

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA Nos. 2613 & 2614/Del/2022
(Assessment Years: 2016-17 & 2017-18)

Sachin,	Vs.	DCIT,
23, Bara Mohalla Near		Central Circle- 7,
City Thana Hisar City		Delhi
SO, Haryana		
(Appellant)		(Respondent)

PAN: EREPS5826P

Assessee by :	Shri Sandeep Goel, Adv
Revenue by:	Ms. Jaya Chaudhary, CIT (DR)
Date of Hearing	14/10/2024 & 07/02/2025
Date of pronouncement	05/03/2025

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeals in ITA Nos.2613 & 2614/Del/2022 for AYs 2016-17 & 2017-18, arise out of the order of the Commissioner of Income Tax (Appeals)-24, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] dated 30.08.2022 against the order of assessment passed u/s 153C r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.12.2021 by the Assessing Officer, DCIT, Central Circle-7, New Delhi (hereinafter referred to as 'ld. AO').

2. Identical issues are involved in both these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience. The facts of Assessment Year 2016-17 are taken up for adjudication and the decision rendered thereon shall apply mutatis mutandis for Assessment Year 2017-18 also except with variance in figures.

3. The assessee has raised the following original grounds of appeal before us:-

"1. On the facts and circumstances of the case, the order passed by the Ld. AO and impugned order passed by the CIT (A) is bad both in the eye of law and on facts.

2. In absence of providing of satisfaction note, if any, recorded by the regular AO of the appellant (ITO, Ward-1, Hisar) initiation of proceedings u/s 153C, in the facts and circumstances of the case, are not valid and, therefore, the assessment basing on such invalid proceedings deserved to be cancelled and CIT (Appeals) has erred in upholding the validity of the proceedings u/s 153C.

3. On the facts and circumstances of the case, the Ld. CIT(A) has not appreciated the contention of the appellant that upon the facts and circumstances of the case and without application of mind, absence of cogent material, without conducting any independent enquires arriving at the prima facie conclusion that books of account or document or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year and years referred to in sec. 153A(1) as the documents seized in the search of third party does not belong to the appellant hence, the Notice issued u/s 153C by the AO as well as the assessment order passed by AO are invalid, illegal both in the eye of law and on the facts.

4. On the facts and circumstances of the case, the Ld. CIT(A) has not appreciated the contention of the appellant that presumption of Section 292C cannot be applied to the appellant.

5. On the facts and circumstances of the case, the Ld. CIT(A) has not appreciated the contention of the assessee that the Ld. AO erred in making addition of Rs.1,20,800/- under sec. 69A relying on inadmissible evidence of ledger account found in 'Pankajkb' account of M/s JBL OFFLINE without providing the appellant the relevant details/ documents and right to cross examine the third party even on the several specific request made by the appellant to the AO during the course of assessment proceedings

6. On the facts and circumstances of the case, the Ld. CIT(A) has not appreciated the contention of the assessee that the Ld. Assessing Officer has erred in making addition u/s 69A of the Income Tax Act, 1961 amounting to Rs. 1,20,800/- as the addition is not based on evidence, opposed to evidences on records, based on the surmises and conjecture totally disregarding the facts of the case.

7. On the facts and circumstances of the case, the Ld. CIT(A) has not appreciated the contention of the assessee that the Ld. AO failed to appreciate the various request letters and written submission and also

erred in disbelieving the contents of affidavit vide Certificate No. DL69351661480291T dtd 25.12.2021 filed while making the impugned addition of Rs. 1,20,800/-."

4. The assessee is the Proprietor of M/s Meru Jewels, carrying the whole sale business of gold bullion. He had filed his original return of income declaring total income of Rs. 17,37,170/-. A search and seizure operation was conducted u/s 132 of the Act on 05.01.2017 in the case of Jindal Bullion Ltd (JBL). During this search, digital data stored in software called 'Hajir Johri' was seized from the residence of Mr. Kushagra Jindal, promoter of JBL. The said software purportedly contained parallel books maintained by JBL where both transactions through the banking channel and cash transactions were found recorded. While the transaction undertaken through banking channel were recorded in regular books of accounts maintained in tally software, however, certain cash transactions were not recorded in the regular books of accounts, which were alleged by the Ld. AO to be unaccounted. The Ld. AO observed that a statement of Ms. Parul Ahluwalia, Director and former employee of JBL, was recorded under Section 132(4) of the Act, wherein, she confirmed that both 'pakka' and 'kaccha' transactions undertaken by JBL were documented in the 'Hazir Johri' software.

5. On perusal of seized data, among others, the ledger account found with code '**Pankaj kb**' allegedly pertaining to assessee was found. In the said ledger, the transactions made in cash as well as through banking channel were found recorded. The AO of the searched person recorded his satisfaction note on 24.09.2020, that the said ledger account pertain to the assessee and has bearing on computation of total income of the assessee. Accordingly, notice under section 153C of the Act stood issued to the assessee on 23.10.2020. In response to the said notice, the assessee filed

his return of income on 13.12.2021 declaring total income of Rs 17,37,170/-. On 14.12.2021 and 18.12.2021, the assessee requested for Xerox copies of the seized documents pertaining to the assessee for the related Assessment Years. On 20.12.2021, the assessee received "proforma for recording of satisfaction about seized assets belonging / pertaining / relating to person other than the person searched" together with ledger namely "Pankaj kb" containing financial data from 23.04.2015 to 09.05.2016 relevant to Assessment Years 2016-17 and 2017-18. On 21.12.2021, the assessee requested to provide the copy of statements recorded on oath under section 132(4) of the Act of Ms Parul Ahluwalia and Mr Kusharg Jindal or any other persons wherein it is alleged that ledgers with code name "Pankaj kb" pertains to the assessee and it was also requested to provide an opportunity to cross examine those persons.

6. The assessee categorically denied having made any unaccounted cash transactions with JBL and also furnished the details of transactions done with JBL by the assessee. Hence the ledger account "Pankaj kb" was denied by the assessee completely. The Ld. AO issued show cause notice on 21.12.2021 as to why the amount of various unaccounted transactions entered in the ledger account with code name "Pankaj kb" pertaining to assessee / Meru Jewels by JBL should not be added to the income of the assessee on the basis of statement of Parul Ahluwalia, Kusharg Jindal and on the basis of banking transactions appearing in the Hazir ledger accounts by 22.12.2021. In response thereto, the assessee submitted his reply on 22.12.2021.

7. The Ld. AR before us argued that the assessee did not enter into any cash transactions with JBL. According to the Ld. AR, all transactions conducted between the assessee and JBL were undertaken through proper banking channels and were duly recorded in the audited books of accounts

of the assessee. The Ld. AO, however, relied on entries from the seized ledger 'Pankaj kb', which was not maintained by the assessee, and the statement of Ms. Parul Ahluwalia, a Director and former employee of M/s. JBL. In her statement, however, Ms. Ahluwalia made no mention of any cash transactions involving the assessee, nor was she specifically questioned about such transactions. Given that the 'Hazir Johri' ledger was neither maintained by nor recovered from the assessee, the presumption under Section 292C read with section 132(4A) of the Act does not apply to the assessee. Thus it was argued that no presumption could be drawn against the assessee on the basis of seized material found in the search of third party, when no corroborative evidence in related to such transactions was found implicating the assessee.

8. The Ld. AR also pointed out that from the perusal of the seized ledger named 'Pankaj kb' of Hazir Johri software, it can be seen that it not only contains entries pertaining to assessee but some other parties as well with whom assessee had no relation whatsoever. The Ld. AR also drew our attention to the seized ledger in which against the bank payments, name of the respective party i.e., Assessee or other parties were mentioned. However, against the alleged cash payment, no names are mentioned. Therefore, even if one believes that the cash payment to be true it cannot be said how much cash is attributable to which party. This pattern of recording the entries raises a serious concern whether while making the entries, the accountant of JBL have posted the cash entries in the wrong ledgers or deliberately, the cash entries were posted in the ledgers of genuine parties, like Assessee, for concealing the identity of the actual cash buyers and to reflect the correct profitability. In view of the above pointed deficiencies, it was argued that the seized ledger is a dumb document, in as much as it makes no accounting sense to merge the entries of unrelated

parties into one ledger, to state that it is trite law that no addition can be made on the basis of dumb documents, more so when no corroborative evidence of cash sales i.e., sales invoices/vouchers, stock register etc. were found during search. In support of this, the Ld AR placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of CIT v. D.K. Gupta reported in 308 ITR 230 (Del).

9. In so far as statements of Ms. Parul Ahluwalia and Ms. Ekta Soni (employee of JBL group) referred by the Ld. AO in the assessment order, the Ld. AR pointed out that the Assessee had sought for cross examination of relevant persons, of those, who had deposed against the assessee, but the Ld. AO failed to provide the same.

10. The Ld. AR relied on the co-ordinate bench decisions of Delhi Tribunal in the case of Anoop Kumar Soni vs. DCIT in ITA No. 1641/Del/2021 dated 2.8.2023, wherein while adjudicating almost similar facts related to search on JBL, the Tribunal held that since the ledger found during the search 'AP' contains the entries of parties other than assessee, then said ledger cannot be said to be belonging to assessee and addition made on the basis of assumption was deleted. Similarly reliance was placed on yet another decision of Surender Kumar Jain in ITA No. 1314/Del/2023 dated 07.03.2024 arising out of search in the JBL, wherein it was held that entries in the Hajir Johri ledger of M/s. JBL, supposedly involving M/s. S.K. Impex, do not prove actual transactions without corroborative evidence such as bills or invoices. The additions are based on conjecture and the statement of Mr. Parul Ahluwalia lacking supporting evidence was deleted.

11. Per contra, the Ld. DR vehemently relied on the orders of the lower authorities and argued that the Hazir Johri Software, the accounting data of which was seized during the search on JBL, was full fledged database

which was meticulously prepared to record the banking transactions as well the unaccounted cash transactions. Further, it was also argued that the persons belonging to JBL in their statement recorded under section 132(4) of the Act during the search admitted that accounted (genuine transaction disclosed in the regular books of accounts) as well as unaccounted cash entries were recorded in the Hajir Johri software. The said statements were never retracted by the said persons.

12. The Ld. AR in his rebuttal to the arguments advanced by the Ld. DR vehemently submitted that seized ledger 'Pankaj kb' is a combined ledger account wherein transactions of various unrelated parties were also recorded and the lower authorities had not brought on record with cogent corroborative evidences to prove which of those transactions actually pertain to the assessee herein.

13. We have heard the rival submissions and perused the materials available on record. At the outset, we find that a search and seizure operation was conducted u/s 132 of the Act on 05.01.2017 in the case of Jindal Bullion Ltd (JBL). During this search, digital data stored in software called 'Hajir Johri' was seized from the residence of Mr. Kushagra Jindal, promoter of JBL. The said software purportedly contained parallel books maintained by JBL where both transactions through the banking channel and cash transactions were found recorded. The Ld. AO observed that a statement of Ms. Parul Ahluwalia, Director and former employee of JBL, was recorded under Section 132(4) of the Act, wherein, she stated that both 'pakka' (entries recorded in regular books of account) and 'kaccha' (unaccounted) transactions undertaken by JBL were documented in the 'Hajir Johri' software. On perusal of seized data, among others, a ledger named 'Pankaj kb' allegedly pertaining to Assessee was found. In the said ledger, the transactions made in cash as well as through banking channel

were found recorded. But it is pertinent to note that the Hazir Johri Software was found and seized from the premises of JBL at the time of its search under section 132 of the Act. Hence the presumption under section 292C of the Act would apply to JBL and not to the assessee. Eventhough the proceedings stood initiated under section 153C of the Act on the assessee, the basic presumption under section 292C of the Act would only be on JBL. The assessee on its part had categorically denied the transactions reflected in the said Hazir Johri Software by clearly stating that the entries found thereon contains transactions of various other unrelated parties with the assessee and that the employee of JBL had recorded all the transactions against assessee's name. Admittedly, the entries reflected in the said software pertains to other unrelated parties with the assessee. Admittedly, the said ledger is a combined ledger account of various transactions pertaining to other unrelated parties with the assessee and contains few transactions pertaining to the assessee. However, there is no concrete material brought on record by the lower authorities to implead assessee with all those transactions. Even for the transactions where assessee's name was mentioned, the revenue was not able to bring any corroborative evidence to prove the nature of such transaction. Hence it could be safely concluded that the assessee had given a plausible explanation about the contents of the said software. Furthermore, as rightly pointed out by the Ld.AR, there is no corroboration of those entries with the bills / vouchers , sales, stock registers etc, showing the cash sales to prove that the alleged cash sales belong to the assessee. Hence those entries cannot be relied upon for making an addition in the hands of the assessee.

14. We also find that the Co-ordinate Bench of this Tribunal in the case of Anoop Kumar Soni vs. DCIT in ITA No. 1641/Del/2021 dated 2.8.2023,

wherein while adjudicating almost similar facts related to search on JBL, the Tribunal held that since the ledger found during the search 'AP' contains the entries of parties other than assessee, then said ledger cannot be said to be belonging to assessee and addition made on the basis of assumption was deleted. The relevant observations made by the Tribunal in this regard are as under:-

"30. The banking transactions pertaining to other entities such as Aarthav Gems & Jewels Pvt. Ltd., Surasti Overseas Pvt. Ltd., M/s Saumya Bullion & Jewellers were also recorded in the account AP whereas it had nothing to do with the assessee. In the Remand Report dated 02.08.2021 the Assessing Officer verified all these banking transactions and accepted the contentions of the assessee. In other words, it was verified by the Assessing Officer that some of the banking transactions recorded in the account AP pertain to other entities and not the assessee. Only 23% of the total banking transactions pertain to assessee and remaining 77% are between JBL and other parties. In the facts of the assessee's corroboration is missing. It is for the searched party i.e. JBL to explain the contents of material recovered from his premises. In case the searched party states that the material belongs to a third party there has to be some connect or corroboration with the third party. On the facts of the present case there is no direct evidence to establish that the account AP belongs to Anoop Soni. The entire action is based on presumptions made by the A.O. Notably, simultaneous search action on 05.01.2017 on Anoop Soni did not detect any material or evidence to establish or even suggest that he was engaged in unaccounted and undisclosed transactions involving sale/purchase of gold in cash outside books of accounts.

31. The entire addition by treating the account AP as belonging to Anoop Soni has been made on the basis of presumption drawn and the statement of Shri Parul Ahluwalia. However, statement of the assessee has not been recorded on this issue either at the time of search, post search inquiries or even during the assessment proceedings. A careful examination of the account AP as reproduced in the assessment order would reveal that in the remarks column various acronyms have been used against different transactions such as JD, KCX, RBG Overseas, KMTY, Oven AJ, JBL Coins, Oppo Mobile, Satia, Ishaan, Anshul, Vinod 8676, Guddu etc. These abbreviations

show that the transaction recorded is neither through bank nor cash because since specific acronyms have been used, these transactions cannot be inferred to be pertaining to the assessee even if it is presumed with account AP belongs to the assessee.

32. Hence, keeping in view, the entire factual matrix of the case, we hold that no addition is warranted in the case of the assessee. In the result, the peak credit theory set out by the Id. CIT(A) would also become infructuous. The appeals of the assessee on this ground are allowed and accordingly the appeals of the revenue are liable to be dismissed."

15. Similar view was taken by this Tribunal in the case of Surender Kumar Jain in ITA No. 1314/Del/2023 dated 07.03.2024 arising out of search in the JBL, wherein it was held that entries in the Hajir Johri ledger of M/s. JBL, supposedly involving M/s. S.K. Impex, do not prove actual transactions without corroborative evidence such as bills or invoices. The additions are based on conjecture and the statement of Mr. Parul Ahluwalia lacking supporting evidence was deleted. The relevant findings of the said decision are 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 linking 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."

16. In view of the above observations and respectfully following the judicial precedents relied upon hereinabove, we hold that no addition could be made in the hands of the assessee by placing any reliance on Hazir Johri Software. Accordingly, the grounds raised by the assessee are allowed for both the years under consideration.

17. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 05/03/2025.

-Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:05/03/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi