

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 5304/Del /2014  
Assessment Year: 2008-09**

**ITA No. 5305/Del /2014  
Assessment Year: 2009-10**

Smt. Rita Kumari, E-1A, Maharani Bagh, New Delhi. (PAN: AAIPK4790M)	vs	DCIT, Central Circle-4, New Delhi.
(Appellant)		(Respondent)

Appellant by : Shri Ashok Kumar, CA  
Respondent by: Smt. Paramita Tripathy, CIT DR

**Date of Hearing : 14.09.2017  
Date of Pronouncement: 31.10.2017**

**ORDER**

**PER BENCH:**

Both these appeals have been preferred by the assessee. ITA number 5304/DEL/2040 pertains to assessment year 2008 – 09 and assails the order dated 23/05/2014 passed by the Ld. CIT (Appeals)–XXXIII, New Delhi whereas ITA number 5305/Del/2014 pertains to assessment year 2009 – 10 passed by

the Ld. CIT (Appeals) – XXXIII, New Delhi on 23<sup>rd</sup> May, 2014. Both these appeals were heard together and are being disposed of through this common order.

2. The brief facts of the case are that a search and seizure operation under section 132 of the Income Tax Act, 1961 was carried out on 21<sup>st</sup> of January 2011 in M/s Dharampal Satyapal group of cases. In response to the statutory notice under section 153A, the assessee filed the return declaring a total taxable income of Rs. 36,00,547/- for assessment year 2008 – 09. Similarly, for assessment year 2009 – 10, in response to the statutory notice under section 153A, the return was filed declaring an income of Rs. 24,43,944/-. During both the years, the assessee had received salary from M/s San Lorenzo AG, Switzerland which was declared after deducting federal pension, social security charges, accidental insurance, group health insurance, pension, personal tax etc. The AO was of the opinion that gross salary is to be brought to tax and therefore proceeded to make an addition of Rs. 3,52,572/- in assessment year 2008 – 09 and of Rs. 3,57,648/- in assessment year 2009 – 10. The appeal by the assessee before the Ld. CIT (Appeals) challenged the assumption of jurisdiction under section 153A of the Act and

also challenged the additions on merits. However, the appeals for both the years were dismissed and now the assessee has approached the ITAT and has challenged the additions on the following grounds –

ITA 5304/Del/2014

*“1. That, on the facts and in the circumstances of the case, the learned CIT (A) has erred in law in confirming the impugned addition of Rs. 3,52,572.00 in the salary income earned in a foreign domain and which is only addition made vide order passed u/s 153 is bad in law, without jurisdiction and void ab initio and deserve to be quashed as such, as the same is in respect of a closed assessment which has not abated and is made not on the basis of any incriminating material unearthed during the course of search ( i.e. not on the basis of any concealed material which was either not disclosed or was intended not to be disclosed ). Rather the addition is made to the normal income already assessed/disclosed and not in respect of any undisclosed income detected based on any incriminating material seized as a result of the search but by misinterpreting the provisions of law and ignoring the real income test and subjecting the impugned amounts to double taxation.*

*2. That, without prejudice to the above ground of appeal in any manner whatsoever , the learned CIT (A) has erred in law in not allowing the deletion of the impugned additions of Rs. 3,52,572.00 to the salary income of the assessee on the merits of the case.*

*3. That without prejudice to the above grounds of appeal, on the facts and in the circumstances of the case, the learned CIT (A) is not justified in law in confirming the charge of interest u/s 234B.*

*The appellant craves leave to add, alter, amend or vary from the grounds of appeal at or before the time of hearing.”*

ITA No.5305/Del/2014:-

*“1. That, on the facts and in the circumstances of the case, the learned CIT (A) has erred in law in confirming the impugned addition of Rs. 3,57,648.00 in the salary income earned in a foreign domain and which is only addition made vide order passed u/s 153 is bad in law, without jurisdiction and void ab initio and deserve to be quashed as such, as the same is in respect of a closed assessment which has not abated and is made not on the basis of any incriminating material unearthed during the course of search ( i.e. not on the basis of any concealed material which was either not disclosed or was intended not to be disclosed ). Rather the addition is made to the normal income already assessed/disclosed and not in respect of any undisclosed income detected based on any incriminating material seized as a result of the search but by misinterpreting the provisions of law and ignoring the real income test and subjecting the impugned amounts to double taxation.*

*2. That, without prejudice to the above ground of appeal in any manner whatsoever , the learned CIT (A) has erred in law in not allowing the deletion of the impugned additions of Rs. 3,57,648.00 to the salary income of the assessee on the merits of the case.*

*3. That without prejudice to the above grounds of appeal, on the facts and in the circumstances of the case,*

*4. a) the learned CIT (A) is not justified in law in not deleting interest u/s 234B, and*

*b) is not justified in law in not deleting interest u/s 244A and 234D.*

*The appellant craves leave to add, alter, amend or vary from the grounds of appeal at or before the time of hearing.”*

3. The Ld. authorised representative submitted that the addition pertaining to salary was the only addition which had been made in both the years under appeal and that these additions were bad in law and without jurisdiction as they were

made in respect of closed assessments which had not abated and which were not made on the basis of material found during the course of search. It was also submitted that the assessee's appeals for assessment years 2007 – 08 and 2010 – 11 in ITA numbers 5303 & 5306 were already allowed by the ITAT Delhi Bench by directing the deletion of additions as no incriminating material had been found during the course of search in respect to the additions made.

4. The Ld. CIT DR supported the orders of the authorities below but could not controvert the fact that the impugned additions were not based on any incriminating material found during the course of search.

5. We have heard the rival submissions and have perused the material on record. In both the appeals, the fact that no assessment was pending has not been disputed by the Ld. CIT DR. It is also undisputed that the AO has not referred to any incriminating material found during the course of search while making the impugned additions. The only dispute is with regard to the question as to whether any addition could have been made without there being any incriminating material having been found and seized during the course of search operations. The

assessing officer has not mentioned any document found during the course of search evidencing that assessee had obtained benefit of pension out of salary income. It is observed that the fact of deduction from the gross salary came to the notice of the assessing officer during the course of assessment proceedings only and it cannot be said that the additions made in respect of deductions claimed by the assessee were on the basis of any incriminating material unearthed during the course of search. ITAT Delhi bench in assessee's own appeals for assessment years 2007 - 08 and 2010 - 11 had deleted similar additions on identical findings of fact. The ITAT Delhi Bench in ITA numbers 5303 and 5306/DEL/2014, vide order dated 4<sup>th</sup> of August 2017, have deleted identical additions to the salary income of the assessee. Respectfully following the same, we hold that no addition could have been made in the years under consideration and ground No. 1 and both the appeals is accordingly allowed.

6. In the final result both the appeals of the assessee stand allowed.

The order is pronounced in the open court on 31st October,  
2017.

**Sd/-**

**(G.D. AGRAWAL)  
PRESIDENT**

**Sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 31st October, 2017

‘GS’

Copy forwarded to:

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

TRUE COPY

By Order

ASSISTANT REGISTRAR