

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'B', NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 815/Del/2016
AY: 2011-12**

ACIT, Circle 62 (1) New Delhi	Vs.	Ashok Thapar HUF C-7, Ansal Villa Satbari Mehrauli New Delhi 110 030 PAN: AADHA7372L
(Appellant)		(Respondent)

Department by : Ms. Ashima Neb, Sr.D.R
Assessee by : Sh. T.R. Talwar, Adv.

Date of Hearing : 25th September, 2018

Date of Pronouncement: 26th September, 2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by Revenue, against order dated 18/12/15 passed by Ld.CIT(A)-20, New Delhi for Assessment Year 2011-12 on the following grounds of appeal:

- (I) *In the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the expenses of Rs.80,66,174/- without appreciating the fact that expenses claimed by the assessee are not directly attributable to the income of the assessee.*
- (II) *In the fact and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.1,35,87,820/-*

made u/s 68 of the act and addition of Rs.70,29,249/- made u/s 69 of the act without appreciating the fact that assessee failed to substantiate its claim regarding cash deposits and term deposits during the assessment proceedings and additional evidence was accepted under rule 46A without taking into consideration the remand report submitted by the A.O.

(III) That the appellant, craves, leave to add, amend or modify the ground(s) of appeal at any time.

Relief claimed in appeal

As per the grounds of appeal & the order passed by Ld. CIT(A)-XX, New Delhi be quashed.

2. Brief facts of the case are as under:

Assessee filed its return of income on 30/09/11 declaring income of Rs.1,04,21,750/-. The return was processed under section 143 (1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), and case was selected for scrutiny. Representative of assessee appeared before the Ld. AO with whom the case was discussed. Various requirements were requisitioned vide questionnaire and order sheet entries to assessee.

2.1. It is recorded in assessment order that assessee has claimed to be engaged in leasing business. Ld.AO observed that assessee had taken property on lease from Sh. Ashok J Thapar, which was further sublet. Against sub-leasing, Ld.AO observed that assessee received rental income of Rs.2,02,35,075/-. Against rental income, assessee claimed various expenses. As assessee failed to produce any supporting evidences, Ld.AO disallowed the expenses being unverified and also treated the rental receipt as net business income of assessee. Ld.AO further treated interest income as income from other sources. Further Ld. AO also disallowed a sum of Rs.1,58,45,629/- which was paid by

assessee to Sh.Ashok J Thapar, towards lease of premises on which no TDS was deducted by assessee.

2.2. On further analysis of the documents filed by assessee, Ld.AO observed that as per AIR information cash deposits has been made by assessee into the bank accounts to an extent of Rs.89,50,000/-. Further on examination of cash book it was observed that assessee was having cash in hand of Rs.1,55,39,251/-. On examination of bank statements filed by assessee Ld.AO observed that assessee has deposited cash in bank to an extent of Rs.46,37,820/-. Ld.AO asked assessee to explain source of these cash in hand for which neither any details were furnished nor any satisfactory explanation was tendered. Ld.AO thus made an addition of Rs.1,35,87,820/- as cash deposits under section 68 of the Act.

2.3. Further Ld.AO observed that as per AIR information assessee had made term deposits with bank for which the source of income was not explained. As assessee failed to substantiate the same by way of any evidence, Ld.AO made addition under section 69 of the Act.

2.4. Aggrieved by the addition made by Ld.AO, assessee preferred appeal before the Ld.CIT (A). Before Ld.CIT (A) assessee filed various details which amounted to additional evidence. Ld. CIT(A) accordingly called for remand report in respect of the same. Thereafter after considering the submissions advanced by

assessee in light of remand report, Ld.CIT (A) deleted certain additions.

3. Aggrieved by the order of Ld. CIT (A) revenue is in appeal before us now.

4. Ground No. 1 raised by revenue is in respect of allowing the expenses of Rs. 80,66,174/-.

4.1. Ld.Sr.DR submitted that, while deleting disallowance of expenses, Ld.CIT(A) referred to Part-III, and IV of Lease Agreement. However in paper book, Lease Agreement does not contain any such part as mentioned by Ld.CIT (A). Further Ld. Sr.DR submitted lease agreement dated 01/04/10 entered into between assessee and Sh.Ashok J Thapar, placed at page 35-38 of paper book, is in respect of same premises, which assessee sublet to LIC. Referring to clause 3 at page 36, Ld.Sr.Dr submitted that, all major repairs, like damage of electricity cable, bursting sanitary pipes, cracks etc., was to be done by Lessor therein, being Sh.Ashok J Thaper, and not assessee before us. And that it is difficult to accept contentions of assessee, having incurred all major expenses. Supporting order of Ld.AO, she submitted that Ld.CIT(A) failed to verify agreements before granting relief to assessee. She further casted heavy doubt on the expenses incurred by assessee which has been claimed against the rental income. Assessee has not filed any bills or vouchers in respect of huge expenses claimed for year under consideration, for which business purpose has not been proved, as required under section 37 (1).

4.2. Ld.AR on the contrary, submitted that, assessee is also having money lending activities, against which, expenses were

incurred for year under consideration. He submitted that Ld. CIT (A) correctly observed that Department has accepted money lending activity carried on by assessee in the preceding Assessment Years and admittedly interest income were treated as business income of assessee, against which various expenditure were debited by assessee.

5. We have perused the submissions advanced by both sides in light of records placed before us. On perusal of grounds raised by assessee before Ld. CIT (A), it is observed that assessee has not challenged the change of head by Ld.AO regarding interest income. Therefore in a way assessee has accepted interest income to be treated as income from other sources. On a query being put up by the Bench to Ld.AR, it has been submitted that consciously assessee has not disputed this issue before Ld.CIT(A) and also before this Tribunal. Therefore, in our considered opinion, the argument advanced by Ld.AR, of considering expenses incurred by assessee also for money lending activities stands rejected.

5.1. Further even before Ld. CIT (A) assessee has neither filed any bills/vouchers nor provided sufficient evidences in order to prove the business exigency for incurring such expenses.

5.2. Now coming to expenses alleged to have been incurred in respect of sub-lease agreement, it is observed that Ld.CIT (A) has referred to certain obligations mentioned in Part III and IV of such agreement, which is not placed on record before us. The sub lease agreement placed in paper book before us, at pages 22 -31, do not refer to any such parts. On perusal of the sublease agreement placed at page 22-31 of paper book, Clause 1 (e) deals

with necessary repairs required to be carried out to keep the demised premises in good tenantable condition. Admittedly assessee has not filed before the authorities below any of the details regarding huge expenditure alleged to have been incurred for discharge of obligation in terms of repairs. We, therefore fail to understand, on what basis Ld.CIT (A) held that, assessee has discharged a number of obligations which was agreed upon between the parties to the sub-lease. We find there is difference in sub-lease agreement, relied upon by Ld.CIT(A) and sub-lease agreement that is placed before us in the paper book.

5.3. We accordingly set aside this issue back to Ld.AO for verification. Assessee is directed to produce lease Agreements before Ld.AO in connection with the demised premises therein, along with bills/vouchers in respect of expenditure incurred towards sub-lease premises which are alleged to have been incurred by assessee. The Ld.AO is then directed to verify the same as per law, and if found genuine as per sub lease agreement entered into by assessee with LIC, may allow the claim of assessee.

Accordingly we set aside ground No. 1 to Ld. AO for due verification as per law.

6. Ground No. 2 has been alleged by revenue against deleting the addition made by Ld.AO under section 68 and section 69 of the Act.

6.1. Addition under section 68

Ld. Sr.DR submitted that as per the AIR information cash deposits has been made by assessee in bank on various dates for which assessee has not offered any explanation. She further

submitted that from the cash book placed before the Ld. AO it has been recorded that assessee was having cash in hand of Rs.1,55,39,251/- for which the source has not been explained by assessee. Ld.Sr.DR further submitted that from the bank statement filed by assessee Ld. AO has observed cash deposits on various dates amounting to Rs. 46,37,820/-for which again no explanation were provided. She submitted that before Ld. AO, assessee failed to submit an explanation of the source of cash in hand and also could not substantiate that reasons for withdrawals of such cash claimed to be cash in hand. She submitted that before the Ld.CIT(A) assessee submitted additional evidence regarding utilisation of cash in hand in advance for some land deals which could have been filed before Ld. AO during assessment proceedings.

6.2. Ld.Sr.DR submitted that Ld. CIT (A), after calling for the report from Assessing Officer on the additional evidences so filed, deleted the addition without verifying the genuineness of the transaction, identity and creditworthiness of the parties from whom the cash has been received back on alleged cancelled transactions. She submitted that these documents were objected by Ld. AO as they were not verified.

6.3. On the contrary Ld.AR submitted that assessee is in the business of leasing and sub-leasing of properties and during the year under consideration cash deposits in the bank as claimed to have been made from cash in hand. He submitted that purpose of keeping cash in hand is for giving advances to the farmers for taking their land on lease as they insist upon cash. Ld.AR submitted that Assessing Officer has also doubted the cash in

hand which is coming from earlier years. He submitted that these are utilised for acquiring agricultural land in nearby areas, NCR, where conversion of land for use for housing/office was taking place. Ld.AR further submitted that during the financial year 2009-10 assessee had acquired certain acres of land and other deals could not materialise which resulted into non-consolidation of certain plots. Ld.AR further submitted that since no new deals came up, cash was deposited in banks.

7. We have considered the rival contentions of both sides in the light of records placed before us.

7.1. It is observed from the paper book that at pages 75 to 90 assessee has placed certain receipts in respect of payments made to some parties. Ld. AO has objected to these documents as these are not verified. Further assessee has not established that all deposits made in bank accounts were in respect of cancellation of deals as has been alleged by assessee. Further assessee submitted regarding opening cash balance which was accepted by authorities below in immediately preceding year. We therefore direct assessee to produce all the parties with whom deals were cancelled and money has been deposited in bank accounts. Ld.AO is directed to take into consideration opening balance appearing in books of accounts of assessee, before verifying identity, creditworthiness and most importantly genuineness of transaction, that has been alleged to have been cancelled, in lieu of which, cash were deposited back into the accounts.

7.2. Insofar as the withdrawals are concerned assessee is directed to reconcile the statement of withdrawals with deposits into bank accounts maintained by assessee. In the event the co-

relation of withdrawals with the deposits is successfully made by assessee in terms of the deals that has been cancelled, no further enquiries need to be made by Ld. AO. On the contrary, if there are certain cash in hand/deposits in bank, for which there is no corresponding withdrawal, assessee is directed to establish source of such cash/deposits in the bank to the satisfaction of Ld. AO as per section 68 of the Act, which means assessee is directed to establish identity, creditworthiness and most importantly genuineness of cash deposited in bank as well as cash in hand. Ld. AO shall then verify the same as per law.

With these directions we set aside this ground to Ld. AO.

8. Addition under section 69

It is observed that assessee had made certain term deposits and since during assessment proceedings, no information was provided by assessee and the same was added by Ld.AO. Ld. Sr. DR placed reliance upon the observations of Ld. AO.

8.1. Ld.AR submitted that these term deposits were made on 07/08/08 with Bank of Baroda for a sum of Rs.70,29,245/-. It has been submitted that this is an old FDR which was renewed from time to time.

9. We have perused the submissions advanced by both sides in light of records placed before us.

9.1. Ld. CIT (A) has observed that a sum of Rs. 55,35,000/-was put on FDR on 07/05/07 which was renewed from time to time. During year under consideration the renewal was of Rs.17,29,245/-and FDR was closed on 21/09/09. Under such circumstances we do not find it a fit case for an addition under section 69, as during relevant Assessment Year in which deposit

was initially made, the authorities has accepted the same. Accordingly this addition alleged by revenue stands dismissed.

Accordingly the ground raised by revenue stands partly allowed.

10. In the result the appeal filed by revenue stands partly allowed.

Order pronounced in Open Court on 26th September,2018.

Sd/-

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 26th September, 2018

*Gmv

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

Draft dictated on	26.09.18
Draft placed before author	26.09.18
Draft proposed & placed before the Second Member	
Draft discussed/approved by Second Member	
Approved Draft comes to the Sr. PS/PS	
Kept for pronouncement	
Order uploaded on	
File sent to Bench Clerk	
Date on which the file goes to Head Clerk	
Date on which file goes to A.R.	
Date of Dispatch of order	