



\$~43

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 294/2022**

PR. COMMISSIONER OF INCOME TAX ..... Appellant

Through : Mr. Zoheb Hossain, Senior Standing  
Counsel for Revenue along with Mr  
Vipul Agarwal, Mr Parth Semwal,  
Junior Standing Counsels.

versus

SHRI ROOP KISHORE MADAN ..... Respondent

Through :

%

Date of Decision: 1<sup>st</sup> September, 2022

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

### **J U D G M E N T**

**MANMEET PRITAM SINGH ARORA, J (Oral):**

1. The present appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act') impugning the order dated 13<sup>th</sup> May, 2020 in ITA No. 663/Del/2019 for the Assessment Year ('AY') 2012-13 whereby the appeal of the Assessee has been allowed. The Assessee was the proprietor of M/s Rhea Distribution Company.

2. In the present appeal, the Revenue is aggrieved by the deletion of the addition of Rs.24,50,91,663/- which as per the Revenue was an unexplained addition made by the Assessee to its capital account. It is stated that the Assessee has failed to discharge the burden regarding the source from which



the capital was introduced.

3. It is contended by the Revenue that during the assessment proceedings initiated under Section 143 of the Act, the Assessee was asked to furnish details regarding the net capital addition to the tune of Rs.24,50,91,663/- with evidence. The learned counsel for the Revenue relied upon the order of the Assessing Officer ('AO') which records that the Assessee failed to produce its books of accounts and supporting vouchers before the AO to substantiate the aforesaid addition.

4. The aforesaid addition was confirmed by the Commissioner of Income Tax (Appeals) ('CIT(A)') after referring to the remand reports submitted by the AO dated 18<sup>th</sup> May, 2018 and 04<sup>th</sup> December, 2018. However, the Assessee filed an appeal against the order of the CIT (A) before the ITAT and the Tribunal after perusing the evidence on record has deleted the said addition.

5. The learned counsel for the Revenue has contended that the ITAT erred in deleting the said addition since, the documents produced by the Assessee were belated and remained unverified at the end of the AO.

6. We have considered the submissions of the Appellant.

7. The contention of the Revenue that the documents filed by the Assessee before the CIT (A) could not be verified by the AO is not borne out from the record. The documents filed by the Assessee were verified by the AO and in this regard remand reports were also filed by the AO on 18<sup>th</sup> April, 2018 and 14<sup>th</sup> December, 2018.

8. The impugned order records that the Assessee had submitted due information with respect to the source of cash as well as the consequent addition to the capital account. The details of the cash surrendered, cash



deposited in bank and total addition made to the capital account as noted in the impugned order is as follows:-

<b>A . Details of Cash Surrendered</b>	
Total Income Surrendered on 17.09.2010 on account of STCG	15,92,00,000/-
Less: Amount seized out of Locker and Adjusted in Tax Demand.	70,00,000/-
Balance	15,22,00,000/-
Less: Amount seized out of Locker and adjusted in Tax demand	55,70,000/-
Balance of Cash out of Surrendered Income <b>(Total A)</b>	14,66,30,000/-
<b>B. Details of cash consumed/deposited in bank out of above.</b>	
<b>During A.Y. 2012-13</b>	
Cash Deposited in Bank	13,11,34,500/-
Cash utilized in Rhea Distribution Company	38,86,000/-
Total Addition in Rhea Distribution Co. (in Capital Account)	13,50,20,500/-
<b>During A.Y. 2013-14</b>	
Cash received out of surrendered income	1,16,09,500/-
Total (B )	14,66,30,000/-

As a sequitur, it has been explained that, the details of addition to the capital account of Rs.24,50,91,663/- in Assessee's proprietorship concern M/s Rhea Distribution Company was as under:-

A. Cash received during A.Y. 2012-13 (Out of income surrendered) (Deposited in various Bank accounts and then introduced in capital account of Rs.	Rs.13,50,20,500/-
--	-------------------



13,11,34,500/- and cash introduced directly in firm and utilised in firm Rs.38,86,000/-).	
B. Unsecured Loan received in bank account of Rhea Distribution Co. (Prop. Firm) (in the ITR shown as capital)	Rs.3,98,00,000/-
C. Loan and Advances given by the Proprietor Roop Kishore Madan in preceding years from his proprietorship concern Roop International and transferred to the balance-sheet of another proprietorship concern M/s, Rhea Distribution Company.	Rs. 9,02,95,000/-
D. Less:- Drawings of the Assessee	Rs.2,00,23,837/-
Total addition to Capital Account (A+B+C-D)	Rs.24,50,91,663/-

9. The ITAT recorded that the Assessee had surrendered Rs.15.22 crores as additional income during the previous AY 2011-2012 and duly paid tax thereon and this fact was not disputed by the AO. The Assessee stated that though the surrender was made in the previous assessment year, a sum of Rs.15 crores was only received in the AY under appeal and the said amount was thus introduced in the books of accounts in the AY under appeal. To this effect, the ITAT has noted that no adverse inference has been drawn by the AO in the remand reports with respect to the aforesaid facts as stated by the Assessee. The ITAT therefore concluded that the Assessee has duly explained the credit of Rs.15 crores in its capital account. In the present appeal as well, the said fact has not been disputed by the learned counsel for the Revenue.

10. Further, with respect to the amounts received in the bank account of Rhea Distribution Co. as unsecured loans, the ITAT noted that the Assessee has produced sufficient documentary evidences on record, i.e., confirmation



from the creditors, their balance sheets and their bank statements which evidence that the creditors had been assessed to tax and have sources for giving loans and advances to the Assessee. The said loan amounts and advances were credited to the bank account of the Assessee therefore, on perusal of these documents, the ITAT concluded that the Assessee has produced sufficient documentary evidence explaining the source of the deposits in its bank account and the ITAT specifically noted that no adverse comments on these documentary evidences were made by the AO in its remand report. Thus, the ITAT concluded that the Assessee has sufficiently explained the source of the unsecured loans of Rs.3.98 crores.

11. With respect to the amount of Rs. 9,02,95,000/-, the ITAT noted that these amounts are the opening balances from the previous years and therefore, no addition could be made on account of these amounts in the current year.

12. The ITAT therefore, concluded that the Assessee has duly explained the source of cash deposits in its bank account as well as the addition made to the capital account. The ITAT noted that since the surrender of Rs.15.92 crores was made in the previous assessment year and tax was duly paid thereon, the said amount introduced in the accounts in the current assessment year would not be taxable. The ITAT therefore concluded that the Assessee has sufficiently explained the total addition to its capital account of Rs.24,50,91,663/- and deleted the said addition.

13. The learned counsel for the Appellant has not disputed the findings of the ITAT that in the remand report there was no adverse inference drawn by the AO with respect to the documentary evidence furnished by the assessee in respect of the unsecured loans. The learned counsel also does not dispute



the finding of the CIT(A) that there was a surrender of income by the Assessee in the previous AY to the tune of Rs. 15.22 crores and tax was duly paid thereon. There is no challenge to the finding of the ITAT that in case of addition of Rs. 9.02 crores, the amounts were opening balances from the earlier years. The ITAT has after perusing the evidences filed by the Assessee and the remand reports received from the AO, concluded that the addition against the Assessee cannot be sustained. The learned counsel for the Revenue has not been able to point out any error in the findings of fact by the learned ITAT.

14. The learned counsel relied upon the judgment of this Court in *Commissioner of Income Tax Vs. Manish Buildwell Pvt. Ltd.* reported in *2011 SCC OnLine Del 4763* to contend that the conditions provided under Rule 46A of the Income Tax Rules, 1962 should be strictly complied with and only when these conditions stated therein are satisfied, would additional evidence be admitted. However, in the facts of the present case, the additional evidences were admitted by the CIT (A) and remand reports were called for from the AO. There is nothing on record which evidences that the Revenue opposed the admission of additional evidence before the CIT (A). In fact, there was no cross objection filed by Revenue before the ITAT challenging the admission of the additional evidence by the CIT (A). The impugned order records that the AO perused the documents and submitted its remand reports which have been considered by the ITAT before deciding the matter. The learned counsel for the Appellant has not pointed out any error in the order of the ITAT in appreciating the remand reports. The objection to admission of additional evidence at this stage is belated and no ground for interference is made out.



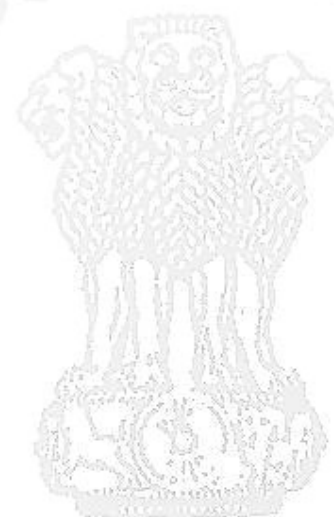
15. Since, the grounds of appeal challenge the findings of fact and do not point out perversity in the said findings, no substantial question of law arises in the present appeal and the same is dismissed.

**MANMEET PRITAM SINGH ARORA, J**

**MANMOHAN, J**

**SEPTEMBER 01, 2022**

pkv



सत्यमेव जयते