आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष **एवं**
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No. 2749/Mum/2014
(**निर्धारण वर्ष** / Assessment Year: 2008-09)

ACG Arts & Properties Pvt. Ltd. 1001, Dalamal House 10th Floor, Nariman Point Mumbai – 400 021	**बनाम**/ Vs.	**DCIT-Central Circle-42** Aaykar Bhavan M.K.Road Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. **AAACU-0615-L**		
(अपीलार्थी /**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

Assessee by	:	S/Shri J.D.Mistry & Madhur Aggarwal-Ld. ARs
Revenue by	:	Shri Harshad Vengurlekar-Ld. DR

सुनवाई की तारीख / **Date of Hearing**	:	29/11/2019
घोषणा की तारीख / **Date of Pronouncement**	:	29/01/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 The captioned appeal by assessee for Assessment Year [AY] 2008-09 contest the order of Ld. Commissioner of Income-Tax (Appeals)-38 [CIT(A)], Mumbai, *Appeal No. CIT(A)-38/IT-492/2009-10* dated 31/01/2014 *qua* confirmation of addition of Rs.692.55 Lacs on account of unexplained paintings. The assessment for impugned AY was framed by Ld. Deputy Commissioner of Income Tax, Central Circle-42, Mumbai [AO] u/s 143(3) *read with Section 153B* on 30/12/2009 wherein the assessee was saddled with impugned additions of Rs.692.55 Lacs and the same form part of subject matter of appeal before us.

1.2 The assessee has filed concise ground of appeal on 31/10/2018 which read as under: -

> On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals)-38, Mumbai (CIT(A)) erred in upholding the order of the Asst. Commissioner of Income Tax, Central Circle 42, Mumbai (A) in making an addition of Rs.6.92 Crores to total income on account of unexplained paintings.

1.3 The Learned Sr. Counsel, at the outset, placed on record the decision of this Tribunal in the case of Ms. Kavita Singh, proprietress of *M/s Reflections* vide ITA No. 1242/Mum/2012 order dated 08/12/2017 rendered under similar factual matrix wherein substantial additions were deleted finding strength in the documentary evidences furnished by the assessee in support of source of paintings. The copy of the order has been placed on record. The Ld. Sr. Counsel further submitted that the assessee seek to rely upon similar documentary evidences in the present case, which are stated to have already been placed in the paper-book. It has further been submitted that both the assessee were subjected to common search proceedings and therefore, the facts are pari-materia the same in case of both the assessee. *Au Contraire,* Ld. DR submitted that assessee failed to discharge the onus of proving the source of paintings before lower authorities.

1.4 We have carefully considered the same and perused the documents placed in the paper-book. We have also considered the decision rendered by this very bench in the case of Ms. Kavita Singh, proprietress of *M/s Reflections* vide ITA No. 1242/Mum/2012 order dated 08/12/2017.

2.1 In the above background, we find that the assessee being *resident corporate assessee* stated to be engaged in the business of *sale of Painting / Archives,* was assessed for year under consideration u/s 143(3) *read with section* 153B on 30/12/2009 wherein the income of the assessee was determined at Rs.988.79 Lacs after certain addition as against returned income of Rs.295.20 Lacs filed by the assessee.

2.2 The assessee being part of the ACG Art group, was subjected to search action on 17/04/2007. The search was conducted at various offices of the assessee company and residences of directors and members of the group. The group is stated to be dealing in manufacturing of *gelatin capsules* and trading in *painting and sculptors* through assessee and another entity namely, *M/s Reflection* which is proprietorship concern of one of the directors, Ms. Kavita Singh. Investigations revealed that the said group indulged in accepting bogus purchase bills in respect of paintings from persons who were engaged in providing accommodation bills. The details of alleged bogus purchases as made by the assessee has been tabulated in para-4 of the quantum assessment order. From the recorded statements, a suspicion was raised about the correctness and completeness of the books of accounts and the purchases made by the assessee were held to be under doubt.

2.3 During the course of search proceedings, costly paintings were found and the revenue alleged that the assessee could not furnish satisfactory evidences of purchases thereof. Consequently, 288 painting valued at Rs.1939.92 Lacs were inventorized out of which 71 painting valued at Rs.999.20 Lacs were put under constructive seizure u/s 132(1)(iii). The details of these painting have also been tabulated in the same para. The assessee offered an income of Rs.295.20 Lacs in its return of income filed on 06/10/2008 which was ultimately assessed at Rs.988.79 Lacs.

2.4 During the course of assessment proceedings, the assessee was directed to explain the source and ownership of the paintings. In defense, the assessee filed bills, vouchers, photographs and copies of magazines to establish the cost, date of acquisition and source etc. The assessee also submitted that some of the paintings were very old and acquired prior to AY 2002-03. However, the said submissions could not find favor with Ld. AO who proceeded to make additions on account of unexplained investments in the paintings. Since all the paintings pertaining to Chairman of the assessee company as well as other entities were stated to be belonging to the assessee, the additions on aggregate basis were made in the hands of the assessee.

2.5 The details of additions, thus made, worked out be Rs.692.55 Lacs as per the following details: -

No.	**Name of Entity**	**Value (Rs.)**
1.	ACG Arts & Properties Pvt.Ltd.(3 paintings)	Rs.10,00,000/-
2.	UPCL (21 paintings)	Rs.4,89,00,000/-
3.	Sci-Tech (10 paintings)	Rs. 49,95,000/-
4.	Ajit Singh (13 paintings)	Rs. 1,43,60,000/-
	Total	**Rs.6,92,55,000/-**

3.1 Aggrieved, the assessee contested the additions made by Ld. AO before learned first appellate authority vide impugned order dated

31/01/2014 wherein the assessee sought to explain the source of paintings by categorizing the unexplained paintings into 6 categories / groups in the following manner: -

> (i) 11 paintings amounting to Rs.1,20,00,000/- were acquired prior to the block period commencing from 01.04.2001 to 31.03.2008 which are supported by third party magazines;
> (ii) 3 paintings aggregating to Rs.60,50,000/- were acquired prior to the block period commencing from 01.04.2001 to 31.03.2008 which are supported by photographs taken on relevant occasions;
> (iii) 11 paintings aggregating to Rs.88,50,000/- were acquired prior to the block period commencing from 01.04.2001 to 31.03.2008 which are supported by various vouchers, bills & cheque payment details;
> (iv) 11 paintings aggregating to Rs.1,42,00,000/- were supported by panchanama drawn during the earlier search action;
> (v) 5 paintings aggregating to Rs.2,50,000/- were low value paintings;
> (vi) 4 paintings aggregating to Rs.2,79,00,000/- were supported by vouchers, bills & cheque payment details.

3.2 However, Ld. CIT(A) controverted the aforesaid submissions by observing as under: -

> 7.6 According to the appellant, the sources are fully explained. The contentions of the appellant are not acceptable for the following reasons:
> (i) The appellant failed to produce the stock register establishing that the said paintings *are* accounted for in the books of account.
> (ii) The appellant failed to substantiate the said purchases by producing purchase invoices.
> (iii) There was a search and seizure operation conducted in this case earlier in the year 2001 and an inventory of paintings was also made at the time of search in the year 2001. The appellant tried to show that most of the paintings pre-existed before 2001 by showing such paintings in magazines, photographs, self vouchers and CNBC interview. If the appellant's contention is true and these paintings had existed prior to the search carried out in the year 2001, then the same should have formed part of the inventory made during the course of search in the year 2001, which is not case here.
> (iv) No invoice or any kind of bill issued by sellers from whom these paintings have purchased were *produced.* If such invoices/ bills have been produced, the sellers could have been contacted so as to verify the genuineness of the said purchases of paintings. It is also significant to mention that during the course of search, the statement recorded from as many as five persons as mentioned in para 7.2 above establishes the fact that the appellant never purchased the paintings from the said persons.
> (v) The appellant tried to establish that 11 paintings existed prior to 01.04.2001 and supported its arguments by producing copies of magazines. It is hard to accept

such magazines as a proof because if the appellant was the owner of the said paintings, the same should have been forming part of the inventory of paintings made in the year 2001 during the earlier search. The A.O has also mentioned that it is not very clear to come to the conclusion that the paintings as appearing in the said magazines are the same as that of the paintings found during the course of search in the year 2007.

(vi) 3 paintings were stated to be acquired before 01.04.2001 and photographs taken were given as a proof to establish the same. In this connection, I am of the view that the said photographs cannot constitute as evidences in support of the claim of the appellant since the date of taking such photographs is not proved. The appellant's submission that the persons who are appearing in the photographs are older as of now compared to their age in the photograph cannot a ground to accept that the photographs were old since the age of the persons concerned and their identity has not been established.

(vii) 11 paintings were stated to be acquired before 01.04.2001 and were supported by vouchers, bills and cheque payment details. In this regard, it is significant to mention that these vouchers and bills are self made and there are certain references to cheque payment details. Complete description of the paintings is not available on the vouchers. In the absence of full details it cannot be said that the cheque payments are made for the paintings in question. Further, it may also be mentioned that the appellant had not submitted the copies of the bank accounts from which the said payments have been made. The appellant also failed to give information such as the name and address of the persons from whom these paintings were purchased. No purchase invoices have been produced. It was already established in the appellant's case that the appellant has been merely issuing cheques and obtaining bills from bogus billers and was also receiving the cash in return for cheque payments issued. Therefore, it is not possible to accept the self made vouchers issued by the appellant as evidence for purchase of the said paintings.

(viii) The appellant's contention that 11 paintings were listed in the panchanama drawn in the year 2001 and they are in possession of appellant even today-cannot be accepted. If this contention of the appellant is true, then these 11 paintings must have become part of the inventory of paintings made in the year 2007. But the appellant failed to establish that the said paintings as it appears in the panchanama drawn in the year 2001 are similar to the paintings listed as per panchanama drawn in the year 2007.

(ix) The appellant had not established the sources for low value paintings.

(x) 4 paintings were stated to have been purchased after 01.04.2001 and in support of the same the appellant produced vouchers, cheque payment details etc. In this regard, it is significant to mention that these vouchers and bills are self-made and there are certain references to cheque payment details. Complete description of the paintings is not available on the vouchers. In the absence of full details, it cannot be said that the cheque payments are made for the paintings in question. Further, it may also be mentioned that the appellant had not submitted the copies of the bank accounts from which the said payments have been made. The appellant also failed to give information such as the name and address of the persons from whom these paintings were purchased. No purchase invoices have been produced. It was already established in the appellant's case that the appellant has been merely issuing cheques and obtaining bills from bogus billers and was also receiving the cash in return for cheque payments issued. Therefore, it is not possible to accept the self made vouchers issued by the appellant as evidence for purchase of the said paintings.

(xi) No confirmations produced from the sellers from whom these paintings were purchased.

(xii) The appellant tried to show CNBC interview of Shri Ajit Singh in which some of the above paintings are appearing on the background. The interview was alleged to have been given before 01.04.2001 but the date of such interview has not been proved. The appellant could have obtained confirmation from the Television Channel to prove its case.

(xiii) The appellant's submission that in the earlier years the paintings were written off in the books of account has also not been proved by producing the books of account.

(xiv) The appellant's submission that the group decided to insure all the paintings in the year 2005 and therefore the ownership of the paintings is proved does not help the case of the appellant. If the appellant is owner of the said paintings, then the question is whether the source of investment in such paintings is genuine. The appellant failed to establish the sources of investment. The investigations carried out during the course of search show that the appellant purchased these paintings in grey market out of unaccounted income and later sought to obtain bogus invoices from the accommodation entry providers.

(xv) The appellant's contention that some of the paintings were received on consignment basis for display and probable sale, is not acceptable since such claims must have been taken by the appellant during the course of search operation. If the appellant proved this claim before the authorized officer, there could not have been any reason for keeping such paintings under constructive seizure under second proviso to section 132(1) of the Act. It is a normal human behavior to declare the truth before the enforcement authorities if they act in any presumption which is contrary to fact. In this case since the authorized officer is proceeding with the presumption that the paintings belong to the appellant and if such presumption is not true then it is the duty of the appellant to contradict the same then and there under statement recorded u/s. 132(4) or atleast immediately thereafter. This has not been done in this case. Further the appellant is also giving contradicting submissions. On the one hand it establishes the ownership over paintings by insurance taken in the year 2005 and on the other hand it argues that some paintings are received on consignment basis.

7.7. Therefore, in the absence of evidences as above, it is not possible to accept the contention of the appellant that the above paintings are explained. It is held in the following judgements that the overall circumstances and human probabilities have to be taken into consideration while ascertaining the true nature of the transaction:

(i) The Hon'ble ITAT, Delhi Bench in the case of DCIT vs. Smt. Phoolwati Devi (2009) 314 ITR AT 1 (Delhi) has held as under:

> *"despite the documentation supporting the claim of the assessee superficially, the evidence could not be accepted in view of the surrounding circumstances and human probabilities. There were certain features of the case which belie the documentary evidence."*

(ii) In the case of M/s.Kachwala Gems vs. JCIT, ITA No.134/JP/2002 dated 10.12.2003, which has been affirmed by the Supreme Court in the case of M/s.Kachwala Gems vs. JCIT (2006) 206 CTR (SC) 585, 288 ITR 10 (SC), it was held that payment by account payee cheque is not sufficient to establish the genuineness of purchases.

(iii) In the case of CIT vs. Prashant (P) (1994) 121 CTR (Cal.) 20, the Calcutta High Court has held that even payment by account payee cheque is not sacrosanct and it would not make an otherwise non-genuine transaction genuine.

(iv) In the case of Sumati Dayal vs. CIT (1995) 214 ITR 801 the Supreme Court, interalia held as under :

> *"in such cases, a superficial approach to the problem should be eschewed and the matter has to be considered in the light of human probabilities and further that any transaction about which direct evidence is rarely available should be inferred on the basis of circumstances available on the record. In that case, the majority opinion of the Settlement Commission was approved as it was taken after considering the surrounding circumstances and applying the test of human probabilities."*

It was settled in the case of CIT vs. Durga Prasad More 82 ITR 540 (SC) that where a party relies on self-serving recitals in a document, it is for that party to establish the truth of these recitals. It was further held by the Apex Court in this case that the tax authorities are entitled to look into the surrounding circumstances to find out the reality of such recitals. The Hon'ble Apex Court has specifically observed as under:

> *"Science has not yet invented any instrument to test the reliability of the evidence placed before a Court of Tribunal. Therefore, the Courts and Tribunals are applying the test of human probabilities. Human minds may differ as to the reliability of a piece of evidence."*

(vi) The Hon'ble ITAT, Ahmedabad Bench has upheld the addition made under section 69C of the Act in the case of Vijay Proteins Ltd. vs. ACIT (1996) 55 TTJ 76 (Ahm.) in similar circumstances.

7.8 Thus, it is clear that the settled position is that the onus lay upon the appellant to prove the genuineness of the purchase transaction claimed by the appellant as genuine. However, this onus has not been discharged by the appellant. In this regard, reliance is also placed on the judgement of the Hon'ble Rajasthan High Court in the case of Indian Woolen Carpet Factory (2002) 178 CTR (Raj.) 420 and Madhya Pradesh High court in the case of VISP(P) vs. CIT, Indore (2004) 186 CTR (MP) 218. Here it is pertinent to note that the Courts have held that if the investigation done by the department leads to doubt in respect of the genuineness of the transaction, it is incumbent on the assessee to produce the parties along with necessary documents in order to establish the genuineness of the transactions.

7.9 If the propositions as held in the above decisions are applied, I am of the view that the appellant had not established its case. The evidences which have not been produced are weighing heavily as against the evidences furnished by the appellant which are also not Tree from doubts for genuineness. In view of the above, all the paintings have to be treated as unexplained in nature and accordingly the addition made by the A.O on account of unexplained investment of Rs.6,92,55,000/- is hereby confirmed.

It is quite evident from the observations of learned first appellate authority that the explanation furnished by the assessee was found to be non-satisfactory since the assessee failed to substantiate the source of paintings with cogent documentary evidences. Aggrieved, the assessee is under further appeal before us.

4. Upon due consideration, we find that the issue of addition on account of unexplained paintings, under similar factual matrix, was subject matter of appeal before this very bench in the case of Ms. Kavita Singh vide ITA No. ITA No. 1242/Mum/2012 order dated 08/12/2017. In the said order, the bench at paras 6 to 9, appreciated the various documentary evidences furnished by the assessee in support of acquisition of paintings and adjudicated the matter substantially in assessee's favor in the light of these evidences. Similar evidences are stated to have been placed before us in the paper-book and the assessee has drawn analogy by tabulating the same in the following manner: -

Sr.No.	Annexure	Evidence	No. of Paintings	Addition by A.O. (Rs.	ITAT order of Mrs. Kavita Singh-ITA No.1242/Mum/2012 dated 8 October, 2017 similar issue – Reference Page
		Prior to Block period (Annexure -I to III)			
1.	Annexure-I	Magazines	11	1,20,00,000	
2.	Annexure-II	Photographs	3	60,50,000	
3.	Annexure-III	Vouchers, Bills	11	88,50,000	Page- 6 & 7, para-7
4.	Annexure-IV	Panchnama	11	1,42,00,000	Page-6, Para-7
5.	Annexure-V	Low Value	5	2,55,000	Page-8, Para- 9
6.	Annexure-VI	Vouchers, Bills (during the block period)	4	2,79,00,000	Page-8, Para-9
		Total	45	**6,92,55,000**	

Since facts as well as circumstances of additions are pari-materia the same, we restore the matter back to the file of Ld. AO and direct him to re-appreciate the evidences furnished by the assessee in the light of adjudication rendered by us in the case of Ms. Kavita Singh (supra) with a direction to the assessee to substantiate his stand, in this regard. The Ld. CIT(A) has observed that many of the paintings were not reflected as part of stock-in-trade of the assessee. However, we find that the assessee has been saddled with addition on account of unexplained paintings on aggregate basis for various group entities and therefore, in such a case, few of the paintings would not be reflecting in the stock-in-trade held by the assessee. With these observations, the matter stand remitted back to the file of Ld. AO as aforesaid.

5. The appeal stands allowed for statistical purposes.

Order pronounced in the open court on 29th January, 2020.

Sd/-	Sd/-
(Mahavir Singh)	**(Manoj Kumar Aggarwal)**
उपाध्यक्ष **/ Vice President**	लेखा सदस्य **/ Accountant Member**

मुंबई Mumbai; दिनांक Dated : 29/01/2020
Sr.PS:- Jaisy Varghese

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

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उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**