

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

(CONDUCTED THROUGH VIRTUAL COURT)

**BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER &
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

IT(SS)A No.213/Ind/2021
(Assessment Year: 2018-19)

ACIT, Central-2, Indore	Vs.	Vinod Bansal, Khandwa
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AIEPB3961B		
(Appellant)	..	(Respondent)

Revenue by :	Shri P. K. Mishra, CIT.D.R.
Assessee by :	Shri S.N. Agrawal, CA

Date of Hearing	19.12.2022
Date of Pronouncement	14.03.2023

O R D E R

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the Revenue is directed against the order dated 09.08.2021 passed by the Ld. CIT(A)-3, Bhopal (M.P.) (hereinafter referred to as 'Ld. CIT(A)') arising out of the order dated 28.12.2019 passed by the DCIT (Central)-2, Indore (hereinafter referred to as 'Ld. AO') under Section 143(3) of the Income-Tax Act, 1961 (hereinafter referred to as 'the Act') for Assessment Year (hereinafter referred to as 'A.Y.') 2018-19 with the following ground:

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in law in deleting the addition amounting to Rs. 1,97,85,430/- on account of undisclosed income u/s 69 of the Income Tax Act 1961.”

2. Brief facts leading to the issue is this that the assessee is a partner in the partnership firms, M/s Vinod Industries and M/s MG Oils and his main sources of income include interest, remuneration and share of profit from these partnership firms. A search and seizure operation under Section 132 of the Act was carried out at the business premises as well as residential premises of MG Oils Group of Khandwa including the assessee and other concerns/ business associates on 23.01.2018. Thereafter, notices under Section 153A of the Act were issued for the A.Y. 2012-13 to 2017-18 and notice under Section 143(2) of the Act was issued for the A.Y. 2018-19. The income-tax return of the assessee for the A.Y. 2018-19 was filed on 26.10.2018 declaring total income at Rs.38,93,740/-. The Ld. AO during the course of assessment proceedings on the basis of some suspicious messages found from the mobile phone of the assessee and his brother, Shri Sunil Bansal reached to a conclusion that the assessee was involved in hawala transactions. The Ld. AO worked out an amount of Rs. 1,97,85,430/- on the basis of photo of those suspicious messages which was inventorized at Page No. 1-33 of LPS-11 and made addition of Rs. 1,97,85,430/- to the total income of the assessee by treating it as undisclosed income under Section 69 of the Act which was, in turn, deleted by the Ld. CIT(A). Hence, the instant appeal has been filed before us by the Revenue.

3. During the course of assessment proceedings, the Ld. AO observed on perusal of messages found from the mobile phone of the assessee and inventorized at Page No. 1-33 of LPS-11 that the assessee was involved in hawala transactions. The assessee contended before the Ld. AO that some of the

messages found from his mobile phone contained reference of the amounts received against sale of oil made by the firm, M/s MG Oils which was duly accounted for in the books of accounts of M/s MG Oils. However, the same, was, according to the Ld. AO, not found to be true and made addition of Rs. 1,97,85,430/- to the total income of the assessee on account of amount worked out on the basis of suspicious messages relating to hawala transactions found from the mobile phone of the assessee.

4. Before us, the Ld. DR vehemently supported the order of Ld. AO. Per contra Ld. Counsel for the assessee supported the findings of Ld. CIT(A). We have heard the respective parties and perused the relevant material available on record.

5. The Ld. Counsel for the assessee submitted that the Ld. AO separately considered the amounts mentioned in the messages found from the mobile phone of the assessee even though many of those messages were merely for exchange of information and did not contain any confirmation regarding receipt/ payment of funds and those messages represented the transactions ultimately did not materialize. The Ld. Counsel further submitted that few of such messages found from the mobile phone of the assessee contained reference of the amounts received against sale of oil made by the firm, M/s MG Oils which was duly accounted for in the books of accounts of M/s MG Oils. The Ld. Counsel drew our attention to Page Nos. 41-53 of the Paper Book wherein screenshots of the messages found from the mobile phone of the assessee and working prepared showing the correct amount computed on the basis of those messages was filed. The Ld. Counsel explained that the correct amount after removing the effect of various messages which ultimately did not materialize and also after removing

the effect of messages containing the reference of the amounts which were received against sale of oil by M/s MG Oils came to Rs. 62,85,430/- as against the amount of Rs. 1,97,85,430/- worked out by the Ld. AO.

6. The Ld. Counsel vehemently argued that the messages found from the mobile phone of the assessee were related to SHARMAJI of Delhi/ RAJESH NATH of Mumbai with whom the assessee had business relationship in connection with sale of oil. He further argued that the assessee was not engaged in carrying out any oil business in his individual capacity but the partnership firms, M/s MG Oils and M/s Vinod Industries, wherein the assessee represented as one of the partners, were engaged in such oil business. The Ld. Counsel argued that if the amount received and mentioned in the messages was linked with the sale of oil, then, it ought to be appreciated that the entire amount of sale of oil was duly recorded in the books of accounts of the partnership firms, M/s MG Oils and M/s Vinod Industries and consequently, there was no justification for making separate addition to the total income of the assessee on account of amount worked out on the basis of alleged suspicious messages found from the mobile phone of the assessee. The Ld. Counsel further submitted that the amount worked out on the basis of messages found from the mobile phone of the assessee which was treated as unrecorded cash in his hands was nothing but the amount of cash deposited in the bank accounts of the suspicious firms which was treated by the Ld. AO herself as pertaining to M/s MG Oils. Hence, it was vehemently argued that there was no rationale behind making separate addition of Rs. 1,97,85,430/- to the total income of the assessee merely on the basis of alleged suspicious messages found from the mobile phone of the assessee, particularly when the Ld. AO herself while passing the assessment order in the

case of M/s MG Oils concluded that the amount of cash deposited in the bank accounts of the suspicious firms pertained to M/s MG Oils.

7. We have considered each and every plea raised by the Ld. Counsel during the course of hearing before us. We find that the Ld. CIT(A) while allowing the appeal preferred by the assessee observed as follows:

“ 4.2. **Ground Nos 1 to 3 for A.Y. 2018-19: -** *Through these grounds of appeal the appellant has challenged the addition made by the AO amounting to Rs: 1,97,85,430/- on account of undisclosed income u/s 69 of the I.T. Act and charging of tax liability as per amended provisions of section 115BBE of the Act. The assessing officer while passing the assessment order added the entire amount as found in the mobile messages as income of the appellant. Details of amount as added in the case of the appellant was provided on inner Page Nos 8&9 of the Assessment order. The assessing officer observed that the appellant during the course of search stated that these messages relate to the sale of oil but in post search proceeding the appellant claimed that these messages also relate to the sale of Arbi by the farmers through local transporter. The appellant merely facilitates to receive amount on behalf of Transporter. The appellant further claimed that the ownership of the amount as received in the messages were never belonging to him. The assessing officer however, rejected the contention of the appellant as explained in the post search proceeding. The appellant during the course of search assessment as well as appellate proceeding has clarified that these messages relates to Shri Sharma ji (Pandit Ji) of Delhi with whom the appellant having regular business transactions of sale of Oil. The appellant is not engaged in any oil business in his Individual capacity but the partnership firm M/s M G Oil and M/s Vinod Industries in which the appellant represent as a partner engaged in the Manufacturing and trading of oil. During the course of scrutiny assessment as well as appellate proceeding it was clarified that some of the customer of M/s M G Oils sent cash directly to the appellant and the said amount of cash was deposited by the appellant or by the staff of M/s M G Oils in their bank account and therefore the said amount was transferred in the bank account of M/s M G Oils against sales. It was further explained that the nature of cash as received by the appellant was duly explained to the assessing officer and the same was deposited in the bank account of the customer to whom oil were sold by M/s M G Oils. It was also explained that appellant also received cash on behalf of farmers against the sale of Arbi Crop. The appellant further stated that message as found in the mobile was added twice. Since, the appellant in the communication stated to collect certain amount and then confirmation was received for collection of the amount. The assessing officer added both these figures which was not correct. The appellant provided complete list of the transactions considered twice or thrice by the assessing officer on Page Nos 52 & 53 of the Compilation. On perusal of the said list, the contention of the appellant*

*seems correct. The correct amount calculated as per message was of Rs 62,85,430/- only and not of Rs 1,97,85,430/- as added by the assessing officer. The appellant further contended that in any case entire amount of message cannot be constituted as income of the appellant. The assessing officer simply stated that cash was received by the appellant and therefore the same was taxed as income of the appellant. If the assessing officer rejected the contention of the appellant, in that case it is the duty cast on the assessing officer to explain the correct nature of transactions as recorded in the messages but the assessing officer failed to do so. Considering the overall facts of the case and submission as filed by the appellant it is evident that the assessing officer added the entire amount as found recorded in the message which is not justifiable. The amount received in small denomination on different dates. The amount as added also includes repetition in respect of same amount which need to be ignored. The correct amount therefore calculated which comes to Rs 62,85,430/- only. If the appellant fails to explain the correct nature the correct re-course with the assessing officer was to tax the net profit and not the entire amount as added by assessing authority. In the present case, the appellant is not engaged in any business activities in his Individual capacity. The assessing officer during the course of search and post search inquiry not found any thing about any business activities carried out by the appellant. The appellant during the course of search, explained that he has business connection of oil sale with Pandit ji of Delhi. Oil business was carried out by the firm M/s M G Oil and M/s Vinod Industries. It was also noticed by the assessing officer herself that cash was deposited in the bank account of few of the customers by the appellant or by the staff of M/s M G Oils which itself proved that entire amount of cash as received by the appellant as noticed through the mobile messages relates to the customers of M/s M G Oils to whom oils were sold by the firm. The sales as executed to all the customers were duly accounted for in the regular books of account of the firm and therefore there was no justification for adding the said amount merely on the basis of mobile messages to the total income of the appellant. Therefore the assessing authority is not justified in making addition. Therefore, the addition made by the AO amounting to Rs: 1,97,85,430/- is **Deleted**. The appeal on these grounds is **Allowed**.*

Since the additions as made by the assessing officer on account of undisclosed income u/s 69 of the I.T. Act, 1961 have already been deleted on merit. Therefore, the charging of tax liability as per amended provisions of section 115BBE on these grounds is academic in nature and having no impact on the fate of these grounds."

8. The above findings of the Ld. CIT(A) have not been controverted by the Ld. DR. The facts discussed above squarely reveal that the Ld. AO simply made addition in respect of all the amounts mentioned in the messages found from the mobile phone of the assessee, irrespective of the fact as to whether those amounts represented income of the assessee or not and also as to whether those

messages represented the transactions which ultimately materialized or not. We have also considered the working prepared by the Ld. AR on the basis of these messages wherein the correct amount after removing the effect of various messages which ultimately did not materialize and also after removing the effect of messages containing the reference of the amounts which were received against sale of oil by M/s MG Oils came to Rs. 62,85,430/- as against the amount of Rs. 1,97,85,430/- worked out by the Ld. AO. and we find that the amount in dispute should have been Rs. 62,85,430/- only as against the amount of Rs. 1,97,85,430/- added by the Ld. AO to the total income of the assessee.

9. Further, we find strong force in the contentions of the Ld. Counsel that messages found from the mobile phone of the assessee were related to SHARMAJI of Delhi/ RAJESH NATH of Mumbai with whom the assessee had business relationship in connection with sale of oil. It can be seen that the assessee was not engaged in carrying out any oil business in his individual capacity but the partnership firms, M/s MG Oils and M/s Vinod Industries, wherein the assessee represented as one of the partners, were engaged in carrying out oil business. Hence, if the amount received and mentioned in the messages is linked with the sale of oil, then, we are inclined to accept the contention of the Ld. Counsel that the entire amount of sale of oil was duly recorded in the books of accounts of the partnership firms, M/s MG Oils and M/s Vinod Industries and henceforth, there was no justification for making separate addition to the total income of the assessee. The Ld. Counsel has categorically explained the fact that the messages found from the mobile phone of the assessee contained the amounts which were received by the assessee against sales made by the firm, M/s MG Oils which was duly accounted for in the books of accounts of M/s MG Oils. Hence, considering the totality of the facts, we are of the considered

opinion that since the Ld. AO herself while passing the assessment order in the case of M/s MG Oils observed that cash was deposited in the bank account of few of the customers by the assessee or by the staff of the firm, M/s MG Oils, this in itself proves that the entire amount of cash received by the assessee as noticed through the messages found from his mobile phone was related to the customers of M/s MG Oils to whom sales were made and duly accounted for in the books of accounts of M/s MG Oils and accordingly, there was no justification for making separate addition to the total income of the assessee on this count.

10. It was the duty of the Ld. AO to explain as to how the amounts found noted in those messages represented the real income of the assessee which should have been subject to tax. In this regard, we have considered the judgment passed in the matter of CIT v. Excel Industries Ltd. [2013] 358 ITR 295 (SC) is wherein the Hon'ble Supreme Court categorically held that income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. We find in the instant case, the Ld. AO utterly failed to do so and simply summed up each and every amount found noted in those messages and added the same to the total income of the assessee which was not justified.

11. Thus, considering the entire aspect of the matter, we are of the considered opinion that there was no justification for making addition of Rs. 1,97,85,430/- to the total income of the assessee on account of amount worked out on the basis of alleged suspicious messages relating to hawala transactions found from the mobile phone of the assessee by treating it as undisclosed income under Section 69 of the Act. The addition made by the Ld. AO on account of amounts noted in

the alleged suspicious messages found from the mobile phone of the assessee cannot be said to be justified in view of the observations made hereinabove. Hence, we do not find any infirmity in the findings of the Ld. CIT(A) and accordingly, the deletion of addition of Rs. 1,97,85,430/- made by the Ld. CIT(A) is just and proper so as to warrant no interference. Hence, this ground of the appeal preferred by Revenue is found to be devoid of any merit and, thus, dismissed.

12. In the result, appeal filed by the Revenue is dismissed.

This Order pronounced on 14/03/2023

Sd/-
(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Indore; Dated 14/03/2023

S. K. Sinha, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

(Sr.PS)
ITAT, Indore