

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)**

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**ITA No. 5951/Del./2017
(ASSESSMENT YEAR : 2009-10)**

Shri Neeraj Goel,
C-355, Saraswati Vihar,
Pitampura,
New Delhi – 110 034
(PAN AEPPG5267E)
(APPELLANT)

vs. ACIT, CC-28,
New Delhi

(RESPONDENT)

ASSESSEE BY : Shri V.K. Aggarwal, AR
REVENUE BY : Shri V.K. Jiwani, Sr. DR

ORDER

This appeal filed by the assessee against the order of the Ld. CIT(A)-XXVI, New Delhi dated 21.8.2017 and pertains to assessment year 2009-10.

2. The grounds raised read as under:-

1. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the order passed by the AO which is illegal being against the principles of natural justice and against the provisions of I.T. Act, 1961.
2. The Ld. CIT(A) has grossly erred on facts as well as in laws in confirming the addition of Rs. 5,31,217/- on account of alleged interest income

on the basis of a seized document which is dumb/
bald.

3. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the addition by invoking section 292C in spite of the fact that the document was not found either in the possession or control of the appellant.
4. The Ld. CIT(A) has grossly erred on facts as well as in law in holding that the appellant has not discharged the onus of offering suitable explanation.
5. The appellant craves leave to add, alter, modify and withdraw any grounds before or during the course of appellate proceedings.

3. The brief facts of the case are that the original return in this case was filed on 20.1.2010 declaring an income of Rs. 10,97,600/- which was processed u/s. 143(1) of the I.T. Act, 1961. A search and seizure action was conducted in this case u/s. 132(1) of the Act on 7.3.2014. Return u/s. 153A of the Act was filed on 9.10.2015 declaring the same income as filed originally. The AO has made the addition of Rs. 5,31,217/- on account of alleged interest income on the basis of a seized document and assessed the income of the assessee at Rs. 16,38,570/- vide his order dated 29.2.2016 passed u/s. 153A

r.w.s. 143(3) of the I.T. Act, 1961. Against the said assessment order dated 29.2.2016, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 21.8.2017 has affirmed the action of the AO and dismissed the appeal of the assessee.

4. Aggrieved with the Ld. CIT(A)'s order, assessee appealed before the Tribunal.

5. At the time of hearing, Ld. Counsel of the assessee stated that during the course of search, one loose paper was seized containing some jottings, which is a bald document, because the same does not have either the name of the assessee or any other person; the document is not in the handwriting of the assessee; the document is neither signed by the assessee nor by any other person; the document does not show whether the figures jotted therein represent receipt of payment; the document does not indicate whether it is an investment or deposit or loan. He further stated that the document in dispute was found at the residence of the assessee which was being frequently visited by various visitors including friends and relatives. Therefore, the assessee did not have any control over the residential premises and this document was not seized from the possession or control of the assessee, hence, the addition made on the basis of such a bald document needs to be

deleted. In support of his aforesaid contention, he relied upon the order dated 29.7.2016 of the ITAT, 'F' Bench, New Delhi in the case of Praveen Juneja passed in ITA Nos. 3031-3032/Del/2012 (AYrs. 2003-04 & 2004-05) wherein on similar facts and circumstances, the addition made by the AO and confirmed by the Ld. CIT(A) were deleted. He further stated that the aforesaid decision of the ITAT in the case of Praveen Juneja has been upheld by the Hon'ble Delhi High Court vide order dated 14.7.2017 passed in ITA No. 56/2017 in the case of CIT, Central-3 vs. Praveen Juneja and Appeal of the Revenue was dismissed. In view of the above, he requested that by respectfully following the precedent, as aforesaid, the present appeal of the assessee may be allowed.

6. On the contrary, Ld. DR relied upon the orders of the authorities below and stated that a document bearing computations of interest @18% on a base quantum of Rs. 12 lacs was found from the residential quarters of the assessee and the calculations are depicting regular periodicity. The assessee has not sought to furnish any explanation in respect of the document and the undeniable fact is that this document was seized from the residential quarters of the assessee. Therefore, the addition in dispute was rightly made and confirmed by the Ld. CIT(A), which does not need any interference. To support his contention, he relied upon the

following cases laws decided by the Hon'ble Delhi High Court, Hon'ble Jharkhand High Court and the Hon'ble Kerala High Court wherein the appeal was decided in favour of the Revenue.

- Hon'ble Delhi High Court in the case of Daya Chand vs. CIT (2001) 117 Taxman 438 (Delhi)
- Hon'ble Delhi High Court in the case of CIT vs. Nagesh Kumar Aggarwala (2011) 9 taxmann.com 249 (Delhi)
- Hon'ble Jharkhand High Court in the case of Mahabir Prasad Rungta vs. CIT (2014) 43 taxmann.com 328
- Hon'ble Kerala High Court in the case of Bhagheeratha Engineering Ltd. Vs. ACIT (2017) 79 taxmann.com 325 (Kerala).

7. I have heard both the parties and perused the records, especially the impugned order and the case laws cited by both the parties. I find that the case laws cited by the Ld. DR are not on exactly the similar and identical facts of the present case, but the case laws cited by the Ld. Counsel of the assessee is exactly on the identical and similar facts as involved in the present case, hence, the issues involved in the present case is squarely covered by the decision dated

29.7.2016 of the ITAT, 'F' Bench, New Delhi in the case of Praveen Juneja passed in ITA Nos. 3031-3032/Del/2012 (AYrs. 2003-04 & 2004-05) wherein the Tribunal has examined and dealt the similar issue as under:-

"4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. AR for the assessee challenging the impugned order contended inter alia that none of the loose paper recovered from the residential premises of the Omaxe Limited bears his signatures, handwriting, address of the assessee, date, etc.; that none of the paper was recovered from the possession of the assessee; that no house belonging to the assessee has brought on record by the AO as alleged in the loose paper; that the loose paper even does not pertain to the period under assessment; that there is no entry in the books of account of the assessee pertaining to the

*payment made by cheque in question; that opportunity of being heard has not been provided to the assessee during assessment proceedings and relied upon the judgments cited as **CIT vs. Vivek Aggarwal 2015-TIOL-459-HC-DEL-IT, Bansal Strips (P) Ltd. & Ors. Vs. ACIT (2006) 99 ITD 177 (Del.), Ashwani Kumar vs. ITO (1992) 42 TTJ (Del) 644 and N.K. Malhan vs. DCIT (2004) 91 TTJ (Del) 938.*** However, on the other hand, Id. DR relied upon the order passed by AO/ CIT(A).

6. Undisputedly, seized documents pertain to addition of Rs.98,16,450/- qua the AY 2003-04 are available at pages 1 to 4 of the paper book filed by the assessee; that seized documents pertaining to addition of Rs.95,27,126/- qua the AY 2004-05 are available at pages 1 to 3 of the paper book filed by the assessee; that seized document, available at pages 1 to 4 qua AY 2003-04 and pages 1 to 3 qua AY 2004-05, do not bear name, address, signatures and handwriting of the assessee.

7. *In the backdrop of the aforementioned facts and circumstances, undisputed facts and contentions raised by the parties, the first question arises for determination is :-*

"as to whether addition made by AO and affirmed by CIT (A) at Rs.98,16,450/- and Rs.95,27,126/- qua AYs 2003-04 and 2004-05 respectively on the basis of loose paper recovered during search and seizure operation conducted at the residential premises of M/s. Omaxe Limited on 22.09.2005 is not sustainable as alleged by the assessee."

8. *Bare perusal of the assessment orders and impugned orders passed by CIT (A) shows that documents seized during search and seizure apparently goes to prove that the assessments in these cases have been made by the AO and affirmed by the CIT (A) on the basis of suspicion, which is not sustainable in the eyes of law for the following reasons :-*

- i. that the first document lying at page 1 of the paper book on the basis of which addition of Rs.5,00,000/- has been made is categoric enough to disclose that one K.L. Bhatia, S/o Lal Chand Bhatia has taken interest free loan of Rs.5,00,000/- from the assessee which has been traced to the cheque no.268868 having been paid*

by M/s. BHA Associates Pvt. Ltd. to M/s. Landmark Estate Pvt. Ltd. being the sale proceeds for purchase of shop in New Friends Colony;

- ii. that the AO as well as CIT (A) have rejected the contention merely on the ground that the cheque number given by the assessee is 26888 whereas cheque no relied upon by assessee is 268868. To our mind, this is a typographical error in writing the cheque number which should have been verified by the AO from the debit credit entries maintained by the respective banks. So, this addition is not sustainable;*
- iii. that addition of Rs.40,85,000/- on the basis of loose document, available at page 3 of the paper book pertaining to AY 2003-04, is an estimate of house construction of 4800 sq.ft. @ Rs.1,100/-. But this paper does not indicate the location of the house under construction nor does this bear the signatures and handwriting of the assessee. More so, no such house has been located by the AO belonging to the assessee having been constructed*

during the year under assessment nor does it indicate if the amount was paid by way of cheque or cash. So, this addition is again made by the AO on the basis of suspicion without collecting evidence, hence not sustainable;

- iv. that addition of Rs.49,00,000/- on the basis of loose document, available at page 4 of the paper book pertaining to AY 2003-04, is made under the head "Extras not included in basis construction". Again, this paper does not indicate if it pertains to the assessee nor the address and location of the property is mentioned therein nor such property has been located by the AO during the assessment proceedings. The AO has also not brought on record any forensic evidence to prove the handwriting of the loose paper relied upon by him to make the addition, which is exclusively made on the basis of*

suspicion and guesswork. Even no corroborative material has brought on record by the AO to substantiate the addition nor the CIT (A) has called for any remand report seeking corroborative evidence, if any;

- v. that similar is the fate of the addition of Rs.3,31,450/- made by the AO qua AY 2003-04 on the basis of paper/bill, available at page 2 of the paper book, as it does not bear the name of the assessee being a purchaser nor does AO brought on record any evidence by making verification qua invoice no.162133 if issued by Johnson, wherein it is categorically mentioned that the payment has been received by way of cheque. AO has also not traced the cheque as to making the payment of the aforesaid amount from the issuing agency of the invoice in question;*
- vi. that even otherwise, the AO has also not brought on record any material to prove that the assessee was in conscious possession of aforesaid documents on the basis of which addition has been made rather vaguely stated that the*

document/papers were recovered from the house of assessee.

- vii. that despite denial of the assessee that the loose papers do not belong to him in any manner, AO invoked the deeming provisions without collecting any corroborative evidence;*
- viii. that the AO has made addition of Rs.1,00,000/- qua AY 2004-05 as unexplained expenditure u/s 69 of the Act on the basis of paper/document, available at page 1 of the paper book -B. Bare perusal of the paper shows that the same does not bear the name of the assessee nor it is in the handwriting of assessee nor does it explain the purpose of making and receiving payment. Merely on the basis of this document, addition cannot be made as the same is not substantiated with any evidence;*
- ix. that the AO has made another addition of Rs.3,31,450/- on the basis of a seized document, available at page 2 of the paper book-B. Perusal of the document, available at page 2 of Paper Book - B, apparently shows that the document contains the figure of Rs.50,000/- stated to have received as rent but again this document is bereft of name of the recipient, description of the rented property and*

as to who is the payee of the amount in question. Strangely enough, on the basis of seized document/paper showing the amount of Rs.50,000/- the addition of Rs.3,31,450/- has been made by the AO on the basis of whims and fancies and thereafter the Id. CIT (A) have further perpetuated the error committed by AO without insisting upon any cogent material to sustain the addition;

- x. that on the basis of seized document, available at page 3 of paper book – B, AO made an addition of Rs.80,50,000/- by merely stating that the argument addressed by assessee is not acceptable. For the sake of repetition, it is again reiterated that this document is silent as to the payer and payee of the amount in question nor does it disclose that the payment was made by cheque or cash nor it is proved that the document is in the handwriting of assessee or at least bears his signatures. So, we are of the considered view that the addition of Rs.80,50,000/- on the basis of this document is also not sustainable.*

9. In view of what has been discussed above, additions made by the AO and affirmed by the Id. CIT (A) vide impugned orders are not sustainable in the eyes of

law, hence hereby deleted and consequently, both the appeals filed by the assessee stand allowed."

8. I further find that the aforesaid decision of the ITAT in the case of Praveen Juneja has been upheld by the Hon'ble Delhi High Court vide order dated 14.7.2017 passed in ITA No. 56/2017 in the case of CIT, Central-3 vs. Praveen Juneja and Appeal of the Revenue was dismissed by holding as under:-

"4. A search took place in the premises of the Respondent/ Assessee pursuant to which certain documents were seized. The document on the basis of which the above addition was made was a piece of paper dated 24th November, 2003. It contained a handwritten figure of '8050'. In two columns it set out details of purportedly expenses on drive way, tennis court, garden lights etc. in the left column totaling '9.45' and some other expenses relating to architect, wooden fittings, bathroom fittings, etc. in the right column totaling '13.45'.

5. The explanation offered by the Assessee was that he was a director of Omaxe Ltd., a company in the construction business. He sought to explain that the said paper containing estimates in relation to the Omaxe

Plaza project of the company was with him in that capacity. The CIT(A) rejected the above explanation on the ground that seized document nowhere contained the name Omaxe Ltd. Since the said document had been seized from the residence of Assessee, the CIT (A) drew a presumption under Section 292C of the Act was that it belonged to him. Further, the CIT(A) proceeded on the basis that the figure of '8050' was in fact Rs. 80,50,000 and, constituted the unexplained income of the Assessee, since the Assessee had not submitted any evidence like a confirmation letter or any other document to show that expenditure related to Omaxe Ltd.

6. *The ITAT in the impugned order noted that the document was "silent as to the payer and payee of the amount in question nor-does it disclose that the payment was made by cheque or cash nor it is proved that the document is*

in the handwriting of assessee or at least bears his signatures."

7. . In the considered view of the Court, the addition of Rs.80,50,000 merely on the basis of a single document without making any further enquiry was not justified. No attempt was made by the AO to find out if in fact it constituted estimates relating the construction of project of Omaxe Ltd.

8. In the circumstances, the impugned order of the ITAT suffers from no legal infirmity and does not give rise to any substantial question of law.

9. The appeal is, accordingly, dismissed."

9. Keeping in view of the facts and circumstances of the case as explained above and respectfully following the aforesaid precedents, I am of the considered view that addition on account of alleged interest income is not sustainable in the eyes of law, because the document does not mention the name of the assessee, does not bear the signature of the assessee, not in the handwriting of the assessee, documents has imply jottings of certain figures and does not indicate whether it is an investment or deposit or

loan, hence, the said seized document is dumb/bald and even otherwise, the same was never found either in the possession or control of the assessee. Therefore, on this basis, I delete the addition in dispute and accordingly reverse the orders of the authorities below.

10. In the result, the appeal of the assessee is allowed.

Order pronounced on 21/03/2018.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date:- 21/03/2018

SRBHATNAGAR

Copy forwarded to: -

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

TRUE COPY By Order,

Assistant Registrar, ITAT, Delhi Benches