IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.53/Nag./2020

(Assessment Year : 2015–16)

Shrigopal Rameshkumar Sales Pvt. Ltd.
1, Sarvodaya Cloth Market
Gandhibag, Nagpur 440 002
PAN – AABCS9226J

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle–1(3), Nagpur

..... Respondent

Assessee by : Shri Kapil Hirani
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 17/12/2024	Date of Order – 30/12/2024

O R D E R

PER K.M. ROY, J.M.

Captioned appeal by the assessee is against the impugned order dated 26/03/2018, passed by the learned Commissioner of Income Tax (Appeals)–3, Nagpur, [*"learned CIT(A)"*], for the assessment year 2015–16.

2. In its appeal, the assessee has raised following grounds:–

"1. That the learned CIT Appeal erred in law and on facts in confirming the addition of Rs.2,50,00,000/- and the same is liable to be deleted.

2 That the addition maintained at Rs. 2,50,00,000/- is bad in law in as much as Assessee denied to have received any amount in Cash but however in spite of specific denial and supply of addresses and PAN number neither examined Govindraja Group Mills nor the broker Mr. Surenthirakumar. Hence this addition is bad in law.

3. That the addition maintained at Rs. 2,50,00,000/- is further vitiated in law as it is without proper opportunity and without supporting by any independant evidence in view of specific denial by Assessee.

4. That the Addition of 2,50,00,000/- is maintained in inappropriate appreciation of evidence and is maintained on surmises and conjectures.

5. That on facts the learned CIT Appeals erred in maintaining the addition of 2,50,00,000/- in as much as the Assessee has filed duly confirmed letter from Govindraja Group Mills accepting the account statement and no Cash Payment by said Govindraja Group and further in rejecting the explanation of Assessee that 2,50,00,000/- represents 2 L.C.'s of 1.25 Cr. each Feb 2013 for which it was claimed that double deduction was wrongly claimed. Therefore the addition maintained at 2,50,00,000/- is liable to be allowed."

3. During the course of hearing, the Registry has pointed out a delay of 702 days in filing the present appeal before the Tribunal. The learned Counsel, Shri Kapil Hirani, appearing for the assessee, at the very outset, invited attention of the Bench to the Affidavit filed seeking condonation of delay and took us through the contents of the Affidavit and the supporting documents filed in support of prayer seeking condonation of delay. The sum and substance of the application seeking condonation of delay is that the appeal was filed through the Counsel of the assessee, Shri Vijay Chandak, Advocate, who, through his staff, filed the copy of the appeal before the Office of the Departmental Representative (DR), ITAT, on 07/05/2018, as is procedurally required to be filed before filing of the appeal with the Registry, which was within the prescribed period of 60 days from the date of the impugned order 26/03/2018, passed by the learned CIT(A). The learned Counsel further invited attention to the appeal fees challan of ₹ 10,000 which was also paid by the assessee on 04/05/2018. Further, it is the contention of the learned Counsel that due to inadvertence, the staff of the Counsel of the assessee, after filing the copy of the appeal before the D.R. Office, the said staff got the impression that the appeal has been duly filed and as such he did not proceed to file a separate copy of the same before the Registry, as

was statutorily required for the appeal to be registered. The learned Counsel further invited our attention to the acknowledgement on the set of the appeal which clearly depicted the date of filing of the same before the office of the D.R. as 07/05/2018. It is the case of the assessee that the Revenue has simultaneously preferred cross−appeal for the impugned assessment year and the Counsel of the assessee immediately upon realizing the inadvertence, filed the copy of the appeal before the Registry on 26/02/2020, which was accordingly then registered and the consequent delay of 702 days had accordingly occurred.

4. We have considered the arguments of the learned Counsel for the assessee and also perused the contents of the application seeking condonation of delay including the affidavit filed by Shri Vijay Chandak, Advocate, stating the above facts. It is an undisputed fact that the present appeal was filed with the office of the D.R. on 07/05/2018 and that the appeal fees pertaining to the said appeal was also paid by the assessee on 04/05/2018, which is well within the time limit of 60 days from the date of the impugned order passed by the learned CIT(A). It appears that the delay in filing of the appeal was solely on the inadvertence on the part of the staff of the Counsel of the assessee in assuming that having filed the copy of the appeal with the office of the D.R., the procedure filing of the appeal stood completed and consequently the copy of the appeal remained to be filed with the Registry, as was required to complete filing process. The cause of delay in filing of the appeal thus seems to be reasonable and on a conspectus of the facts and the affidavit so filed by the Counsel of the assessee, we are inclined

to condone the delay in filing of the appeal in the interest of natural justice. In our view, the assessee should not suffer due to latches on the part of his legal advisor. We thus condone the delay of 702 days in filing of the appeal and proceed to adjudicate the appeal on merits.

5. The sole dispute involved in this appeal relates to addition sustained by the learned CIT(A) amounting to ₹ 2,50,00,000, allegedly held to have been received by the assessee in cash.

6. The assessee is engaged in the business of running a Ginning Mill and dealing in cotton. A search and seizure action under section 132(1) of the Income Tax Act, 1961 (*"the Act"*) was conducted on the assessee on 12/02/2015. During the course of search, it is the case of the Revenue that certain files were seized and more particularly documents inventorised as B16, wherein certain recordings were found which showed the assessee having received alleged cash of ₹ 2,50,00,000. The Assessing Officer accordingly made addition.

7. On appeal, learned CIT(A) confirmed such addition made by the Assessing Officer. The assessee being aggrieved filed appeal before the Tribunal.

8. Before us, the learned Counsel for the assessee denied having received any amount in cash, as alleged by the authorities below. The learned Counsel, invited our attention to the statement recorded of the assessee under section 131 dated 07/04/2015, and which is placed on record at Pages−155 & 156 of the Paper Book, wherein the assessee, in the statement, categorically denied

receiving any amount of cash much less cash of ₹ 2,50,00,000, as alleged. It is the case of the assessee that the said notings and the paper so seized and which has been reproduced by the Assessing Officer at Page−11 of the assessment order pertains to transactions of the assessee with Govindraja Mills Group and the said paper was not prepared by the assessee nor any of his employees. It is the submission of the assessee that the said paper was prepared by one Shri Surenthira Kumar, who is a broker for cotton bales transactions between the assessee and Govindraja Mills Group and the same was prepared by Shri Surenthira Kumar, for reconciliation purposes. The learned Counsel further invited our attention to the said handwritten note where firstly there is a balance of ₹ 5,10,19,465, mentioned as on 31/05/2014, which according to the learned Counsel for the assessee is the balance receivable by the assessee on account of sales made to the entities pertaining to Govindraja Mills Group. The learned Counsel further invited attention to Pages 116-124 of a separate Paper Book containing compilation of submission made before the learned CIT(A) wherein the copies of accounts pertaining to companies of Govindraja Mills Group has been enclosed which shows the balances in the books of accounts of the assessee as under:−

SGML Balance as on 31.5.2014	*₹1,22,15,204*
SGTPL balance as on 13.5.2014	*₹2,10,51,741*
SGTPL−II balance as on 13.5.2014	*₹1,77,52,520*
Total:−	*₹5,10,19,465*

9. It is the contention of the assessee that the said balance as appearing in the documents referred to and relied upon by the Assessing Officer is nothing but the balance pertaining to entities of Govindraja Mills Group and

books of accounts of the assessee against sales made by the assessee the said entities. He vehemently averted that no defect or deficiencies were found in the books of account.

10. That with respect to the amount of ₹ 2,50,00,000, appearing in the said document, the contention of the assessee is that the said amount pertains to two Letter of Credits (L.C.) of Canara Bank of ₹ 1.25 crore each dated 04/02/2013 and 07/02/2023 received by the assessee and which were reflected in the books of accounts in earlier financial year.

11. Our attention was invited to Page−115 of the compilation having submissions made before the learned CIT(A) wherein the extract of statement recorded of Shri Ramesh Rander, Director of assessee is placed wherein the assessee in response to specific query raised has denied receiving any amount in cash and further that the said amount was received by way of L.C. which according to the assessee was also stated in the statement recorded during the time of search. It is further submitted by the assessee that the said sum of ₹ 2.5 crore was received by way of two L.Cs each of ₹ 1.25 crore and that both the L.Cs were issued by Canara Bank, Arpukottai, Madurai, Tamil Nadu, in the first week of February 2013.

12. Our attention was further invited to the reply given to the subsequent question wherein the assessee has categorically stated that with respect to the terminology of cash payment being used, it is a general business practice to refer to the payments made vide cheque, RTGS, Draft, or any other mode as cash payment and that it does not actually signify the amount received in

liquid cash. The assessee further in his statement stated that there are no cash transactions involved which he even suggested be verified with the counterparty. The learned Counsel for the assessee further emphasized the fact that despite the assessee seeking that the said transaction be verified from the counterparty, no independent enquiries were conducted by the Assessing Officer with the said Shri Surenthira Kumar, nor Govindraja Mills Group as was mandatorily required to ascertain whether any cash was actually received by the assessee. He pointed out that the Department did not make any meaningful investigation to carry out the process to a logical end. They did not make any inquiry with the payees to ascertain the truth and to unravel the surrounding circumstances. He further emphasized that there is absolutely no other evidence whatsoever, corroborative or otherwise, to prove that the assessee received the said amount of ₹ 2.5 crore except the loose paper relied upon. He further emphasized the fact that the date of receipt of cash is nowhere mentioned in the documents referred to and relied upon by the Assessing Officer. It is further his case that the said document was not prepared by the Assessee nor any of its staff members and that the writing on the said page was not matched with the assessee nor any of its staff members to prove that the document was prepared by the assessee or its staff. It is the case of the assessee that it is solely on the basis of this page that the Assessing Officer without examining the party who has allegedly paid the cash and without bringing on record any independent evidence has made the addition of ₹ 2.5 crore. The learned Counsel for the assessee further very interestingly invited our attention to the copy of the assessment order filed for the assessment year 2014-15 wherein the similar addition has been made

by the Assessing Officer pertaining to the same amount of ₹ 2.5 crore and consequently the learned Counsel for the assessee argued that considering that the Assessing Officer made identical addition in the assessment year 2014−15 as well, it is very clear that the Assessing Officer himself was not certain with respect to the date of receipt of this amount and as such proceeded on a witch hunt and made the addition in both the years i.e., in assessment year 2014-15 and 2015-16. Thus, the Assessing Officer made the addition in both the years presumably that even if one addition is ultimately negated, still the Department will not be a loser. The learned Counsel for the assessee further argued that under any case the documents referred to and relied upon by the Assessing Officer has to be referred to in full and not in part as is the trite law. The balance as mentioned in the said document, as stated hereinabove, pertains to the balance as appearing in the books of accounts of the assessee with respect to the sales made to companies pertaining to Govindraja Mills Group and consequently the said amount has already been offered for taxation as the same has been included in the sales of the assessee. The learned Counsel for the assessee on a conspectus of the facts and legal propositions argued that the addition be deleted as per law and in the interest of justice.

13. The learned Departmental Representative on the other hand strongly relied upon the order of the Assessing Officer and submitted that on the facts and circumstance of the case, it is very clear that the said document belonged to the assessee and on a conspectus of the facts of the case and the contents of the document, it is very clear that the said amount was received in cash by

the assessee and which has rightly been added by the Assessing Officer and urged that the addition so made by the Assessing Officer be confirmed. He argued that these represented undisclosed sales and payment was hence not recorded in the books of account. Here, it is pertinent to quote herein below Q.70 and its answer thereto published in Law of Evidence and Cross–examination of Tax and Allied Laws: Frequently Asked Questions:–

> *"Q.70 The books of account and entries therein are relevant and afford prima facie proof of the correctness and therefore of evidentiary value in the determination of income in the assessment proceedings - Discuss?*
>
> *Answer:*
>
> *The erstwhile section 34 of the Indian Evidence Act, 1872, specify that "entries in the books of account including those maintained in an electronic form, regularly kept in the course of business are relevant wherever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient evidence to change any person with liability". This is now contained in section 28 of "The BSA 2023", with the caption "Entries in books of account when relevant".*
>
> *The books of account regularly kept in the course of busi- ness means, only such books as are entered from day, as the transactions take place within the meaning of section 28 of "The BSA 2023", sub-section (12A) of section 2 of Income-tax Act, defines books of account.*
>
> *"Books or books of account includes ledgers, day- books, cash books, account-books and other books whether kept in the written form or in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form or in a floppy, disc, tape or any other form of electro-magnetic data storage device."*
>
> *As per the stated provision of the section 28 of "The BSA 2023", in the assessment Proceedings, when notice is given to the assessee to produce the books of account, in support of the return submitted the books of account maintained in the regular course of business, thus produced, insofar as their contents are concerned, constitute evidence, and thus the entries afford prima facie proof of correctness and thus are of evidentiary value.*
>
> *If the Assessing Officer does not find specific defects in the books of account, the entries in such books of account, are conclusive as to their evidentiary value. In other words, all the entries in the books of account must be proved that they are in accordance with facts. The entries in the books of account can be considered correct and authentic, when they are supported by independent evidence.*

> *In the course of assessment if the circumstances suggest that the books are not reliable based on the information collected by the Assessing Officer, pursuant to the verification made by him, the information must be put to the assessee for his explanation. Based on rejection of accounts if assessment is made, such assessment will be sustained only when there is nexus to the material on record."*

14. We have considered facts of the case, arguments canvassed by both the sides and the legal position on this issue at length. The only dispute in the present appeal is the addition of ₹ 2,50,00,000 emanating out of certain document which is a part of documents seized and inventorised at B/16, the contents of which are reproduced by the Assessing Officer at Page−11 of the assessment order. The whole dispute is with respect to whether the assessee received the said amount in cash, whether the impugned document holds any evidentiary value and whether this particular sum amounts to income of the assessee, as has been added by the Assessing Officer and confirmed by the learned CIT(A). On a basis of the submissions made by the respective parties as well as the evidence on record, we inclined to accept the argument of the learned Counsel for the assessee. It is an undisputed fact that the said document referred to and relied upon by the Assessing Officer while making the impugned addition does not bear any signature of the assessee whatsoever and further the argument that the said document was not prepared by the assessee nor any of its staff members has not been controverted by the Assessing Officer. It is further an undisputed fact that apart from the said document there is absolutely no corroborative evidence found during the course of search to suggest that the assessee actually received any amount in cash much less cash of ₹ 2,50,00,000, as alleged by the Assessing Officer.

15. It is further an undisputed fact that despite the assessee seeking that the genuineness and veracity of the said cash payment of ₹ 2,50,00,000 be cross verified from the parties from whom it is alleged to have been received, no enquiry of whatsoever nature was made by the Assessing Officer from the broker who allegedly prepared the impugned document or from Govindraja Mills Group and have allegedly made the payment of the said sum. The whole basis of the Assessing Officer to have made the addition is simply the noting in the document and which further was explained by the assessee as being nothing but Letter of Credits received by the assessee from the said Govindraja Mills Group against the sales made to the said party. The assessee has all along including in his statement recorded pursuant to the search have denied having received any amount in cash whatsoever much less the amount of ₹ 2,50,00,000, as alleged by the Assessing Officer.

16. It is further undisputed that the balance of ₹ 5,10,19,465, appearing in the said document is the sum total of the recoverables as appearing in the books of accounts of the assessee pertaining to the balance against sales made to companies belonging to Govindraja Mills Group. The Assessing Officer thus proceeded to make the addition solely on the basis of this particular document, ignoring the statement recorded of the assessee and without examining the party who has allegedly paid the cash or the party who has allegedly prepared the said document and without bringing on record any independent evidence to suggest that the assessee in fact received the said amount of ₹ 2.5 crore. What is very important is that, as rightly pointed out by the learned Counsel for the assessee that the Assessing Officer also made

identical addition in assessment year 2014-15 which itself makes it very clear that the Assessing Officer himself was not clear as to when this alleged amount was actually received by the assessee and as such he proceeded to make identical addition in both the years. This stand of the Assessing Officer cannot be countenanced. The addition, as made by the Assessing Officer, does not corroborate with any other material found in the course of search and the addition made by the Assessing Officer solely on the basis of the document which, as pointed out hereinabove, was not prepared by the assessee nor any of the staff members and without conducting any enquiries whatsoever from third parties cannot be sustained in law. Q.38 and its answer thereto published in Law of Evidence and Cross−examination of Tax and Allied Laws: Frequently Asked Questions:−

> *"Q.38 Explain the proposition, that in the assessment proceedings pursuant to search action, the evidentiary value of notings and jottings in the seized documents cannot be taken without corroboration?*
>
> *Answer:*
>
> *Invoking the provisions of section 132(4A) of the Income- tax Act, 1961 on the basis of presumption assessee will be directed to explain all the entries in the notings and jottings in the seized documents. Assessee has to submit explanation along with supporting documents and evidence that the jotting and notings are of no relevance so as to consider in the determination of computation of any income for the purposes of assessment.*
>
> *Such explanation can also be submitted in terms of an affidavit by an assessee. Once an affidavit has been filed, the burden shifts to the department to prove that the replies submitted by assessee were not correct and the entries are susceptible of resulting in income, that has not been dis- closed in the regular books of account.*
>
> *In such circumstances, if there was not direct or corroborative evidence to presume that the notings or jottings had materialised into transaction giving rise to income not dis- closed in the regular books of account, such jottings and notings are of no evidentiary value, and will not enable the Assessing Officer to determine any income based on such jottings and notings.*

The liability to tax any income shall arise only when such jottings or notings proved to be forming part of income not disclosed by assessee, for the purposes of assessment. Refer, CBI v. V.C. Shukla [1998] 3 SCC 410/[1998] 1998 taxmann.com 155 (SC), Common Cause (A Registered Soci- ety) v. UOI [2017] 77 taxmann.com 245/[2017] 245 Taxman 214 (SC).”

17. It is trite law that presumption however strong cannot substitute for evidence.

“The Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 (SC) and Chuharmal V. CIT (1998) 172 ITR 250 (SC) the Court held that although strict rules of the Evidence Act do not apply to income tax proceedings, assessment cannot be made based on imagination and guesswork. The substantive and normal rule of evidence applies together with the principle of natural justice.

The Hon'ble Supreme Court in the case of Umacharan Shaw & Bros v. CIT (1959) 37 ITR 21 (SC), the Court held that suspicion, however strong cannot take the place of evidence. In the case of Mehta Parikh & Co. v. CIT [1956] 30 ITR 181 (SC) the Court held that, when an affidavit is filed the averment therein is assumed to be correct unless the same is proved otherwise.

The Hon'ble Supreme Court in the case of Kishan Chand Chellaram v. CIT [1980] 125 ITR 713 (SC), the Court held that though the proceedings under the Income are not governed by the strict rules of evidence, the department is bound to afford an opportunity to controvert and cross- examine the evidence on which the department places its reliance on.

The Hon'ble Supreme Court in the case of Andaman Timber Industries v. CCE (2015) 127 DTR 241/281 CTR 241 (SC), wherein the court held that, failure to give the assessee the right to cross-examine witness whose statements are relied upon results in a breach of principles of natural justice. It is a serious flaw which renders the order a nullity.

The Hon'ble Supreme Court in the case of Bhandari Construction Company v. Narayan Gopal Upadhye (2007) 3 SCC 163/AIR 2007 SC 1441 the Hon'ble Supreme Court held that a mere suspicion that builders in the country are prone to take part of the sale amount in cash is no ground to accept the story of cash payment to the builder.

The Hon'ble Supreme Court in the case of Murali Krishna Chakrala v. Dy. Director, Directorate of Enforcement (2023) 457 ITR 579 (Mad.) (HC) quashed the prosecution under the Prevention of Money Laundering Act, 2002 held that the issue of tax determination certificates in Form 15CCA without ascertaining the genuineness of documents is not an offence. The Chartered Accountant is required to only examine the nature of remittance and nothing more.

18. What is important further is that, during the course of search, no sales whatsoever has been found outside the books of accounts, and the balance as appearing in the page referred to and relied upon by the Assessing Officer is the sum total of recoverable as duly appearing in the audited books of accounts of the assessee and emanating out of sales made by the assessee to the companies of Govindraja Mills Group. The entire sales having already been recorded in the books of accounts and no sales having been found to have been made out of the books of accounts there is absolutely no occasion for the assessee to have received the said amount of ₹ 2.5 crore in cash as alleged and more particularly when there is absolutely no evidence whatsoever from the person who allegedly has made the payment in cash and forming that the said amount was actually paid by him. The learned Departmental Representative cannot change the colour and complexion of the case by posing facts aline in assessment. A passing references also been made to certain SMS which, however, as mentioned by the learned CIT(A) himself that the date of the said SMS not mentioned, hence, the same cannot be relied upon reaching any conclusions. The said document in absence of any corroborative evidence justifying the authenticity and veracity of the same cannot solely be the basis for making any addition much less the addition of ₹ 2,50,00,000, as has been made by the Assessing Officer in the present case and more particularly when it has not been established that the assessee actually received the said sum and further when the entire balance, as mentioned in the impugned document, is duly accounted for in the books of accounts of the assessee and the entire sales having been duly recorded in the books of accounts and no sales have been found to have been made

outside the books and no other evidence having been established to prove the assessee having actually received the said sum. It is excruciating to note that the addition of ₹ 2.5 crore has been made without any charging provision so as to fall within the four squares of law. Nothing can be more painful to note that such order has passed the muster of section 153 of the Act. Considering the totality of the evidence on record and the arguments made, we are of the considered view that the Assessing Officer grossly erred in making the addition of ₹ 2,50,00,000, and which was wrongly confirmed by the learned CIT(A). Accordingly, we set aside the impugned order passed by the learned CIT(A) and direct to delete the said addition of ₹ 2,50,00,000. Thus, all the grounds raised by the assessee are allowed.

19. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 30/12/2024

Sd/-	**Sd/-**
V. DURGA RAO	**K.M. ROY**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

NAGPUR, DATED: 30/12/2024

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Nagpur; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Sr. Private Secretary
ITAT, Nagpur