

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

Before Justice (Retd.) C V Bhadang, Hon'ble President &
Shri B R Baskaran, Hon'ble Accountant Member

ITA No. 5463/Mum/2024 for A.Y. 2015-16

DCIT CC 3(4), Mumbai	Vs.	Dinesh Lakhmichand Rohira, 2301, Dheeraj Gaurav Height, Tower No.1, New Link Road, Andheri (W), Mumbai 400 053 PAN ACWPR1876K
(Appellant)		(Respondent)

CO 254/Mum/2024
(Arising out of ITA No. 5463/Mum/2024 for A.Y. 2015-16)

Dinesh Lakhmichand Rohira, Mumbai 400 053 PAN ACWPR1876K	Vs.	DCIT CC 3(4), Mumbai
(Cross-Objector)		(Respondent)

Assessee By : Shri Ravindra Pathak
Revenue By : Shri R R Makwana, Sr. DR

Date of Hearing : 04.12.2024	Date of Pronouncement : 04.12.2024
------------------------------	------------------------------------

ORDER

Per Justice (Retd.) C V Bhadang, President:

This is an appeal by the Revenue challenging the order dated 20.08.2024 passed by the learned CIT(A), Mumbai, which in turn arose out of the order dated

28.02.2022 passed by the Assessing Officer. The appeal relates to A.Y. 2015-16. The assessee has filed a cross-objection in the same.

2. By the impugned order the learned CIT(A) has deleted the addition of ₹ 1,96,00,000/- made by the Assessing Officer u/s. 69A of the Income tax Act, 1961, ('Act' for short) as unexplained money in the hands of the respondent - assessee.

3. The brief facts are that the assessee is an individual earning income from house property, business income and income from other sources. The assessee had filed its Return of Income (RoI) for the year under consideration on 31.08.2015, declaring a total income of ₹14,20,420/-. The return was processed u/s. 143(1) of the Act. Subsequently, the case was re-opened on 22.03.2021 u/s. 148 of the Act, based on the information received from the office of DCIT Central Circle, Mumbai. That information was in pursuance of a search action u/s. 132 of the Act, conducted on Wadhwa Group on 16.12.2015, wherein the alleged unexplained cash transactions undertaken by the said group were found. According to the information received, the respondent-assessee was alleged to have given cash loan of ₹1,75,00,000/- to Wadhwa Group and had earned interest in cash of ₹21,00,000/-

4. The respondent assessee objected to the re-opening on the basis of the information and material produced. According to the assessee, the Assessing Officer had no reason to believe that income chargeable to tax had escaped assessment, within the meaning of section 147 of the Act. It was contended that there was no direct nexus or link between the information/material received and

re-opening of the assessment. The Assessing Officer refused to uphold the objection and based on the statement of the key person viz. Shri Arun Nagar recorded u/s. 132(4) of the Act came to the conclusion that respondent had given cash loan and received interest in cash and then proceeded to make the addition as aforesaid.

5. The assessee feeling aggrieved challenged the same before the CIT(A). The learned CIT(A) by a detailed order dated 20.08.2024 has allowed the appeal and deleted the addition, which is the subject matter of challenge in the present appeal. The CIT(A) has upheld the re-opening. However, the addition made by the Assessing Officer has been deleted on merits.

6. The assessee has filed cross-objection challenging the notice issued u/s. 148 and the reopening of the assessment u/s. 147 as being contrary to the provisions of the Act.

7. We have heard the learned DR for the appellant and the learned AR for the respondent assessee. With their assistance, we have gone through the record.

8. It is submitted by the learned DR that the CIT(A) was in error in deleting the addition ignoring the evidentiary value of the statement of Shri Arun Nagar recorded u/s. 132(4) of the Act. It is submitted that there was corroborative evidence in the form of the digital evidence viz. data found in the cloud-based software recovered from the office of Wadhwa Group, which clearly establishes that the assessee advanced cash loan and received interest in cash. It is submitted that the appeal deserves to be allowed.

9. The learned AR on instructions has not pressed the cross-objection.

10. In so far as merits of the impugned additions are concerned, it is submitted that the assessee is a person other than the searched person/entity and the statement of Shri Arun Nagar, which was taken behind the back of the assessee cannot be relied upon. It is submitted that even the statements/submissions made on behalf of Wadhwa Group before the Income Tax Settlement Commission (ITSC), allegedly owning the entire cash transaction cannot bind the assessee.

11. We have considered the submissions made. The record discloses that there was a search u/s. 132 of the Act in the case of Wadhwa Group of Companies and certain incriminating digital data contained in a cloud-based software evidencing certain cash transactions entered into by Wadhwa Group were found and seized, which were pertaining to the period from 01.07.2014 to 02.12.2015. The digital data was decoded by the key person Shri Arun Nagar, whose statement was recorded during the course of the search. Subsequently, statement was filed by the Wadhwa Group before ITSC, owning the entire cash transaction and furnished name, address, PAN of the parties, who had provided cash loans. The said statement included the name of the present assessee. It is on the basis of the statement before ITSC, that the Assessing Officer claimed that the assessee had given ₹1.75 crore to the Wadhwa Group and had received interest of ₹ 21 lacs for the year under consideration in cash, which has led to the Assessing Officer re-opening the assessment u/s. 147/148 of the Act and making the impugned addition.

12. As noticed earlier, as the cross-objection has not been pressed, we are not required to examine the merits of the challenge to re-opening.

13. This takes us to the merits of the impugned addition made. The learned CIT(A) has dealt with the impugned addition made u/s. 69A of the Act from para 6.2 onwards. After referring to certain decisions, the learned CIT(A) in para 6.18 has found that the document/material found from the premises of a third party or a statement of a third party [the one made to the ITSC in this case] cannot be relied upon to make addition in the hands of the assessee, unless such material/statement is corroborated by independent evidence linking to the assessee.

14. It can be seen that during the search on the Wadhwa Group certain digital evidence maintained in a cloud-based software was recovered, indicating the cash loan advanced by the assessee. The said information was decoded by Shri Arun Nagar, the key person of Wadhwa Group. This was followed by statement/submissions made on behalf of the Wadhwa Group before the ITSC, owning the cash loans taken and interest paid in cash. The information about the name, address and the PAN of the present assessee was part of the disclosure made by Wadhwa Group before the ITSC. In our considered view, such a material could not have been relied upon to make the impugned addition in the absence of any corroborative evidence as has rightly been held by the learned CIT(A). The learned CIT(A) has found and in our opinion rightly so that such material could have been used by the Assessing Officer for starting investigation and making inquiry so as to collect material against the assessee and the Assessing Officer was not justified in merely placing reliance on the statement/submissions made on

behalf of the Wadhwa Group before the ITSC. It is trite that the assessee had no control over the statements/submissions made by Wadhwa Group before the ITSC and implicit reliance could not have been placed on such submissions to make the impugned addition in the hands of the assessee in the absence of any corroborative evidence.

15. We have carefully gone through the impugned order. It does not suffer from any infirmity so as to require interference. The appeal as well as the cross-objections are hereby dismissed.

Order pronounced in the open court on 4th December, 2024

Sd/-
[B R Baskaran]
ACCOUNTANT MEMBER
Mumbai, Dated : 4th December, 2024.
SA

Sd/-
[Justice (Retd.) C V Bhadang]
PRESIDENT

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The PCIT, Mumbai.
4. The CIT
5. The DR, 'D' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai