

Additions on basis of info extracted from loose paper found in search proceedings of third party set aside

Summary – The Pune ITAT in a recent case of Pradeep Amrutlal Runwal, (the Assessee) held that where Assessing officer made additions in case of assessee on basis of noting in loose papers found during search proceedings in case of third party against name of assessee as there was no evidence to suggest that payments were made to assessee, additions so made were not justified.

Facts

- The assessee an individual filed its original return of income declaring the total income of Rs. 3.13 Lakhs.
- The Assessing Officer thereafter received information that a search and seizure action under section 132 was carried on in the case of one 'SM', C & F of the 'D Group', wherein, the documents seized during the course of search action included transaction related to the assessee.
- The seized documents revealed that the assessee was in receipt of Rs. 5.10 crores. The Assessing Officer thus reopened the case of the assessee under section 148.
- The Assessing Officer, placing reliance on sections 80 and 114 of the Indian Evidence Act and also following certain decisions held the entire amount of Rs. 5.10 crore as unexplained money under section 69A.
- On appeal, the Commissioner (Appeals) confirmed the order of Assessing Officer on preliminary as well as on merit.
- On further appeal:

Held

- The additions made by the Assessing Officer were not justified in the facts and circumstances *vis-à-vis* of the assessee. During the course of search in the case of 'D Group', the only documents found on the basis of which addition under section 69A has been made in the case of the assessee are in the form of two loose papers wherein amounts Rs. 4.80 crore and Rs. 30 lakhs were noted against the name assessee. Apart from this, no evidence has been found to suggest that the assessee had actually received the said amount or that the assessee had entered into any transaction with 'D Group'. There is no evidence on record to suggest that the assessee has previous business relations with the 'D Group'. In the absence of any documentary evidence to suggest the same, it could not be presumed that the amounts reflected in the loose papers were the income of the assessee received from 'D Group'. It has been the consistent stand of the assessee that there may be many persons of the same name as assessee in Pune and there was no specific evidence to suggest that the said notings pertained to the assessee. Hence, it was not justified as to how, in the absence of any other corroborative details, the Assessing Officer has assumed that the amounts reflected the income of the assessee himself, while the assessee has no business dealings of his with 'D Group'. The

Assessing Officer has not brought on record any evidence to suggest that 'D Group' has admitted that the amounts were paid to the assessee. Hence, simply because the name of the assessee is noted on the seized papers does not mean that the addition could be made in the hands of the assessee. Since no evidence was found relating to the existence of any transaction between the assessee and 'D Group' and in the absence of any corroborative evidence to suggest that the assessee had actually received the said amount, no addition could be made merely on the basis of noting in loose papers found during the search proceedings in the case of 'D Group' against the name of the assessee.

- The presumption under section 132(4A) is available only in respect of the person from whom the paper is seized. It could not be applied against a third party and hence, no addition could be made on the basis of the evidence found with third party. The presumption under section 132(4A) could be used only against the person from whose premises the documents are found and not against the person whose name appears in the seized papers.
- In this case, the addition has been made on the basis of the documents found with 'D Group' and thus, the presumption under section 132(4A) could not be used against the assessee since no incriminating documents were found with it. The reliance placed by the Assessing Officer on the loose papers is not justified at all. Therefore, the question of making any addition is not justified in the absence of other corroborative evidence to that effect.
- Further, the assessee submitted that the Assessing Officer was not justified in making the additions by relying on the provisions of section 114 of the Indian Evidence Act. The concerned Assessing Officer has referred the aforesaid section which states that the court may presume that the evidence which could be and is not produced would, if produced be unfavourable to the person who withholds it. It is pertinent to mention this rule applies to the cases wherein it is evident or an established fact that a particular evidence or document was in possession of the assessee. Thus, in the instant case, the provisions relied by the Assessing Officer are not applicable as the assessee is not withholding any documents. The seized paper found with the 'D Group' indicates that the assessee has received the amount, therefore, the burden was on the Assessing Officer to establish the same. Thus, the reliance placed on the provisions of section 114 of Indian Evidence Act is misplaced.
- It has been consistent stand of the assessee that the assessee has had no business relations whatsoever with the 'D Group'. Further, apart from the noting on paper with the name of assessee, there is no corroborative evidence in this regard against the assessee. In such circumstances, where the assessee has not entered into any transaction with the 'D Group', one certainly could not expect the assessee to be in possession of any evidence to suggest that it has not entered into any such transaction except for his books of account which have already been verified by the concerned Assessing Officer. Hence, the Assessing Officer was not justified in placing reliance on the provision of section 114 of the Indian Evidence Act.

- It was further submitted on behalf of the assessee that the Assessing Officer was not justified in making the addition by relying on the provisions of section 80 of the Indian Evidence Act which states that there is a presumption that the documents produced before the court as record of evidence are genuine. In this regard, the stand of the assessee is that in the case of assessee, document produced was merely in the form of a rough noting wherein certain amounts were written against the name of the assessee. However, there may be many people of that name in Pune and in the absence of any other corroborative evidence to that effect, it cannot be inferred that it belongs to the assessee.
- Furthermore, in all the cases relied by the Assessing Officer, the fact that the assessee had actually earned income or received amounts by way of cash credits, unexplained investment etc. was not under dispute. The issue related to whether the receipts were received from genuine lenders or whether the investments or receipts were a part of the disclosed sources of income of the assessee. However, in the instant case, the issue in question itself is whether rough noting on loose paper found in the course of search at the premises of third person could be assumed the income from the assessee as in the cases relied by the Assessing Officer. This fact has not been established in the case of assessee, therefore, the case laws relied by the Assessing Officer are clearly distinguishable on facts and hence, not applicable to the case of the assessee.
- The papers are found pertaining to 'D Group' as admitted by SM and therefore, these documents may be relevant for deciding the issue in the case of 'D Group'. However, in the absence of any corroborative evidence, the addition could not be made in the hands of the assessee on the basis of the said papers.
- The Assessing Officer and Commissioner (Appeals) have also not brought on record any evidence to suggest that the payment was made to the assessee.
- Therefore, in the absence of clinching evidence against the third person, no action could be taken against him. In such a situation, the Assessing Officer was not justified to make addition in question in assessee's case. Thus, the addition made by the Assessing Officer is not justified and the same is directed to be deleted.
- In the result, appeal filed by the assessee is allowed.