

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW
BEFORE SH. KUL BHARAT, VICE PRESIDENT
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.31/LKW/2023
A.Y. 2013-14

Asstt. Commissioner of Income Tax, Central Circle-2, Kanpur	vs.	Sanjay Kumar Agrawal, D-59, Kamla Nagar, Agra-282005
		PAN: AAUPA2845H
(Appellant)		(Respondent)

Assessee by:	Sh. Anurag Sinha, Adv
Revenue by:	Sh. Neeraj Kumar, CIT DR
Date of hearing:	27.10.2025
Date of pronouncement:	20.01.2026

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the Revenue against the order of the Id. CIT(A)-4, Kanpur dated 14.11.2022 wherein the Id. CIT(A) has allowed the appeals of the assessee against the orders of the Id. AO passed under section 153A r.w.s. 153C of the Income Tax Act, 1961. The grounds of appeal are as under:-

"1. Whether on facts and circumstances of the case and in law, Ld. CIT (A)-IV, Kanpur has erred in deleting the addition of Rs. 3,00,00,000/- made u/s 69A by the AO ignoring the fact that such addition was made by the AO on the basis of entries found on these loose papers seized from the possession of such a person who was having business relations with all persons named therein including assessee.

2. Whether on facts and circumstances of the case and in law, Ld. CIT (A)-IV, Kanpur has erred in deleting the addition of Rs. 3,00,00,000/- made u/s 69A by accepting the denial by the person from whose possession it was recovered and the assessee regarding the relation of its entries with them without considering the facts and circumstances of the case in totality.

3. That the order of the CIT(A) being erroneous in law and facts be set aside and order of the A.O. be restored.

4. That the appellant craves leave to add, alter, adduce or amend any ground or grounds on or before the date of hearing of appeal."

2. The facts of the case are that a search and seizure under section 132 of the operation was conducted on 26.09.2017 in the residential premises of one Sh. Amit Shukla. Material was found from the laptop bag of Sh. Amit Shukla and the same was seized as LP-03. In page nos. 142 to 145 of the seized materials, details relating transactions purported to have been made by the assessee were found. On the basis of this, a notice under section 153C of the Income Tax Act was issued to the assessee on 15.01.2021 and in compliance to the same, the assessee furnished a return of income on 22.01.2021 declaring a total income of Rs. 13,19,210/-. Thereafter, notices under section 143(2) and 142(1) of the Income Tax Act were issued. The Id. AO placed a scanned copy of the said seized material in his assessment order. He pointed out that on perusal of page no. 144 under the account of, "Sanjay Bhai", the assessee had given a loan of Rs. 3 Crores in cash on interest of 50% to Sh. Amit Shukla, during the financial year 2012-13 and in span of two years, the principal amount had doubled to Rs. 6 Crores. The assessee had received repayment of Rs. 50 Lacs in cash in F.Y. 2014-15 and Rs. 70 Lacs in F.Y. 2015-16 from Sh. Amit Shukla in cash. The principle and the interest accrued, which remained unpaid, amounted to Rs. 9,86,04,167/- which was carried over as, "payable" in Prakhar Bhai's account. Thus, this showed that the assessee had advanced a cash amount of Rs. 3 Crores during F.Y. 2012-13 to Sh. Amit Shukla. Accordingly, he asked the assessee to explain the contents of the seized material and the nature of the transaction. In response, the assessee filed an affidavit on 10.06.2021 in which it was submitted that he had no connection with the jottings made on the said loose papers under the name, "Sanjay Loan" or "Sanjay Bhai". The Id. AO did not accept this denial of the assessee on the grounds that the assessee had not denied that he had no business connection with Sh. Amit Shukla. He noted that the names of the projects mentioned in the loose papers were the projects being developed by the persons whose names are mentioned therein. Thus, these papers were not rough or dumb paper, but appeared to have been prepared carefully, after due application of mind, depicting the actual state of affairs between the persons. They were later found from the laptop bag of Sh. Amit

Shukla. Therefore, the onus was on the searched assessee to explain the entries recorded in the documents which he had failed to do. The Id. AO drew attention to section 132(4A) and section 292C of the Income Tax Act which placed the onus upon the person from whose custody the document was recovered to explain the contents of the said document and why it should not be held that the said document belonged to him and its contents were true. The Id. AO pointed out that neither the searched assessee, Sh. Amit Shukla nor Sh. Sanjay Agrawal could rebut the presumption either by corroborative evidence or by substantial evidence. On the contrary, the Id. AO had conducted enquiries to establish the business link of the assessee with the persons whose names were mentioned in loose documents such Prakhar, Sanjay, Saurabh, Satish etc., He drew reference to para 9 for the assessment order dated 30.12.2019 passed in the case of Sh. Amit Shukla for A.Y. 2013-14 wherein it had been mentioned that M/s A.S. Infratech Pvt. Ltd., is a company in which Sh. Prakhar Garg and Sh. Sanjay Agrawal were co-Directors and from a perusal of the books of the assessee, it had been found that during the financial year 2011-12 to 2017-18, the assessee had raised huge unsecured loans from the company of Sh. Prakhar Garg and Sh. Sanjay Agrawal. The Id. AO also pointed out that all these persons were engaged in the same business of real estate. The Id. AO held that since the assessee had not been able to offer any explanation with regard to the said seized document and did not rebut the presumption available with the Department from the same and since the AO of Sh. Amit Shukla had been able to establish the business link between the assessee and the Sh. Amit Shukla, it was clear that the transactions recorded on page 144 of LP-3 pertain to Sh. Sanjay Agrawal *alias*, "Sanjay Bhai". And because the assessee had failed to explain the source of cash loan given to Sh. Amit Shukla, the unexplained loan of Rs. 03 Crores were added to the total income of the assessee under section 69A and brought to tax as per the provisions of section 115BBE.

3. Aggrieved with the said assessment order, the assessee filed an appeal with the Id. CIT(A)-4, Kanpur. Before the Id. CIT(A), it was submitted that no query

had been raised by the ld.AO in the assessment year 2013-14 with regard to the loose papers marked as LP-03-page nos. 142 to 145 and in which the ld. AO had made final addition. Further, the query had been raised in the notices issued for the A.Ys. 2015-16 and 2016-17. It was further submitted that the assessee had no connection with the said loose papers and the same had wrongly been assumed to pertain to the assessee. The document did not have the signature of either the searched person or the assessee. It was a computer printout from a computer that was not used / maintained / operated by the assessee. Hence, no presumption under section 132(4A) and 292C of the Act was available against the assessee as none of the loose papers were found from the assessee. Furthermore, it was pointed out that the Hon'ble Supreme Court in the case of CBI vs. V.C. Shukla (1998) 3 SCC 410 had laid down that loose papers were not books of accounts and therefore, entries therein were not admissible under section 34 of the Evidence Act, 1872. Therefore, relying upon these loose papers without there being any corroborative evidences, no liability could be fastened upon the assessee. It was submitted that the jottings in the seized paper did not contain any description relating to any payment made either in cheque or cash to any person. Thus, these notings were incapable of any interpretation as they did not constitute any coherent recording from which a clear finding relating to unaccounted investment / loans / interest /sale of land/ purchase of land by the assessee could be concluded. It was submitted that the loose paper was not found from the assessee and therefore, if the ld. AO was of the view that the assessee's explanation was not acceptable, the burden to substantiate or prove the contents of the document shifts to the person who is making the allegation, which in this case was the AO. It was further submitted that no evidence had been found indicating any transaction with Sh. Amit Shukla giving rise to undisclosed income. Furthermore, the assessee had requested for examination of Sh. Amit Shukla and for granting the assessee the right to cross examination which have not been allowed. It was submitted that no addition of Rs. 3 Crores could be made in the hands of the assessee on the basis of this document, since the document had not been found from the possession of the

assessee, the assessee's name was not mentioned in the said document and no corroborative evidence had been brought on record by the AO to connect the loose paper with the assessee. The assessee relied upon the judgment of the ITAT Pune Bench in the case of Vinit Ranawat vs. ACIT 215(6) TMI 608-ITAT (Pune). He also submitted that the facts as recorded by the Id. AO was incorrect. The assessee had submitted that during the course of assessment proceedings by way of affidavit that he was never a Director in the company named as M/s A.S. Infratech Pvt. Ltd., as had been alleged in the order of Sh. Amit Shukla and it was submitted that since the mind of the AO had been influenced by irrelevant material, the findings were vitiated in view of the decision of the Hon'ble Supreme Court in the case of Dhirajlal Girdharilal vs. CIT (1954) 46 ITR 736 (SC). It was further submitted that in the matter of advancing of loans to Sh. Amit Shukla from M/s GEE Diamonds Steel (Pvt.) Ltd., and M/s Bijnor Engineering (P.) Ltd, the DDIT had issued summons to the companies and complete evidence had been furnished by those companies before the DDIT, who had accepted the genuineness of the loan and the Id. AO of the searched person had held such loans to be genuine. Thus, on these grounds, it could not be said that, "Sanjay Bhai" as referred to in the loose paper meant to Sh. Sanjay Agrawal. The assessee also questioned the identification of, "Sanjay Bhai" with him, he invited attention to the decision of the Hon'ble Bombay High Court in the case of PCIT vs. Sh. Pervez Mohammad Hussain Ghaswal (2021) 12 TMI 27 (Bom) wherein the Hon'ble High Court had held that there was no concrete evidence that could establish that, "Pervez Sir" referred to that assessee. Therefore, the action of the Id. AO in assuming that, "Sanjay Bhai" meant Sh. Sanjay Agrawal i.e. the assessee had no backing or approval either in law or in facts as such an assumption deserve to be held as perverse. The assessee pointed out that it was a settled position in law that suspicion however so strong could not be allowed to take the place of proof. He relied upon various judgments to show that the Courts had held so. He further pointed out that during the course of assessment proceedings, the assessee had furnished an affidavit specifically denying his connections with the seized persons but the AO had ignored the affidavit without

proving it to be incorrect, wrong or false. He had neither examined the so called author of the document nor the assessee despite of specific request made by the assessee. Attention was invited to the judgment of the Hon'ble Supreme Court in the case of Mehta Parikh & Co. vs. CIT (1956) 30 ITR 181 wherein the Hon'ble Supreme Court had held that the correctness of the affidavit could not be challenged unless the parties were cross examined by the Id. AO. In the present case, the assessee was not afforded the opportunity of cross examination and therefore, the contents of his affidavit could not be disbelieved or rejected. It was also argued that the Id. AO had made the impugned addition under section 69A of the Act. Section 69A had been enacted to treat the value of certain items as income by a deeming provision. The deeming provision had to be construed strictly. The facts must be found by the Id. AO to bring a case within that deeming provision. However, in the present case, the facts have not been established and therefore, no addition could be made on the basis of section 69A. The assessee, thereafter, made reference to several case laws in support of his arguments. He further pointed out that against the additions made in the case of Sh. Amit Shukla, appeals have been preferred before the Id. CIT(A)-4, Kanpur and the Id. CIT(A) had deleted the additions in all these years where additions were made on the basis of LP-3. While deleting the same, the Id. CIT(A) had held that these seized papers were accounts of Sh. Prakhar Bhai and not of Sh. Amit Shukla. Furthermore, the searches conducted on the case in Sh. Prakhar Garg and the assessee, no paper corresponding or confirming the said loose papers has been found. It was, therefore, submitted that either the documents should speak for itself or in company or in association of other material found during the search, the document should be clear and unambiguous in respect of essential components for subjecting the assessee to tax. If the document could not satisfy this primary condition, then it was only a dumb document and could not be proceeded with even for seeking explanation from the assessee much less making addition in his hands. Accordingly, it was submitted that no charge could be levied on the basis of a dumb document and since it had already been established by the orders of the

ld. CIT(A) that the documents belonged to Sh. Prakhar Bhai and not Sh. Amit Shukla, no addition could be made by the AO in the hands of the assessee on account of alleged loan given to Sh. Amit Shukla.

4. The ld. CIT(A) considered the matter and pointed out that Sh. Amit Shukla had denied the ownership of the loose papers. He had stated that he did not know any of the persons whose names were appearing in these loose papers because the loose papers did not relate to him and therefore, he could not provide any details with regard to the same. The ld. CIT(A) held that while trying to corroborate the contents of the seized papers, the ld. AO had made various assumptions / presumptions which were based on incorrect assumption of facts. The assessee had furnished an affidavit in which he had categorically stated that the loose papers did not belong to him. The ld. AO had not done any exercise to establish the connection of the assessee relied upon the seized material. Since, neither Sh. Amit Shukla, from whom possession the seized material was seized nor the assessee had confirmed that the contents of the seized material were related to Sh. Sanjay Agrawal and since no banking transaction or other identifiable transaction appeared on the said seized documents from which it could be established beyond doubt that the seized document pertained to the assessee, tax liability could not be fastened upon the assessee. The presumption under section 132(4A) and 292C could not be held against the assessee as the documents have not been received from his possession. Furthermore, the ld. CIT(A) pointed out that in the appellate order of Sh. Amit Shukla dated 30.05.2022, the contents of the seized materials have been analyzed in detail and in conclusion, the balances have been held to be pertaining to Sh. Prakhar Garg. Furthermore, in the assessment order in the case of Sh. Prakhar Garg, the DCIT, Central Circle, Ghaziabad had added this amount of Rs. 3 Crore alongwith other additions appearing in these seized materials and that the subsequent appeal had been dismissed due to non-compliance and want of prosecution. The ld. CIT(A) held that detailed analysis of the seized papers revealed that these very accounts of Sh. Prakhar Bhai, since all the balances were

transferred in his final statement of affairs and in the assessment proceeding of Sh. Prakhar Garg, the Id. AO had also reached the same conclusion. Furthermore, since the Id. AO had failed to establish that the contents of pages 144 and 145 LP-3 pertain to the assessee and failed to bring requisite evidences to show that the seized material pertain to the assessee thus there was no material to fasten the tax liability on the assessee. The Id. CIT(A), thereafter, relied upon various case laws and deleted the addition of Rs. 3 Crores made under section 69A of the Income Tax Act in the hands of the assessee.

5. The Department is aggrieved at this order of the Id. CIT(A) and has accordingly come in appeal before us. Sh. Neeraj Kumar, CIT DR (hereinafter referred to as the Id. DR) submitted that the Id. CIT(A), Kanpur had failed to appreciate the detailed discussions made in the assessment order in this regard. The documents had been seized from the personal laptop bag of Sh. Amit Shukla (searched person) and these documents clearly shown the nexus of entries appearing therein with the searched person, alongwith other persons mentioned in the document. The documents were on a neatly typed paper with meticulous details of transactions containing the names of persons Sh. Prakhar Bhai, Sanjay Bhai, Saurabh etc., the amount of money given or received, the calculation of interest received or due etc, in respect of various real estate projects. Furthermore, the names of the projects have been mentioned on the loose papers and these projects were being developed by the persons whose names were mentioned therein. The Id. CIT DR pointed out that section 292C deals that when any material is found in the premises of the person searched or survey, it may be presumed that such material belongs to the person, that the content of such material are true and the handwriting on that document is of that person. In the present case, neither the said person Sh. Amit Shukla nor the assessee Sh. Sanjay Agrawal could rebut the presumption available to the Department, either by corroborative evidence or by circumstantial evidence. The Id. AO had conducted enquiries to establish the business link of the assessee with the names of the persons whose names were

mentioned in the loose documents and therefore, order of the Id. AO deserves to be confirmed. The Id. DR further pointed out that the additions have been confirmed in the hands of Sh. Prakhar Garg, which showed that the documents have been held to be valid evidence. He further argued that the income tax cases were based on the pre-ponderance of probability and therefore, that evidence was sufficient to warrant the addition. If the Tribunal had an opinion that further enquiries were necessary, the matter could always be restored back to the Id. AO for these enquiries.

6. On the other hand, Sh. Anurag Sinha, Advocate (hereinafter referred to as the Id. AR) placed reliance on the submissions before the Id. CIT(A). He pointed out that the name of the assessee had not been mentioned in the said document and there was no evidence to conclude that the Sanjay Bhai referred to in the said document pertained to the assessee. No details of how the monies that are claimed to have been advanced by him to Sh. Amit Shukla, had been recorded in the said document that were verifiable. The addition had not been sustained in the hands of Sh. Amit Shukla. Furthermore, the document which had been found from the person of Sh. Amit Shukla, could create a presumption in the hands of Sh. Amit Shukla, but most certainly could not create presumption in the hands of the assessee who was a third party, unless the document was proved with corroborative evidences. The Id. AO had not brought any corroborative evidences on record to show that the assessee was the person mentioned in the said documents and that he had advanced a sum of Rs. 3 Crores to Sh. Amit Shukla. Merely pointing out some business connections between the parties were not sufficient to conclude that the assessee had advanced to any money to Sh. Amit Shukla. It was further submitted that the ITAT, Agra Bench in the case of ACIT, Central Circle, Agra vs. Sh. Saurabh Gupta in ITA No. 36 & 37/AGR/2024 had passed an order in favour of that assessee. It was submitted that the referred case had material bearing over the case on hand, inasmuch as in the case of Saurabh Gupta, proceedings were initiated under section 153C of the Act on the basis of

notings mentioned in Annexure LP-3 (pages 142 to 145) found and seized in the search of Sh. Amit Shukla and additions had been made on that basis. The addition as was made on the basis of the above seized document was found unsustainable by the Id. CIT(A)-4, Kanpur and upon being challenged at the instance of Revenue, the order passed by the Id. CIT(A) have been upheld by the ITAT. In view of parity of facts, it was prayed that similar view may be adopted in the case of the assessee. Furthermore, the Id. AR also drew our attention to the decision of the Hon'ble Allahabad High Court in the case of CIT vs. Mudit Verma in ITA No. 120 of 2009, wherein the Hon'ble Allahabad High Court had held that where no such search and seizure was conducted at the premises of the assessee and no document was found and recovered from his possession, presumption under section 132(4A) and 292C of the Income Tax Act, 1961 in respect of those documents could not arise against the assessee.

7. We have duly considered the facts and circumstances of the case. In this matter, the document in question namely LP-3 pages 142 to 145 were seized from the laptop bag of Sh. Amit Shukla. As per the provisions of Income Tax Act, the presumption under section 132(4A) and section 292C lie against the person from whom books of accounts, other documents, money, bullion, jewellery or any other valuation article of thing is found. As pointed out by the Hon'ble Allahabad High Court in the case of CIT vs. Mudit Verma in ITA No. 120 of 2009, no such presumption lies against the third party. In the case of ACIT vs. Saurabh Gupta in ITA No. 36 and 37/AGR/2024, the ITAT Agra Bench, while considering the additions made in the hands of Sh. Saurabh Gupta, one of the persons whose name supposedly figures in pages 144 and 145 of the said LP-3, ruled that once it is a instance of a, "third person" other than the searched assessee, the presumption of the correctness of the contents of the seized material would not be extended to the said person. The similar logic applies to the facts of the assessee's case. While the presumption under section 132(4A) and 292C can apply against Sh. Amit Shukla (subject to his disproving those presumption) there is no way that the said

presumption can be extended to the assessee. There must be independently verifiable material within the document that proves beyond doubt that the contents of the said documents pertained to such third party and represented transactions made by him, which would then be required to be explained by him. We have perused that said document as contained on pages 2 and 3 of the assessment order. In our view, nothing emerges from the said document to suggest that the, "Sanjay Bhai" mentioned in the said document was the assessee or that he entered into such transactions as recorded in the said document. We also observe that the involvement of the assessee in this matter has not been established by way of any statement from Sh. Amit Shukla, from whose possession, the document was seized. We also note that the assessee has filed an affidavit on 10.06.2021 in which he has categorically stated that these loose papers do not belong to him and the AO has not done any exercise to establish the connection of the assessee with these loose papers. No banking transaction or other identifiable transaction appears from which it could be established that the loan of "Sanjay Bhai" and "Sanjay Loan" pertained to the assessee. We also observe that the Id. CIT(A) in para 5.13 of his order has stated in the search conducted in the premises of the assessee on 23.08.2016, no documents relating to such cash transactions with Sh. Amit Shukla or Sh. Prakhar Garg could be found though the period to which these transactions have alleged pertain to the period before the date of search in the premises of the assessee. Thus, from the same, he has come to the conclusion that the co-relation of the assessee with the contents of pages 144 and 145 could not be established. We have also considered the fact that Sh. Amit Shukla is alleged to have received loans from two companies with which the assessee was acquainted namely M/s GEE Diamonds Steels (P.) Ltd. and M/s Bijnor Engineering (P.) Ltd., but we further observe that summons to these companies have been issued in the case of Sh. Amit Shukla and evidences furnished in support of these loans which were found to be acceptable. Thus, these cannot be a ground to draw a relation between the assessee and Sh. Amit Shukla so as to raise a presumption of correctness of the entries made on pages 144 and 145 of LP-3. Therefore, on

consideration of these facts and the position in law, we do not find any infirmity in the order of the Id. CIT(A) in deleting the addition of Rs. 3 Crores made in the hands of the assessee under section 69A of the Income Tax Act. Accordingly, the appeal of the Revenue is found to be without merit and is accordingly dismissed.

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

Order pronounced on 20.01.2026 in the Open Court.

Sd/-

**[KUL BHARAT]
VICE PRESIDENT**

DATED: 20/01/2026

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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

Sd/-

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

By order
Sr. P.S.