

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI R.S. SYAL, AM & MS. SUCHITRA KAMBLE, JM

ITA Nos.1001 to 1004/Del/2013  
Assessment Years : 2006-07 to 2009-10

DCIT,  
Circle 37(1),  
New Delhi.

Vs. Mr. Rajneesh Chopra,  
101, Nilgiri Apartments,  
9, Barakhamba Road,  
New Delhi – 110 001.

PAN: AAPPC2128J

ITA Nos.1233 to 1235/Del/2013  
Assessment Year : 2006-07 to 2008-09

Mr. Rajneesh Chopra,  
101, Nilgiri Apartments,  
9, Barakhamba Road,  
New Delhi – 110 001.

Vs. DCIT,  
Circle 37(1),  
New Delhi.

PAN: AAPPC2128J

(Appellant)

(Respondent)

Assessee By : Shri Salil Aggarwal, Advocate &  
Shri Shailesh Gupta, CA  
Department By : Shri Rajesh Kumar Ketia, Sr. DR

Date of Hearing : 01.10.2015  
Date of Pronouncement : 06.10.2015

ORDER

PER R.S. SYAL, AM:

This batch of seven appeals comprises of four appeals by the Revenue for the assessment years 2006-07 to 2009-10 and three appeals by the assessee for the assessment years 2006-07 to 2008-09. As some of the issues raised in these appeals are common, ergo we are proceeding to dispose them off by this consolidated order for the sake of convenience. The appeals of the assessee are recalled matters inasmuch as the earlier *ex parte* common order was recalled by the Tribunal vide its later order.

2. Before taking up the instant appeals, we consider it expedient to mention that the cross appeals for the assessment year 2005-06 were extensively argued by both the sides as a lead matter. We have passed a separate order for the A.Y. 2005-06. In fact, no separate arguments were advanced in respect of the issues in the present appeals which are common to the A.Y. 2005-06 and the arguments for such earlier year

were adopted. Accordingly, the view taken in such earlier year will be followed in the present appeals on similar grounds.

**Assessment Year 2006-07**

3. First two grounds of the Revenue's appeal are against substituting income from profession to Rs.94,29,953/- (wrongly mentioned as Rs.1,31,89,943/-) as against Rs.1,50,39,861/- assessed by the AO on the basis of entries in the impounded register. The assessee has challenged the sustenance of the balance addition. Similar grounds were there in the appeals for the A.Y. 2005-06. In such year, the income of Rs.54 lac determined by the AO was reduced by the Id. CIT(A) to Rs.40.17 lac. We have upheld the view of the Id. CIT(A) for such earlier year. Since the facts and circumstances of the year under consideration are *mutatis mutandis* similar to those for the A.Y. 2005-06, following the view taken for such earlier year, we approve the impugned order on this issue. Both the grounds are dismissed.

4. Ground no. 3 of the Revenue's appeal is against restricting the addition made by the AO on account of income from undisclosed

sources on the basis of undisclosed bank account from Rs.5,73,248/- to Rs.2,02,765/-. The facts of this issue are similar to ground no. 3 for the A.Y. 2005-06. The assessee is against the sustenance of the remaining addition. Following the view taken in such earlier year, we approve the impugned order on this issue and dismiss the grounds raised by both the sides on this issue.

5. Ground no. 4 of the Departmental appeal is against the deletion of addition on account of unexplained expenditure amounting to Rs.36,67,400/-. The facts of this ground are that certain loose papers were impounded during the course of survey and were marked as Annexure A-18. Certain details of expenses incurred from 9.4.2005 to 17.5.2005 amounting to Rs.36,67,400/- were written on page no. 32 of this Annexure. On being called upon to explain the source of such expenses, the assessee contended that this document does not belong to him. Not convinced, the AO made addition of Rs.36,67,400/- u/s 69C of the Act. The Id. CIT(A) ordered for the deletion of this addition.

6. After considering the rival submissions and perusing the relevant material on record, it is observed that expenses of Rs.36.67 lac were found to have been recorded in the documents impounded during the course of survey at the premises of the assessee. In the absence of any satisfactory explanation given by the assessee, the AO was justified in presuming that these documents belonged to the assessee only. Having held so, the next question which arises is whether the addition for Rs.36.67 lac on account of certain unexplained expenses can be made when the assessee has already surrendered unexplained income for the year in question. It is noticed that the assessee filed original return declaring income of Rs.18.35 lac and the assessee has conceded total income from profession at Rs.94.29 lac, which has been approved by us in an earlier para. This manifests that an additional undisclosed professional income of the assessee has been assessed to the tune of Rs.75.95 lac. When there is undisclosed income which has been separately charged to tax and there are certain un-recorded expenses which are less than the amount of undisclosed income, there cannot be

any separate addition for unrecorded expenses also because such unrecorded expenses are presumed to have been made out of undisclosed income, unless the AO proves that the undisclosed income was utilized elsewhere. Here is a case in which undisclosed professional income has been taxed at Rs.75.95 lac. Against this, there is an unexplained expenditure to the tune of Rs.36.67 lac. Once additional professional income has been included in the total income of the assessee, there cannot be any rationale for including unexplained expenses also in the assessee's total income. Such unexplained expenses have to be treated as financed out of the undisclosed income. It is not the case of the AO that this undisclosed income was spent elsewhere. In view of the foregoing reasons, we are of the considered opinion that the ld. CIT(A) was justified in deleting the addition of Rs.36,67,400/- made by the AO on account of undisclosed expenses found recorded in the impounded documents. This ground is not allowed.

7. Ground no. 5 is against the deletion of addition of Rs.19,40,000/-. The facts apropos this ground are that page no. 4 of Annexure-A-15

divulged the recording of a transaction of sale of shop No.79, LGF, World Trade Centre, which was sold for Rs.26,10,000/- on 27.01.2007. This property was purchased by the assessee for a sum of Rs.23,40,000/- The assessee's bank statement revealed that a sum of Rs.4 lac was paid on 22.10.2005 against the purchase of property. The AO made addition for the remaining amount of Rs.19,40,000/-. The Id. CIT(A) deleted this addition.

8. After considering the rival submissions and perusing the relevant material on record, here again we find that the subject matter of this ground is incurring of unexplained expenses out of undisclosed income. As against additional professional income of Rs.75.95 lac which has been taxed for the year under consideration, this sum of Rs.19.40 lac has to be presumed as emanating from such undisclosed professional income, because such amount along with a sum of Rs.36.67 lac, being the subject matter of immediately preceding ground, is less than the undisclosed professional income. In view of the reasons given in earlier

para, we uphold the impugned order deleting this addition. This ground fails.

9. The last effective ground of the Revenue's appeal is against the deletion of addition of Rs.1,50,000/- on account of unexplained expenditure. Page no. 4 of A-18 impounded during the course of survey revealed that the assessee had incurred certain expenses towards foreign travel to Bangkok. The AO estimated expenses on foreign travel at Rs.1,50,000/- and added the same to the assessee's total income. The Id. CIT(A) deleted this addition.

10. Having heard the rival submissions and perused the relevant material on record, we find that the AO has made addition u/s 69C by estimating expense of Rs.1,50,000/- incurred by the assessee on foreign visit. We find from the assessee's Income and expenditure account that there is a claim for deduction of travelling expenses amounting to Rs.4,85,430/-. The assessee has made out a case that travelling expenses incurred on Bangkok visit stand included in this sum of Rs.4.85 lac and, as such, there cannot be any separate addition. When the travelling

expenses have been claimed by the assessee in its Income and expenditure account, there cannot be any case for treating the expenses on Bangkok visit u/s 69C without controverting the assessee's contention that expenses on Bangkok visit stand included in such total expenses of Rs.4.85 lac. That apart, we find that addition u/s 69C cannot be made on an estimate basis. For making such an addition, it is obligatory on the part of the AO to bring on record certain direct material indicating the precise amount of expenditure incurred, but, not recorded in the books of account. We are dealing with a case in which the AO has made an estimate of expenses incurred on such Bangkok visit. Be that as it may, we are inclined to uphold the impugned order for the reason that even if it is presumed that the assessee did undertake travel to Bangkok and further did not record the expenditure as estimated by the AO in his books of account, then also this amount of presumed expenditure of Rs.1.50 lac is to be considered as met out of the total undisclosed professional income of Rs.75.95 lac. In view of the

foregoing reasons, we uphold the impugned order in deleting this addition.

11. The only other ground surviving in the assessee's appeal against the initiation of re-assessment proceedings was not pressed by the ld. AR. The same is, therefore, dismissed as not pressed.

12. In the result, both the appeals are dismissed.

### **Assessment Year 2007-08**

13. The assessee filed return of income on 29.10.2007 declaring total income at Rs.2,98,880/-. The assessment was finally completed pursuant to notice u/s 148, at a total income of Rs.1.35 crore including Income from profession at Rs.1,08,79,338.

14. First two grounds of the Revenue's appeal are against substituting income from profession to Rs.76,74,944 as against Rs.1,08,79,338 assessed by the AO on the basis of entries in the impounded register. The assessee has challenged the sustenance of the balance addition. Similar grounds were there in the appeals for the A.Y. 2005-06. In such

year, the income of Rs.54 lac determined by the AO was reduced by the Id. CIT(A) to Rs.40.17 lac. We have upheld the view of the Id. CIT(A) for such earlier year. Since the facts and circumstances of the year under consideration are *mutatis mutandis* similar to those for the A.Y. 2005-06, following the view taken in such earlier year, we approve the impugned order on this issue. Both the grounds are dismissed.

15. Ground no. 3 of the Revenue's appeal is against restricting the addition made by the AO on account of income from undisclosed sources on the basis of undisclosed bank account from Rs.5,66,799/- to Rs.3,13,993/-. The facts of this issue are similar to ground no. 3 for the A.Y. 2005-06. The assessee is against the sustenance of the remaining addition. Following the view taken in such earlier year, we approve the impugned order on this issue and dismiss the grounds raised by both the sides on this issue.

16. Ground no. 4 of the Revenue's appeal is against the deletion of addition of Rs.7,20,000/- made by the AO towards unexplained expenditure on foreign travelling.

17. We have discussed this issue in our order for the A.Y. 2006-07 while dealing with ground no. 6 of the Revenue's appeal and have held that no separate addition can be sustained for unexplained expenses if undisclosed income is more than that. For this year also, we find that the AO has estimated expenditure on foreign travel at Rs.7,20,000. Undisclosed professional income for this year has been sustained to the tune of Rs.73.76 lac (Rs.76.74 lac – Rs.2.98 lac). Following the reasons given in our order for the A.Y. 2006-07, we order for the deletion of this addition.

18. The last effective ground in the Revenue's appeal for this year is against the deletion of addition on account of undisclosed investment of Rs.10,96,200/-. The facts of this ground are that page no. 3 of Annexure A-15 divulged that the assessee purchased Shop No.55, LGF, World Trade Centre on 23.1.2007 for a sum of Rs.37,06,200/-. The source of such expenditure was given as sale of another property, namely, Shop No.79, LGF, WTC, for a sum of Rs.26,10,000/-. The AO added the

differential amount of Rs.10,96,200/-. The ld. CIT(A) deleted this addition. The Revenue is aggrieved against this deletion.

19. Having heard both the sides and perused the relevant material on record, we find that the facts of this ground are similar to ground no. 5 of the Revenue's appeal for the A.Y. 2006-07. Following the reasons given for deletion of such addition, we countenance the view taken by the ld. CIT(A) in deleting the addition for the current year as well because the amount of this investment along with the other unexplained expenditure is more than the undisclosed professional income sustained by us.

20. The grounds taken by the assessee in its appeal against sustenance of remaining addition are dismissed for the reasons given in the earlier years' orders. As regards the ground challenging initiation of re-assessment, the ld. AR was fair enough not to press the same, which is hereby dismissed as not pressed.

21. In the result, both the appeals are dismissed.

**Assessment Year 2008-09**

22. First two grounds of the Revenue's appeal are against substituting income from profession to Rs.61,52,361 as against Rs.78,69,735 assessed by the AO on the basis of entries in the impounded register. The assessee has challenged the sustenance of the balance addition. Similar grounds were there in the appeals for the A.Y. 2005-06. In such earlier year, the income of Rs.54 lac determined by the AO was reduced by the Id. CIT(A) to Rs.40.17 lac. We have upheld the view of the Id. CIT(A) for such earlier year. Since the facts and circumstances of the year under consideration are *mutatis mutandis* similar to those for the A.Y. 2005-06, following the view taken in such earlier year, we approve the impugned order on this issue. Both the grounds are dismissed.

23. Ground no. 3 of the Revenue's appeal is against restricting the addition made by the AO on account of income from undisclosed sources on the basis of undisclosed bank account from Rs.21,77,352/- to Rs.6,20,251/-. The facts of this issue are similar to ground no. 3 for the A.Y. 2005-06. The assessee is against the sustenance of the remaining

addition. Following the view taken in such earlier year, we approve the impugned order on this issue and dismiss the grounds raised by both the sides on this issue.

24. The assessee's challenge to the additions sustained by the ld. CIT(A) is dismissed because of the reasons given in earlier years. The ground taken by the assessee against the reopening of assessment does not arise out of the impugned order because the assessment in this case has been completed u/s 143(3) without any reference to the provisions of section 147.

25. In the result, both the appeals are dismissed.

### **Assessment Year 2009-10**

26. First two grounds of the Revenue's appeal are against substituting income from profession to Rs.34,16,080 as against Rs.60,53,959 assessed by the AO on the basis of entries in the impounded register. The assessee has challenged the sustenance of the balance addition. Similar grounds were there in the appeals for the A.Y. 2005-06. In such

earlier year, the income of Rs.54 lac determined by the AO was reduced by the Id. CIT(A) to Rs.40.17 lac. We have upheld the view of the Id. CIT(A) for such earlier year. Since the facts and circumstances of the year under consideration are *mutatis mutandis* similar to those for the A.Y. 2005-06, following the view taken in such earlier year, we approve the impugned order on this issue. Both the grounds are dismissed.

27. Ground no. 3 of the Revenue's appeal is against restricting the addition made by the AO on account of income from undisclosed sources on the basis of undisclosed bank account from Rs.2,78,172/- to Rs.63,000/-. The facts of this issue are similar to ground no. 3 for the A.Y. 2005-06. The assessee is against the sustenance of the remaining addition. Following the view taken in such earlier year, we approve the impugned order on this issue and dismiss the grounds raised by both the sides on this issue.

28. In the result, the appeal is dismissed.

The order pronounced in the open court on 06.10.2015.

Sd/-

[SUCHITRA KAMBLE]  
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]  
ACCOUNTANT MEMBER

Dated, 06<sup>th</sup> October, 2015.

dk

Copy forwarded to:

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

AR, ITAT, NEW DELHI.