

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH -'SMC' NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA No. 900/Del/2017
ASSESSMENT YEAR : 2012-13

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| Mrs. Kinty Suri C/o Sanjiv Sapra & Associates, CAs, C-763, New Friends Colony New Delhi – 110 025 PAN ARTPS3829B | Vs. | ITO Ward-10(1) New Delhi. |
| (Appellant) | | (Respondent) |

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| Assessee by : | Shri Sanjiv Sapra, CA |
| Department by: | Ms. Bedobani, Sr. DR |
| Date of Hearing | 25/05/2017 |
| Date of pronouncement | 08/06/2017 |

Per BHAVNESH SAINI, Judicial Member

ORDER

This appeal by assessee has been directed against the order of
Ld. CIT(A) -35, New Delhi dated 30th January, 2017 for assessment year
2012-13 on the following grounds :-

1. "That the Ld. CIT(A) had erred on facts and under the law in confirming the addition of Rs. 5,00,000/- on account unexplained perks u/s 17(2)(iii) of I.T. Act as made by the AO.
2. That the Ld. CIT(A) had erred on facts and under the law in confirming the addition of Rs. 3,00,000/- on account of unexplained expenditure incurred on foreign travels as made by the AO.
3. That without prejudice to Ground No. 1 & 2 above, the additions as made by the AO and confirmed Ld. CIT(A) are very excessive."

2. Briefly the facts of the case are that during assessment proceedings, the AO observed that in the relevant year the assessee had undertaken foreign travel tour to UAE, Singapore etc. however she could not furnish the reasons/ purpose for undertaking such visits. The assessee could not produce any correspondence/work contract or invitation letter from the countries which could justify her claim that these visits were undertaken for the purpose of business and hence should be allowed as a business expense. The AO also found that the expenditure for the foreign visits was borne by M/s. Design & Development India (Pvt.) Ltd., a company where assessee was a director. The AO thus disallowed the expense claimed of Rs. 5 lacs u/s 17(2)(iii) on account of unexplained perks. Similarly AO noted that assessee has also undertaken foreign visit on 1st July, 2012, details of which have not been furnished by the assessee. The assessee simply explained that she had undertaken journey with her husband and expenditure has been borne by her husband. The AO, therefore, disallowed estimated expenditure u/s 69C at Rs. 3 lacs and added to the income of the assessee.

3. The assessee submitted additional evidences before Ld. CIT(A) like copy of Board Resolution of the company etc. To which the AO objected and submitted in the remand report that addition was made for foreign visit to UAE and Singapore because the purpose of visits remained unverified and assessee also stated that expenses are borne

by her husband. It was also stated that assessee has not produced any evidence of purpose of visiting foreign country and failed to explain any official purpose. It was also submitted that with regard to addition of Rs. 3 lacs u/s 69C, the passport shows that assessee has undertaken foreign visits on 1st July, 2011 instead of 1st July, 2012 mentioned in the assessment order.

4. The assessee in the rejoinder submitted before the Ld. CIT(A) that she is Bachelor of Arts from Delhi University. She had become a partner of firm M/s. Design & Development in assessment year 2008-09. The assessee was involved in the business activities of providing design and interior work services to its clients and used to travel for meeting and developing business relations. The firm was taken over by company by the name of M/s. Design & Development India Pvt. Ltd. in which assessee is a share holder / Director . The assessee continued to be involved in the business activities as were doing earlier. No travel expenses have been disallowed earlier. The foreign trip travel expenditure of the assessee were borne by M/s. Design & Development India Pvt. Ltd. and such expenditure have been accepted by the AO u/s 153A dated 29th February, 2016. Therefore, no part of such expenditure can be considered to be a perk in the hands of assessee. Section 17(2)(iii) as invoked by the AO is not applicable to the facts of the case. No foreign travel expenditure have been claimed in the hands of the assessee because same have been incurred by the company. Therefore, both the additions are liable to be deleted.

5. Ld. CIT(A) noted that assessee has not given any evidence like project report and other documents to show that she was doing any official work. The bachelor degree in Arts does not qualify the assessee as a design expert. The addition was therefore, confirmed. As regards addition of Rs. 3 lacs it was confirmed because no evidence has been filed.

6. I have heard Ld. Representatives of both the parties and perused the material on record. Ld. Counsel for assessee reiterated the submissions made before authorities below and referred to certificate of the company, and details of travelling expenses borne by the company, Board Resolution and it was submitted that provisions of section 17(2)(iii) of the I.T. Act does not apply to the assessee as she was not an employee of M/s. Design & Development India Pvt. Ltd. and was only its director and share holder whereas such provisions applies to employee director. The assessee has not received any salary and any meeting fees from the company. Ld. Counsel for assessee relied upon order of ITAT Delhi Bench in the case of Smt. Shilpa Pasari vs. ITO in ITA No. 3204/Del/2009 dated 14th December, 2011 in support of contention that provision of section 17(2)(iii) would not apply in the case of the assessee. Ld. Counsel for assessee further submitted that the AO accepted in the remand report that travelling of 1st July, 2012 is actually 1st July, 2011 which is part of the entire foreign travel undertaken by the assessee. Therefore, no separate addition of Rs. 3 lacs should have been made. On the other hand, Ld. DR relied upon orders of the authorities

below and submitted that in the order of the company the facts have not been discussed and that travel of 1st July, 2011 do not match with foreign journey undertaken by the assessee.

7. I have considered rival submissions. The AO made addition of Rs. 5 lacs u/s 17(2)(iii) of the Act on account of unexplained perks. Section 17(2)(iii) of the Act reads as under :-

“(iii) the value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases –

(a) by a company to an employee who is a director thereof;

(b) by a company to an employee being a person who has a substantial interest in the company ;

(c) by any employer (including a company) to an employee to whom the provisions of paragraphs (a) and (b) of this sub-clause do not apply and whose income [under the head “salaries” (whether due from , or paid or allowed by, one or more employers), exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds [fifty] thousand rupees:]

[Explanation – For the removal of doubts, it is hereby declared that the use of any vehicle provided by a company or an employer for journey by the assessee from his residence to his office or other place of work, or from such office or place to his residence, shall not be regarded as a benefit or amenity granted or provided to him free of cost or at concessional rate for the purposes of the sub-clause;]”

8. The authorities below while invoking the above provision against the assessee has mentioned in the impugned orders that Rs. 5 lacs has been incurred by the company on her personal tours undertaken of foreign countries, source of such expenditure is the company in which she has been director. Section 17(2)(iii) of the I.T. Act does not apply to the assessee as assessee was not an employee of M/s. Design &

Development (P) Ltd.. The assessee claimed that she was only director and share holder whereas this section applies to an employee director. Ld. Counsel for assessee also explained that assessee has only 14% of the share holding in the aforesaid company which was also specifically submitted before the authorities below to show assessee has no substantial interest in company. Therefore, in my view provision of section 17(2)(iii) would not apply in the case of the assessee. Ld. Counsel for assessee relied upon order of the ITAT Delhi Bench in the case of Smt. Shilpa Pasari vs. ITO (supra) in which in para 10 it is held as under :-

"10. Apropos assessee's appeal, it has not been disputed that there was no relationship of employer employee between SKCSPL and the assessee. A perquisite u/s 17(2)/17(3) can be added in the hands of the assessee only if the employer employee relationship is established. In the absence thereof, the addition in the hands of assessee u/s 17(2)/17(3) cannot be made. In view thereof, we allow this ground of appeal taken by the assessee."

9. Since the authorities below simply noted that assessee was a director in the aforesaid company therefore conditions of section 17 (2)(iii) would not apply in the case of assessee. Therefore, on this reason itself the addition of Rs. 5 lacs would be deleted. It may also be noted here that assessee filed certificate and Board resolution of M/s. Design & Development India Pvt. Ltd. in which it is clarified that Board has sent the assessee to foreign trip for business purposes and all the expenditure are borne by the company. It is also certified that assessee was a non-employee director and share holder in the company and no salary or director's fees was paid to her by the company during the year

under consideration. These evidences on record clearly prove that assessee undertaken foreign visits for the purpose of business of company and is not a perquisite within the meaning of section 17(2)(iii) of the I.T. Act. Further the authorities below made addition of Rs. 3 lacs in respect of foreign visit undertaken by assessee on 1st July, 2011. Ld. Counsel for assessee referred to PB 62 which is certificate of foreign visit issued by the company to show that assessee has visited foreign country from 30th June, 2012 to 1st July, 2011. Therefore, this visit was already part of the foreign visit of the assessee. Therefore, no separate addition should have been made on estimate in a sum of Rs. 3 lacs.

10. Considering the above discussion and in the light of the above provisions and material on record, I am of the view both the additions of Rs. 5 lacs and Rs. 3 lacs are wholly unjustified. I accordingly set aside the orders of the authorities below and delete both the additions.

11. In the result appeal of assessee is allowed.

Pronounced in the Open Court.

Sd/-

**(BHAVNESH SAINI)
JUDICIAL MEMBER**

Dated: 08/06/2017

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Copy forwarded to: -

1. Appellant
2. Respondent
3. Principal CIT
4. CIT(A)
5. DR, ITAT

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By Order,

ASSISTANT REGISTRAR