ms. Parul Ahluwalia, Director and former employee of M/s. JBL, the entity subjected to search operation during which her statement was recorded. The Ld. AR submitted before us that Ms. Parul Ahluwalia nowhere in her statement identified that alleged cash transactions related to the assessee. No specific questions in this regard were asked from her. Nothing is forthcoming from the side of the Revenue to controvert the above pleadings of the assessee.

- 9.1 *It was asserted by the assessee before the Ld. AO that the assessee was not even cross examined during search operation of M/s. JBL or during post search enquiry/investigation either by the Intelligence Wing or by the Ld. AO. The Revenue is silent on this aspect of the assessee's assertion.*
- 9.2 *It is observed that during the course of assessment proceedings the show cause notice dated 09.12.2021 issued to the assessee does not have any whisper about the statement of Ms. Parul Ahluwalia that her statement is being used adversely against the assessee. It is submitted by the Ld. AR that the assessee got the knowledge of such statement only on receipt of assessment order. If that is the scenario, the question of allowing the assessee an opportunity to cross-examine Ms. Parul Ahluwalia does not arise. In fact this has not taken place. Therefore, we are of the opinion that the statement of Ms. Parul Ahluwalia recorded during search of M/s. JBL cannot legally be adversely used against the assessee. In taking this view, we are supported by the decision of Hon'ble Delhi High Court in CIT vs. SMC Share Brokers Ltd. (2007) 288 ITR 345 (Del) wherein the court held that where statement of a third person is acted upon without giving an opportunity to cross examine him, principles of*

natural justice has not been followed and order would not be valid. This decision was rendered in the context of order under section 158BD which is equally applicable in the case of the assessee to order passed under section 153C of the Act.

9.3 *Perusal of the assessment orders would show that whereas the Ld. AO has used his imagination in applying the provision of section 69C for making the impugned addition in both the years treating the alleged cash transactions as expenditure incurred by the assessee towards purchase of gold/bullion from M/s. JBL, the Ld. CIT(A) was in a fix. So he confirmed the impugned addition in AY 2016-17 under section 69C as unexplained expenditure and in AY 2017-18 under section 69A as unexplained money. In our view the impugned addition made by the Ld. AO in both the AY(s) is not sustainable because it is based on mere suspicion, surmise and conjectures and not on legally sound footing and the Ld. CIT(A) admittedly confirmed the addition based alone on facts which emerges from the details and findings made by the Ld. AO (para 6.5 of appellate orders refers).*

9.4 *For the reasons set out above and on the facts and in the circumstances of the case, we allow the appeals of the assessee and direct the Ld. AO to delete the impugned addition in both the AY(s)."*

11. In view of the facts discussed above and in the light of decisions of Co-ordinate Benches, we hold that the additions made by the Ld.AO cannot be sustained. The additions of INR 26,60,000/- u/s 69A of the Act and INR 200/- on account of undisclosed income are accordingly, deleted.

12. As the appeal has been allowed on merits, other legal grounds are rendered academic in nature and hence are not being adjudicated upon.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 13th December, 2024.

Sd/-

**(VIKAS AWASTHY)
JUDICIAL MEMBER**

** Amit Kumar **

Sd/-

**(RENU JAUHRI)
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI