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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 285/2018, C.M. APPL.9296/2018

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-3
..... Appellant

Through : Sh. Sanjay Kumar, Jr. Standing Counsel.

versus

SH. RAJIV GUPTA ..... Respondent

Through : Sh. Sameer Rohatgi and Sh. Akshit Pradhan, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **12.03.2018**

1. The Revenue's appeal under Section 260A of the Income Tax Act, 1961 [hereafter "the 1961 Act"] urges that the Tribunal fell into error in its appreciation of the assessee's statement in the course of search under Section 132 of the 1961 Act. The assessee and premises of M/s. Shri Ram Hari Ram Group and M/s. Orchid Infrastructure and Developers Pvt. Ltd. were searched. In the course of search, the assessee, in his statement, offered to surrender ₹50 crores which was duly reflected in his returns. The statement also incorporated ₹1 crore. During the course of assessment proceedings, the assessee had urged that ₹1 crore was a sum that included the other amounts disclosed by him in the returns for the current year, under Section 143(3).

2. The Assessing Officer (AO) rejected this contention. The CIT(A) reversed the AO's order. The Tribunal affirmed the CIT(A)'s order. The Revenue urges that the Tribunal and the CIT(A) fell into error in not appreciating that like the assessee, some other searched parties had offered additional amounts, which were confirmed in the course of assessment. The CIT(A) – in holding otherwise, in the assessee's case, on the basis of the same records which were common to all proceedings fell into error.

3. It is evident from the facts that what is at stake is appreciation of facts and circumstances. CIT(A) made a comprehensive order which took note of all the facts – and also duly considered the relevant authorities. The CIT(A) held as follows:

> *"It may be appreciated that in spite of comprehensive search where investigation and verification of papers, records, assets were done and numerous statements were recorded and verified and after marathon assessment proceedings there is no material to suggest that addition of Rs.1 crores is supported by any incriminating document or cogent material found and available on record.*
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> *As such, it is prayed to delete the addition of Rs. 1 crores which is arbitrary and contrary to facts born on record and provisions of law.*
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> *5. **Finding on Ground of Appeal Nos. 1 to 9:-***
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> *The above grounds relate to the addition made for Rs.1,00,00,000/-. The basis of this addition arises from the disclosure of concealed income for Rs.50 Crores made by Sh. Rajeev Gupta for the entire group in his*

statement recorded on 26/27.02.2009 which also includes that of the assessee and which has subsequently been reiterated by Sh. Rajeev Gupta in the breakup provided in his letter to the ADIT dated 05.06.2009 & 10.06.09 wherein the amount of Rs.1 Crores has been declared by the assessee in his own hands. The AO is of the view that the assessee has backtracked from his disclosure of Rs. 1 Crore and consequently the same has been added to the income of the assessee.

As against this the substance of the assessee's argument is that the initial disclosure of Rs.50 Crores made in various hands by Sh. Rajeev Gupta included the normal income of the group and was not over and above the normal income. In this connection attention has been invited to the statement of Sh. Rajeev Gupta dated 27.02.09 and his subsequent letter to the ADIT on 05.06.09. It has also been argued by the appellant that in the statement of Sh. Rajeev Gupta dated 27.02.09 in answer to question no.21 the words "over and above normal income of the AY 2009-10" were specifically deleted after having been recorded. It has also been submitted that in the letter dated 05.06.09 addressed to ADIT concerned this purposeful deletion was pointed out to display the categorical stand of Sh. Rajeev Gupta that Rs. 50 Crore disclosure included normal income for AY 2009-10 of the various assesses whose names are written in this letter. Reference has also been made to the letter dated 09.06.09 written by Rajeev Gupta to ADIT Unit-III (2, New Delhi in which the bifurcation of 50 crores income for AY 2009-10 in hands of various assesses which included the appellant's income for Rs. 1 crore together with the details of payment of advance tax and TDS has been filed.

From all these submissions the point being made by the appellant is that the consolidated disclosure of

Rs.50 crore also included normal income for AY 2009-10 which includes exempt income. Thus the appellant has contended that there has been no backtracking from the surrender of income of Rs.1 Crore in case of the appellant. It has also been submitted by the appellant that no part of income as per regular books of account maintained or document found and seized has been left out. Reliance has also been placed on the decision in the case of Sarwan Singh Rattan Singh AIR 1957 SC 637 and of ITAT in Karam Chand 73 ITD 434 which is to the effect that it is open to the party to prove that the admission made by him is not correct and true. That the statement of Sh. Rajeev Gupta has in any case not been retracted but has been erroneously interpreted by the AO. It has lastly been argued that as laid down in the case of Pullangode Rubber 91 ITR 18(C); Anoop Kumar 147 Taxman 26 (ASR) the retraction for surrender of income made u/s 132(4) during search proceedings may be accepted in facts of case. Further that in the absence of any supportive material or evidence, addition could not be made merely on the basis of statement recorded u/s 132(4) as there is no incriminating material on record to justify the addition.

Considering the totality of the arguments it is observed that the disclosure statement made by Sh. Rajeev Gupta on 27.02.09 is somewhat ambiguous in nature and the issue whether this disclosure included the normal income of the group and was not over and above the normal income is not very clear. However, at the same time it is also noted that in his subsequent letters written to the ADIT concerned on 05.06.09 and 10.06.09 Sh. Rajeev Gupta has clearly stated that the disclosure of Rs.50 crores included normal income for AY 2009-10 for all the assesses whose names are written on these communications. Moreover, alternatively even if the assessee goes back on his disclosure for a certain *amount, the onus shifts on the AO to investigate and substantiate the difference between the disclosure made and the returned income and that the difference cannot straightaway be added to income. In such circumstance it was the duty of the AO to have investigated the matter further before making addition to income and not merely based the same on the disclosure. It is apparent from the assessment order that no such investigation has been made neither there is reference to any incriminating document found relating to the appellant in the statement recorded of Sh. Rajeev Gupta on 27.02.09 or in the assessment order passed by the AO. In view of the above discussion the addition made for Rs.1,00,00,000/- is directed to be deleted."*

4. The Court is of the opinion that what is involved in the present case is not a question of law much less a substantial one. The Revenue seems to be urging issues concerning pure appreciation of facts best left to the final determination of the lower appellate authorities, including the Tribunal.

5. For these reasons, there is no merit in the appeal. It is accordingly dismissed along with the pending application.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MARCH 12, 2018/ajk