

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : A : NEW DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITAs No.1528 & 1529/Del/2022
Assessment Years: 2015-16 & 2016-17

Bijender Singh Lohia,
Plot No.10, 3rd Floor, LSC,
B-1, Vasant Kunj,
New Delhi.

Vs JCIT (OSD),
Central Circle-26,
New Delhi.

PAN: AAVPL6626N

(Applicant)

(Respondent)

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| Assessee by | : Shri Gaurav Jain, Advocate & Ms Shweta Bansal, CA |
| Revenue by | : Ms Sunita Verma, CIT, DR |
| Date of Hearing | : 04.03.2024 |
| Date of Pronouncement | : 16.04.2024 |

ORDER

PER ANUBHAV SHARMA, JM:

These appeals are preferred by the assessee against the orders dated 30.05.2022 of Commissioner of Income Tax (Appeals)-31, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeals No.994/20-21 arising out of an appeal before it against the orders dated 17.03.2021 passed u/s 153A r.w.s. 143(3) of the Income Tax Act, 1961

(hereinafter referred to as ‘the Act’) by the JCIT (OSD), Central Circle-26, New Delhi (hereinafter referred as the Ld. AO).

2. A search and seizure operation u/s 132(1) of the IT Act, 1961 was conducted on 29/05/2018 along with parallel search of M/s. Lion Manpower Solutions Pvt. Limited (referred herein further as ‘Lion Manpower’ or ‘Company’) in which appellant was director and admittedly no incriminating material was found from the search premises of the appellant. The alleged incriminating material on the basis of which an addition was made in the impugned assessment order was found from the search premises of Lion Manpower. Admittedly the original return of income for AYs 2015-16 and 2016-17 was filed on 30/09/2015 and 30/09/2016, respectively and which stood processed under section 143(1), and the time limit to issue notice under section 143(2) stood expired on 30/09/2016 and 30/09/2017 respectively. Accordingly, the aforesaid assessment stood concluded before the conduct of search under section 132 on 29.05.2018.

3. Pursuant to search, the assessment proceedings under section 153A of the Act, were initiated for both the AYs, which were completed vide order(s) dated 17/03/2021 after making addition(s) of Rs. 28,20,658/- and Rs. 9,25,074/- respectively under section 69C of the Act on the basis of a manual cash book, alleged to be containing cash expenses from unexplained sources found from the premises of Lion Manpower.

4. On further appeal, the Ld. CIT(A), however, allowed partial relief to the appellant and modified the order of the assessing officer by partially sustaining the additions u/s 2(24)(iv) of the Act, by considering the same as the benefit or perquisite obtained by the director from the company.

5. The assessee is in appeal raising the following grounds for AY 2015-16 which are similar in both the AY, except the amounts involved:-

“1. Under the facts and circumstances of the case, the Ld. CIT(A) has grossly erred on facts as well as in law in not annulling the assessment order passed by the Ld. AO u/s 153A r.w.s. 143(3) which is ex-facie illegal, arbitrary and without jurisdiction being against the principles of natural justice and against the provisions of IT Act, 1961.

2. Under the facts and circumstances of the case, the Ld. CIT(A) has grossly erred on facts as well as in law in not annulling the assessment order passed by the Ld. AO u/s 153A r.w.s. 143(3) without obtaining the approval u/s 153D of the IT Act.

3. The Ld. CIT(A) has grossly erred on facts as well as in law in not deleting the addition of Rs. 16,57,222/- made by the Ld. AO vide order u/s 153A r.w.s. 143(3) in spite of the fact that no incriminating document was found during the search at the premises of the assessee and no assessment proceeding was pending as on the date of search.

Grounds mentioned below are without prejudice to the above grounds.

4. The Ld. CIT(A) has grossly erred on facts as well as in law in not deleting the addition of Rs. 28,20,658/- made by the Ld. AO u/s 69C on account of unexplained cash expenditure but sustaining and restricting the same to Rs.16,57,222/- by modifying the said addition under section 2(24)(iv) of the IT Act, 1961.

4.1 The Ld. CIT(A) has grossly erred on facts as well as in law in not accepting the contention of the appellant that the impugned expense of Rs.16,57,222/- was incurred out of the cash income of Rs.50,00,000/- pertaining to AY 2014-15 which was offered by the appellant in Income Declaration Scheme, 2016.

4.2 The Ld. CIT(A) has grossly erred on facts as well as in law in holding that expense of Rs. 16,57,222/- are the personal expenses of the appellant which were met from the funds of the company, i.e., M/s Lion Manpower Solutions Pvt. Ltd. (Now, known as "Lion India Ltd. ") in which the appellant is a director failing to appreciate that no discrepancy was found by the Ld. AO in the books of M/s Lion Manpower Solutions Pvt. Ltd.

5. The appellant craves leave to add, alter and modify any ground of appeal before or during the appellate proceedings."

6. Heard and perused the record. We are of the considered view that all the issues are connected, therefore, they are taken up for discussion together.

7. Now with regard to the issue if assessment u/s 153A of the Act is not based on any incriminating material. It comes up that during the course of search operation conducted at the premises of Company at Vasant Kunj, New Delhi, a manual cash book of Company was found and seized. The premises, at Vasant Kunj, New Delhi from which such manual cash book was found is the premises of Company in which the assessee is a director. Copies of panchnamas of both the appellant and Company are enclosed at page 120-129 of paper Book II. The case of Ld. AR is that the Ld. AO did not refer any document found during the course of search upon the appellant. The seized material, i.e., cash book was annexed at Annexure A-12 and A-13, which was found from the aforementioned premises of Lion Manpower and formed part of its Panchnama. Therefore, during the course of search upon the appellant, no incriminating material was found. Thus Ld. AR contends, under the circumstances, no addition can be made in the

case of the appellant, and Ld. AR heavily relied Hon'ble Supreme Court judgment in **PCIT Vs Abhisar Buildwell Pvt. Ltd.; 454 ITR 212(SC)**.

8. It comes up that as the appellant raised this issue before Ld. CIT(A) however, the Ld. CIT(A) decided the same against the appellant by holding as under:

6.2. I have carefully considered the contentions raised by the appellant. Regarding the contention that the seized documents on the basis of which addition have been made in the case of the assessee were found from the premises of M/s Lion Manpower Solutions Pvt. Ltd and such seized documents from a third party cannot be used in the case of the assessee u/s 153A, it is seen that in the cases of Anand Kumar Jain (HUF) (Supra) and Shivali Mahajan (Supra) cited by the appellant the incriminating documents were seized from the premises of a totally different person/entity/group and were used against the concerned assessee, whereas in the case of the appellant the incriminating documents were found from the premises of M/s Lion Manpower Solutions Pvt. Ltd, in which the appellant is a Director and hence the two are intimately connected premises of the same group. In such a situation any material found at the premises of a connected person can be utilised while making the assessment in the case of any assessee, as held by Hon'ble Apex Court in the case of **CIT Vs. S. Ajit kumar (2018) 93 taxmann.com 294 (SC)**, the relevant portion of which is as follows:

9. Ld. AR submitted that the Ld. CIT(A), erred in making an artificial distinction of the aforesaid proposition on the ground that even though the incriminating material was not found from the premises of the assessee, but was found from the premises of related premises of the group. It was submitted that there is no concept of joint assessment of a related entities forming part of common search. The assessment of each person emanating of common search, related or unrelated, has to be independently completed in accordance with the provisions of the Act. Ld. AR submitted that in fact the provisions of section 292CC(2) of the Act, categorically provide that, notwithstanding authorization of

search u/s 132 of group of persons, assessment shall be made separately in the name of each person. He has submitted that the decision of Hon'ble Supreme Court in the case of *PCIT Vs Abhisar Buildwell Pvt. Ltd.(supra)* also does not carve-out any such exception qua incriminating material found from the search premises of related parties.

10. Reliance in this regard, was further placed by Ld. AR, on decision of this Tribunal in **Shri Krishna Kumar Singhania Vs DCIT; I.T.(SS).A Nos. 109 & 110/Kol/2017; dt. 06/12/2017 and Kalyanika Infra Mega Ventures (P.) Ltd. Vs DCIT; [2023] 157 taxmann.com 34 (Jabalpur - Trib.) (Third Member Decision)** for the proposition of law that despite common search between the assessee and the group entity like the company and its director, there can be no deviation from the scope of assessment contained in section 153A or 153C of the Act.

11. Further reliance is placed on the decision Delhi High Court in the case of PCIT, (Central) - 3 Vs. Anand Kumar Jain (HUF) [ITA 23, 26-31/2021] dated 12.02.2021 for the proposition that even if a search was conducted upon the premises of the assessee, if the AO was relying upon the incriminating material found from the search of third party, then the same can not be used for assessment u/s 153A and AO should have resorted to section 153C of the Act. We consider it pertinent to reproduce the part of judgment relied by Ld. AR, herein below;

“8. Next, we find that, the assessment has been framed under section 153A, consequent to the search action. The scope and ambit of section 153A is well defined.

10. Now, coming to the aspect viz the invocation of section 153A on the basis of the statement recorded in search action against a third person. We may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of Section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in Section 153A), then the only legal recourse available to the department was to proceed in terms of Section 153C of the Act by handing over the same to the AO who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the Assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law that requires our consideration.

Accordingly, the present appeals, along with all pending applications, are dismissed.”

12. Ld. AR has further relied on the Judgment in Delhi bench of Tribunal in the case of DCIT v. Shivali Mahajan [ITA 5585 to 5590/Delhi/2015] dated 19.03.2019; Delhi High Court in the case of PCIT, (Central) - 3 Vs. Anand Kumar Jain (HUF) [ITA 23, 26-31/2021] dated 12.02.2021; ITAT Bench, Delhi in the case of ACIT Vs. K.G. Finvest (P.) Ltd. [2017] 88 taxmann.com 627 (Delhi - Trib.); ITAT Bench, Mumbai in the case of Unique Star Developers Vs. DCIT [2017] 83 taxmann.com 83 (Mumbai - Trib.); ITAT Bench, Ahmedabad in

the case of Dr. Mansukh Kanjibhai Shah Vs. ACIT: 129 ITD 376 (Ahd.), for the same proposition of law.

13. In the submissions filed, the Ld. AR has specifically distinguished the judgement of Hon'ble Supreme Court in CIT Vs S. Ajit Kumar; 404 ITR 526, as relied by Ld CIT(A) for the following reasons:

- i) No incriminating material was found from the premises of the assessee;
- ii) The scope of the aforesaid decision was restricted to the interpretation of erstwhile scheme of search assessment contained in section 158BB r.w.s 158BC of the Act which is different from the scheme of assessment u/s 153A for concluded years, which now stands settled by the decision of Hon'ble Supreme Court in the case of Abhisar Buildwell (Supra).

14. The ld. DR has, however, supported the orders of the ld. tax authorities below by submitting that there is no evidence to establish that the office premises of the company and the office of the director were separate. Referring to para 6.2 of the order of the ld.CIT(A), it was submitted that the ld.CIT(A) has rightly relied the judgement of the Hon'ble Supreme Court in the case of *CIT vs. Ajit Kumar (2018) 93 taxmann.com 294(SC)* as the adverse material found at the time of search and seizure proceedings at the premises of the company had material information available with regard to the transactions of the assessee also. It was submitted that the company does not have a separate existence and a mind of its own. With regard to certain transactions of Mr. Vasudevan which was

submitted in the form of explanation from the assessee, it was submitted that the same were not through any banking channel and were rightly disbelieved by the Id.CIT(A). It was also submitted that this amount was not accounted in the cash book of the assessee. The Id. DR has relied *MDLR Resorts Ltd. vs. CIT, (2014) 361 ITR 407 (Del)* to submit that infirmities in *Panchnama* are not material to question the search.

15. After taking into consideration of material before us and the submissions, it comes up that Assessing officer has relied on manual cash book of Company for the period 07-10-2014 to 22-04-2015, which was found and seized from premises of Company only. Admittedly the manual cash book of Company was maintained by one Mr. Vasudevan. Admittedly the said manual cash book also contained routine expenses of Company and the expenses incurred by Mr. Vasudevan on behalf of the appellant. The summary of the cash book, depicting transactions pertained to the appellant, is as under:

| Particulars | | AY 2015-16 | AY 2016-17 | Total |
|---|----------------|-------------------|------------------|-------------------|
| Opening Balance | A | 12,33,835 | - | 12,33,835 |
| Amount given by appellant to Vasu Ji | B | 11,50,126 | 3,63,300 | 15,13,426 |
| Amount received back by appellant from Vasu Ji | C | 19,38,500 | 5,00,000 | 24,38,500 |
| Expenses incurred by Vasu Ji on behalf of the appellant | D | 21,02,683 | 7,17,975 | 28,20,658 |
| Differential Cash | A+B+C-D | -16,57,222 | -8,54,675 | -25,11,897 |

16. On the basis of the aforesaid cash book, the Ld. AO made addition of Rs. 28,20,658/- u/s 69C being alleged unexplained cash expenditure for AY 2015-16 on the basis of a manual cash book. It is mentioned by ld. AR that admittedly out of total expenditure of Rs. 28,20,658/-(total of S. No. D in above cash book summary) added by the Ld. AO in AY 2015-16, Rs. 21,02,683/- were incurred in AY 2015-16 and balance amount of Rs, 7,17,975/- was incurred in the next year which was wrongly considered by the Ld. AO in the year under consideration.

17. In AY 2016-17, the Ld. AO made an addition of Rs. 9,25,074 (24,38,500 – 15,13,426), based on same seized cash book, being net amount received by the appellant from Mr Vasudevan during the period 07-10-2014 to 22-04-2015.

18. The case of appellant is that he used to give money to Mr Vasudevan, as imprest for his personal expenses and also used to take the amount back from Mr Vasudevan on need basis. During the period 07-10-2014 to 22-04-2015, allegedly, the appellant received an amount of Rs. 24,38,500/- from Mr Vasudevan and returned an amount of Rs. 15,13,426/- to Mr Vasudevan. Accordingly, the net amount of Rs. 9,25,074/- (24,38,500 – 15,13,426) (Difference of S. No. B & C in above cash book summary) was added by the Ld. AO alleging unexplained cash expense u/s 69C.

19. As a matter of fact, in appeal, the Ld. CIT(A), however, having perused the complete cash book for the period 07-10-2014 to 22-04-2015 allowed partial

relief to the appellant and modified the order of the assessing officer by partially sustaining the additions in the following manner:

| AY | Addition made by Ld. AO u/s 69C | Addition sustained by modifying the same u/s 2(24)(iv) of the Act, as appearing in above cash book summary |
|---------|---------------------------------|---|
| 2015-16 | 28,20,658 | 16,57,222 |
| 2016-17 | 9,25,074 | 8,54,575 |

20. Ld. CIT(A) has held that:

i) Since the source of expenses is cash of the company traceable to the seized cash book itself in the form of; i) funds introduced by the appellant and ii) withdrawals from the bank account of the company, such expenditure cannot be treated as unexplained expenditure u/s 69C of the Act.

ii) However, the said expenses were personal expenses of the appellant which were incurred by the company. Therefore, since the personal expenses of the appellant were met by the company, the said amount is chargeable as income of the appellant as per the provisions of section 2(24)(iv) of the Act.

iii) The CIT(A) gave the benefit of opening cash balance in the aforesaid cash book to the extent of Rs. 12,33,835/- as relatable to income of Rs. 50 lacs disclosed by the assessee in Income Declaration Scheme, 2016 (IDS) for AY 2014-15, and rejected the balance to be attributable to the same on the ground that the cash book was meticulously maintained by Mr. Vasudevan and if the income of Rs. 50 lacs in the form of cash was given to Mr. Vasudevan, it should

have accounted as receipt in the said cash book and therefore, the explanation of the assessee to that effect was rejected.

21. Now what can be concluded is that the manual cash book contained entries related to cash withdrawals and expenses of Company which were duly recorded and reconciled with its books of account, as also cash introduced, withdrawn and expenses on behalf of the appellant. Thus we are of the considered view that once Ld. CIT(A) has endorsed the findings of Ld. AO that based on this manual cash book, of the Company, no substantive addition is required to be made in the hands of Company and as the cash inwards and outwards are found to be from known sources and existing books, which have been considered final in the assessment of Company, then same set of books of the Company, including the manual cash book found at the premises of the Company, cannot be considered to be incriminating material for the purpose of Section 153A of the Act to make addition in hands of assessee as a searched person, as the two AYs before us are of concluded assessments. The corollary to aforesaid being that to consider the said seized document of transactions of appellant reflected in manual cash book in the hands of appellant, provisions of Section 153 C of the Act should have been invoked at the first instance. Thus the change of head of the addition by Ld. CIT(A), has resulted in vitiating the exercise of jurisdiction u/s 153A of the Act and 153C of the Act.

22. Even otherwise, if Ld. CIT(A) has given benefit to the appellant of having cash in hand subsequent to the disclosure of Rs. 50 lacs in IDS, then the source of

impugned expenditures incurred by Mr Vasudevan, on behalf of the appellant should also be accepted. Restricting the benefit to opening balance in AY 2015-16 has no basis except being based on presumption. Thus, there was no justification with Ld. CIT(A) to hold that the said expenditure by Mr. Vasudevan, were the benefit or perquisites given by the company to its director which is chargeable to tax u/s 2(24)(iv) of the Act. Admittedly, these expenditures were not even claimed as deduction in the hands of the company. It was also not considered in the hands of the company. The most excruciating fact is that Mr. Vasudevan could not have accounted the amount given by appellant to him as a receipt in the manual cash book as the dates reflected in the said cash book are prior to the date of declaration in IDS made by appellant. Hence, it could be safely concluded, to offset the negative cash balance reflected in manual Cash Book *qua* the transactions of appellant, the disclosure of Rs.50 lacs was made by appellant in IDS. Hence, there is no scope for making any addition at all in the hands of the appellant as appellant would be entitled for telescoping benefit.

23. Consequently grounds are sustained. The appeals are allowed.

Order pronounced in the open court on 16.04.2024.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 16th April, 2024.

dk

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi

