

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.1397/Del./2023, A.Y. 2019-20

Deputy Commissioner of Income Tax, Central Circle-31, Room No. 343, ARA Centre, Jhandewalan Extention, New Delhi PAN: ASHPG4455E	Vs.	Ashok Kumar Gupta, 6407A, Khari Baoli, Chandni Chowk, New Delhi-110006
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Javed Akhtar, CIT(DR)

Date of Hearing	24/02/2025
Date of Pronouncement	24/02/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

The appeal for the Assessment Year (hereinafter, the 'AY') 2019-20 filed by the Revenue is directed against the order dated 10.02.2023 of the Commissioner of Income Tax (Appeals)-30, New Delhi [hereinafter, the 'CIT(A)'].

2. Vide 7 grounds, the Revenue has challenged the impugned order deleting the substantive addition of Rs.4,66,09,558/- made on account of unexplained cash and jewellery found in the lockers & vaults provided by Faqir Chand Lockers & Vaults Private Limited (the assessee is the director

of this Company) to some whose KYC were not completely and properly maintained so that such persons were not identifiable. The Revenue has also raised one of the grounds as the impugned order is perverse.

3. The relevant facts giving rise to this appeal are that Faqir Chand Lockers & Vaults Private Limited is engaged in providing Lockers & Vaults on lease rent to its customers. The assessee is the director of Faqir Chand Lockers & Vaults Private Limited. Various lockers & vaults situated in the premises of Faqir Chand Lockers & Vaults Private Limited were searched under section 132 of the Income Tax Act, 1961 (hereinafter, the 'Act') from 31.10.2018 to 17.12.2018. Faqir Chand Lockers & Vaults Private Limited failed to provide complete KYC details of following lockers based on which the alleged persons were neither identifiable nor traceable:

S. No.	Locker Number	Name of the Locker holder	Nature of contents	Content found cash/ jewellery (in Rs.)
1.	174	Rajesh Kumar Ravat	Cash	2,98,000.00
2.	176	Anil	Jewellery	47,42,148.00
3.	298	Ravi Kumar	Cash	68,410.00
4.	369	Deepak Kumar	Cash	3,65,00,000.00
5.	383	Owner not traceable	Cash	50,00,000.00
Total				4,66,09,558/-

Therefore, the above-mentioned Cash & Jewellery worth Rs.4,66,09,558/- were seized, which was assessed on substantive basis in the hands of the respondent assessee and on protective basis in the hands of Faqir Chand Lockers & Vaults Pvt. Ltd. Aggrieved, the assessee filed appeal before the CIT(A), who allowed the appeal holding as under:

“10.3 The appellant in the appellate proceedings has challenged the addition made by the Assessing Officer on several grounds. The appellant submitted that no papers/documents were found and seized during the search operation at the premises of searched party i.e. M/s. Faquir Chand Lockers and Vaults Private Limited including above referred lockers which indicate that the contents found in these unclaimed lockers belong to the appellant. The appellant submitted that the Annexures mentioned in the seizure memo of the lockers are nothing but simply the memos of cash and jewellery seized from these lockers. He had further submitted that there is no reference of any seized material/documents in the satisfaction notes which indicate that the appellant was the owner of contents in these lockers. Accordingly, the appellant emphasized that the recording of satisfaction that the seized cash and jewellery belong to the appellant was not legally correct and was without appreciation of material available on record.

10.4 The appellant further submitted that the details of all the locker owners available in its records were provided to the Assessing Officer which was sufficient to identify the owners of the lockers. Further even in the case of failure in identification of the owners of the lockers, no presumption can be drawn against the appellant as the lockers were the property of Company not of the appellant. The Company was operating the lockers and the rent received from the customers in respect of lockers hired to the customers was duly recorded by the Company in its books. The appellant was the Director of the company but was not the owner of the lockers neither he was operating the locker in individual capacity. In such situation invocation of provision of section 132(4A) of the Income Tax Act was not justified in his case.

10.5 The observations of the Assessing Officer and the written submission of the appellant have been carefully examined. On perusal of facts on record, it is noted that M/s. Faquir Chand Lockers and Vaults Private Limited (Company) is a registered domestic company incorporated on 24.01.1992 and is engaged in the business of providing lockers to public. Approximately 300 lockers operated by the company were found in the said premises which were covered u/s 132 of the Act. Most of the lockers were claimed by the respective allottees and they were assessed u/s 153A of the Act. Five lockers as referred above were found to be unclaimed. It has been observed that the Company was not

maintaining adequate KYC of its clients and could not prove during the assessment proceeding the identity and whereabouts of its allottees/ holders. On perusal of assessment order of the Company and the appellant it has been observed that they failed to discharge their obligation of identifying their clients or the real owners of lockers. The AO made efforts to find the persons mentioned in the record of the company but owners claimed (unexplained) by the Company could not be found. In such circumstances, the unclaimed assets needs to assessed in the hands of its owner / custodian as per the provisions of section 132(4A) r.w.s. 69A of the Act. The question now is who can be treated to be the deemed owner of these lockers? The AO assessed the contents in the hands of appellant being the Director of the Company and also made protective addition in the hands of the Company. Here, I do not agree with the AO with the decision of the AO. In my considered opinion the addition of the unclaimed assets shall be made in the hands of the Company for the following reasons: -

- 1) No evidence has been found during the search that the unclaimed lockers were owned/ operated by the appellant. In satisfaction note seized documents referred are basically the seizure memos of cash and jewellery found in the locker. There is no proof that these lockers were operated by the appellant in its individual capacity. The AO has not doubted the existence of Company or that the lockers were the property of the Company.*
 - 2) It is a fact that the lockers installed at the premise were the property of M/s. Faquir Chand Lockers and Vaults Private Limited all the communication / documents / agreements regarding the lockers with their holders were made in the name of the Company.*
 - 3) The company used to issue receipts of rent of locker in its name and and the rent received on the lockers from various parties were accounted for as the income of M/s. Faquir Chand Lockers and Vaults Private Limited.*
 - 4) The documents seized from the premises of company such as locker operation register etc. suggest that the operation of all the lockers installed under the control of Company not the appellant.*
- Accordingly, the presumption of section 132(4A) is not justified against the appellant instead it can be justifiably invoked against the Company.*

10.6 Accordingly, I hold that the unclaimed cash and jewellery amounting to Rs.4,66,09,558/- shall be added in the hands of M/s Faquir Chand & Vaults Pvt. Ltd.

10.7 In view of above facts the addition made by the AO in hands of appellant is deleted and same is sustained in the hands of M/s. Faquir Chand & Vaults Pvt. Ltd. in appeal No.10452/2018-19.”

4. The Ld. CIT-DR, emphasizing various paras of assessment order, argued the case vehemently and prayed for dismissal of the appeal. None attended on behalf of the respondent assessee.

5. We have heard the Ld. CIT-DR and have perused the material available on the record. The impugned order is very well reasoned. Faquir Chand Lockers & Vaults Private Limited is providing lockers on lease rent. Such lease rent received from customers is duly disclosed as income by Faquir Chand Lockers & Vaults Private Limited. The appellant is neither the owner of the above-mentioned lockers nor is authorized in the individual capacity to operate any of the lockers. Section 132(4A) of the Act deals with the presumption regarding assets found during a search & seizure operation. It states that any books of account, documents, money, or valuables found during a search can be presumed to belong to the person searched. Furthermore, the contents of the seized documents are presumed to be true and belong to the person searched. However, this presumption is not absolute. The burden lies on the Revenue to disprove the presumptions by bringing contradictory evidence on the record and

the assessee can counter these presumptions by providing credible explanations and corroboratory evidence demonstrating ownership or the legitimate source of the assets. The Ld. CIT(A) has rightly invoked the section 132(4A) of the Act. We do not see any infirmity in the impugned order. We therefore, decline to interfere with the finding of the Ld. CIT(A). consequentially, we dismiss the appeal of the Revenue.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in open Court on 24th February, 2025

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Dated: 24/02/2025

Binita, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI