

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE**

**DR. BRR KUMAR, ACCOUNTANT MEMBER**

**AND**

**MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 2440/Del/2022

Asstt. Year: 2017-18

DCIT, Central Circle-25, New Delhi.	Vs.	Yograj Arora 19, Western Avenue, Sainik Farms Khanpur, New Delhi – 110 062 PAN AAEP3210E
(Appellant)		(Respondent)

Assessee by:	Shri R.S. Ahuja, CA
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	30.08.2023
Date of pronouncement:	07.11.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the Revenue is directed against the order dated 20.07.2022 of the Ld. Commissioner of Income Tax (Appeals)-29, New Delhi (**"CIT(A)"**) pertaining to Assessment year (**"AY"**) 2017-18.

2. The Revenue has taken the following grounds of appeal:-

- “1. Whether on the facts & in the circumstances of the ease and law, the Ld.CIT(A) is legally justified in deleting the addition on account of unexplained cash income of Rs. 1,45,00,000/- without appreciating the fact that additional incriminating material in the

*form of diary in which details of various cash payment mentioned was found during the course of search on assessee.*

2. *Whether the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.*
3. *Whether the grounds of appeal are without prejudice to each other.”*

3. The brief facts are that it is a case of search conducted under section 132(1) of the Income Tax Act, 1961 (**the “Act”**) on 05.10.2017 at the residential premises of the assessee who is a practicing Chartered Accountant. For AY 2017-18 he had filed his return on 24.03.2018 declaring income of Rs. 12,16,68,990/- which was processed under section 143(1) of the Act.

3.1 Consequent to search, notice under section 153A of the Act was issued in response to which the assessee filed return on 23.08.2019 declaring the income of Rs. 12,16,68,990/-. Statutory notice(s) were issued and complied with. During search a diary was found and seized. Page No. 30 of Annexure A-8 thereof contained details of various transactions. The jottings on this page had also details of cash to one HKA amounting to Rs. 1.45 crore. The Ld. Assessing Officer (**“AO”**) asked the assessee to explain source of said cash paid to HKA. The assessee replied on 24.12.2019 saying that page 30 of Annexure A-8 contained rough working of fund planning by his brother who was handling the real estate business of the family; that this document did not indicate any receipt or payment of any amount to any person; that the cash of Rs. 1.45 crore meant the liquid funds required for the next two months upto 31.03.2017. These funds were required to pay off the diversion charges to the Government for Indore project of about Rs.75 lakhs, payment to be made to the contractors of about Rs. 50 lakhs and salaries and overheads of about Rs. 20 lakhs. Thus totalling to Rs.145 lakhs. It was further stated that against this projection a sum of Rs. 73.12 lakhs (approx.) was paid as diversion charges as against budget amount of Rs. 75 lakhs, payment to Warsi Developers of Rs. 60 lakhs against budget amount of Rs. 50 lakhs and salaries and overheads of Indore office of Rs. 19.20 lakhs (approx.) as against budget amount of Rs. 20 lakhs. The

assessee submitted copy of ledger account of the diversion charges and Warsi Developers in the books of M/s. Aarone Developers Pvt. Ltd., along with bank statement. The person wise details of the salary and rent paid was also submitted before the Ld. AO.

3.2 The explanation of the assessee was not acceptable to the Ld. AO. He held that Rs. 1.45 crores is actual cash arranged / paid by the assessee to HKA which was available with the assessee. He therefore made an addition of Rs. 1,45,00,000/- under section 69A of the Act to the income of the assessee in assessment order dated 31.12.2019 passed under section 153A/143(3) of the Act observing as under:

*"On bare perusal of the noting on this paper it is revealed that the payments noted thereon are actual payments and not in the nature of any planning The explanation of assess is nothing but a concocted story designed just to explain the document. The nature of payments such as advance taxes, HDFC bank deposits, bank instalments etc are the actual payments and hence the cash of Rs 1.45 crore is also the actual cash arranged paid by the assessee to Sh. Homender Kumar Arora. Accordingly, the cash of Rs 1.45 crore available with the assessee as per the noting made on page 30 of annexure A-B is held unexplained u/s 69A of the IT Act This mean an addition of Rs. 1,45,00,000/- to the income of the assessee. Tax on this income shall be charge u/s 116BBE of the IT. Act."*

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A). During appellate proceedings the assessee made written submission on 16.07.2021 which is reproduced by the Ld. CIT(A) at para 6 of his appellate order. In continuation thereto further 2<sup>nd</sup> and 3<sup>rd</sup> submission was made which find place at pages 23-30 of the order of the Ld. CIT(A). In para 7 of the appellate order at pages 30-40, the Ld. CIT(A) recorded his observation and findings and concluded in para 7.12 of his order as under:-

*"7.12 From the above it is clear that the AO erred in making addition by placing reliance on rough notings by drawing incorrect interpretations therefrom without referring to the statement recorded during the course of search or the submission and documents filed by the appellant. Further, the AO has not discussed the other figures as appearing in the said page and their relation with the appellant. In view of aforesaid, the action of the AO cannot be*

*upheld and addition made by the AO amounting to Rs. 1,45,00,000/- is hereby deleted.”*

5. Dissatisfied, the Revenue is in appeal before the Tribunal and all the three grounds relate thereto.

6. We have heard the Ld. Representative of the parties and perused the records. It is not in dispute that in search at the residence of the assessee, a diary as per Annexure A-8 was found and seized and that page No. 30 of the diary contained details of various transaction such as advance tax payments, sales, loans, instalment payment, bank deposits including jotting HKA 1.45 cash. It is this jotting 1.45 cash which is alleged by the Ld. AO to be the cash payment to HKA amounting to Rs. 1.45 crore the source of which the Ld. AO required the assessee to explain. The assessee furnished explanation before the Ld. AO as stated in para 3.1 above. Before the Ld. CIT(A) the assessee stated that HKA is his younger brother who was hospitalized at the time of search and later expired. He was diagnosed grade IV brain tumour cancer in US hospital in January, 2017 with a life expectancy of about six months. After his return from US in January, 2017 the assessee started understanding from his brother the affairs of the real estate business which his brother was handling. Since he had problem in writing, his brother dictated his affairs to him (the assessee) which he wrote on a rough note pad found and seized in search. In said noting one amount “1.45 cash” has been written along with other amounts. The Ld. AO picked up the amount “1.45 cash” and interpreted it as amount paid by him to his brother in isolation. The explanation given before the Ld. AO was reiterated before the Ld. CIT(A). It was argued that a dumb document has been interpreted unilaterally by the Ld. AO as payment by him of Rs. 1.45 crore to his brother. As a matter of fact the said nothing /jotting was a planning of funds required by his brother for meeting liability of his company, namely M/s. Aarone Developers (P) Ltd. in subsequent months which is backed by actual payment in subsequent months. However, the Ld. AO treated the explanation as “a concocted story designed just to explain the document.”

6.1 It is worthwhile at this stage to reproduce the findings of the Ld. CIT(A) recorded in para 7.4 of his appellate order:-

*“7.4 The AO however, not being satisfied t the appellant made an addition of Rs.145 Crores u/s 69A of the Act alleging by the explanation submitted by as unexplained money. On the perusal of the assessment order it was seen that the Assessing Officer has neither upon any of the submissions made by the appellant during the course of assessment commented proceedings nor brought any material fact or evidence on record to corroborate the allegations. Further, the AO has not dealt with the statement of the appellant recorded the course of search which has an evidentiary value under the law. There assessment order to substantiate that the appellant has actually made such exists nothing on record or in the payment to Mr. Homender Kumar Arora. The AO has erred in not placing any evidence on record to prove as to how the amount alleged to have been paid to HKA was paid i.e manner of payment, what was the source of the said payment and how the said sum was utilised by HKA. Further, the AO in the assessment order, not dealt with other figures as appearing on the impugned page and how they are linked to the appellant. As discussed above, the appellant is a practicing chartered accountant earning income from practice and other sources. The AO in its order has not stated as to how the said figures of taxes, instalments and other names are related to the appellant.”*

6.2 Again, the Ld. CIT(A)'s comments on Ld. AO's casual approach in stating that the payments noted on the sheet are actual payment and not in the nature of any planning are worth quoting. In para 7.7 of his appellate order, the Ld. CIT(A) says as under:-

*“The interpretation drawn by the AO that the impugned page contains details of "Actual" payments and not in the nature of planning is based on assumptions and suspicions and not based on any tangible evidence or proof present on record. The appellant has submitted the complete details as to figures appearing in the impugned sheet. The AO in the assessment order has not referred to the bank statement(s) of the appellant before drawing the said conclusion with regards to the actuality of the information/ payments/ transactions mentioned on the impugned sheet. In fact, the afore-mentioned statement of the appellant recorded u/s 132(4) of the Act, is enough to prove otherwise and to prove the assumptions made by the AO not correct. The AO has not quoted a single instance in the assessment order which can substantiate that the figures as appearing on the impugned page are actual on that particular date. Considering the submission and the documents filed during the course of assessment and appellant proceedings, it can be said that the figures on the impugned sheet are projections.”*

7. In support of the well settled legal position that a non speaking document without any corroborative material, evidence on record and finding that such document has materialized into transactions giving rise to income of the assessee not disclosed in regular books of account, has to be disregarded for assessments to be framed pursuant to search operation, the Ld. CIT(A) relied on the following judicial precedents:-

- (i) Common cause v. UOI 77 taxmann.com 245 (SC)
- (ii) State v. Ganeswara AIR 1963 SC 1850
- (iii) CIT vs. Anil Bhalla (2010) 322 ITR 191 (Del)
- (iv) CIT, Delhi (Central)-II v D K Gupta (2008) 174 Taxman 476 (Del)
- (v) CIT vs. Atam Valves (P) Ltd. (2009) 184 Taxman 6 (P&H)
- (vi) Central Bureau of Investigation v. V.C. Shukla (1998) 3SCC 410

8. Perusal of the assessment order reveals that the impugned addition has been made under section 69A of the Act. Section 69A has been brought on the Statute Book by the Finance Act, 1964 w.e.f. 1.4.1964. The effect and scope of this provision has been explained by the CBDT in its Circular No. 20, dated 7<sup>th</sup> July, 1964 thus:

***“Provision for assessment of unexplained money and the value of unexplained bullion, jewellery or other valuable articles.*** – 85. A new section 69A has been introduced by section 16 of the Finance Act, 1964, providing in substance, that where in any financial year, an assessee is found to be owner of any money, bullion, jewellery or other valuable article, which is unaccounted for in the books of the assessee and the nature and source of acquisition whereof has not been explained by him to the satisfaction of the AO, such money and the value of such bullion or jewellery, etc. may be deemed to be the income of the assessee for such financial year.

86. This provision is complementary to the provisions of section 69 which enables the assessment of the value of investments which have not been recorded in the books of account of the assessee and the source of which has not been explained by him satisfactorily.

87. *It has to be carefully noted that the conditions precedent to the application of the provisions of section 69A are that*

*(i) the money, bullion, jewellery or other valuable articles in question are not recorded in the books of account, if any, maintained by the assessee concerned for any source of income; and*

*(ii) that the assessee either offers no explanation as to the nature and source of acquisition thereof or the explanation offered by him is in the opinion of the Assessing Officer not satisfactory.*

*In coming to the conclusions that the explanation offered by the assessee in support of his case is not satisfactory, all the facts, circumstances and the evidence in the case have to be considered very carefully, and for this purpose, the assessee should be given due opportunity to adduce evidence in support of his explanations.”*

9. Admittedly, it is not a case in which the assessee was found to be in possession of the cash of Rs. 1.45 crore in search operation. Therefore, it cannot be presumed that the assessee was the owner of the said cash. To attract the provisions of section 69A sine qua non is “ownership” of money etc. which has not been recorded in the books of account. The Ld. AO has made only presumption that the said cash was ‘available with the assessee’ without bringing on record any material in support thereof. Not only that he went a step further and presumed that the assessee paid the said cash to his brother H.K. Arora only on the basis of conjecture and surmises. The assessee offered explanation for the noting made on page 30 of Annexure A-8 duly supported by the documentary evidence which has been rejected by the Ld. AO in total disregard of all the facts, circumstances and the evidence in the case as ordained by the CBDT in its Circular (supra). To apply the provisions of section 69A by the Ld. AO without satisfying the conditions precedent is not sustainable.

10. On the facts and in the circumstances of the assessee’s case, we have no hesitation in holding that the Ld. CIT(A) was perfectly justified in deleting the impugned addition. In no way his order can be branded as perverse, erroneous and not tenable on facts and in law.

11. The appeal of the Revenue is devoid of any substance and merit which we hereby reject.

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

**Order pronounced in the open court on 7<sup>th</sup> November, 2023.**

**sd/-  
(DR. BRR KUMAR)  
ACCOUNTANT MEMBER**

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 7/11/2023  
**Veena**

Copy forwarded to -

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2. Respondent
3. CIT
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ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
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Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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