

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.62/Nag./2018
(Assessment Year : 2013-14)

Asstt. Commissioner of Income Tax
Central Circle-1(1), Nagpur Appellant

v/s

Shri Sanjay Gaurishankar Agrawal
Flat no.101, Om Mansion, Plot no.158
Ramdaspath, Nagpur 440 001 Respondent
PAN - AEDPA0105K

Assessee by : Shri Kapil Hirani
Revenue by : Shri Sandipkumar Salunke

Date of Hearing - 28/11/2024

Date of Order - 10/02/2025

ORDER

PER V. DURGA RAO, J.M.

The aforesaid appeal by the Revenue is directed against the impugned order dated 29/01/2018, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2013-14.

2. The Revenue has raised following grounds:-

"1. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs. 12,50,00,000 made on account of unexplained cash credit u/s 68, holding that the assessee has proved the identity and creditworthiness of the lender company and genuineness of the transaction without appreciating the fact that the assessee had not been able to prove credit worthiness of lender companies when the main source of fund was share premium which itself was from questionable sources.

2. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs. 10 on account of unexplained cash credit u/s 68,

holding that the assessed due proved the identity and creditworthiness of lender companies and genuineness of transaction without appreciating the fact that these lender companies were Kolkata based paper companies which had later on been taken over by the assessee and his family members.

3. On the facts and circumstances of the case and in law, the CIT(A) failed to appreciate that the credit entries in form of share premium, loans were received from shell companies who are part of financial manoeuvring to legitimise illicit money and evade taxes and lack of genuineness in actual operations of shell companies.

4. On the facts and circumstances of the case and in law, the CIT(A) has deleted the addition by superficially assessing the genuineness of transactions by accepting the documents sighted before him on face value ignoring the surrounding circumstances, preponderance of human probabilities and ground realities ?

5. On the facts and circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.12,50,00,000/- holding that the amount is received through banking channel by incorrectly distinguishing the ratio of decision of Hon'ble Supreme Court in the case of P. Mohan Kala and Ors.

6. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs. 12,50,00,000/- made on account of unexplained cash credit u/s 68, holding that the addition had not been made on the basis of any incriminating material found during search without appreciating the fact that during the course of search, incriminating documents with regard to investment of assessee and his family members in Kolkata based companies (lenders) were found and seized from the residential premises of the assessee.

7. Any other ground that may be urged at the time of hearing.

3. Facts in Brief:– The assessee is an Individual deriving income under the heads "Income From House Property", "Income From Salary" and "Income From Other Sources". For the year under consideration, the assessee filed its return of income under section 139 of the Income Tax Act, 1961 ("the Act") on 28/02/2014, declaring total income of ₹ 5,12,270, which was accepted vide intimation under section 143(1) of the Act and no notice under section 143(2) of the Act was issued within the prescribed time i.e., by 30/09/2014. On 02/12/2014, a search and seizure action was conducted under section 132 of the Act was carried out at residential premises of the assessee. In response to the notice issued under section 153A of the Act, the assessee filed its

return of income on 29/07/2016, declaring same income of ₹ 5,12,270. The Assessing Officer completed assessment under section 143(3) r/w section 153A of the Act on 30/12/2016, making addition of ₹ 12.50 crore under section 68 of the Act being unsecured loan taken from a company which was treated as unexplained.

4. On appeal, the learned CIT(A) deleted the addition of ₹ 12.50 crore made by the Assessing Officer, the operating part vide Para-6.6, 6.7 and 6.9 of the impugned order passed by the learned CIT(A) are extracted below:-

"6.6 A perusal of the assessment order also shows that no incriminating material was found in the case of the appellant during the course of search proceedings showing that the transaction entered into by the appellant was Sham transaction. The appellant has submitted that it had filed return of income u/s 139 of the I.T. Act on 28/02/2014 declaring total income of Rs. 5,12,270/-. The appellant has also submitted that the returned income was accepted vide intimation u/s 143(1). The appellant also submitted that no notice u/s 143(2) was issued within prescribed time. The appellant accordingly submitted that the assessment in the appellant's case was unabated/completed assessment and therefore any addition in the appellant's case could be made only on the basis of incriminating material found during the course of search. The appellant relied on various judicial pronouncements including one in the case of CIT Vs. Kabul Chawla (2016) 380 ITR 573 (Del), in which it has been held that:

"Completed assessments can be interfered with by the Assessing Officer while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment. (Para 37)."

67 It is noted from the record of the appellant that the regular assessment for A.Y. 2013-14 has been framed u/s 143(1) by Asst. Commissioner of Income Tax, Circle-1, Nagpur accepting the returned income. I also find that no incriminating material has been found during the course of search. The AO has not made this addition on the basis of any incriminating material found during the course of search. Therefore, I find that the appellant is covered by the following judicial pronouncement:

(2016) 380 ITR 0573 (Delhi)

CIT vs. Kabul Chawla

(2015) 374 ITR 0645 (Bom.) CIT vs. Continental Warehousing Corporation

iii) (2016) 384 ITR 0543 (Delhi) Pr. CIT vs. Ms. Lata Jain

iv) (2013) 023 ITR 0766 (Mum.) ACIT vs. Pratibha Industries Ltd.

(2016) 47 CCH 0159 (Del.) (Trib.) Best Infrastructure (India) Pvt. Ltd. &Ors. vs. ACIT &Ors.

Hon'ble High Court of Delhi order in ITA No. 13/2017 in the case of Best Infrastructure (India) Pvt. Ltd. vide order dated 01/08/2017.

6.8 I find that in the facts of present case, the AO has not relied upon any incriminating material found during the course of search to make addition as is evident from perusal of assessment order. Ratio laid down by the aforesaid decision squarely support the submission made by the appellant and addition made by the AO is unjustified and unsustainable.

6.9 Considering the totality of facts and circumstances in case of appellant and following the aforesaid judicial precedents, I am of the considered view that the addition made by the AO is unjustified and unsustainable. The assessment in appellant's case had been framed u/s 143(1). Therefore, the appellant's case remained unabated/completed as a result of the search. Therefore, relying on judicial pronouncements stated above, any addition in appellant's case could only be made on the basis of some incriminating material found during the course of search. I find that the AO has not relied on any incriminating material found during the course of search to make these additions. Therefore, I find that the addition made by the AO u/s 68 of the I.T. Act is unjustified and unsustainable. The AO is accordingly directed to delete the addition of Rs. 12,50,00,000/-. Ground Nos. 1 and 2 are accordingly allowed."

5. Before us, the learned Departmental Representative, Shri Sandipkumar Salunke, strongly supported the order passed by the Assessing Officer.

6. The learned Counsel for the assessee, Shri Kapil Hirani, appearing on behalf of the assessee submitted that on two grounds – (i) the assessee has proved the identity and creditworthiness of the creditor and also proved the genuineness of the transaction; and (ii) the assessment for the year under consideration was unabated and the addition has not been made on the basis of any incriminating material found during the search. The learned Counsel for the assessee further submitted that the learned CIT(A) has relied on decisions in CIT v/s Kabul Chawla, 380 ITR 573 (Del.) and CIT v/s Continental Warehousing Corporation, 374 ITR 645 (Bom.) and many other judicial

pronouncements. He submitted that the Hon'ble Apex Court in a landmark decision rendered in PCIT v/s Abhisar Buildwell (P) Ltd., vide judgment dated 24/04/2023 reported as [2023] 332 CTR 385 (SC) has confirmed the above view of the High Courts and held that *"in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments / unabated assessments"*. In assessee's own case for assessment year 2009-10 and 2010-11 in ACIT v/s Shri Sanjay Gaurishankar Agrawal, appeal being ITAs no.60 & 61/Nag./2018, vide order dated 27/09/2023, a copy of which is placed on record, wherein the Co-ordinate Bench of the Tribunal, Nagpur Bench, on identical facts, has dismissed the Revenue's appeal and held that since the assessments were unabated, no addition could have been made in absence of incriminating material, whereas in the assessment order dated 31/12/2016, passed under section 153A of the Act, the Assessing Officer has not made addition based on any incriminating document found during the search. Thus, the learned Counsel for the assessee submitted that in view of the above facts and legal position, the impugned order passed by the learned CIT(A) be upheld.

7. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. Here, we find that the Assessing Officer has made addition solely on the basis of statement made by a third party and the Assessing Officer failed to provide opportunity to the assessee to cross examine the said third party, which resulted in clear violation of law laid down by the Hon'ble Supreme Court in *Andaman Timber Industries v/s CIT*, (2015) 62 taxmann.com 003 (SC), wherein the Hon'ble

Supreme Court held that when statements of witnesses are made basis of demand, not allowing assessee to cross-examine witnesses, is a serious flaw which makes order nullity, as it amounts to violation of principles of natural justice. Even otherwise also, we find that the issue for our adjudication is squarely covered by the Co-ordinate Bench decision of the Tribunal, Nagpur Bench, rendered in assessee's own case in ACIT v/s Shri Sanjay Gaurishankar Agrawal, Revenue's appeal being ITAs no.60 & 61/Nag./2018, vide order dated 27/09/2023, for the assessment year 2009-10 and 2010-11, wherein the Tribunal held as under:-

"6.8. I find that in the facts of present case, the AO has not relied upon any incriminating material found during the course of search to make addition as is evident from perusal of assessment order. Ratio laid down by the aforesaid decision squarely support the submission made by the appellant and addition made by the AO is unjustified and unreasonable.

6.9. Considering the totality of facts and circumstances in case of appellant and following the aforesaid judicial precedents, I am of the considered view that the addition made by the AO is unjustified and unsustainable. The assessment in appellant's case had been framed u/s 143(3) vide order dated 27/12/2011. Therefore, the appellant's case remained unabated/completed as a result of the search. Therefore, relying on judicial pronouncements stated above, any addition in appellant's case could only be made on the basis of some incriminating material found during the course of search. I find that the AO has not relied on any incriminating material found during the course of search to make these additions. Therefore, I find that the addition made by the AO u/s 68 of the I.T. Act is unjustified and unsustainable. The AO is accordingly directed to delete the addition of Rs.1,80,00,000/-. Ground Nos. 1 and 2 are accordingly allowed."

4. Suffice to say, it has come on record that the department has not been able to pinpoint any incriminating material found or seized during the course of search against the assessee. We thus see no merit in it's common instant legal ground in both these assessment years. Rejected accordingly.

5. These Revenue's twin appeals I.T.A. nos.60 & 61/Nag./2018, are dismissed in above terms. A copy of this common order be placed in the respective case files."

8. The learned Departmental Representative could not adduce any evidence to contradict the decision of the learned CIT(A) to enable this Court to take a view other than the view taken by the learned CIT(A). Accordingly,

the impugned order passed by the learned CIT(A) is hereby upheld by dismissing the grounds raised by the Revenue.

9. In the result, appeal by the Revenue stands dismissed.

Order pronounced in the open Court on 10/02/2025

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 10/02/2025

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur