

AFR

Reserved on 18.10.2019

Delivered on 13.11.2019

Court No. - 35

Case :- INCOME TAX APPEAL No. - 357 of 2010

Appellant :- Ajay Gupta

**Respondent :- Commissioner Of Income Tax Appeals Meerut And
Another**

Counsel for Appellant :- Parv Agarwal, Parv Agarwal

**Counsel for Respondent :- C.S.C., Krishna Agarwal, Shubham
Agarwal**

Hon'ble Bharati Sapru, J.

Hon'ble Rohit Ranjan Agarwal, J.

(Delivered by Hon'ble Rohit Ranjan Agarwal, J.)

This appeal under Section 260-A of the Income Tax Act has been filed by the assessee challenging the order of the Income Tax Appellate Tribunal Delhi Bench "A" New Delhi (hereinafter called as ITAT) dated 12.03.2010, partly allowing the appeal of the department.

This appeal was admitted on 22.11.2010 on the following questions of law:

- "1. Whether the presumption under Section 132(4A) of the Income Tax Act can be raised in the assessment proceeding?*
- 2. Whether apart from section 132(4A) of the Income Tax Act, the burden to explain the documents seized from the possession of the assessee during search is upon him and if it so, then has he discharge the burden."*

Brief facts of case are that residential premises of the assessee was searched under Section 132 of Income Tax Act (hereinafter called as the 'Act') on 28.02.2000. Locker No. 64 Dena Bank, Abu Lane Branch, Meerut, which is in the joint name of assessee and his wife Smt. Aneeta Gupta, was

also searched. During search, jewellery worth Rs.7.44 lakhs was found from the assessee, while jewellery worth Rs.13.55/- lakhs was found in the locker of assessee, out of which, jewellery worth Rs.8.87/- lakhs was seized.

Notice under Section 158-BC was issued to the assessee on 03.12.2001 for filing return of income. In compliance thereof, assessee filed return of income declaring NIL undisclosed income. Assessment for block period was completed on 27.03.2002 on undisclosed income. CIT, Kanpur on 23.05.2003 passed order under Section 263 of the Act. In compliance to the order under Section 263, notices under Section 142 (1) of the Act was issued on 25.08.2003 and questionnaire on 04.08.2003. In compliance of the said notice, assessee appeared through his legal representatives and filed his detailed reply. The Assessing Officer passed order under Section 158-BC read with Section 263 of the Act, assessing the undisclosed income at Rs.65,33,302/- as against the declared undisclosed income of NIL.

Aggrieved by the said order, assessee filed appeal before CIT (Appeals) Meerut under Section 250 of the Act on 20.01.2009. CIT (Appeals) Meerut partly allowed the appeal of the assessee.

Against said order, the revenue filed appeal before ITAT on two grounds, firstly, that CIT (A) had erred in law and fact in deleting the addition of Rs.51,432/- made by A.O. on account of undisclosed jewellery. The second ground was for deletion made by CIT (A) of Rs.5,58,870/- on account of papers found during search from premises of the assessee,

and the CIT had overlooked the provisions of Section 132 (4A) of the Act. The ITAT while partly allowing the appeal of revenue rejected the first ground of appeal taken by revenue and upheld the order passed by CIT (A), while deciding ground no. 2 it reversed the order of the CIT (A) and restored that of A.O.

Sri Parv Agarwal, learned counsel appearing for the assessee submitted that Tribunal while deciding the appeal failed to consider that revenue did not establish any connection between the entries recorded in loose papers found during search with the books of accounts. Further, the assessee on 29.11.2004 had made written submission that he does not have any knowledge about persons mentioned in the papers, as well as categorically denied the transaction. It was also submitted that the assessee denied both the papers before DDI investigation in his statement recorded under Section 131, which is part of the record at page 42 of paper book.

It was also contended that Tribunal while reversing the finding of CIT (A) has only considered the three judgments relied upon by First Appellate Authority, and it being the last fact finding authority did not record any finding as to how the papers found during search corroborated with the findings recorded by the A.O., and on the basis of presumption available to the revenue under Section 132 (4A) reversed the orders of CIT (A).

Per contra Sri Krishna Agarwal, learned counsel appearing for the department submitted that the assessee failed to rebut the presumption under Section 132 (4A)

regarding correctness of the documents found and seized during search. He further contended that the documents relied upon by A.O. was found during search, as such the Tribunal had rightly reversed the finding of CIT (A) and restored the order of A.O., as far as addition of Rs.5,58,870/- is concerned which was made on account of papers found from the premises of assessee during search.

We have heard counsel for the parties and perused the material on record. It is not in dispute that two loose papers were found during search from the premises of assessee, however, during block assessment proceedings, the assessee had denied the documents and statement was recorded by Deputy Director of Investigation, he had submitted that he had no concern with the said documents, so seized. Further, the A.O. while passing the assessment order had only on basis of the loose papers found during search made addition to the undisclosed income of assessee while the entries of said papers remained uncorroborated.

This Court, in the case of ***CIT, Kanpur Vs. Shadiram Ganga Prasad, 2010 UPTC 840*** has held that the loose parchas found during search at the most could lead to a presumption, but the department cannot draw inference unless the entries made in the documents, so found are corroborated by evidence.

As, Section 132(4A) of the Act provides that any books of account, documents, money, bullion, jewellery or other valuable articles or things found in possession or in control of any person in course of search may be presumed to be belonging to such person, and further, contents of such

books of account and documents are true. But this presumption is not provided in absolute terms and the word used is “may” and not “shall”, as such the revenue has to corroborate the entries made in the seized documents before presuming that transactions so entered were made by the assessee. Presumption so provided is not in absolute terms but is subject to corroborative evidence.

In the present case, Tribunal only on basis of presumption under Section 132 (4A) of the Act, reversed the finding of CIT (A), without recording any finding as to how the loose sheets which were recovered during search, were linked with the assessee. In the absence of corroborative evidence, the Tribunal was not justified in reversing the finding by the CIT (Appeals).

In view of the above, we are of the considered view that order passed by Tribunal reversing the finding of CIT (A) in regard to deletion of addition made of Rs.5,58,870/- and restoring the order of A.O. on mere presumption is unsustainable. The order dated 12th March, 2010 is set aside to that extent, and the matter is remitted back to Tribunal to decide afresh, as far as addition of Rs.5,58,870/- is concerned, within a period of three months from today.

The appeal stands ***partly allowed***.

Order Date :- 13.11.2019
M. ARIF