

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'E' NEW DELHI  
BEFORE SHRI R. S. SYAL, ACCOUNTANT MEMBER  
AND  
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER  
I.T.A .No.-2488/Del/2013  
(ASSESSMENT YEAR-2006-07)**

|   |    |  |
|---|----|--|
| DCIT<br>Circle 41(1)<br>New Delhi<br><br><b>(APPELLANT)</b> | vs | Madhukar Sharma<br>1179, Sector-37<br>Noida<br>AAMP11094A<br><br><b>(RESPONDENT)</b> |
|---|----|--|

|                      |                                 |
|----------------------|---------------------------------|
| <b>Appellant by</b>  | <b>Sh. Rajesh Kumar, Sr. DR</b> |
| <b>Respondent by</b> | <b>None</b>                     |

|                              |                   |
|------------------------------|-------------------|
| <b>Date of Hearing</b>       | <b>28.03.2017</b> |
| <b>Date of Pronouncement</b> | <b>30.03.2017</b> |

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 16/1/2013 passed by CIT(A)-XXVII-New Delhi.

2. The grounds of appeal are as follows:-

*“On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in:-*

1. *Admitting the additional evidence in contraventions of Rule 46A in spite of the fact that A.O vide letter dated 2/11/2012 has clearly stated that additional evidence should not be accepted as nothing stopped the assessee to produce the same before the A.O.*
2. *Deleting the addition of Rs.37,00,000/- made u/s 69 of the Income Tax Act, 1961 and Rs. 10,43,319/- made u/s 68 of the Income Tax Act, 1961.”*

3. Assessee filed return of income of Rs.4,86,547/- on 30/3/2007. In the assessment order passed u/s 144 of the act, income of the assessee was determined at Rs.53,93,066/- after making various additions i.e. Rs. 37 lakh u/s 69 of the Income Tax Act being unexplained investments in mutual funds, Rs.11,43,319/- u/s 68 of the Act on account of unexplained credits appearing in the assessee's bank A/c and Rs. 56,000/- on account of unexplained cash deposit in the assessee's bank account with ICICI Bank. The assessee is a retired senior citizen who retired from defence services in 1991. He derives income from pension, capital gains and other sources. As per information received in the assessee's case he had made large investments in mutual funds. The A.O called for the copy of the mutual funds investments as well as the assessee's bank accounts u/s 133(6) of the act. The A.O based on information on various entries in the bank account with the investments made by the assessee in different mutual funds, he allowed corresponding credit to the assessee. After allowing such credit, the certain investment entries remained unexplained which the A.O added to the assessee's income u/s 69 of the Act being unexplained investments.

5. Being aggrieved by the same, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

6. The Revenue is before us. The Ld. DR submitted that the Assessing Officer has rightly added certain investment entries which remained unexplained to the assessee's income under Section 69 of the Act. The Ld. DR further submitted that the Assessing Officer correctly observed that apart from verification in respect of Entry No. 17 of the highest amount appearing to be incorrect, an attempt was made to call for copy of assessee's bank accounts from the banks mentioned in the computation of income. Since, accounts Numbers were not mentioned, copy of all the bank accounts could not be called for/collected. On the basis of bank accounts collected, the assessee can be given benefit of some investments only which could be said to be verifiable [even though exact dates do not match] from the bank accounts copy available

on record now. After giving benefit to these investments as reported in AIR information which could be said to be matching & after excluding the sums reported in the AIR information reported as "Others", the following investments still remained, the source of which could not be explained at all. The Ld. DR further submitted that since the source of these credits is not verifiable, and there has been no compliance from the assessee these credits amounting to Rs.11,43,319/- are added to the total income of the assessee being unexplained as per Section 68 of the I.T Act, 1961. The CIT(A) has totally ignored these aspects, therefore, the appeal of the Revenue be allowed.

7. We have heard Ld. DR and perused the records available before us. The assessee in response to these addition submitted before the CIT(A) that he had received retirement benefits of Rs.20 lakhs in the year 1991 on his retirement from the defence services. This sum was invested in FDRs with bank for earning interest income. In the year 2003-04 he started investing in mutual funds out of these FDRs. At the close of the immediately preceding Financial Year i.e. on 31/3/2005, the assessee had investments amounting to Rs.30,00,799/- in mutual funds. Details of these investments as on 31/3/2005 were filed in the form of a balance sheet as on 31/3/2005. These investments were redeemed and again reinvested thereby switching the investment from one mutual fund to the other on the advice of some portfolio managers. As a result of switching of investment there were total redemptions of Rs.58.67 lakhs during the year under consideration. Copies of corresponding bank accounts and mutual fund statements showing redemptions wherever available was placed on record during the assessment proceeding. Therefore, all the investments made in mutual funds during the year under consideration were explained. The assessee's submissions along with the additional evidence filed by him before the CIT(A) was forwarded to the A.O for his comments. The A.O in his remand report dated 2/11/2012 simply repeated the observations made in the assessment order regarding the issuance of notices and non compliance on the part of the assessee but did not commented or made any

observations on merits. The only observation made by the A.O is that as the assessee had not filed any submissions/replies during the course of the assessment proceedings in spite of various opportunities, the additional evidence filed by him at the appeal stage should not be accepted. The assessee's explanation in this regard was that he was under judicial custody for the period 20/11/2008 to 2/1/2009. The same documentary evidence in the form of a copy of the FIR filed against him, a copy of his arrest letter, copy of court proceedings notice and a copy of bail letter dated 20/1/2009 was filed in support of this contention before the CIT(A).

8. Thus, the CIT(A) has taken into cognizance all the documentary evidence. The absence of the same during the assessment proceeding which prevented by sufficient cause from filing this documentary evidence before the A.O. was also rightly considered by the CIT(A). Thus additional evidence filed by the assessee was rightly admitted by the CIT(A). The assessee's bank accounts and copies of mutual fund redemption statements placed in the paper book, various investments made in mutual funds during the year under consideration are out of either redemption of the old investments in mutual funds or out of auto sweep FDR maturity. Therefore, these investments are genuine and was fully explained by the assessee. In support of the loan of Rs.3,50,000/- from CITI Bank, the assessee filed a copy of the sanctioned letter from the CITI Bank. With regard to loan amount of Rs. 75,000/- given by the assessee and received back on 14/2/2006(Rs. 25,000/-) and on 17/3/2006 (Rs. 50,000/-) a confirmation from Sh. S. Madhusudan was filed to this effect giving his complete address, PAN and the ward where he assessed to tax. Both these amounts were received in the HSBC account of the assessee through cheques. However, a perusal of the assessee's bank account no. 00301003348, with ICICI bank revealed that these are following cash deposits in this account-

|            |   |        |
|------------|---|--------|
| 04.04.2005 | - | 40,000 |
| 05.04.2005 | - | 45,000 |
| 07.04.2005 | - | 15,000 |

While explaining the source of these cash deposits the assessee submitted before the CIT(A) that these cash deposits had been made out of cash in hand available as on 1/4/2005 amounting to Rs.2,50,000/-. This explanation of the assessee was rightly not accepted by the CIT(A) because the assessee did not maintain any book of account. No cash flow statement was available on record to show that the assessee actually had cash in hand of Rs. 2,50,000/- as on 1/4/2005. Therefore, amount of Rs.1,00,000/- deposited in cash on different dates in ICICI Bank as mentioned above was rightly added to the assessee's income as unexplained cash credits in the assessee's bank accounts was restricted to Rs.1,00,000/-. Thus, the CIT(A) has correctly arrived at the finding after verifying all the documents. There is no need to interfere with the order of the CIT(A).

9. In the result, the appeal is dismissed.

**The order is pronounced in the open court on 30th day of March, 2017.**

**Sd/-**

**(R.S. SYAL)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 30/03/2017

*R. Naheed \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

|     |  | Date       |       |
|-----|--|------------|-------|
| 1.  | Draft dictated on                                | 28.03.2017 | PS    |
| 2.  | Draft placed before author                       | 29.03.2017 | PS    |
| 3.  | Draft proposed & placed before the second member | .2017      | JM/AM |
| 4.  | Draft discussed/approved by Second Member.       |            | JM/AM |
| 5.  | Approved Draft comes to the Sr.PS/PS             | 30.03.2017 | PS/PS |
| 6.  | Kept for pronouncement on                        |            | PS    |
| 7.  | File sent to the Bench Clerk                     | 30.03.2017 | PS    |
| 8.  | Date on which file goes to the AR                |            |       |
| 9.  | Date on which file goes to the Head Clerk.       |            |       |
| 10. | Date of dispatch of Order.                       |            |       |