

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI

BEFORE SHRI SUDHIR PAREEK, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 4564/DEL/2017 [A.Y 2013-14]
ITA No. 4565/DEL/2017 [A.Y 2014-15]

Krishna Gopal Saraf
2nd Floor, P-5, Private Colony
Srinivaspuri, New Delhi

Vs.
The A.C.I.T
Central Circle - 28
New Delhi

PAN: ADJPS 1407 P

(Applicant)

(Respondent)

Assessee By : Shri Archit Gupta, Adv
Shri Akarsh Garg, Adv

Department By : Shri Javed Akhtar, CIT-DR

Date of Hearing : 29.01.2025
Date of Pronouncement : 12.02.2025

ORDER

PER NAVEEN CHANDRA:-

Both the above captioned separate appeals by the assessee are preferred against the order of the ld. CIT(A)-29, New Delhi dated 22.04.2017 pertaining to A.Ys 2013-14 and 2014-15.

2. Since common grievances are involved in both the captioned appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

ITA No. 4564/DEL/2017 [A.Y 2013-14]

4. The assessee has raised the following grounds of appeal for AY 2013-14:

1. BECAUSE there did not exist any material before the Joint Director of Income Tax (Inv.) authority concerned which could lead to the formation of "reason to believe" that pre-conditions as mentioned in clauses (a), (b) and (c) under sub-section (1) of section 132 or anyone of these pre-conditions stood satisfied in the instant case, with the result that the execution of warrant of authorization against the "appellant" is wholly illegal.

2. BECAUSE there being no incriminating material found during the course of search and seizure action that illegally took place under section 132(1) in the case of the "appellant" on the basis of illegal warrant of authorization, variation between the returned income and assessed income as made up of credit card payment of Rs. 4,55,495/-

is wholly illegal and beyond the jurisdiction conferred on the ACIT, under section 153A r.w.s. 143(3) of the Act, in the instant case.

3 BECAUSE in view of the attended facts and circumstances of the case that search under section 132 being carried out against the "appellant" on 07.03.2014, no proceedings under section 153A for the assessment year 2013-14 could have been initiated as also concluded vide order dated 29.03.2016 under section 153A r.w.s. 143(3) of the Act, against the "appellant".

4. BECAUSE no notice under section 143(2) of the Act having been issued after filing of the return' on 16.02.2016, assessment order dated 29.03.2016 passed by ACIT is bad, illegal and void ab initio.

5. BECAUSE the payments made by the "appellant" through credit card(s) were out of duly explained sources filed by him during the course of assessment proceedings as also appellate proceedings, the CIT(A) has erred in law and on facts in confirming the addition of Rs. 4,55,495/- made by the ACIT.

6 BECAUSE the observations made by the CIT(A) in para 11.1 of the impugned order is incorrect as the "appellant" had duly placed before him the source of payments made through credit cards of HDFC Bank and ICICI Bank, addition of Rs. 4,55,495/- sustained by the him is incorrect and the same deserves to be deleted.

7 BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice."

5. At the outset, the ground no 1,2,3 challenging the validity of search u/s 132 is dismissed as the same is not maintainable before the ITAT. The ground no 4 regarding non issue of notice u/s 143(2) is also dismissed as the Hon'ble Delhi Court in the case of *Ashok Chadda V ITO* 337 ITR 399 (Del) has held that there is no requirement of issuing notice u/s 143(2) for finalization of assessment u/s 153A. In any case, the AO has recorded in his assessment order that a notice u/s 143(2) of the Act was duly issued on 18.03.2016 and served upon the assessee.

6. Brief facts of the case are that the assessee filed his return of income on 13.03.2014 declaring income of Rs 7,12,630/- which was processed u/s 143(1) of the Income-tax Act, 1961 [the Act, for short]. Search and seizure action u/s 132 of the Act was carried out in Bindal Group of cases and Saarthak Vanijya India Ltd (SVIL) including the assessee on 07.03.2014. The assessee being an employee, manager (Marketing) of the SVIL, he was also covered in the search operation. Various books of account/documents were found and seized and statements of various persons were also recorded.

7. In response to notice u/s 153A, the assessee filed the return of his income declaring an income of Rs 7,22,470/-. The Assessing Officer noticed that there was a difference of Rs. 9,840/-. The AO issued notice u/s 143(2) of the Act on 18.03.2016 and duly served upon the assessee.

8. The AO on the basis of the AIR information, found that credit card payments of Rs 4,55,495/- (Rs 2,40,855/- from HDFC Bank and Rs 2,14,500/- from ICICI) was made by the assessee during the year under consideration. In absence of explanation from the assessee, the amount of Rs. 4,55,495/- was treated as unexplained expenditure and added to the total income of the assessee from undisclosed sources. Penalty proceedings u/s 271(1)(c) were initiated separately.

9. The aggrieved assessee appealed before the ld. CIT(A) who partly confirmed the same.

10. The aggrieved assessee is now before us and vehemently argued that the Assessing Officer did not bother to even cross check the information so gathered from the AIR whether they were a revenue receipt in the form of profit/income fit to be added as income or there were only transactions happened during the course of time. It is the say

of the ld. counsel for the assessee that the Assessing Officer was in great haste to add the transaction as income without giving any understandable reasoning. It was further contended by the ld. counsel for the assessee that the Assessing Officer erred in not applying his mind and made the addition which is contrary to the facts of the case and bad in the eyes of law.

11. Per contra, the ld. DR relied upon the orders of the authorities below. The ld DR stated that the year under consideration is an abated AY, hence the AO has the power to make assessment on the basis of AIR information.

12. We have heard the rival submissions and have perused the relevant material on record. We find that the AY is an abated assessment year and the AO may consider the AIR information for making an assessment. We find that for the credit card expense of HDFC Bank, the assessee has explained, before the CIT(A), the source as cash/maturity of FDR, borrowing of funds from friends and family members, out of salary receipts etc. in the case of credit card for HDFC Bank and through cash for credit card payment of ICICI Bank. The assessee has provided a chart of the month-wise credit card payments. The CIT(A) has largely

disbelieved the assessee explanation in absence of evidence/documents like bank account or cash flow statement or confirmation/evidence for borrowing from family members or friends. We note that the CIT(A) has set aside for verification the payment of HDFC Bank on 13.06.2012, of Rs.31,175/- which has been paid out of maturity of FDR.

14. With regard to the ICICI bank account credit card payments, we find that the assessee has explained the same as paid out of cash and no fund flow or source for such payments have been provided either at assessment stage or at appellate stage.

15. From the facts of the case, we note that the assessee is a salaried employee who has income from salary, capital gain and other sources. Being a salaried employee, he does not have a books of account or a fund flow statement to explain the source of payments made. We also note that the payments for HDFC Credit card are small ranging from Rs 415/- to Rs 30,000/-. The source explained are borrowings, salary, cash in hand, recovery of loan etc. In such a situation, we are of the opinion that the CIT(A) should have examined the bank account and salary statement before rejecting the assessee's explanation completely. Therefore, looking to the facts and circumstances of this case, we are

of the considered view that the AO/CIT(A) have not properly examined the assessee explanation for the source of payment for the HDFC and ICICI credit card.

16. Similarly, with respect to the payment for ICICI credit card, we find that the payments ranges from Rs 1000/- to Rs 35,000/- the source of which is explained as payments out of cash in AY 2013. For AY 2014-15, he has explained as borrowings, salary, cash in hand, recovery of loan etc. Considering the assessee being a salaried employee, without any books of account or fund flow statement, it was incumbent upon the AO as well as the CIT(A) to examine the explanation of the assessee thoroughly. In view of the discussion as above, we find it expedient to remit the issue back to the file of the AO to examine the assessee explanation for the credit cards payments, with reference to his bank statement, regarding source being borrowings, salary, cash in hand, recovery of loan. The ground 5 & 6 is partly allowed.

17. In the result, the appeal of the assessee is allowed for statistical purpose.

ITA No. 4565/DEL/2017 [A.Y 2014-15]

18. The grounds raised by the assessee for AY 2014-15 read as under:

1. BECAUSE there did not exist any material before the Joint Director of Income Tax (Inv.) authority concerned which could lead to the formation of "reason to believe" that pre-conditions as mentioned in clauses (a), (b) and (c) under sub-section (1) of section 132 or anyone of these pre-conditions stood satisfied in the instant case, with the result that the execution of warrant of authorization against the "appellant" is wholly illegal.
2. BECAUSE there being no incriminating material found during the course of search and seizure action that illegally took place under section 132(1) in the case of the "appellant" on the basis of illegal warrant of authorization, variation between the returned income and assessed income as made up of;- Rs.
 - a) On account of alleged unexplained sum, representing a rough noting recorded by some other persons as also pertaining to third person:18,00,000
 - b) credit card payment: 7,28,445
 is wholly illegal and beyond the jurisdiction conferred on the ACIT under section 153A r.w.s. 143(3) of the Act, in the instant case.
3. BECAUSE in view of the attended facts and circumstances of the case that search under section 132 being carried out against the "appellant" on 07.03.2014, no proceedings under section 153A for the assessment year 2014-15 could have been initiated as also concluded vide order dated 29.03.2016 under section 153A r.w.s. 143(3) of the Act, against the "appellant".
4. BECAUSE no notice under section 143(2) of the Act having been issued after filing of the 'return' on 16.02.2016, assessment order dated 29.03.2016 passed by ACIT is bad, illegal and void ab initio.

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5. BECAUSE the "CIT(A)" has erred in law and on facts observing that the "appellant" could not substantiate the nature of seized material, nor requested for cross examination as also did not provide any explanation to the same and in confirming the observation as also addition of

Rs.18,00,000/- made by the ACIT in the assessment order dated 29.03.2016.

6. BECAUSE the "appellant" after having been categorically stated in his statement recorded at the time of search and seizure under section 132(4) of the fact relating to the identity of Sri. R.K. Mishra as also the belongings of the bag found at the time of search and seizure action at his residential premises, the CIT(A) has erred in law as also on facts in confirming the findings of ACIT who has grossly erred in making the addition of Rs.18,00,000/- on the basis of the loose paper found from that bag by invoking the provisions of section 292C of the Act.

7. BECAUSE the "appellant" being the man of small means having nothing to do with the entries mentioned on the loose paper having been found at his premises, which was duly explained also, addition made by ACIT as also confirmed by CIT(A) is bad in law and the same deserves to be deleted.

8. BECAUSE in any case and without admitting the same, addition of Rs.18,00,000/- made on the basis of incomplete information as appearing in the name of third person and recorded in the hand writing of Sr. R. K. Mishra, without even cross verifying from the related person, is erroneous much to high and excessive too.

9. BECAUSE the payments made by the "appellant" through credit card(s) were out of duly explained sources filed by him during the course of assessment proceedings as also appellate proceedings, the CIT(A) has erred in law and on facts in confirming the addition of Rs.7,28,445/- made by the ACIT.

10. BECAUSE the observations made by the CIT(A) in para 11.1 of the impugned order is incorrect as the "appellant" had duly placed before him the source of payments made through credit cards of HDFC Bank and ICICI Bank, addition of Rs.7,28,445/- sustained by the him is incorrect and the same deserves to be deleted.

11. BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice.

19. The ground no 1,2,3 challenging the validity of search u/s 132 is dismissed as the same is not maintainable before the ITAT. The ground no 4 regarding non issue of notice u/s 143(2) is also dismissed as the hon'ble Delhi Court in the case of *Ashok Chadda V ITO* 337 ITR 399 (Del) has held that there is no requirement of issuing notice u/s 143(2) for finalization of assessment u/s 153A.

20. The Ground No. 9 and 10 pertains to the credit card payment of Rs. 7,28,445/. The assessee challenged the addition of Rs. 7,28,445/-, on account of AIR information, where the assessee has shown to have made credit card payments of Rs.3,66,170/- towards HDFC Bank card and Rs.3,62,275/- towards ICICI Bank credit card for the year under consideration. The addition has been made as assessee could not explain the source of such expenditure.

21. We have heard the rival submissions and have perused the relevant material on record. This issue has been dealt by us in the earlier part of this order for A.Y 2013-14 and accordingly we refer the issue back to the file of the AO to examine the assessee explanation regarding source for payments for the credit cards. Ground No. 2 is partly allowed.

22. Ground Nos.5 to 8 relate to the addition of Rs. 18,00,000/- as undisclosed income under the provision of section 292C, on the basis of seized material found during the course of search.

23. Aggrieved, the assessee went in appeal before the ld. CIT(A) who confirmed the addition holding that presumption with respect to section 292C has not been rebutted by the assessee nor any corroborative evidence has been brought on record.

24. Aggrieved further, the assessee is in appeal before us.

25. It is the say of the ld. counsel for the assessee that the impugned year is a search year where regular assessment u/s 143(3) has been conducted. The ld AR submitted that in the course of search a 'red bag' was found containing keys of the office of SVIL. The bag contained a piece of paper where a note was written as withdrawal of Rs 18,00,000/- on 16.10.2013 under the name of R.K.Mishra. It is the say of the ld AR that the seized paper found from his premises is a stray document and not in the hand writing of the assessee. It is also contended that from the said seized document nothing is proved. It is the say of the ld AR that the stray document cannot be treated as evidence that this amount

is the undisclosed income of assessee, especially in the absence of any corroborative enquiry like examination of R.K.Mishra who was another employee of SVIL. The Id AR further argued that the AO did not corroborate the seized documents with any evidence to establish the same related to the assessee. The Id AR further stated that the assessee's statement u/s 132(4) that the document did not belong to him and he has no knowledge of the content of the document, was not controverted by the AO. The Id AR vehemently stated that the addition made only on the basis of presumption drawn u/s 292C is not valid.

26. Per contra, the Id DR relied on the order of the CIT(A). The Id. DR strongly argued that the red bag containing the document was found from the assessee's premises and, therefore, the onus was on the assessee to explain the contents u/s 292C of the Act. The Id. DR contended that the assessee cannot escape merely by saying that he had no knowledge of the contents of the documents.

27. We have heard the rival submissions and have perused the relevant material on record. We find that during the course of search and seizure operation, a 'red bag' was found from the premises of the assessee containing keys of the office of M/s Sarthak Vanijya India Limited [SVIL]

where the assessee was an employee and documents mentioned as 'Page 6 and 7 of Annexure A-1' was found in the said bag. We find that the document is a piece of paper which mentions withdrawal of an amount of Rs. 18 lakhs on 16.10.2013 and a name is mentioned as Shri R.K. Mishra. The Assessing Officer added this amount of Rs. 18 lakh as undisclosed income of the assessee invoking the presumption of ownership available under the provisions of section 292C of the Act, on the ground that since documents in the red bag were found from the premises of the assessee, the onus was on the assessee to satisfactorily explain the contents of the seized document.

28. We find from the statement recorded u/s 132(4) of the Act, that the assessee replied to questions regarding keys and documents that the keys of the office were delivered at his residence by somebody from the office and he denied having any knowledge of the content of the document. However, he stated that the hand writing on the document may be of Shri R.K. Mishra, another employee of SVIL.

29. In such factual matrix, we are of the opinion that, the onus shifted to the Assessing Officer to corroborate his presumption with any cogent evidence/materials. We find force in the assessee's argument that the

Assessing Officer should have investigated further to determine the contents of the document found in the red bag instead of taking shelter u/s 292C of the Act for making the addition. We also note that the Assessing Officer has not even attempted to examine Shri R.K. Mishra who was another employer of SVIL, neither any statement of Shri R.K. Mishra was recorded nor he was confronted with the assessee.

30. There are plethora of cases which have held that the statement recorded u/s 132(4) of the Act have significant evidentiary value, however, the same needs to be corroborated with material and evidence. In the instant case the assessee has given his statement u/s 132(4) that the documents did not belong to him and he had no knowledge regarding the contents of the document and that the name mentioned in the document is that of R.K.Mishra, another employee of SVIL. In such a situation, it was incumbent on the Assessing Officer to determine the facts with further investigation and to collect evidences and materials to substantiate his conclusion. We find that Assessing Officer has failed to bring any corroborative evidence for treating the amount being undisclosed income of the assessee.

31. The Revenue has heavily relied on the provisions of section 292C which provides as under :

"292C (1) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed—

- (i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;
- (ii) that the contents of such books of account and other documents are true; and
- (iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-s. (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in cl. (a) or cl. (b) or cl. (c), as the case may be, of sub-s. (1) of section 132A, had been found in the possession or control of that person in the course of a search under section 132."

32. As far as presumption available under section 292C is concerned, we are of the considered view that the same is limited to the ownership and content of the documents found at the time of search or survey to be true. The presumption however, has not been extended by the statute to presume an amount to be the undisclosed income of the assessee. Moreover, the presumption under section 292C of the Act is rebuttable presumption and when the assessee denies knowledge of the contents of the document, the onus shifts to the AO to corroborate the documents with evidence. As held in *Godwin Construction Pvt. Ltd Vs ACIT* (ITAT Delhi) ITAT Delhi case that provisions of section 292C of the Income Tax Act is only a deeming provision and the deeming provision cannot be applied mechanically, ignoring the facts of the case and surrounding circumstances.

33. In the facts of the instant case, we find that there is no whisper of any examination/investigation by the AO to show that amount mentioned in the document is undisclosed income of the assessee especially considering the fact that the assessee was only a salaried employee of SVIL having income from salary, interest and capital gain. Considering the facts in totality, we hold that there is failure on the part of the Assessing Officer in discharging the onus that was shifted towards

him by the assessee, of conducting further investigation into the seized documents and link it with the assessee. We, therefore are of the opinion in the present case, no addition of the impugned amount is called for and we direct the deletion of the additions made by AO and upheld by CIT(A). The grounds 5 to 8 is allowed.

34. In the result, both the appeals of the assessee in ITA Nos. 4564/Del/2017 and ITA 4565/DEL/2017 are partly allowed.

The order is pronounced in the open court on 12.02.2025.

Sd/-

[SUDHIR PAREEK]
JUDICIAL MEMBER

Sd/-

[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 12th FEBRUARY, 2025.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Sl No.	PARTICULARS	DATES
1.	<i>Date of dictation of Tribunal Order...</i>	
2.	<i>Date on which the typed draft Tribunal Order is placed before the Dictation Member</i>	
3.	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
4.	<i>Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.</i>	
5.	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
6.	<i>Date on which the signed order comes back to the Sr. P.S./P.S</i>	
7.	<i>Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website</i>	
8.	<i>Date on which the file goes to the Bench Clerk alongwith Tribunal Order</i>	
9.	<i>Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks</i>	
10.	<i>Date on which the file goes to the Supervisor (Judicial</i>	
11.	<i>The date on which the file goes to the Assistant Registrar for endorsement of the order</i>	
12.	<i>Date of Despatch of the Order</i>	