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

Before Dr. B. R. R. Kumar, Accountant Member

Ms. Astha Chandra, Judicial member

ITA No. 211/Del/2023 : Asstt. Year: 2007-08

DCIT, Central Circle-4, New Delhi-110055	Vs	Capital Power Systems Ltd., 3721/2, 1st Floor, Netaji Subhash Marg, Darya Ganj, New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAACC0119R		

Assessee by : Sh. Mayank Patwari, CA &
Sh. Amol Jagga, Adv.
Revenue by : Sh. Vipul Kashyap, Sr. DR

Date of Hearing: 29.08.2023		**Date of Pronouncement: 06.11.2023**

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by Revenue against the order of ld. CIT(A)-23, New Delhi dated 16.11.2022.

2. Following grounds have been raised by the Revenue:

> *"1. The ld. CIT(A) is erred in deleting the addition of Rs. 7 Crores made on the basis of statement recorded during the search without appreciating the judgment of jurisdictional (Delhi) High Court in the case of Bhagirath Agarwal Vs. CIT (31 taxmann.com 274) wherein the HC held that "an addition in assessee's income relying on statement recorded during search operation cannot be deleted without proving the statement to be incorrect."*

3. The history and brief facts of the case are that a search action u/s 132 of the Act was initiated in the group cases of the assessee, i.e. the Capital Meter Group, whose directors were

Shri Pawan Kumar Bansal and Shri Mahesh Kumar Gupta. During the course of such search proceedings. Shri Pawan Kumar Bansal, surrendered an amount of Rs. 7 crores. A letter written by Shri Pawan Kumar Bansal, in the capacity of the CEO of the assessee, made a surrender of Rs. 7 crores as the income of the group concern emanating out of the search in the Capital Meter Group. In his statement u/s 132(4), Shri Pawan Kumar Bansal, reiterated the contents of the letter, dated 01.09.2006, his stand that the surrender was made on behalf of Capital group of companies, stating therein, that a bifurcation will be provided later on. In the statement u/s 132(4) of the Act, Shri Pawan Kumar Bansal, also provided the bifurcation of the amount of Rs. 7 crores as income from various sources and investment made by Pawan Kumar Bansal, to the tune of Rs. 3,55,00,000/- and by Mahesh Kumar Gupta, to the tune of Rs. 3,45,00,000/-. The assessee company filed its' return of income for the AY 2007-08 declaring its total income at Rs. 80,53,110/-. The AO, in the assessee's case, accepted the returned income of the assessee by passing an Assessment Order u/s 143(3)/153A of the Act. In the Assessment Order passed in the case of Pawan Bansal, the AO made substantive addition of Rs. 3,35,00,000/- and protective addition of Rs. 3,45,00,000/- whereas, substantive addition of Rs. 3,45,00,000/- was made in hands of Shri Mahesh Kumar Gupta. On appeal by Shri Pawan Bansal, the Ld. CIT(A), restricted the addition made by the AO as the statement relied upon by the AO was not considered in its entirety and as such any addition that was to be made should have been on the basis of reliable evidence. Therefore, on the basis of seized material showing undisclosed income, the Ld. CIT(A) restricted the addition to Rs. 27.58 lacs and deleted the

addition made on the basis of the statement of Shri Pawan Bansal. Aggrieved with the order of the Ld. CIT(A), cross appeals were preferred before the ITAT. The Co-ordinate Bench of ITAT, while concurring with the findings of the Ld. CIT(A) held that the cumulative effect of the statement should have been considered which did not reveal the income of Rs. 7,00,00,000/- in the hands of Shri Pawan Bansal. The Tribunal also rendered the statement unreliable and deemed it fit to turn to the seized material and restricted the addition to the seized material only. Further aggrieved by the decision of the Tribunal, the Revenue went in appeal against the order in the case of Pawan Bansal and Mahesh Kumar Gupta before the Hon'ble High Court wherein the appeal was dismissed as there was no substantial question of law that arose and the order of the Tribunal was affirmed by the Hon'ble High Court.

4. Consequently, on an incorrect interpretation of the orders of the Tribunal and the Hon'ble High Court, the Assessing Officer issued a notice u/s 148 r.w.s. 150 of the Act considering the order of the Tribunal to be a "direction" within section 150 of the Act, and proceeded to initiate reassessment proceedings against the assessee u/s 148 and completed the assessment determining the total income at Rs.7,00,00,000/- which is solely based on the statement recorded u/s 132(4) of Sh. Pawan Kumar Bansal, the CEO of the assessee company.

5. Aggrieved, the assessee filed appeal before the ld. CIT(A).

6. The ld. CIT(A), Sh. Sujeet Kumar negated the contention of the Assessing Officer that the Tribunal, in case of Pawan Bansal, had given the finding that the surrender was made by

the assessee and not the individuals. This is due to the fact that the surrender was on behalf of the group and that the AO should have followed up as to the specific details of the group entities in order to determine in whose hands the income should be added instead of merely relying on the statement of Pawan Kumar Bansal in absence of any incriminating material.

7. The department, being aggrieved with the order of the Ld. CIT(A), has preferred the appeal before the Tribunal. The Revenue relied on the judgment of the Hon'ble Delhi High Court in the case of Bhagirath Aggarwal vs. Commissioner of Income-tax which holds that an addition to assessee's income relying on statement recorded during search operation cannot be deleted without proving the statement to be incorrect.

8. In order to determine whether or not there was any finding to such effect by the ITAT, the operative portion of the such order was examined. The ITAT held as under:

"11.....When we see the cumulative effect of all the facts as well as the statements, following position emerges:-

12. Shri Pawan Kumar Bansal is an individual who is not carrying on any business in his individual capacity. The business is carried on by Capital Group of Companies including Capital Power Systems Ltd. whose CEO is Shri Pawan Kumar Bansal, i.e., the assessee. The original disclosure made vide letter dated 1st September, 2006 was for and on behalf of Capital Power Sytems Ltd. The assessee signed the above letter in his capacity as CEO of the said company. In the statement dated 8th September, 2006, he deposed before the Revenue authorities in which he affirmed the voluntary disclosure of additional income of Rs. 7 crores on behalf of Capital Group of

companies. Thus, even in the statement dated 8th September, 2006, there was no disclosure in the individual capacity of Shri Pawan Kumar Bansal, another statement dated 12th September, 2006, he reiterated his earlier statement vide letter dated 1st September, 2006 and statement dated 8th September, 2006. Thus, the disclosure of income was by Capital Group of companies. However, in reply to another question in his statement dated 12th September, 2006, he disclosed the income of Rs.3,55,00,000/- in his individual capacity and the income of Rs.3,45,00,000/- in the name of Shri Mahesh Kumar Gupta. The Revenue authorities who recorded the statement did not bother to point out the contradiction between the reply to question No.2 and question No.4. In reply to question No.2, he reiterated his letter dated 1st September, 2006 and statement dated 8th September, 2006 wherein no income was disclosed in the individual names of Shri Pawan Kumar Bansal and Shri Mahesh Kumar Gupta. But, in reply to question No.3, the income was disclosed in the individual names. It is a settled law that the statement has to be considered as a whole and Revenue cannot choose to rely upon only one part of the statement ignoring the other statements. Moreover, statement dated 12th September, 2006 is not the only statement but it is only one part of the series of letter/statements. In the statement dated 8th September, 2006, Shri Pawan Kumar Bansal has stated that the details of the disclosure would be given after going through the seized material. Therefore, the statement has a relevance with the seized material and statement is made by him to disclose the income as represented by the seized material. No other corroborative evidence to support the income of Rs. 7 crores in the hands of the assessee and Shri Mahesh Kumar Gupta is found. In the above circumstances, after considering the cumulative effect of the letter dated 1st September, 2006 and both the statements, the proper course would be to determine the undisclosed income on the basis of loose papers found and seized at the time of search. The CIT(A) did the same.

13. We, therefore, uphold the order of learned CIT(A) to the extent wherein he held that the income of the assessee i.e. Shri Pawan Kumar Bansal is to be determined on the basis of undisclosed income as per the noting on the loose papers..."

9. From the aforesaid, the following derivations emerge:

(i) The ITAT has held that the surrender was made by the appellant company at an ad-hoc sum of Rs.7 crores as a representative of Capital Group of companies.

(ii) The ITAT has made any remarks/finding on the assessability of such surrender in the hands of the appellate company.

(iii) The ITAT has only upheld the order of the Ld.CIT(A) to extent that the income has been computed/added on the basis of incriminating material seized during the search action. In light of the contradiction in the statements by Mr. Pawan Kumar Bansal, both the authorities held that addition cannot have been made solely on the basis of such statements.

Excerpts from the order of the Ld.CIT(A) and decision of the Tribunal:

10. In the light of appellate orders in the case of Mr. Bansal and Mr. Gupta, it is evident that the aforesaid addition of Rs.6,80,00,000/- were made merely on the basis of surrender made in the statement recorded u/s 132(4) without having any supportive evidence. Therefore, Ld. CIT (Appeal) deleted entire addition except Rs.27,58,000/- and in second appeal, the ITAT

dismissed the Revenue appeal and out of assessee's appeal allowed the relief of Rs. 19,68,000/- confirming the addition of Rs.7,90,000/-.

11. Now, it is pertinent to note here that the aforesaid deletion of Rs.6,72,10,000/- (6,80,00,000 - 7,90,000) out of total addition of Rs.6,80,00,000/- was made on the reason that no evidence found during course of search except loose papers pertaining to Rs.7,90,000/- and it was held that the addition of Rs.6,72,10,000/- based on statement recorded u/s 132(4) having no supporting documents/evidence/assets was not sustainable. It emerges that the facts of the present case are inextricably linked to the cases of Mr. Bansal and Mr. Gupta as in the present case as well search action u/s 132 was conducted and assessment was made u/s 143(3)/153A of the Act. Hence, the treatment of the addition of Rs.7,00,00,000/- based only on statement of Shri Pawan Kumar Bansal (Director) cannot be different from the one in the case of the two individuals.

12. The crux of the claim of the Assessing Officer is that the appellant company has till date not retracted its letter dated 01.09.2006 undersigned by Mr. Bansal as CEO. This finding of Assessing Officer that the appellant company through its director had surrendered such sum as its own undisclosed income is flawed. For this the said letter must be re-visited and the relevant para of such letter is reproduced for ready reference:

"we Capital Power Systems limited hereby agree to voluntarily surrender additional income of Rs. 7,00,00,000.00……., on behalf of the company, its Directors, Senior Executives, their spouse, family

members and relatives including other companies, firms in which such persons are partners, directors or interested. The detailed letter and specific assessee-wise details shall be submitted to your goodself after going through seized material."

13. It is fairly evident that such disclosure was never made by the appellant company in its own hands but was made on behalf of the Capital Group of Companies which is also the finding of the ITAT. Thus, the non-retraction of such statement does not help the Assessing Officer's case at all to assess such disclosure in the hands of the appellant company, especially when detailed break-up was subsequently submitted by the same person, i.e. Mr. Bansal.

14. The Assessing Officer had duly examined the seized material in light of the statement of Mr. Bansal and came to a conclusion that such material pertained to Mr. Bansal and Mr. Gupta. In fact, the protective addition of Rs.3.45 crores was also made in the hands of Mr. Bansal for an income which was added on substantive basis in the hands of Mr. Gupta. This shows that according to the Assessing Officer such income either pertained to Mr. Bansal or Mr. Gupta, the appellant company was never in sight to be taxed for such income.

15. In the impugned case, it is not the finding of the Tribunal that there was any undisclosed income of the appellant company that was not assessed to tax. Had there been any such categorical finding by the Tribunal, in that case the Assessing Officer was correct in reopening and bringing to tax the undisclosed Income of the appellant. The Tribunal decided the case of the two individuals and concluded that the income

cannot be taxed in their hands in the absence of any material on record to show that there was any undisclosed income in their hands.

16. The provisions of section 150 is reproduced as under:

"(1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or computation in consequence of or to give effect to any finding or direction contained an order passed by any authority in any proceeding under this Act way of appeal, reference or revision for by a Court in any other law.

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or re-computation as it referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or re-computation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or re-computation may be taken."

17. From the plain reading of the section, it is evident that there has to be any finding or direction in the order of the Tribunal then only the case can be reopened. From the reading of order of the Tribunal which is reproduced in paragraphs, it is seen that there is neither any finding nor any direction of the Tribunal regarding undisclosed income of the appellant company. There is no finding or direction of the Tribunal allowing the Assessing Officer to bring to tax the amount of Rs.7,00,00,000/- in any manner whatsoever.

18. In the case of the individuals it is the finding of the Tribunal that no addition can be made if there is no supporting seized material to substantiate the addition. The same rule applies in the case of the appellant company. In the case of the appellant company also, addition has been made only on the basis of statement without any supporting seized material. In both the reasons recorded for re-opening and in the assessment order there is no reference to any seized material that can substantiate the addition made by the Assessing Officer.

19. Therefore, in view of the above, we totally concur with the decision of the Assessing Officer was not justified in reopening and adding the amount of Rs.7,00,00,000/- as undisclosed income in the hands of the assessee.

20. In the result, the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 06/11/2023.

Sd/-	Sd/-
(Astha Chandra)	**(Dr. B. R. R. Kumar)**
Judicial Member	**Accountant Member**

Dated: 06/11/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR