

**IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH,  
JODHPUR  
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND  
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**ITA No. 297/JODH/2019  
(Assessment Year 2012-13)**

Ashok Kumar Banthia, Kumharon Ka Mohalla, Gangashahar, Bikaner.	Vs.	D.C.I.T., Central Circle, Bikaner.
PAN No. AIXPB 4919 N		

Assessee by	Shri Suresh Ojha, Adv. & Shri Sudarshan Jhabak, CA.
Revenue by	Smt. Sanchita Kumar, CIT-DR
Date of Hearing	12/08/2021
Date of Pronouncement	06/09/2021

**ORDER**

**PER: SANDEEP GOSAIN, J.M.**

The present appeal has been filed by the assessee against the order passed by the Id. CIT(A)-IV, Jaipur dated 07/09/2019 for the A.Y. 2012-13 wherein following grounds have been taken by the assessee:

- “1. That the order passed by the Assessing Authority and sustained by the Commissioner of Income Tax (Appeals) is illegal and against the law.
2. That the order is illegal in view of the fact that the Commissioner of Income Tax (Appeals) as well as the Assessing Authority fails to cross examine the deponent of the affidavits submitted before the Assessing Officer. In view of judgment of Hon’ble supreme Court delivered in the case of M/s Mehta Parekha & Co., the contents of the affidavit should have been accepted.
3. That the assessment completed in the hands of the assessee is not justified because the amount belongs to M/s Lux Industries Limited as admitted by the Director of the company. Therefore, the assessment is illegal.

4. *That the statement of Mr. Bhaskar Poddar which was the basis of sustaining the addition, was no statement in the eye of law in view of the judgment of Hon'ble Rajasthan High Court.*
5. *That the order passed by the Commissioner of Income Tax (Appeals) is against judicial decorum and judicial discipline because the judgment having the character of binding nature and not followed by the Commissioner of Income Tax (Appeals).*
6. *That the charging of interest is illegal and against the law."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the assessee is an individual and derived income from commission received as agent of M/s Lux Industries Ltd., Kolkata which was shown under the head business income, besides petty interest received from banks. The assessee filed his return of income on 13/09/2012 declaring total income of Rs. 2,20,007/-. Subsequently, a search and seizure operation U/s 132 of the Income Tax Act, 1961 (in short the Act) was carried out on 19/04/2011 at New Delhi Airport, during search, an amount of Rs. 25.00 lacs were found and seized from the assessee. On being asked, the assessee filed a reply dated 04/10/2013 and stated that the cash amount of Rs. 25.00 lacs seized from the assessee does not belong to the assessee but belongs to the company M/s Lux Industries Limited, Kolkata which is an existing assessee, assessed to tax by DCIT, Circle-9, Kolkata and further that the assessee is connected with the said company and posted at Delhi as commission agent, therefore, the amount was carried for and on behalf of the company and he has nothing to do with the amount

so seized from him. Thereafter the A.O. completed the assessment U/s 143(3) r.w.s. 153B(1)(b)/144A/154 of the Act determining the total income of the assessee at Rs. 27,20,010/-.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of parties and material placed on record, upheld the action taken by the A.O.. Against the said order of Id. CIT(A), the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

5. All the grounds of appeal are interrelated and interconnected but by way of this appeal, the assessee is basically aggrieved by the order of the Id. CIT(A) in confirming the action of the A.O. and submitted that the amount seized from the assessee does not belong to him but belonged to M/s Lux Industries Ltd.. In this regard, the Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied on the written submissions filed before the Bench and the same is reproduced below:

*"That the assessee successfully discharges the burden by finding respective evidence is available on record in the paper book. The assessee submitted his affidavit stating that amount belongs to the Lux Industries Limited; also submitted affidavit of Director of Lux Industries Limited which too was also confirm in their response of summon. All this fact established that amount belong to Lux Industries Limited and with the Directory is also accepting that the amount belongs to company and not Ashok Banthia.*

*Furthermore in response to the query of Commissioner of Income Tax (Appeals) dated 25.05.2017 and 18.08.2017 also submitted the following paper book page 51 to 73*

<i>Extract of the cash book with certificate of CA</i>	<i>67 to 73 P.B.</i>
<i>Calculation of the VAT for the month of April 2011</i>	<i>65 of P.B.</i>
<i>Extract of Sales Register for the period April 2011</i>	<i>56 to 61 of P.B.</i>
<i>Challan of VAT (Proof of Payment of VAT)</i>	<i>62 P.B.</i>
<i>Air Ticket provided by Kolkata office</i>	<i>63 &amp; 64 P.B.</i>

*In this way the assessee submitted evidence and discharge the Burden and shifted upon the department. Therefore the addition made and sustained by the CIT (A) is illegal and in these circumstances the addition sustain by the Commissioner of Income Tax (Appeals) is illegal and against the law.*

*Accepted by Sales Tax Department*

*It will be worthwhile to submit that the sales tax authority accepted the sale belongs to Lux Industries Limited in case which calculation is given in the above. In this respect your kind attention is invited to words the judgment reported in 273 ITR 262 in which it was held that if the sales tax department is accepting in that case the income tax should have accepted the same. The ratio of the judgment is quietly applicable in case of assessee.*

*Application of 153 C of IT Act*

*It will be worthwhile to mention here that assessee requested to transfer the proceeding to the assessing authority of Lux Industries Limited, Kolkata because the document / amount belongs to the Lux Industries Limited, Kolkata and the document should be refer to the assessing authority of Lux Industries Limited. The assessing authority was specifically requested but not accepted this ground. The Director admitted this fact in affidavit as well as in confirmation of affidavit.*

*Real owner should be taxed*

*In Income Tax, the real owner should have been taxed and not the representative there of the Lux Industries is real owner of amount and Sh. Ashok Banthia is the only representative of Lux Industries Ltd.*

*I am here under reproducing the last para of show cause notice*

*"After considering all the relevant material it is obvious that the money carried by you amounting to Rs. 25 lacs was your unexplained income. The subsequent averments of Sh. Ashok Kumar Todi appear to be a cooked-up story and hence, the same is not acceptable. Thus, you have failed to discharge your burden of proof as per Indian Evidence Act that an amount of Rs. 25 lacs seized from your possession does not belong to you."*

*The assessing officer having no evidence, but rejected the explanation by taking shelter of world cooked story. In spite of the request the department fails to supply any evidence against the assessee and rejected the explanation for the sake of rejection. There are cantina of judgment that real owner should be taxed.*

*Shri Ashok Bhatia that is the assessee in the statement stated that the amount belongs to Lux Industries Limited and also submitted copy of the affidavit, which is available at page number 6-9 during the course of assessment proceeding during the course of assessment proceeding the assessee also submitted and affidavit of the Director of Lux Industries Limited sh Ashok Todi. The copy thereof is available at page 13 of paper book. It will be worthwhile to submit that out of two that is Ashok Banthia and Ashok Todi, Ashok Kumar Banthia that is assessee was not at all cross-examined, whereas the Ashok Todi was cross examined by way of summon in which contention of the affidavit was accepted by him.*

*But Ashok Kumar Bhatia of them was not cross examined by the assessing officer. There is a law of land delivered in case of Mehta Parekh and Company reported in 30 'TR Page 181 in case of Mehta*

*Parekh and Company. The ratio of judgment is applicable in toto. It will be worthwhile to submit that the Honorable Tribunal of this bench is also following the ratio laid down in this judicial pronouncement for your ready reference the part of the ratio reported in 36 TTJ page 1 delivered in case of Dr Prakash Rakhi is reproduced here under full stop*

*The relevant portion of case referred in 36 TTJ 1 is under;-*

*Whether averments of a duly sworn in affidavit are to be accepted as correct unless the same are rebutted by evidence? Held Yes*

*In view of above facts and circumstances you will observe that the act of the assessing officer is legal and the Commissioner of Income Tax (Appeals) fails to follow the judicial pronouncement having character of binding nature as per Article 141 of Constitution of India. You are requested that the act of the Commissioner of Income Tax (Appeals) make kindly be declared as in legal and against the law.*

*As far as in the affidavit of Shri Ashok Todi Director of Lux Industries Limited in concern in the affidavit it has been accepted that money belongs to the company and Shri Ashok Banthia was only courier of money and following the instruction of the company bringing the money from Delhi to Kolkata. In support of this fact the assessee submitted the copy of air ticket which was sent by the Kolkata officer for coming to Kolkata and back. This it prove the fact stated by Director of company and Shri Ashok Banthia. The assessing officer issued commission to Kolkatta and in response to the commission Shri Shri Ashok Todi appeared before him and admitted in the statement that money belongs to him therefore in the fact and circumstances the contention of the affidavit as well as this statement should have been accepted by the assessing officer and the Commissioner of Income Tax ( Appeals) should have deleted the addition.*

*I want to draw your attention that shri Ashok Todi admitted that the amount belongs to the Lux Industries Limited. The relevant portion of statement is been reproduced here under:-*

*Q. No. 4 Since Mr. Ashok Banthia is your commission agent and entitled only to a small commission why as he carrying so much cash of about Rs. 25 lakhs on 19.04.2011?*

*Ans. The amount pertains to sale proceeds of a particular lot of T-shirts of Kolkata Knight Riders sold in Delhi and since the goods originally belonged to Kolkata and there was requirement of cash in Kolkata, Mr. Ashok Banthia was directed to bring the cash to Kolkata.*

*Q. No. 5 How much commission is paid to Mr. Ashok Banthia on an average per annum?*

*Ans. The amount of commission depends on sales made through him. The amount of commission is around Rs. 5 to Rs. 6 lakhs per annum is respect of sales made on behalf of Lux Hosiery Ltd and Todi Hosiery Ltd.*

*Q. No. 6 Mr. Ashok Kr. Banthia in his statement recorded by DDIT (Inv.), Unit-V(1), Delhi on 19.04.2011 has stated that he is employed as Sales Head in Delhi for Lux Industries Ltd. and his annual salary is Rs. 3 lakhs per annum. What do you have to say in this regard?*

*Ans. Mr. Ashok Kr. Banthia is the commission agent in Delhi and no fixed salary is paid to him.*

*Furthermore the above fact established that the amount belong to Lux Industries Limited and not Ashok Banthia.*

*Sh. Bhaskar Poddar also stated that the amount belongs to Lux Industries Limited in his statement dated 07.06.2011. The statement of Bhaskar Poddar is also establishing that the amount belongs to Lux Industries Limited. The relevant portion is also reproduced. The A.O. has also taken the shelter of the statement of Sh. Bhaskar Poddar. This is not correct.*

*I want to draw your attention towards the statement of Ashok Toddi, the question No. 8, 9 are being reproduced hereunder:*

*Q. No. 8 Please state how you know Mr. Bhaskar Poddar, S/o Shri Ravi Poddar.*

*Ans. Mr. Bhaskar Poddar is working as an Accountant with M/s Lux Industries Ltd. in Delhi Office.*

*Q. No. 9 Mr. Bhaskar Poddar in his statement recorded by the Investigation Wing, New Delhi on 07.06.2011 has stated as follows :-*

*(i) Normally the sales are made to the Distributors of the company. However, the cash sales have been made to other persons, the details of which are not available.*

*(ii) I don't know whether the cash sales were actually made or not. These invoices have been prepared at the instruction of Shri Ashok Kr. Banthia.*

*(iii) Shri Banthia gave me a note sheet detailing amount and number of cartons on 27.04.2011 and the invoices were prepared accordingly.*

*Ans. Mr. Bhaskar Poddar is a very junior staff and mainly looks after loading / unloading and sometimes preparation of invoices. The sales are sometimes recorded in rough sheets (parchi) and the invoices are prepared at a later date against which VAT is also paid.*

*In view of the above mentioned Fact and circumstances it is submitted that the addition made kindly be declared as illegal and made kindly be treated as belongs to be Lux Industries Limited Industries Limited and not belong to the Shri Ashok Banthia.*

*Statement should have been read as a whole the assessing authority accepted part of the contention which can be twisted as against the assessee was only picked and the other direct reply work ignore full stop in the Income-Tax theory of pick and choose is not permissible in the eye*

*of law as has been held by the supreme court in case of reported in 60 page 41.*

*It is submitted that the amount so found is belongs to the Lux Industries Limited Kolkata in this respect I want to draw your kind attention towards the fact that in the affidavit Shri Ashok Banthia category speaking and the owner of the amount i.e. Lux Industries Limited himself accepting that amount belongs to him. Subsequently and affidavit of Shri Ashok Todi the Director of the company was also submitted and that too was confirm in course of recording the statement by the counterpart of the assessing authority of Kolkata in the statement it will be worthwhile to submit here that subsequently the Commissioner of Income Tax ( appeals) raised query and directed to submit the evidence in respect of availability of rupees 25 lacs in the shape of cash book 70-73 and that too was submitted in this way all the information was obtained and made available to the department, The relevant information is at page no.51 to 73 of paper Book. In this fact and circumstances you will observe that the documentary evidence so submitted is lead to the conclusion in support of the claim of the assessee and that the amount not belongs to assessee. In these facts and circumstances you are requested that the amount which was treated as income of the assessee may kindly be declared as belongs to the Lux. Industries Limited and should not be taxed in the hands of the assessee.*

*It is therefore requested that same make kindly be deleted and may kindly be declared as belongs to the Lux Industries Limited Industries Limited.*

*The statement of the Shri Bhaskar Poddar Shri Ashok Banthia was recorded and copies thereof are available at page 1 to 5 of paper book. The statement of Shri Bhaskar Podar was relied upon by the assessing officer as well as Commissioner of Income Tax (Appeals). The statement of Shri Bhaskar Poddar so recorded is at page number 3-5 and Shri Ashok Banthia 1-2 of the paper book. From the perusal of the copy of his statement so provided by the department to the*

*assessee, you will observe that the statement is not having the word read over and accepted (RO& AC) in the bottom of the statement written by the respective officer during the course of recording the statement AND WITHOUT ADMINISTARING THE OATH. As far as the legal position is concerned it will be worthwhile to submit here that the statements are no statement in the eye of law in view of judgment of Rajasthan High Court as well as ITAT Jodhpur. He relied on the decision in the case of Kewal Ram Suman Mal Govinda reported in 92 STC page 629.*

*The ratio of judgments is applicable because the judgment is judgment of Jurisdiction al VI Court therefore having the character of binding nature.*

*It will be worthwhile to submit that the Hon'ble this bench also followed the same principal in case of Vardhman Industries reported in 99 TTJ page 599. The assessing officer as well as Commissioner of Income Tax (Appeals) not accepted the plea taken by the assessee before them. You're therefore requested that the statement may kindly be declared as no statement in the eye of law, in view of judgment of Jurisdictional high court's decision. These statements are sole basis for sustaining the addition of rupees 25 lakh in case of the assessee.*

*The Honorable Rajasthan High Court also observe that the recording officer, after recording of statement must write at the bottom or end of the statement as read over and accepted. The none mentioning of read over and accepted converted the statement as no statement in the eye of law, as per the judgment of Rajasthan High Court, Jaipur Bench, in case of the Assistant Commissioner Taxes Officer Vs. Kishori Shyam Brijesh Kumar reported in 93 STC Page 213 (Raj.). The Hon'ble Court held that missing of read over and accepted over the signature the Hon'ble Court not accepted the statement as correct. In the fact and circumstances you will observe that admission cannot be considered to be an admission at all since even the basic requirement of law has not been complied with.*

*It is submitted that during the course of assessment the assessee come forward with judicial pronouncement in person as well as in writing in the written submission submitted before the Commissioner of Income Tax (Appeals). I am herewith attaching to one chart of the pronouncement on which the assessee relied before the Commissioner of Income Tax (Appeals) which is at page 49 of paper book. From the perusal of same you will observe that Commissioner of Income Tax (Appeals) have not followed the judgment having the character of binding nature, as per Article 141 of constitution of India. From the list you will observe that there are judicial pronouncement delivered by Rajasthan High Court, Supreme Court and Territorial Income Tax Appellate Tribunal not followed by the Assessing Officer as well as the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) is supposed to follow the judicial pronouncement in this respect.*

*THE ORDER PASSED MAY KINDLY BE DECLARED AGAINST THE JUDICIAL DECORAM AND DISCIPLINE.*

*He relied on the decision in the case of Union of India Vs M/s Kamalaxmi Finance Corporation Ltd, 72 Taxman-Magazine page 43.*

*Avon Apparels Vs ITO 22 Taxworld 399*

*As such you will observe that the order of tribunal is having the binding nature, as far as the judgment of Supreme Court is concern, same is binding as per Article 141 of Constitution of India.*

*Besides this there are also various judicial pronouncement wherein it was held that the judgment of Jurisdictional High Court is binding and as far as the judgment of Supreme Court is concern same is binding even as per Constitution of India . In view of fact and circumstances you will observe that the rejection of appeal is for the sake of rejection by flouting the judgment of binding nature. You're requested that the addition sustained*

*amounting to rupees 25 lacs may kindly be declared as in legal and order passed make kindly quest.*

*The judgment on which the department relies is judgment covered under the .definition of per in curium, because the judgment of Mehta Parekh and Company was not dealt with by the court while delivering judgment. The relevant judgments are as per case law index.*

*From the perusal of the order of A.O. you will observe that the Assessing authority levied/ charged the interest. The levy of tax itself is in dispute and just for the sake of argument it is accepted that the tax has rightly been levied by taking interpretation in favour of the revenue even then no interest liability is attracted from the beginning but if at all is chargeable from the date of creation of the demand. In this respect your kind attention is invited towards the judgment of Hon'ble Supreme Court reported in 94 STC Page 422. The Hon'ble Supreme Court is of the consistent view that the interest if at all can be charged can only be from the date of creation of demand itself. In other words, this is admitted and established fact in respect charging of the interest in the fiscal law.*

6. On the other hand, the Id CIT-DR has vehemently supported the orders of the lower authorities and submitted that as per the statement of Mr. Todi, Director of the Lux Industries, no cash was carried by the assessee for and on behalf of the company either on earlier occasion or subsequently. She also stated that the assessee failed to explain the source of cash amount seized from him. The Id. CIT(A) has rightly upheld the action of the Act.

7. We have considered the rival contentions and carefully perused the material placed on record. As per the facts of the present case, we noticed

that the assessee is a commission agent and received commission as agent of M/s Lux Industries Ltd., Kolkata, he filed his return of income for the year under consideration declaring total income of Rs. 2,20,007/-. A search and seizure operation was carried out on 19/04/2011 at New Delhi Airport and during search, amount of Rs. 25.00 lacs were found and seized from the assessee. On verification, the assessee told that the cash amount of Rs. 25.00 lacs seized from the him belong to the company M/s Lux Industries Limited, Kolkata and the assessee is connected with the said company and posted at Delhi as commission agent, therefore, the amount was carried for on behalf of company and he has nothing to do with the amount so seized from him.

8. From perusal of the record, we observed that, the assessee is a commission agent of Lux Industries Ltd. and as per the prevalent law, the real owner should have been taxed and not the representative thereof. The assessee is only a representative of the Lux Company. The assessee in his statement recorded U/s 132(4) of the Act has specifically stated that the amount seized from him at the Air Port belongs to Lux Industries Limited. Statement of Director of the company namely Shri Ashok Kumar Todi was also recorded, which are available at page No. 10 to 13 of the paper book in which he had specifically admitted that the amount seized pertains to sale proceeds of a particular lot of T-shirts of Kolkata Knight Riders sold in Delhi and since the goods originally belonged to Kolkata and there was requirement of cash in Kolkata. Therefore, Mr. Ashok

Banthia was directed to bring the cash to Kolkata. As far as in the affidavit of Shri Ashok Todi, Director of Lux Industries Limited is concerned, in the said affidavit, it has been accepted that money belongs to the company and Shri Ashok Banthia was only courier of money and following the instruction of the company bringing the money from Delhi to Kolkata on behalf of the company. In support of this fact, the assessee submitted the copy of air ticket which was sent by the Kolkata officer for coming to Kolkata. The Id. AR has drawn our attention towards the admission of Shri Ashok Kumar Todi, Director of the Lux Industries towards the fact that the amount belongs to the Lux Industries Limited. The relevant portions of statement are reproduced here under:-

Q. No. 4 Since Mr. Ashok Banthia is your commission agent and entitled only to a small commission why as he carrying so much cash of about Rs. 25 lakhs on 19.04.2011?

Ans. The amount pertains to sale proceeds of a particular lot of T-shirts of Kolkata Knight Riders sold in Delhi and since the goods originally belonged to Kolkata and there was requirement of cash in Kolkata, Mr. Ashok Banthia was directed to bring the cash to Kolkata.

Q. No. 5 How much commission is paid to Mr. Ashok Banthia on an average per annum?

Ans. The amount of commission depends on sales made through him. The amount of commission is around Rs. 5 to Rs. 6 lakhs per annum in respect of sales made on behalf of Lux Hosiery Ltd and Todi Hosiery Ltd.

Q. No. 6 Mr. Ashok Kr. Banthia in his statement recorded by DDIT (Inv.), Unit-V(1), Delhi on 19.04.2011 has stated that he is employed as Sales Head in Delhi for Lux Industries Ltd. and his annual salary is Rs. 3 lakhs per annum. What do you have to say in this regard?

Ans. Mr. Ashok Kr. Banthia is the commission agent in Delhi and no fixed salary is paid to him.

Statement of Shri Bhaskar Poddar, who is an accountant in M/s Lux Industries Ltd. was also recorded and in his statement, Sh. Bhaskar Poddar also stated that the amount belongs to Lux Industries Limited. The statement of Bhaskar Poddar also established that the amount belongs to Lux Industries Limited. In view of the above statement, we can say that the amount seized from the assessee does not belong to him but belonged to the Lux Industries Limited. However, as per facts of the present case, the A.O. adopted the method of pick and choose certain words from the statement of Sh. Bhaskar Poddar and reached to a contrary conclusion. The A.O. has chosen only those words which were more favourable to the Revenue whereas it is a settled law that any statement recorded by the Revenue authorities is to be read as whole and no pick and choose method should be adopted which favours the revenue. The statement of Sh. Bhaskar Poddar is on the record which specifically depicts that the assessee Ashok Kr. Banthia was working as a Regional Sales Officer of M/s Lux Industries Ltd. and he was handling all the cash transactions of the company. It is undisputed fact that the assessee was posted for the Delhi region and was looking after sales and cash

collection of the entire region on behalf of the company. It is also an admitted fact that the affidavit filed by Shri Ashok Todi, which is at page No. 13 of the paper book who was director of M/s Lux Industries Ltd. had categorically admitted that on 19/04/2011, the assessee was carrying amount of Rs. 25.00 lacs in cash on behalf of the company from Delhi office to its head office at Kolkata. The said statement of Shri Ashok Todi, director of M/s Lux Industries Ltd. was never cross examined by the A.O.. Apart from this, the A.O. also did not collect any other material to show that the contents contained in the affidavit was not correct. The A.O., merely rejected the affidavit of Shri Ashok Todi who was director of M/s Lux Industries Ltd. without any plausible reason. The A.O. was not justified in rejecting the affidavit and other material in such a manner. Whereas the affidavit of Shri Ashok Todi was supported by the statement of Ashok Todi himself, the assessee, Shri Bhaskar Poddar and also supported by extract of cash book with certificate of C.A. which at page Nos. 67-73 of the paper book, calculation of VAT from the month of April, 2011 which is at page No. 65 of the paper book, extract of sales register for the month of April, 2011 which is at pages No. 56-61 of the paper book, challan of VAT, proof of payment of VAT which is at page No. 62 of the paper book and air tickets provided by Kolkata office which are at page Nos. 63 and 64 of the paper book. These entire bunch of documents go to prove that this cash was belonging to the company namely M/s Lux Industries Ltd. and the company had shown the said amount before the Sales Tax authorities and the Sales tax authorities

had also accepted the sales belonging to M/s Lux Industries Ltd.. At this stage, we would like to draw support from the decision in the case of CIT Vs Anand Metal Corporation 273 ITR 262 (Mad) wherein it was categorically held that if the Sales tax authorities accept the sale belonging to a party then in that eventuality, the said findings of the Sales tax authorities are binding on the income tax authorities and the A.O., thus, in this way, the income tax authorities has not power to scrutinize the said documents again in respect of sales which have already accepted by the Sales tax authorities. As from the very beginning, it has been specifically stated by the assessee that M/s Lux Industries Ltd. had already shown this amount of sales at Rs. 25.00 lacs in their sales tax returns. Moreover, Shri Ashok Todi, director of M/s Lux Industries Ltd. has categorically mentioned that Mr.Bhaskar Poddar who has also got his statement recorded is a very junior staff and mainly looking after loading and unloading and some times preparation of invoices. It was submitted that sales are sometime recorded in draft sheets and the invoices are prepared at a later date against which VAT has also been paid and in this regard challan of payment of VAT has also been placed on record, which is at page No. 62 of the paper book which shows that the amount so carried by the assessee on behalf of the company was on account of sales collection regarding which required extracts of sales register for the period of April, 2011 has already been placed on record at page Nos. 56-61 of the paper book wherein the said amount has been shown received from the sales on account of Kolkata Knight Riders T-shirts and on that required VAT has also

been paid. Thus, in this way, the assessee has successfully discharged the burden by disclosing source of cash amount by filing respective evidences which are available on the record in the paper book.

9. Even otherwise, the tax authorities are also required to tax the real owner and not the representative thereof and in this case, the real owner of the cash amount seized from the assessee belongs to M/s Lux Industries Ltd. and not to the assessee.

10. Although, the assessee had also filed an affidavit in support of his contention but he was never cross examined by the A.O. Therefore, the averments contained in duly sworn affidavit are to be accepted as a correct unless the same are rebutted by the evidence. On this proposition, we found support from the decision of Hon'ble Supreme Court in the case of Mehta Parikh & Company Vs CIT 30 ITR, 181 (SC), Dr. Prakash Rathi Vs ITO 36 TW 1 (Jodh ITAT), ITO Vs Doctor Tej Gopal Bhatnagar 20 TW 368 (Jodh ITAT), Labh Chand Bohra Vs ITO 219 CTR 571 (Raj), Shrikumar Vs ITO 36 TTJ 538, Smt. Savitri Devi Vs ITO 11 ITD 422 Delhi, CTO Vs Kewal Ram Sumnomal Cavanduspur 92 STC 629 (Raj), ITO Vs Vardhaman Industries 99 TTJ 509 (Jodh ITAT), ACTO Vs Kishore Shyam Brajesh Kumar 93 STC 213 (Raj), Indo Malwa United Mill Limited Vs State of MP 60 ITR 41 (SC), Late Mangilal Agarwal Vs ACIT 208 CTR 159 (Raj), CIT Vs Daulat Ram Rawat Mull 87 ITR 349 and Union of India Vs Kamalaxmi Finance Corporation 92 Taxmann 43. Considering the totality of facts and circumstances of the case,

we are of the view that the amount seized from the assessee at the Delhi Air Port belonged to the Lux Industries Limited and not the assessee. The A.O. as well as the Id. CIT(A) wrongly made and confirmed the assessment and added the same in the income of the assessee, therefore, we direct to delete the addition qua this issue.

11. In this result, this appeal of the assessee is allowed.

Sd/-

**(VIKRAM SINGH YADAV)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Jodhpur

Dated 06/09/2021

\*Ranjan

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT (A)
5. The DR
6. Guard File

Assistant Registrar  
Jodhpur Bench