

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE
SHRI M BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 3431/DEL/2023
Asstt. Year: 2015-16

Shri Kailash Gahlot, 6/6172, Vasant Kunj, New Delhi – 110 070 PAN AAJPG2849N	Vs.	DCIT, Central Circle-4, New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Vinod Kumar Bindal, CA Ms. Rinki Sharma, ITP & Shri Saurabh Sharma, Advocate
Department by:	Shri Sanjay Kumar, CIT(DR)
Date of Hearing:	20.05.2024
Date of pronouncement:	02.07.2024

ORDER

PER VIMAL KUMAR, JM

The appeal is against order dated 30.09.2023 of the Learned Commissioner of Income Tax (Appeals), New Delhi [hereinafter referred as Learned CIT(A)], dismissing the appeal against order dated 12.04.2021 of the Learned Assistant Commissioner of Income Tax, Central Circle-4, Delhi (hereinafter referred as Learned AO) making addition of Rs. 42,98,086/- on account of unexplained cash credit under section 69C of the Income Tax Act, 1961(hereinafter referred as the Act).

2. Brief facts of case are that a search and seizure action under section 132 of the Income Tax Act, 1961 was carried out in “M/s. Corporate International Financial Services Limited and others Group and associates” on 10.10.2018. A search warrant of authorization under section 132 of the Act was issued in the name of Shri Kailash Gahlot resident of C-6/6172, Vasant Kunj, Delhi on 10.10.2018. Thereafter jurisdiction of the case was transferred to the office by centralization order dated 16.09.2019 from the Pr. Commissioner of Income Tax, Delhi – 21, to New Delhi.

3. Assessee filed return of income under section 139 of the Act on 24.09.2015 declaring total income of Rs.1,66,73,890/-. Notice under section 153A of the Act was issued on 05.02.2020 and duly served. In response to the notice return of income was filed on 25.12.2020 declaring total income at Rs. 1,66,73,890/-. Notice under section 143(2) dated 28.12.2020 was issued through ITBA portal and duly served upon the assessee. Thereafter notice under section 142(1) of the Act dated 12.01.2021 along with a detailed questionnaire was issued to the assessee to furnish details, documents. Shri Dinesh Kumar Sharma, CA/authorised representative of the assessee appeared. Subsequently. Shri Vinod Kumar Bindal, CA filed power of attorney, details and documents called from time to time. Assessee had derived income from salary, house property, business, capital gain and other sources. During the course of search and seizure operation conducted at premise bearing address-A-Block Prem Nursery, Najafgarh, Delhi in which office

of Shri Kailash Gahlot incriminating document in the form of diary was found and seized which is marked as AnnexureA-2. The total amount of cash expenses was Rs. 42,98,086/-. The assessee was requested vide question No. 4 to question no. 13 of questionnaire issued under section 142(1) of the Act to provide explanation with respect to cash expenses during the year under consideration. Assessee submitted common reply dated 19.03.2021, with an affidavit of assessee mentioning that the diary was written by Shri Rohit Sharma and the same belonged to him. Affidavit of Shri Rohit Sharma was also filed.

4. The Learned AO vide order dated 12.04.2021 concluded that amount of Rs. 42,98,086/- was unexplained and added it to the total income of the assessee under section 69C as unexplained expenditure for the year under consideration and taxed under section 115BBE.

5. Appellant/assessee preferred appeal before the Learned CIT(A) which was dismissed vide order dated 30.09.2023.

6. Being aggrieved appellant/assessee preferred present appeal.

7. Learned authorised representative for appellant/assessee submitted that Learned CIT(A) erred in confirming addition of Rs. of Rs 42,98,086/- as unexplained expenditure u/s 69C of the Act by holding the diary of Shri Rohit Sharma seized from the office of the assessee as belonging to the assessee by applying the

presumption u/s 132(4) of the Act ignoring that the said presumption is a rebuttable presumption. The presumption was rebutted by filing of affidavit of Shri Rohit Sharma owning the diary and explaining its contents by way of affidavit dated 22.03.2021 copy of which is at page No. 38 to 42 of Paper Book. Moreover, appellant/assessee had filed explanation of Annexure A-2 which is at page No. 43 to 47 of the Paper Book. The diary was owned by a third party. So, the diary could not be considered as belonging to assessee as per settled law. No amount was mentioned in the diary was ever given to appellant/assessee.

8. Learned authorized representative for appellant/assessee submitted that Learned CIT(A) erred in confirming addition of Rs. 42,98,086/- as unexplained expenditure under section 69C of the Act being the amounts mentioned in a diary seized from the office premises as expenses incurred by the appellant during his election campaign. The appellant never incurred the said amount during his election campaign in his constituency as the Expenditure Observer appointed by the Election Commission never challenged the same. The affidavit showed that the said amounts were spent by many party workers on their own violation without knowledge of the appellant. So the addition deserves to be deleted.

9. Learned authorised representative for appellant/assessee submitted that the Learned AO erred in law in making addition of Rs. 42,98,086/- as unexplained expenditure under section 69C of the Act without appreciating that there were many duplicate/

triplicate entries in said diary and all amounts could not be aggregated for purpose of computing the amount spent.

10. Learned authorised representative for appellant/assessee submitted that impugned orders are bad in law as having been based on mechanical approval under section 153D of the Act without due application of mind.

11. Learned authorised representative for appellant assessee submitted that Learned AO erred in law and on facts in charging tax under section 115BBE of the Act whereas the additional tax liability was applicable w.e.f. AY 2017-18. As such addition otherwise does not attract the said section.

12. Learned authorised representative for department submitted that during search dated 10.10.2018 diary annexure as A-2 was recovered from premises i.e. office of Shri Kailash Gahlot. The diary contained entries of cash payment to the tune of Rs. 42,98,086/-. Appellant/assessee failed to explain the questionnaire question No. 4-13. The affidavit filed by Shri Rohit Sharma claiming to be author of diary and the details of receipt and payment /election expenses of Aam Admi Party and not of the assessee. In absence of specific details or any other document was rightly not considered by the Learned AO and Learned CIT(A). Reference to the Hon'ble High Court of Delhi in ITA No. 134/2014, C.M. APPL.5666/2014 in the case of M/s. JRD Stock Brokers (P) Ltd. vs. Commissioner of Income Tax-II and Hon'ble

ITAT, Delhi benches in ITA No. 1274-1287/Del/2023 in the case of Joginder Pal Gupta was made.

13. From examination of record in the light of aforesaid rival contention it is crystal clear that search and seizure action dated 10.10.2018 in the office of appellant/assessee led to recovery of diary marked as Annexure A-2. The diary contained entries of cash payment to vendors worth Rs. 42,98,086/-. The assessee vide question No. 4 to question no. 13 of questionnaire was issued under section 142(1) of the Act to provide explanation. Appellant/assessee submitted reply on 19.03.2021 and affidavit interalia claiming that the diary found from his office was of Shri Rohit Sharma. The diary mentions expenses incurred on election contested by several candidates of Aam Aadmi Party. Affidavit of Shri Rohit Sharma was also filed. (from page 38 to 42 of Paper Book).

14. An affidavit of Shri Rohit Sharma at pages 38 to 42 of paper book contains para No. 6 regarding entries on each page of diary mentioning amounts and figures. The contents of affidavit especially para No. 6 do not properly explain entries as names of person paying the amount and the expenses paid are vaguely mentioned. Names of relatives of appellant/assessee are also mentioned. Shri Rohit Sharma had stated that only Rs. 10,95,700/- was incurred for promotion of Aam Aadmi Party and many candidates in West Delhi constituency. No supporting document regarding averment was submitted. In absence of specific details and other supporting documents, the affidavit of

Shri Rohit Sharma was rightly rejected by the Learned AO and Learned CIT(A). Impugned orders being just, fair and reasonable, deserve to be upheld. In view of above material facts grounds of appeal No. 1 to 5 being de void of merit are untenable. Impugned orders deserve to be upheld.

15. No other point was argued.

16. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 2nd July, 2024.

sd/-

**(M BALAGANESH)
ACCOUNTANT MEMBER**

sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 02/07/2024

Veena

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	