IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.2338/Del./2017
Assessment Year 2006-2007

Shri Vijay Kumar Aggarwal, M-64, 65 Jagat Ram Park, Laxmi Nagar, New Delhi – 110 092. PAN AEXPA2040R	vs.	The Income Tax Officer, Ward – 36(1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, Advocate And Shri Ashish Goel, Advocate
For Revenue :	Shri H.K. Choudhary, CIT-DR

Date of Hearing :	15.12.2020
Date of Pronouncement :	21.12.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of Ld. CIT(A)-19, New Delhi, Dated 15.03.2017, for the A.Y. 2006-2007.

2. We have heard the Learned Representatives of both the parties through video conferencing and perused the material available on record.

3. Briefly the facts of the case are that original return of income was filed on 15.06.2006 declaring income of Rs.1,30,641/- by the assessee wherein the assessee has shown business income and income from other sources. Subsequently, search operation was carried-out at the residence of the assessee at J-83, Extension, Gali No.4, Guru Ram Dass Nagar, Laxmi Nagar, Delhi-110 092 on 09.12.2005 under section 132 of the Income Tax Act, 1961 and certain documents were found and seized by the Department. The A.O. recorded reasons for reopening of the assessment under section 147/148 of the Income Tax Act, 1961 and notice under section 148 of the I.T. Act, 1961 was issued on 28.03.2013 to the assessee. In response thereto, the assessee submitted that the return of income filed originally may be treated as return filed in response to notice under section 148 of the Income Tax Act 1961. The

A.O. noted in the reassessment order that proceedings under section 147 were initiated on the basis of sufficient evidence found during the course of search in the case of assessee. Therefore, by applying the provisions of Section 132(4A) and Section 292C of the Income Tax Act, 1961, the A.O. rejected the objection of the assessee against the initiation of the reassessment proceedings. The A.O. further noted that during the course of assessment proceedings it has been claimed by assessee that he had earned income from brokerage and interest only during the year under consideration and he has no other business activity. On 20.02.2014 notice under section 142(1) along with detailed questionnaire was issued to the assessee calling for certain details and documents in respect of various documents found at the residence of the assessee as per Annexure-A of the seized document. The said notice Dated 20.02.2014 is reproduced in the reassessment order in Para-2.3. The assessee has made part compliance to the notice. The A.O. issued summons to the assessee for his personal deposition. The assessee appeared before the A.O. and he was

confronted with the seized document. During the deposition assessee has refused to own the documents except documents at Sl.No.47 and 48 which are photographs of the assessee and another is the Deposit Certificate of Central Bank of India. The assessee explained that the documents did not belong to him. The A.O. considering the explanation of assessee, made several additions in the re-assessment order and computed the total income of assessee at Rs.1,70,48,370/- vide re-assessment order under sections 147/143(3) of the Income Tax Act, 1961, Dated 28.03.2014.

4. The assessee challenged the reassessment proceedings and all the additions before the Ld. CIT(A). The Ld. CIT(A) deleted some of the additions and deleted part additions and allowed the appeal of assessee partly.

5. The assessee in the present appeal has raised the following grounds :

(1) On Ground Nos.1 to 9, the assessee challenged the initiation of re-assessment proceedings

under section 147/148 of the Income Tax Act, 1961.

(2) On Ground No.10, the assessee challenged the addition of Rs.61,16,740/- on the alleged unrecorded sales.

(3) On Ground No.11, the assessee challenged the Order of Ld. CIT(A) in applying profit rate of 18% which is too high for computing business income.

(4) On Ground No.12, assessee challenged the addition of Rs.20,000/- on the basis of the loose paper.

(5) On Ground No.13, assessee challenged the addition of Rs.2,89,500/- towards Bank Deposits.

5.1. Now we deal with all these Grounds as under

6. On Ground Nos.1 to 9, the assessee has challenged the reopening of assessment under section 147/148 of the Income Tax Act 1961. Learned Counsel for

the Assessee submitted that earlier assessment order under section 143(3) was passed by the A.O. Dated 28.12.2007 on the basis of the seized material found during the course of same search, copy of which is filed at Page-74 of the paper book in which the A.O. on the basis of the seized material found during the course of same search computed the total income of assessee at Rs.1,82,98,210/-. The said assessment order was challenged before the Ld. CIT(A) who vide Order dated 14.12.2010 [PB-81] quashed the assessment order on the ground that notice under section 143(2) was not served within the period of limitation, therefore, assessment was held to be *void abinitio.* Learned Counsel for the Assessee submitted that the A.O. thereafter recorded the reasons for reopening of the assessment for same A.Y. 2006-2007, copy of which is filed at Page-110 of the paper book, in which, the A.O. has mentioned that since earlier assessment order have been declared as *void abinitio* because of non-service of notice under section 143(2) of the Income Tax Act, 1961 and the Departmental appeal is pending before the Tribunal, therefore, in order to safeguard

the interests of Revenue and bring to tax such income, therefore, income has escaped assessment. He has referred to PB-101 which is notice under section 148 of the Income Tax Act, 1961 Dated 28.03.2013. Learned Counsel for the Assessee, therefore, submitted that no new material was available to the A.O. for recording reasons for initiation of the reassessment proceedings which were found during the course of search. He has submitted that since appeal of Department was pending before ITAT on the date of recording reasons, therefore, there were no escapement of income. The A.O. recorded the reasons just to protect the interests of Revenue, otherwise, there were no escapement of income in the case of the assessee. He has relied upon the decision of the Hon'ble Bombay High Court in the case of Metro Auto Corporation vs., ITO 286 ITR 618 (Bom.) in which *"notice has been issued to the petitioner under section 148 of the Income Tax Act. Petitioner pointed-out that when proceedings filed by the Department are pending and when the order impugned in the appeal before the Tribunal is in favour of the assessee, notice under section 148 that the*

income has escaped and that further action be taken was held to be invalid and reassessment proceedings were set aside." Similarly, he has relied upon Judgment of Hon'ble Punjab & Haryana High Court in the case of Smt. Anchi Devi C/o. M/s. Vikas WSP vs., CIT 2008-(3)-TMI-49-P&H (HC) on the same proposition. He has, therefore, submitted that there was no justification to initiate the reassessment proceedings merely on the basis of same material found during the course of search.

7. On the other hand, the Ld. D.R. relied upon the orders of the authorities below and submitted that during the course of search, incriminating material was found against the assessee, on the basis of which, assessment under section 143(3)was framed, but, it was quashed on technical reason that notice under section 143(2) have not been served upon the assessee, but material found during the course of search clearly disclose escapement of income, therefore, A.O. rightly recorded reasons within the period of limitation, otherwise A.O. would not have been in a position to tax the escaped income merely because the appeal of the

Department was pending before the Tribunal. He has submitted that decision of the Hon'ble Bombay High Court does not apply to the facts of the assessee and the Hon'ble Gujarat High Court in its later decision Dated 25.07.2017 in the case of Krishna Developers & Company vs., DCIT, Circle-7(2) reported in [2018] 400 ITR 260 (Guj.) on identical facts held as under :

> *"Merely because reasons recorded by Assessing Officer proceeded on same basis on which Assessing Officer initially desired to make additions but which failed on account of setting aside order of assessment, it would not preclude Assessing Officer from carrying out exercise of reopening of assessment."*

7.1. He has submitted that the aforesaid decision of the Hon'ble Gujarat High Court have been confirmed by the Hon'ble Supreme Court by dismissing the SLP of the assessee Krishna Developers & Co., vs., DCIT-II reported in [2018] 254 Taxman 125 (SC) in which it was held as under :

"Merely because reasons recorded by Assessing Officer proceeded on same basis on which it initially desired to make additions but which failed on account of setting aside order of assessment, it would not preclude Assessing Officer from carrying out exercise of reopening of assessment; SLP dismissed."

8. The Ld. D.R. also relied upon Judgment of the Hon'ble Supreme Court in the case of Pooran Mal vs., Director of Inspection (Inv.) [1974] 93 ITR 505 (SC) in which it was held that *"even if search and seizure may be in contravention of Section 132 of the I.T. Act, still the material obtained thereby is liable to be used, subject to Law before the Income Tax Authorities against the person from whose custody it is seized."* The Ld. D.R. submitted that the seized material could be the basis for reopening of the assessment.

9. We have considered the rival submissions and perused the material on record. It is not a denying fact that during the course of search several material was found against the assessee which clearly indicated that there was

an escapement of income in the case of the assessee. The A.O. framed the original assessment on the basis of the same seized material found during the course of search, but, such assessment order under section 143(3) was quashed by the Ld. CIT(A) because of non-service of notice under section 143(2) of the I.T. Act, 1961, therefore, the same seized material found during the course of search could be the basis for reopening of the assessment under section 147/148 of the Income Tax Act, 1961. There is no illegality in the action of the A.O. in recording reasons for reopening of assessment based on the same seized material found during the course of search against the assessee. An identical issue have been decided by the Hon'ble Gujarat High Court in the case of Krishna Developers & Co., (supra), which was confirmed by the Hon'ble Supreme Court. Following the above decisions in the case of Krishna Developers & Co., (supra), we do not find any reason to quash the reopening of the assessment in the matter merely because the Departmental appeal was pending before the Tribunal when reasons for reopening of the assessment

were recorded. If the A.O. would not have recorded reasons for reopening of the assessment on 28.03.2013, then, the period of limitation in favour of the Revenue would have expired to initiate re-assessment proceedings. Thus, the A.O. was justified in reopening of the assessment in the matter. The decision of the Hon'ble Bombay High Court in the case of Metro Auto Corporation (supra) and the decision of Hon'ble Punjab & Haryana High Court in the case of Smt. Anchi Devi (supra), thus, cannot be relied upon in favour of the assessee. In view of the above, Ground Nos.1 to 9 of the appeal of assessee are dismissed.

10. On Ground Nos.10 and 11, the assessee challenged the addition of Rs.61,16,740/- on unrecorded sales by applying the gross profit rate of 18%. In the alternate contention, it is claimed that application of 18% gross profit rate is too high.

11. Learned Counsel for the Assessee submitted that assessee is not in business of trading in gold. No statement of assessee was recorded at the time of search. No

documents were confronted to the assessee at the time of search or in post-search enquiry and that A.O. has admitted this fact in the remand report at PB-255 Dated 06.02.2017 that statement of assessee was not recorded to confront the documents found during the course of search. He has submitted that somebody left Diary Annexure-A at the residence of assessee which do not pertain to assessee. He has submitted that copy of the Diary filed at PB-13 to 73 will clearly indicate that assessee is not doing any business activity. The assessee also filed reply before the authorities below to the same effect, copy of which is filed at Page-142 of the PB disowning the alleged Annexure-A Diary. He has submitted that in preceding A.Y. 2005-2006, the A.O. made similar addition based on the entries contained in Annexure-A seized Diary and the matter travelled to ITAT, Delhi A-Bench, Delhi in ITA.No.1182/Del./2011 for the A.Y. 2005-2006 in the case of same assessee and similar addition have been deleted by the Tribunal vide Order Dated 12.05.2017. He has submitted that otherwise also the application of gross profit rate of 18% is too high because in

such trade it is common knowledge that gross profit rate may vary from 0% to 1% only.

12. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that incriminating documents were confronted to assessee at the re-assessment proceedings, therefore, presumption under Law would arise against the assessee that assessee owned documents and income have been correctly computed by the authorities below.

13. We have considered the rival submissions. The A.O. on the basis of Annexure-A Diary, copies of which were filed in the paper book at Pages-13 to 73 held that the assessee has unrecorded sales from business of sale of gold jewellery which comes to Rs.4,80,05,541/- and applied gross profit rate of 18% and made addition of Rs.86,40,997/-. The Ld. CIT(A) on the basis of the explanation of assessee and in the absence of any finding by the A.O. with regard to working made by the assessee reduced the un-recorded turnover to Rs.3,39,81,891/- and

reduced the addition to Rs.61,16,740/-. However, it is a fact that at the time of search or in post-search enquiries, the incriminating documents i.e., Annexure-A Diary was never confronted to the assessee. The A.O. admitted in the remand report that statement of assessee was not recorded at the time of search or thereafter. It is the first time after the search on 09.12.2005, assessee was asked to appear personally on 25.03.2014 i.e., after a considerable period of 09 years and statement of assessee was recorded at the re-assessment proceedings by confronting the documents which is the basis for computing the undisclosed sales, but, assessee denied the same. No attempt is also made to tally the handwriting of the assessee with the seized Diary so as to put liability upon him. Therefore, there is no material available on record to suggest that the Annexure-A Diary pertain to the assessee. Similar issue was considered by the ITAT, Delhi Bench in the case of same assessee for preceding A.Y. 2005-2006 and addition made by the A.O. on the basis of the same seized material have been deleted by the Tribunal. The findings of the Tribunal in paras 8 to 13 of

the Order Dated 12.05.2017 (supra) are reproduced as under :

> *"8. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, the AO made the addition by invoking the provisions of Section 292C of the Act and considering the notings of page nos. 31, 32 & 33 of Annexure A found during the course of search in those documents, certain notings were there but name of the assessee was not mentioned, in some of the documents there were details of clothes like sari, suits and shirts etc. The claim of the assessee is that he was not engaged in the business of gold or jewellery. The assessee in the present case, from the very beginning stated that page nos. 31, 32 & 33 etc. of Annexure A did not relate to him. The AO did not make any inquiry from the parties whose names were appearing in the said documents but*

made the addition by invoking the provisions of Section 263 of the Act.

9. *On a similar issue in the case of DCIT Vs Delco India Pvt. Ltd. and Others in ITA Nos. 2453, 2952 & 2926/Del/2013, the ITAT Delhi Bench vide order dated 16.06.2015 had held as under :*

> *"A perusal of section 292C shows that a statutory presumption can be drawn where any documents is found in possession of a person in the course of a search or survey that it belongs to "such a person". A presumption is also drawn that the contents of such a document are true. The presumption having been drawn as per law is required to be confronted and the documents as per record have been confronted. Whether the onus placed upon the assessee in a given set of facts is discharged or not has to be seen from the replies of the assessee based on facts.*

However, the law is well settled that the presumption is rebuttable.

In the facts of the present case, the assessee has denied having any transactions with M/s Smridhi Sponge and has also denied consequently the contents of the seized document as relatable to it; the denial as per the assessment order is also on an affidavit; the particulars available in the public domain procured through the internet searches from the ROC and the official income tax sites as per print outs of the downloads are relied upon. The fact that these were unimpeachable third party evidences that too from the official government sites goes without saying. In these facts, merely sending notices to the addresses provided on the ROC site cannot be said to be rebutting the evidence on record namely that M/s Smridhi Sponge, assessed

to tax in a specific jurisdiction in Kolkata manufacturing M.S. Ingot and Sponge Iron, having specific address as per ROC site receiving payments in cash and cheque as per the seized documents qua which presumption u/s 292C operates towards their correctness; wherein two specific cheques were honoured by Punjab National Bank at Jamshedpur whose account number was "1021";, branch code and factum of the payments made on behalf of the M/s Galaxy Exports as the same "Galaxy" found mentioned at Paper Book page 47 (Seized documents) also dealing in "Iron Ore" were provided; where the names and addresses of the Directors of both the companies; their authorized share capital; details of their balance sheets as per ROC site; Auditor's, Reporters etc. are all given. The fact that these were relevant unimpeachable evidence

has not been doubted. In these facts the reluctance of the tax authorities to address this issue and to carry the enquiries to the logical conclusion is a glaring fact of deliberate inaction. The repeated inactions speak louder then the half hearted actions undertaken. The evidences remains unrebutted on record. No effort to co-relate the assessee's alleged undisclosed transactions with M/s Smridhi Sponge appear to have been addressed so as to demolish the consistent claim on record that it had no dealings with the said concern. In such a background the departmental stand that the level of information available with the assessee proved that the assessee had interactions with the said concern is adding insult to injury.

The silence of inaction speaks much louder than the frenzy of the misdirected

actions necessitating a pro-active department to address the fest spreading malaise lest the tools of search and seizure are reduced to a farce. The repeated inactions speak louder than the half-hearted actions taken. We are of the view that as far as the assessee is concerned the onus to address the seized documents qua which a statutory presumption has been drawn stands fully discharged. - Decided in favour of assessee. "

10. *The aforesaid decision of the ITAT has been affirmed by the Hon'ble Jurisdictional High Court vide its order dated 10.02.2016 in the case of Pr. CIT Vs M/s Delco India Pvt. Ltd. reported at (2016) 2 TMI 607 (Del.) wherein it has been held as under:*

"17. Section 292C of the Act, inter alia, provides that where any books of accounts or other documents are found in possession or control of any person in the course of search under

Section 132 or survey under Section 133A of the Act, it may be presumed that such books or documents belong to such person. Undisputedly, such presumption is rebuttable. It is not disputed that the Assessee had clearly denied having any dealing with M/s Smridhi Sponge Limited and had also filed an affidavit to that effect. The ITAT found, as a matter of fact, that the Assessee on its part had made the necessary enquiries and also provided final accounts of M/s Smridhi Sponge Limited; confirmation from the Director of M/s Smridhi Sponge Limited; details of the bank accounts; final accounts; Director's Report; PAN Number etc. which sufficiently discharged the burden cast on the Assessee. The ITAT also found that the Assessee had provided the necessary information for the AO to make the requisite enquiries from M/s Smridhi Sponge Limited

as well as M/s Galaxy Exports Pvt. Ltd. In our view, no interference with the order of the ITAT is called for under Section 260A of the Act since the findings of the ITAT are essentially factual. Further, we find no infirmity with the findings returned by the ITAT and in any event the same cannot be held to be perverse by any stretch.

18. In the circumstances, no substantial question of law arises and the appeals are, accordingly, dismissed."

11. Similarly, the ITAT Mumbai Bench in the case of Sh. Pandoo P. Naig Vs ACIT and ACIT, CC-32, Mumbai Vs Prakash B. Bandarkar, Parvin B. Bandarkar, Room in ITA Nos. 7089 & 7364/Mum/2011 and ITA No. 6671 & 6672/Mum/2012 (supra) vide order dated 24.06.2016 held as under :

"14. We find that the wording of the section 292C which supposes the presumption to be taken is qualified with the words 'may be', hence, it may or may not be presumed that such documents belong to the person searched. Firstly, the section uses the word 'may presume' and not 'shall presume', hence the presumption of facts under section 292C is not a mandatory or compulsory presumption, but, a discretionary presumption; secondly, such a presumption' is not a conclusive presumption but is a rebuttable presumption because it is a presumption of fact not a presumption of law. Under the circumstances, it is to be examined by the competent authorities as to whether the presumption under the section is attracted owing to the nature of the documents and the contents of such documents found during search/survey action. Such a presumption,

thus, is not an absolute or conclusive presumption, but, it has to be taken in the light of any corroborative, correlating or circumstantial evidence found during the search or survey action. It has been held time and again by various courts of law that where, the Revenue Authorities are vested with any discretionary power, the same is to be exercised judicially. The assessee Shri Pandoo P. Naig, in this case, has, from the very beginning, denied his link or relation with the seized document or with any of the transaction made therein. As observed above, no corroborative, correlating or circumstantial evidence has been found either during the survey action or during post survey investigations which may make a connection or in any manner relate the assessee-Shri Pandoo P. Naig with the said document or the transactions mentioned therein. Hence the

nature of document seized does not point any strong/reliable or stanalone presumption under section 292C of the Act against the assessee Shri Pandoo P. Naig."

12. *From the observations made in the aforesaid referred to orders, it is clear that the presumption of facts u/s 292C of the Act is not a mandatory or compulsory presumption but a discretionary presumption. Since, the word used in the said Section is " may be" and not "shall". Secondly, such a presumption is rebuttable presumption and not a conclusive presumption because it is a presumption of fact not a presumption of law. In the present case, the assessee from the very beginning stated that the documents found during the course of search did not belong to him. The documents relied by the AO i.e. to page nos. 31, 32 & 33 of Annexure A are placed at page nos. 9 to 11 of the assessee's paper book, in those documents nowhere name of the assessee is*

mentioned. The assessee is earning his income mainly from commission and interest which is evident from the copy of acknowledgment of ITR placed at page no. 1 of the assessee's paper book. In the present case, it is not brought on record that the assessee was engaged in the business of gold or jewellery and earning the income from said business, the addition has been made by the AO by presuming that the assessee had made payments to the certain parties but in those documents which had been relied by the AO nowhere it is mentioned that the assessee purchased the gold and even the nature of the transaction is not clear because against certain payments, some quantity of gold has been written and against the others nothing is mentioned. Therefore, the addition made by the AO is only on the basis of surmises and conjecture without bringing any cogent material on record to substantiate that the assessee was engaged in the

business of gold and jewellery and the AO had not brought any material on record to substantiate that the denial of the assessee was false.

13. *In the present case, the contention of the assessee that there was a family function two months prior to the search and somebody has forgotten the documents found during the course of search has not been rebutted. It is also noticed that the Id. CIT(A) also at page no. 13 of the impugned order mentioned as under:*

> *"In regard to the seized documents Annexure A-4 page 31, 32 and 33, the AO had not found any corroborative evidence during the course of search and assessment proceedings."*

In the instant case, it is also an admitted fact that during the course of search no unaccounted stock or assets were found. It is also noticed that in the assessee's case search took place on 09.12.2005 and the seized material was with the

AO who issued notice u/s 153 A of the Act on 05.09.2007 but he did not make any enquiry during that period i.e. between 09.12.2005 and 05.09.2007, to ascertain as to whom the payments, if any, were made and how the assessee was related to those payments. On the contrary, the assessee denied the ownership of the document from the very beginning. We, therefore, considering the totality of the facts and by keeping in view the ratio laid down by the Hon'ble Jurisdictional High Court in the aforesaid referred to decision of Pr. CIT Vs M/s Delco India Pvt. Ltd. (supra) are of the view that the addition made by the AO and sustained by the Id. CIT(A) was not justified. Accordingly, the same is deleted."

13.1. Since the assessee from the beginning have denied the contents of the seized Diary that he did not deal in trading of gold jewellery, therefore, onus was upon the A.O. to prove that assessee actually deal in gold jewellery. The assessee has shown the business income and income

from other sources which have not been doubted by the authorities below. Since this similar seized document have been considered in earlier A.Y. 2005-2006 and similar addition have been deleted, therefore, the issue is covered in favour of the assessee by the aforesaid decision of the Tribunal in favour of the assessee. Further, in the absence of any corroborative evidence to suggest that assessee dealt with trading of gold jewellery, there were no justification to presume from the contents of the Diary that assessee was in fact dealing in gold jewellery. Considering the totality of the facts and circumstances, we do not find any justification to sustain any addition against the assessee. We, accordingly, set aside the Orders of the authorities below and delete the entire addition. In the result, Ground Nos. 10 of appeal of Assessee is allowed. However, Ground No.11 of the Assessee has become infructuous.

14. On Ground No.12, assessee challenged the addition of Rs.20,000/- on the basis of loose paper found during the course of search. The A.O. noted that page-46 of Annexure-A reveal that assessee had incurred a sum of

Rs.20,000/- on 08.10.2005 on the birthday party function of his grand-son at Soubhagya Banquet, Preet Vihar, New Delhi. The assessee in response to the show cause notice given by the A.O. submitted that expenditure might have been met by his son. The A.O, however, made the addition of Rs.20,000/- in the hands of assessee which is confirmed by the Ld. CIT(A).

15. Learned Counsel for the Assessee referred to PB-11 and 12 which is the seized document indicating holding of function on account of birthday of his grand-son Mr. Ayush. He has submitted that name of the assessee did not appear in the seized document and that name of Mr. Ashu Agarwal, son of the assessee, who has held the party have been mentioned. Since assessee denied to have incurred any expenditure, therefore, entire addition is unjustified.

16. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

17. After considering the rival submissions, we are of the view that addition is not warranted in the hands of the

assessee. The seized paper do not indicate the name of the assessee if he has incurred any expenditure. The assessee is grand father of Mr. Ayush, therefore, presumption would be that father of the boy must have incurred the expenditure. Otherwise, there is no liability of the grand father to incur any expenditure on the occasion of birthday of his grand-son. Otherwise also, there is no evidence available on record to suggest that the assessee has incurred any expenditure on the birthday of his grand-son. No further enquiries have been made from the owner of the Banquet Hall or any other person whose name is appearing in the seized paper to verify as to who has incurred the expenditure for the party of the grand-son of the assessee. It, therefore, appears that addition is made merely on presumption and as such, there is no justification to make addition in the hands of the assessee. We, accordingly, set aside the Orders of the authorities below and delete the entire addition. In the result, Ground No.12 of the appeal of the assessee is allowed.

18. On Ground No.13, assessee challenged the addition of Rs.2,89,500/- towards bank deposits. The A.O. found that during assessment year under appeal there are deposits in the bank account of assessee maintained with South India Bank Ltd., Chandni Chowk in a sum of Rs.2,89,500/-. The assessee explained that it is his brokerage income, but, the A.O. in the absence of any evidence did not believe and made the addition.

19. Learned Counsel for the Assessee reiterated the same submissions made before the authorities below and has also submitted that income declared in the return is the income, net of the expenses related to it, therefore, at the most, addition of Rs.1,58,859/- could have been made. He has also submitted that though this issue is not decided by the Ld. CIT(A), but, since the amount is very small, therefore, the same may be decided.

20. On the other hand Ld. D.R. relied upon the Orders of the authorities below.

21. We have considered the rival submissions. It is not in dispute that assessee has made deposits of Rs.2,89,500/- in his bank account in assessment year under appeal with South India Bank Ltd., Chandni Chowk. The assessee claimed before A.O. that deposits are made out of assessee's brokerage income. The assessee has however filed the return of income at Rs.1,30,641/- only. Thus, the authorities below made the addition against the assessee. The authorities below however, failed to note that assessee has filed return of income showing business income and income from other sources. Thus, whatever income is declared in the return of income + some amount accumulated in earlier year could have been available to the assessee so that entire addition is unjustified. We accept the alternative claim of assessee and whatever business income is declared by assessee on account of brokerage, available to the assessee. Therefore, the addition could be sustained to the extent of Rs.1,58,859/- only considering the income declared in the return of income and other income available to the assessee on account of accumulation of income. In

view of the above, we set aside the Orders of the authorities below and restrict the addition to Rs.1,58,859/- only. In the result, Ground No.13 of the appeal of the Assessee is partly allowed.

22. In the result, appeal of the Assessee Partly Allowed.

Order pronounced in the open Court.

Sd/-	Sd/-
(PRASHANT MAHARISHI)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 21st December, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.