

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER**

**ITA No.887/Del/2015
Assessment Year : 2011-12**

Rubina Mittal, R 29, Vikas Marg, Shakarpur, Delhi.	Vs.	DCIT, Central Circle- 17, New Delhi.
PAN : AALPM8089Q		
(Appellant)		(Respondent)

Assessee by : Shri Ridhi Karan Aggarwal, CA
Department by : Ms. Yamini, Sr.DR
Date of hearing : 21-11-2017
Date of pronouncement : 21-11-2017

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 10.11.2014 of CIT(A)- XXXII, New Delhi relating to assessment year 2011-12.

2. This appeal was earlier dismissed by the Tribunal for non-prosecution. Subsequently, the Tribunal vide order dated 06.10.2017 in MA No.360/Del/2016 recalled its earlier order. Hence, this is a recalled matter.

3. Facts of the case, in brief, are that the assessee is an individual and filed her return of income on 01.02.2013 declaring total income of Rs.15,02,078/-. A search and seizure operation u/s 132 of the I.T. Act was conducted at the business/residential premises of the assessee on 19.10.2010. The assessee derives income from salary and business. She is a professor at a college of

Delhi University and is also engaged in a proprietary business of providing temporary infrastructure facilities for various events under the name of “Pinnacle Designs and Exhibits”. She also receives director’s remuneration from a company.

4. During the course of assessment proceedings, the Assessing Officer observed that the assessee has debited the following expenses in her Profit & Loss Account :-

(i)	Motor Expenses	Rs.2,29,570/-
(ii)	Labour Expenses	Rs.5,40,750/-
(iii)	Insurance Expenses	<u>Rs. 20,280/-</u>
	Total	Rs.7,90,600/-

5. The Assessing Officer asked the assessee to prove that the above expenses have been incurred wholly and exclusively for business purpose with documentary evidences. It was explained by the assessee that it is very difficult to obtain voucher/bills on all occasions for the expenses of the above nature. Rejecting the explanation given by the assessee, the Assessing Officer disallowed an amount of Rs.1,58,120/- being 1/5th of such expenses.

5.1 Similarly, the Assessing Officer also made addition of Rs.9,20,000/- being cash found during the course of search from the residence of the assessee at 26A Firozshah Road, New Delhi. He observed that in the statement recorded

during the course of search, the assessee was asked to explain the same. It was replied by the assessee that an amount of Rs.2,50,000/- represents her savings and the explanation for the remaining amount would be furnished in due course. During the assessment proceedings, the Assessing Officer again asked the assessee to explain the source of cash found. It was submitted by the assessee that Rs.5,00,000/- belongs to her out of her personal savings over the years and Rs.1,00,000/- belongs to her mother-in-law Smt. Mridula Mittal and an amount of Rs.3,20,000/- belongs to the proprietary concern of the assessee. The Assessing Officer observed that as per the books the cash in hand comes to Rs.1,08,441/- whereas the assessee is claiming that cash of Rs.3,20,000/- belongs to the proprietary firm. The Assessing Officer confronted the same to the assessee. Rejecting the various explanation given by the assessee, the Assessing Officer made addition of Rs.9,20,000/- to the total income of the assessee as unexplained cash u/s 69A of the I.T. Act.

6. In appeal, the Id. CIT(A) restricted the disallowance to 10% of the expenses as against 20% made by the Assessing Officer in case of Motor Car expenses and Insurance. However, he deleted the disallowance of labour expenses. So far as the addition on account of cash found during the course of search is concerned, the Id. CIT(A) deleted the addition to the extent of Rs.3,20,000/- which according to him was part of regular books of account of

the assessee. He, however, sustained the addition of Rs.6,00,000/- by observing as under :-

“14. I have considered the facts of the case, the written submissions of the appellant and the finding give by the Assessing Officer in the assessment order. The Assessing Officer made the impugned addition on the ground that the explanation give by the appellant with regard to the source of cash found during the course of search amounting to Rs.9,20,000/- was not substantiated with any evidence. Out of the total cash of Rs.9,20,000/- found, the appellant claimed that an amount of Rs.5,00,000/- belonged to her out of her personal savings over the years and Rs.1 lac belonged to her mother in law. However, the appellant could not substantiate his claim with any cogent evidence. The Assessing Officer had rightly pointed out that it was not possible to have a cash saving of Rs.5 lacs out of the cumulative drawings of Rs.12,20,000/- made for house hold expenses during the period 1.04.2004 to 31.03.2011. The appellant also did not explain as to why she had kept the accumulated savings in cash with her instead of depositing the same in her bank account. Similarly, no cogent evidence was furnished with regard to the cash of Rs.1 lac claimed to be belonging to the appellant's mother. In view of these facts, it was rightly held by the Assessing Officer that the amount of Rs.6 lacs claimed to be belonging to herself and her mother was unexplained as it was not supported by any corroborative evidence and, therefore, added back to the income of the appellant.”

7. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal.

8. Ld. counsel for the assessee did not press the grounds relating to Motor Car expenses and labour expenses. It is pertinent to mention here that the Id. CIT(A) has already deleted the entire labour expenses and, therefore, the ground relating to disallowance of labour expenses is a frivolous one.

9. So far as Insurance expenses is concerned, the same relates to disallowance of Rs.2028/- being 10% of Rs.20,280/-. Considering the smallness of the amount and considering the facts of the case that one of the vehicle is a commercial vehicle, the disallowance of Rs.2028/- sustained by the

ld. CIT(A), in my opinion, is uncalled for. Accordingly, the same is directed to be deleted.

10. So far as the addition of Rs.6,00,000/- is concerned, I find the ld. CIT(A) sustained the addition on the ground that the assessee could not substantiate the source with any cogent evidence. She did not explain as to why she had got the accumulated savings of Rs.5,00,000/- in cash with her instead of depositing the same in her bank account. Similarly, the ld. CIT(A) has observed that no cogent evidence was furnished with regard to the cash of Rs.1,00,000/- claimed to be belonging to the assessee's mother. It is the submission of the ld. counsel for the assessee that given an opportunity, she will be in a position to substantiate with evidence to the satisfaction of the Assessing Officer regarding the availability of cash of Rs.5,00,000/- with the assessee and cash of Rs.1,00,000/- available to her mother-in-law. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one more opportunity to the assessee to substantiate with evidence to the satisfaction of the Assessing Officer regarding the availability of cash of Rs.5,00,000/- with assessee and Rs.1,00,000/- with her mother-in-law. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The ground raised by the assessee on this issue is accordingly allowed for statistical purposes.

11. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court at the time of hearing itself i.e. on this 21st day of November, 2017.

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 21-11-2017.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi