

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.2363/DEL/2023
(Assessment Year: 2021-22)**

Brij Gopal Construction Company (P) Ltd.,
A-7/2, Shivaji Apartments, Sector 14,
Rohini,
Delhi – 110 085.

vs. DCIT, Central Circle 3,
New Delhi.

(PAN : AADCB7702J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Gautam Jain, Advocate
REVENUE BY : Ms. Nimisha Singh, CIT DR

Date of Hearing : 22.10.2024
Date of Order : 20.12.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

1. This appeal filed by the assessee is against the order of Id. Commissioner of Income Tax (Appeals)-23, New Delhi (hereinafter referred to as "Id. CIT(A)") dated 28.07.2023 for the Assessment year 2021-22.
2. Brief facts of the case are, original return u/s 139 of the Income Tax Act, 1961 (in Short 'Act') was filed by the assessee on 15.03.2022 vide acknowledgement no. 377437480150322 declaring total income of Rs.204,90,94,870/- for the financial year 2020-21 relevant to assessment

year 2021-22. A search and seizure proceedings u/s 132 of the Act was conducted in the case of assessee and others on 11.02.2021. The case was selected for scrutiny and assessment was completed u/s 153A of the Act on 11.04.2022 determining total income at Rs.213,65,88,529/- after making an addition of Rs.4,97,14,659/- representing unexplained expenditure under the head 'xyz' expenses u/s 69C read with section 115BBE of the Act, addition made of Rs.2,77,79,000/- representing cash payment made to Chetak Enterprises for purchase of an old machinery and held as unexplained investment by invocation of section 69B read with section 115BBE of the Act and further addition made of Rs.1,00,00,000/- representing alleged cash payment made to supplier namely Aggarwal Spun Pipes and Verticast Concrete (P) Ltd. and held as unexplained expenditure by invocation of section 69C read with section 115BBE of the Act.

3. Aggrieved, the assessee preferred an appeal before the ld. CIT(A). After considering the submissions made by the assessee, the ld. CIT(A) confirmed the aforesaid additions made in the assessment order dated 11.4.2022 u/s 153A of the Act.
4. Aggrieved, the assessee is in appeal before us and has raised the following grounds of 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 153A of the Act and, framing of assessment u/s 153A of the Act both of which deserve to be quashed as such.

2 That since approval obtained u/s 153D of the Act was mechanical, illegal and invalid approval, order of assessment made u/s 153A/143(3) is invalid and without jurisdiction.

3 That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in sustaining an addition of Rs. 4,97,14,659/- representing alleged expenditure incurred under the head 'xyz' expenses and held as unexplained expenditure u/s 69C read with section 115BBE of the Act.

3.1 That addition made and sustained by relying upon the material which had not been confronted to the appellant either during the investigation proceedings or during the course of assessment proceedings.

3.2 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in recording various adverse inferences which are contrary to the facts on record, material placed on record and, are otherwise unsustainable in law and therefore, addition so sustained is absolutely unwarranted.

4 That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in sustaining an addition of Rs. 2,77,79,000/- representing alleged cash payment made to M/s Chetak Enterprises for purchase of an old machinery and held as unexplained investment by invocation of section 69B read with section 115BBE of the Act.

4.1 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.

4.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the burden is on revenue u/s 69B

of the Act such burden has not been discharged on the facts of the appellant.

5 That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in sustaining an addition of Rs. 1,00,00,000/- representing alleged cash payment made to supplier namely M/s Aggarwal Spun Pipes and Verticast Concrete (P) Ltd. and held as unexplained expenditure by invocation of section 69C read with section 115BBE of the of the Act.

5.1 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.

Prayer It is therefore, prayed that it be held that notice issued u/s 153A of the Act and also assessment framed u/s 153A of the Act are without jurisdiction and deserve to be quashed as such. It be further held that addition made and sustained by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the appellant company be allowed.”

5. Grounds No.3 to 3.2 relate to addition of Rs.4,97,14,659/- representing alleged expenditure incurred under the head ‘xyz’ expenses and held as unexplained expenditure u/s 69C read with section 115BBE of the Act.
6. Considered the rival contentions and perused the material on record. We are of the considered view that since the facts relating to the above said grounds are identical to the Grounds 4 to 4.2 in ITA No.2321/D/2023 for Assessment year 2014-15 in the case of assessee which have already been decided the issue in an earlier order dated 4.9.2024 by the coordinate Bench and grounds raised by the assessee has been restored to the file of

the Assessing officer for considering the issue afresh with a direction to decide the issue after granting proper opportunity of being heard to the assessee. The relevant findings of the Hon'ble Tribunal are as under:

“23. The next common issue involved in Grounds 4 to 4.2 raised in the appeals filed by the assessee in Assessment year 2014-15, Assessment year 2018-19, Assessment year 2019-20 and Assessment year 2020-21 are:

“Grounds 4 to 4.2 raised by the assessee in ITA No.2321/D/2023 are regarding that addition of Rs. 35,000/- representing expenditure incurred under the head ‘xyz’ expenses and held as unexplained expenditure u/s 69C read with section 115BBE of the Act.

24. The relevant finding of the Ld. CIT (A) on the issue in dispute is extracted as under:

“75 I have considered the facts of the issue and submissions of the appellant. It is seen from the record the AO has made the addition of Rs. 35,000/- by holding as under:

“During the course of search and seizure proceedings, various soft data has been seized/ impounded. In this data various sheets have been found where huge amount of expenditure has been incurred under the head ‘xyz’ expenses.

XYZ				
AY 2014-15	AY 2018-19	AY 2019-20	AY 2020-21	AY 2021-22
35,000	34,7000	7,68,5000	25,02,820	35,22,900
	1,55,000	35,10,400	53,14,610	48,52,066
	1,62,340	1,53,300	1,19,35,747	28,06,000
	5,10,000	50,19,000	5,00,000	43,67,780
	3,72,945	35,00,000	3,24,880	36,23,670
	4,84,500	25,14,200	2,04,500	30,46,131
	20,000	7,42,800	1,03,000	33,12,500
	22,22,890	27,69,000		52,87,000
	7,50,000	12,72,500		10,81,100
	5,90,000	2,77,000		37,31,450

	15,72,500			35,86,700
	29,71,100			13,45,800
				26,92,162
				18,67,000
				15,96,000
				10,57,000
				5,42,000
				7,31,200
				5,00,000
				45,000
				1,21,200
35,000	98,45,975	2,05,26,700	2,08,85,557	4,97,14,659

....

78. The relevant text for the impugned year based on which addition has been made is as under:

S.No.	Dated	Amount received from BGCCPL	Bill amount w/o tax	95%	cash	Vikas D 6	St D 5	v nod 0.4	Dinesh D 55	Ky harvinder	Paid date
3	27/08/2013	For SDO from Ujjwal			35000			35000			paid on 29/08/2013

79 During the course of appellate proceedings, Vide letter dated 04.07.2023, a Copy of the impugned document was sent and confronted to the appellant. The appellant in response to the letter has stated as under (vide his letter dated 04.07.2023):-

"It is respectfully submitted that it is undisputed that the printout now supplied was never confronted to the appellant during the assessment proceedings. It is submitted since the aforesaid printout has never been made the basis of addition by confronting the same to the appellant no addition can now be validity be made particularly when it is a apparently third party document and not a document signed by the appellant or prepared by the directors of the appellant. It is thus submitted in absence of any inquiries having been conducted by the Id. Assessing Officer no addition can validity be made on the basis of the aforesaid dumb document."

...

84 The document was seized from the premise of the appellant. Therefore, the primary onus lies on the appellant to rebut the

contents of the document. As the appellant has not been able to explain the source of money for making the payment, therefore, the Assessing Officer was correct in making addition u/s 69C of the Act

85 In view of the above discussion, the addition of Rs. 35,000/- u/s 69C is upheld.”

25. Both the parties during the course of hearing were in agreement that since the seized material was not confronted to the assessee during the course of assessment proceedings, the matter be restored to the file of Assessing Officer. We find, the assessee in letter dated 4.7.2023 addressed to the ld. CIT(A) and has stated as under:

“It is respectfully submitted that it is undisputed that the printout now supplied was never confronted to the appellant during the assessment proceedings. It is submitted since the aforesaid printout has never been made the basis of addition by confronting the same to the appellant no addition can now be validity be made particularly when it is a apparently third party document and not a document signed by the appellant or prepared by the directors of the appellant. It is thus submitted in absence of any inquiries having been conducted by the ld. Assessing Officer no addition can validity be made on the basis of the aforesaid dumb document.”

26. We, therefore, consider it appropriate to restore the issue to the file of the Assessing Officer for considering the issue afresh with a direction to decide the issue after granting proper opportunity of being heard to the assessee. Thus, grounds 4 to 4.2 of the assessee’s appeal in ITA No. 2321/D/2023 are accordingly allowed for statistical purposes.”

7. Following similar reasons, the Grounds No.3 to 3.2 raised by the assessee are accordingly allowed for statistical purposes.
8. Grounds No.4 to 4.2 are regarding that an addition of Rs.2,77,79,000/- representing alleged cash payment made to M/s Chetak Enterprises for

purchase of an old machinery and held as unexplained investment by invocation of section 69B read with section 115BBE of the Act

9. The relevant facts are, that as a consequence of search, a sheet marked as page no. 182 Annexure 8 was found and seized from the office premises of the assessee at 4th Floor, Vikas Surya Shopping Mall, Rohini, Delhi. The sheet is reproduced by the Id. CIT(A) in his order at page 17 as Image 8.1 and the same is retyped as under:

S.No.	Buyer	Vehicle Type	Number	Total Amount of Sale	Cash	Bill amount	GST	Bank Amount
1	BGCC U.P.	Vogek Payer		7500000.00	3000000.00	4500000.00	810000.00	5310000.00
2	BGCC U.P.	Vogek Payer	Punjab	7500000.00	4300000.00	3200000.00	576000.00	3756000.00
3	BGCC U.P.	CAT Grader		3500000.00	2700000.00	800000.00	144000.00	914000.00
4	BGCC Haryana	CAT Grader		3500000.00	2700000.00	800000.00	144000.00	914000.00
5	BGCC Haryana	CAT Grader		3500000.00	2700000.00	800000.00	144000.00	914000.00
6	BGCC Haryana	Tandem Roll		950000.00	550000.00	400000.00	720000.00	472000.00
	BGCC U.P.	Tandem Roll		950000.00	550000.00	400000.00	720000.00	472000.00
	BGCC U.P.	Tandem Roll		950000.00	550000.00	400000.00	720000.00	472000.00
7.	BGCC Haryana	Transit Mixer		950000.00	650000.00	300000.00	54000.00	354000.00
	BGCC Haryana	Transit Mixer		950000.00	650000.00	300000.00	54000.00	354000.00
	BGCC Haryana	Transit Mixer		950000.00	650000.00	300000.00	54000.00	354000.00
8	BGCC U.P.	Transit Mixer		950000.00	650000.00	300000.00	54000.00	354000.00
	BGCC U.P.	Transit Mixer		950000.00	650000.00	300000.00	54000.00	354000.00
	BGCC U.P.	Transit Mixer		950000.00	650000.00	300000.00	54000.00	354000.00
8	BGCC	Cat Grader		2200000.00	1570000.00	621000.00	111780.00	732780.00
	BGCC	Paver Volvo	Unbilled	4000000.00	2500000.00	1500000.00	370000.00	1270000.00
9.	BGCC	Bird Bouser		450000.00	250000.00	200000.00	36000.00	236000.00
10	BGCC	Sky Lift	Unbilled	500000.00	400000.00	400000.00	72000.00	472000.00
		Sky Lift		800000.00	400000.00	400000.00	72000.00	472000.00
	BGCC	Water Tanker		600000.00	300000.00	300000.00	54000.00	554000.00
		Water Tanker		600000.00	300000.00	300000.00	54000.00	554000.00
11.	BGCC	KYB-Sita	Unbilled	2100000.00	1100000.00	1000000.00	180000.00	1180000.00
12.	BGCC					0.00	0.00	0.00
15.	BGCC					0.00	0.00	0.00
			TOTAL	45600000.00	22220000.00	3202780.00	3202780.00	21028280.00

10. The Id. AO has observed that based on the said printout that assessee has made cash payment of Rs. 2,77,79,000/- to M/s Chetak Enterprises for

purchase of an old machinery. Further, the Id. CIT(A) has confirmed the addition by observing in paras 34-35 of order as under:

“34. I have considered the facts of the issue and submission of the appellant and perused the sheet marked as page no. 182 Annexure 8 found/seized during the course of search and seizure proceedings at 4TM Floor, Vikas Surya Shopping Mall, Rohini, Delhi. As the addition is made on the basis of seized material, therefore, the Assessing Officer was justified in bringing into tax in assessment u/s 143(3) of the Act. Additionally, this is the year in which the search took place.

35. By virtue of section 69B of the Act, it becomes obligatory on the part of the appellant to explain, to the satisfaction of the AO, the source of /investment made by the appellant of Rs.2,77,79,000/. The appellant during the course of assessment and appellate proceedings has failed to prove the source money available for making investment in cash to the extent of Rs.2,77,79,000/-. In view of the facts discussed above, the impugned issue is decision in against of the appellant. Consequently, the addition of Rs.2,77,79,000/- is confirmed. Grounds 10 is dismissed.”

11. Before us the learned AR submitted that assessee purchased old machinery from M/s Chetak Enterprises during the financial year 2020-21 relevant to assessment year 2021-22. The details of the purchase of old machinery is as under:

Sr.No.	Date of invoice	Invoice no.	Amount (Rs.)	Tax (Rs.)	Total Bill (Rs.)
i)	3.6.2020	CEL/GZB/01	45,00,000	8,10,000	53,10,000
ii)	11.6.2020	CEL/PJ/01	32,00,000	5,76,000	37,76,000
iii)	2.7.2020	CEL/GZB/16	8,00,000	1,44,000	9,44,000
iv)	2.7.2020	CEL/GZB/18	8,00,000	1,44,000	9,44,000
v)	2.7.2020	CEL/GZB/17	8,00,000	1,44,000	9,44,000
vi)	6.8.2020	CEL/GZB/24	6,21,000	1,11,780	7,32,780
vii)	10.8.2020	CEL/GZB/25	8,00,000	1,44,000	9,44,000
viii)	16.8.2020	CEL/GZB/41	4,00,000	72,000	4,72,000
ix)	23.9.2020	CEL/GZB/55	3,00,000	54,000	3,54,000
x)	23.9.2020	CEL/GZB/56	3,00,000	54,000	3,54,000
xi)	23.9.2020	CEL/GZB/58	3,00,000	54,000	3,54,000
xii)	23.9.2020	CEL/GZB/59	3,00,000	54,000	3,54,000

xiii)	23.9.2020	CEL/GZB/60	3,00,000	54,000	3,54,000
xiv)	23.9.2020	CEL/GZB/61	2,00,000	36,000	2,36,000
xv)	23.9.2020	CEL/GZB/62	4,00,000	72,000	4,72,000
xvi)	23.9.2020	CEL/GZB/63	4,00,000	72,000	4,72,000
xvii)	23.9.2020	CEL/GZB/64	3,00,000	54,000	3,54,000
xviii)	10.11.2020	CEL/GZB/66	40,000	7,200	47,200
xix)	10.11.2020	CEL/GZB/67	40,000	7,200	47,200
xx)	10.11.2020	CEL/GZB/72	40,000	7,200	47,200
	Total		1,48,41,000	26,71,380	1,75,12,380

12. It is contended that the aforesaid amount was paid in the following manner :-

Sr.No.	Date	Amount (Rs.)	Evidence
i)	7.11.2020	37,76,000	i) Confirmation (338A) ii) Ledger account (278)
ii)	8.7.2020	18,88,000	i) Confirmation (338B)
iii)	7.11.2020	16,75,600	ii) Ledger account (277)
iv)	3.6.2020	90,00,000	i) Confirmation (338C)
v)	17.6.2020	86,000	ii) Ledger account (276)
vi)	8.7.2020	9,44,000	
vii)	7.11.2020	20,00,000	
viii)	7.11.2020	20,00,000	
ix)	7.11.2020	20,00,000	
	Total	2,33,69,600	

13. It is contended that the aforesaid evidence was furnished by the assessee before the Assessing Officer by reply dated 7.7.2022. It is contended that the learned Assessing Officer has not made any enquiry from M/s Chetak Enterprises Ltd. despite the confirmations from M/s Chetak Enterprises Ltd. and no cash was paid by the assessee. It was submitted that the entire transaction is duly supported by the valuation report of an independent valuer taken before the purchase of machinery. Reliance was placed on the following propositions:

I. That seized material in absence of any corroborative evidence found from the possession of the appellant, cannot form basis for making any addition.

- i) 291 ITR 36 (Del) CIT v KulwantRai*
- ii) 293 ITR 43 (Del) CIT v. S.M. Aggarwal*
- iii) 296 ITR 619 (Del) CIT v. GirishChaudhary*
- iv) 305 ITR 245 (Del) CIT vs. VedParkashChaudhary*
- v) 308 ITR 230 (Del) CIT vs. D.K. Gupta*
- vi) 383 ITR 320 (Del) CIT v. VatikaLandbase (P) Ltd.*
- vii) 393 ITR 276 (Bom) CIT v. Arpit Land (P) Ltd.*
- viii) 332 ITR 468 (P&H) CIT v. Atam Valves (P) Ltd.*
- ix) 212 Taxman 1 (Del) CIT v. Jai Pal Aggarwal*
- x) 187 ITD 289 (Asr) Smt. HarmohinderKaur v. DCIT*
- xi) 165 TTJ 145 (Del) ACIT v. SharadChaudhary*

II That statements recorded/material relied and gathered behind the back of the assessee and without any opportunity for cross examination despite specific request made during the course of assessment proceedings, cannot be relied upon as it has no evidentiary value.

- i) 418 ITR 315 (SC) CIT v. Odeon Builders (P) Ltd.*
- ii) 62 taxmann.com 3 (SC) Andaman Timber Industries vs. CCE*
- iii) 125 ITR 713 (SC) KishnichandChellaram vs. CIT*
- iv) 288 ITR 345 (Del.) CIT vs. SMC Share Broker Limited*
- v) 293 ITR 43 (Del) CIT vs. S.M. Aggarwal*
- vi) 295 ITR 105 (Del) CIT vs. Dharam Pal Prem Chand Ltd.*
- vii) 303 ITR 95 (Del) CIT vs. Pradeep Kumar Gupta*
- viii) 322 ITR 396 (Del) CIT vs. Ashwani Gupta*
- ix) 379 ITR 367 (Del) CIT v Sunil Aggarwal*
- xi) ITA No(s)3185, 3186 & 3253/D/2015 (Del) PCIT vs. PavitraRealcon (P) Ltd.*
- xii) ITA No. 645/2019 (Del) dated 23.9.2024 PCIT v. Moon Beverages Ltd.*

III That it is a case of clear lack of enquiry and not a case of objective appreciation of facts on record.

- i) 361 ITR 10 (Del) CIT v. Gangeshwari Metal (P) Ltd.*
- ii) 357 ITR 146 (Del) CIT vs. Fair Finvest Ltd*
- iii) ITA No. 212/2012 dated 11.4.2012 (Del) CIT v. Goel Sons Golden Estate (P) Ltd.*
- iv) 342 ITR 169 (Del) Nova Promoters & Finlease (P) Ltd*
- v) ITA No. 645/2012 dated 13.1.2015 (Del) Funnay Time Finvest Ltd*
- vi) 361 ITR 220 (Del) CIT vs. M/s Kamdhenu Steel and Alloys Ltd.*
- vii) ITA No. 71/2015 dated 12.8.2015 (Del) CIT v. Vrindavan Farms (P) Ltd.*
- viii) ITA No. 3342/D/2013 ITO v. XO Infotech Ltd.*

14. The ld. DR for the Revenue relied upon the findings of the authorities below.

15. Considered the rival submissions and material placed on record. We observed that the ld. CIT(A) has sustained the addition by holding that the assessee during the course of assessment and appellate proceedings has failed to prove the sources of money available for making investment in cash to the extent of Rs.2,77,79,000/-.The factual matrix brought to our notice is that assessee has purchased second had machinery from M/s Chetak Enterprises Ltd. The assessee placed on record ledger accounts, invoices alongwith e-way bills of M/s Chetak Enterprises Ltd. Assessee has also placed on record confirmation from M/s Chetak Enterprises Ltd. It is noted that being second hand machinery the said transactions was entered into as per the valuation report of a govt. registered valuer which is placed at pages 318-338 of Paper Book. The aforesaid payments are

not disputed and books of accounts of the assessee stands accepted. However, it is noted that sheet marked as page no. 181 and 182 of Annexure A8 seized from the office premises of assessee at 4th Floor, Vikas Surya Shopping Mall, Rohini, Delhi are print outs in the shape of loose paper. It is noted that these loose papers are dumb documents. The assessee during the course of assessment proceedings denied making any such payment and vide reply dated 7.7.2022 filed by the assessee submitted as under:

“i. It is submitted that the assessee has purchased second hand machinery from M/s Chetak Enterprises Ltd. State-wise ledger accounts of M/s Chetak Enterprises Limited in the books of M/s BrijGopal Construction Company Pvt. Ltd. for the financial year 2020-21 are enclosed herewith at Annexure-1. Further no cash was paid at all by the assessee in lieu of the said machinery.

ii. Copy of Invoices along with e-way bills of M/s Chetak Enterprises Limited for the financial year 2020-21 are enclosed herewith at Annexure-2

iii. Further it is submitted that being second hand machinery the said transactions was entered into as per the valuation report of a govt. registered valuer. Copy of valuation report of machinery is enclosed herewith at Annexure-3.

iv. Furthermore should your goodself wishes, you may verify these facts directly from M/s Chetak Enterprises Ltd. also.

v. Further it is submitted that sheet marked as page no. 181 and 182 of Annexure A8 seized from the 4th floor, Vikas Surya Shopping Mall, Rohini, Delhi are print outs in the shape of loose paper seized from the office premises of M/s BrijGopal Construction Company Pvt. Ltd. It is submitted that these loose papers are dumb documents. It is respectfully submitted that they have no relation with any materialised or concluded transaction. They have not

been found in the possession of any director or employee of the assessee company, therefore cannot be made basis for drawing any adverse inference. It is thus respectfully prayed that no adverse inference be drawn from such loose papers.”

16. The above printout was not speaking document which can be used as a basis for making the addition u/s 69B of the Act in the absence of any substantive enquiry to validate the content of the paper with any supportive and corroborative material, more particularly have been regard to the confirmation from M/s Chetak Enterprises Ltd. also denied to have been received any cash. The market value of the machinery also stands corroborative as per the valuation report which too stands unrebutted.
17. In ACIT vs. Sharad Choudhary [2014] 165 TTJ 145 (Delhi-Trib.), it has been held that “a charge can be levied on the basis of document only when the document is a speaking one. The document should speak either out of itself or in the company of other material found on investigation and/or in the search. The document should be clear and unambiguous in respect of all four components of charge of tax. If it is not so, the document is only a dumb document and no charge of tax can be levied on the assessee on the basis of a dumb document.”Further it has been held that in absence of any supportive and corroborative material and evidence, a loose paper found during search containing rough notings of proposals/offers could not be a basis for making addition u/s 69B of the Act.

18. The Delhi Bench of Tribunal in case of Rishi Aggarwal vs. DCIT in ITA No. 1643/D/2019 has held as under:

“13. It can be seen from the above paper found during the search placed at page 30 of the Paper Book that: It is neither dated nor signed/stamped, there is no head note on the paper which could suggest the purpose for which it was created, the loose paper contained list of many other property transaction which were related neither to the assessee nor to Sh. Buti Singh (seller) which demonstrates that neither the assessee nor the seller was the author of the document. The loose paper did not belong to the assessee or to the seller, there is no description or comment explaining the hand written jottings-whether it represented a proposal for purchase or construction by the builder or payment between assessee and right seller, there is no date of receipt or payment mentioned against any figure, the content of the paper was incorrect as the total sales consideration did not match to the sales consideration as per the agreement. Further, the sales consideration as per the loose paper did not even match to the handwritten jottings which raise serious doubts on its validity and accuracy.

14. Thus, the above said loose paper was not speaking document and it is a dumb document which can be used as a basis for making the addition u/s 69 of the Act in the absence of any substantive enquiry to validate the content of the paper with any supportive and corroborative material and evidence. The evidentiary value of loose paper which is unsigned, undated and unverified has been held to be highly questionable and has not been accepted by the Hon'ble Supreme Court and various High Courts in following judgments.

*CBI vs. VC Shukla 3 SCC 410 (SC)
 CIT vs. Girish Chaudhary (2008) 296 ITR 619 (Delhi)
 CIT vs. Anil Bhalla (2010) 322 ITR 191 (Delhi)
 CIT vs. Atam Valves (P.) Ltd. 184 Taxman 6 (P&H)
 Atul Kumar Jain vs. DCIT (1999) 64 TTJ (Delhi) 786*

15. In the case of CIT vs. Jaipal Aggarwal [2013] 212 Taxman 1 (Delhi)- wherein it was held that Dumb documents seized, i.e., from which nothing could be clearly understood, cannot form a

justified base for making additions to income of the assessee. Decision of the hon'ble Delhi ITAT in the case of ACIT vs. SharadChoudhary [2014] 165 TTJ 145 (Delhi-Trib.) wherein it has been held that "a charge can be levied on the basis of document only when the document is a speaking one. The document should speak either out of itself or in the company of other material found on investigation and/or in the search. The document should be clear and unambiguous in respect of all four components of charge of tax. If it is not so, the document is only a dumb document and no charge of tax can be levied on the assessee on the basis of a dumb document." Further it has been held that in absence of any supportive and corroborative material and evidence, a loose paper found during search containing rough notings of proposals/offers could not be a basis for making addition u/s 69 of the Act. 16. It is further observed that the Ld. AO did not consider the need to summon the seller or the person searched, or to record the statement of the author/searched person/seller by giving an opportunity to assessee to cross examine the said person. The AO has not even made any enquiry about the value of the property purchased by the assessee. Considering the above facts and circumstances, we find merit in the Ground Nos. 2, 5 to 10 and, accordingly, we delete the addition of Rs.76,75,000/- made u/s 69 of the Act."

19. It is further observed that the AO did not consider the need to summon to M/s Chetak Enterprises Ltd. or to record the statement of the seller by giving an opportunity to assessee to cross examine the said person. The AO has not even made any enquiry about the value of the old machinery purchased by the assessee. Considering the totality of the facts and circumstances, in the light of the above discussions, there was no justification for the ld. CIT(A) to have sustained the addition of Rs.2,77,79,000/- and accordingly, we delete the addition of

Rs.2,77,79,000/- made u/s 69B of the Act. In view of the above discussion, Grounds 4 to 4.2 raised by the assessee are allowed.

20. Grounds 5 to 5.1 are regarding that addition made of Rs.1,00,00,000/- representing alleged cash payment made to supplier namely M/s Aggarwal Spun Pipes and Verticast Concrete (P) Ltd. and held as unexplained expenditure by invocation of section 69C read with section 115BBE of the Act.
21. The relevant facts in brief are, that as a consequence of search, a sheet marked as page no. GO-2, A-12 found/seized during the course of search and seizure proceedings from the office premises of the assessee at 201-206, 2nd floor, Manglam Place, Sector-3, Rohini. The sheet is reproduced by the CIT (A) in his order at page 19 and the same is retyped as under :-

Brij Gopal Construction, Jhajjar Verticast			1,395,360.00
BVN Traders & Supp., Jhajjar Verticast			182,685.00
Brij Gopal Const., Faridabad			17,952,622.00
Brij Gopal Const., Jhajjar Aggarwal			(2,990,181.00)
Brij Gopal Const. Faridabad Aggarwal			101,344.00
Brij Gopal Const., Aggarwal Cash Return			2,300,000.00
Total Amount			19,041,630.00
Less – Pipe Return Verticast			705,957.00
Less – Pipe Return 2200 MM 1 Pipe Verticast			47,500.00
Less – Pipe Return Aggarwal			15,254.00
Less – Cash			5,000,000.00
Less – Cash			5,000,000.00
Less Verticast Cement	7520	198.00	1,488,960.00
Less – Aggarwal Cement	7400	208.00	1,539,200.00
Add Cement (3028100) 3.5%			105,985.00
Closing Balance			5,350,844.00

22. The ld. AO has observed that based on the said sheet, assessee has made cash payment to suppliers namely M/s Aggarwal Spun Pipes and Verticast Concrete (P) Ltd. amounting to Rs. 50 lacs each and made the addition by holding as under:

“As per discussion in para C 9.1, as the assessee has failed to discharge his onus to explain the nature and business relevance of this expenditure. Further, the source of the same has not been explained. As per the provisions of Section 292C of the I.T. Act, 1961 the onus lies on the assessee to explain the contents of these documents, since they were seized from his residence. The assessee was asked to show cause why the expense recorded on these documents should not be treated unexplained expenditure/investment u/s 69, since he has failed to reconcile the expenses recorded on them with regular books of accounts. In response to that the assessee reiterated that he is not in a position to reconcile the same. The assessee failed to reconcile the expenses recorded on the said documents with regular books of accounts. Hence the unexplained expenditure of recorded on the said documents was treated unexplained expenditure/investment u/s 69 of the I.T. Act'61 and added back to the total income of the assessee. The assessee's argument that the entries on these page are vague and has no relevance cannot be accepted as the entries on the ledger on all pages is found to be written continuously in continuity and purposefully. Hence, the amount which could not be explained with relation to the cash withdrawals hereby remained unexplained. On a perusal of the documents, it is evident that the payments as appearing are required to be reconciled with the books of accounts. If assessee is unable to reconcile with the books of accounts then naturally the payments become unaccounted and so the onus upon the assessee is to explain the source thereof. Clearly the expenses which have been made in cash, have not been recorded in the books of accounts.

Thus by virtue of sec 69, it becomes obligatory on the part of the assessee to explain, to the satisfaction of the AO, the source of expenditure/investment made by him, with a rider that if the explanation is not satisfactory, the AO could use his discretion to add the expenditure as deemed income for the year in which the

expenditure was incurred. In view of the above discussion, the assessee has failed to discharge his onus to explain such expenditure/investment with his bank withdrawals/ other corroborative evidences and as such addition is warranted. In view of the above the amount of Rs. 1,00,00,000/- is added to the income of the assessee u/s 69C of the Act.”

23. The ld. CIT(A) has confirmed the addition by observing in paras 45-46 of order as under:-

“46 I have considered the facts of the issue and submission of the appellant and perused the sheet marked as GO-2, A-12 found/seized during the course of search and seizure proceedings at 201-206, 2" Floor, Manglam Place, Sector-3, Rohini, Delhi. The document was seized from the premise of the appellant and therefore, the primary onus to explain the contents lies on the appellant. The appellant has not been able to explain the documents and state the source of cash available which has been utilized for making unaccounted payment.

47 By virtue of section 69C of the Act, it becomes obligatory on the part of the appellant to explain, to the satisfaction of the AO, the source of expenditure made by the appellant of Rs. 1,00,00,000/-. The appellant during the course of assessment and appellate proceedings has failed to prove the source of expenditure. In view of the facts discussed above, the impugned issue is decision in against of the appellant. Consequently, the addition of Rs. 1,00,00,000/- is confirmed. Grounds 11 is dismissed.”

24. Before us the learned AR submitted that assessee has contended that there is no admission of cash paid by any of the director or employee of the assessee company. It is also contended that there is no admission of receipt of cash by M/s Aggarwal Spun Pipes or M/s Verticast Concrete (P) Ld. It is further contended that the payments were through banking channel only and it had never made any such payment in cash. The assessee as placed on record ledger account of M/s Aggarwal Spun Pipes in the books of assessee company (pages 339-342 of Paper Book) and

ledger account of M/s Verticast Concrete (P) Ltd. (pages 343-346 of Paper Book).

25. The Id. DR for the Revenue relied upon the findings of the authorities below.
26. Considered the rival submissions and material placed on record. We observed that the Id. CIT(A) has sustained the addition by holding that the assessee during the course of assessment and appellate proceedings has failed to prove the source of expenditure. It is noted that there is no admission of cash paid by any of the director or employee of the assessee. It is noted that there is no admission of receipt of cash by M/s Aggarwal Spun Pipes or Verticast Concrete (P) Ltd. It is noted that the payments were made through banking channel only and it had not made any such payment in cash. The assessee during the course of assessment proceedings denied making any such and has been stated vide reply dated 10.7.2023 filed by the assessee and submitted as under:

"i. It is submitted that the assessee was not involved in any cash transaction with M/s Aggarwal Spun Pipes and M/s Verticast Concrete Pvt. Ltd. Further all the transactions made by the assessee with these parties are genuine in nature and are supported by invoices and bank statements and also duly recorded in books of account of the assessee. The ledger account of M/s Aggarwal Spun pipes and M/s Verticast Concrete Pvt. Ltd. is enclosed herewith as Annexure-4. Further supporting bank statement has already submitted by the assessee vide reply dated 07.04.22 for AY 2021-22.

ii. Further it is submitted that sheet marked as GO-2, A-12 seized from 201-206, 2" floor, manglam place, sector 3, Rohni, are print outs in the shape of loose paper seized from the office premises of M/s BrijGopal Construction Company Pvt. Ltd. It is submitted that these loose papers are dumb documents. It is respectfully submitted that they have no relation with any

materialised or concluded transaction. They have not been found in the possession of any director or employee of the assessee company, therefore no adverse inference can be drawn based on this. It is thus respectfully prayed that no adverse inference be drawn from such loose papers.

iii. Further should your goodself wishes, you may verify these facts directly from M/s Aggarwal Spun pipes and M/s Verticast Concrete Pvt. Ltd. also.”

27. It is observed that the AO did not consider the need to summon to M/s Aggarwal Sun Pipes and M/s Verticast Concrete (P) Ltd. or to record the statement by giving an opportunity to assessee to cross examine the said person. The AO has not even referred to any statement record of the assessee or any corroborative evidence detected as a result of search. Considering the totality of the facts and circumstances, in the light of the above discussions, there was no justification for the Id. CIT(A) to have sustained the addition of Rs.1,00,00,000/- and accordingly, we delete the addition of Rs. 1,00,00,000/- made u/s 69C of the Act. In view of the above discussion, Grounds 5 to 5.1 raised by the assessee are allowed.
28. Grounds No.1 and 2 are not pressed and, therefore, the same are dismissed as such.
29. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on this 20th day of December, 2024.

**Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

**sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 20.12.2024

TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-23, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI