

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

**BEFORE SHRI NK SAINI, VICE PRESIDENT AND  
SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 3272/Del/2015**

**AY: 2008-09**

**&**

**ITA No. 3273/Del/2015**

**AY: 2009-10**

ACIT, Central Circle 18 Room No.357, ARA Centre E-2, Jhandewalan Extn. New Delhi 110 002	<b>vs.</b>	Sh. Braham Arenja Suite No.212, E-564 Greater Kailash, Part 2 New Delhi  PAN: AADPA1953D
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**(Appellant)**

**(Respondent)**

**Department by :** Sh. Amit Katoch, Sr. D.R.

**Assessee by :** Sh. Satyam Sethi, Adv.

**Date of Hearing :** 28/11/2018

**Date of Pronouncement:** 28/11/2018

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

Present appeals have been filed by revenue, against order dated 19/02/15, passed by Ld.CIT(A)-27, New Delhi for Assessment Year (A.Y.) 2008-09 and 2009-10 on following grounds of appeal:

**ITA No. 3272/Del/2015**

*“1. The Ld.CIT(A) has erred in law as well as on facts in deleting addition of Rs.75,00,000/- on account of undisclosed income of assessee.*

*2.(a) The order of Ld.CIT(A) is erroneous and not tenable in law and on facts.*

*(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of hearing of appeal.”*

ITA No. 3273/Del/2015

*“1. The Ld.CIT(A) has erred in law as well as on facts in deleting addition of Rs.75,00,000/- on account of undisclosed income of assessee.*

*2.(a) The order of Ld.CIT(A) is erroneous and not tenable in law and on facts.*

*(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of hearing of appeal.”*

**2.** At the outset Ld.AR submitted that, issues involved in both appeals are identical and similar. We are accordingly inclined to pass consolidated order in respect of both Assessment Years under consideration. For sake of convenience, we are considering facts relevant to Assessment Year 2008-09 in ITA No. 3272/Del/2015.

**3.** Brief facts of the case are as under:

Search was conducted in Aerens Group on 17/08/2011, followed by search and seizure under section 132 of the Act on 10/02/12 in office of assessee. Subsequently, notice under section 153A of the Act was issued on 30/12/13. In compliance to notice, return declaring income of Rs.4,69,250/-was filed. Thereafter notice under section 142 (1) along with questionnaire was issued

to assessee in response to which, representative of assessee appeared before Ld.AO and filed details and written submission as called for.

**3.1.** Ld. AO observed that during search, diary was seized from residence of assessee, showing marriage expenses of his daughter amounting to Rs.1.5 crores. On detailed scrutiny of seized diary Ld.A.O. observed that expenses were incurred in financial Year 2007-08 and also certain payments were relating to financial Year 2008-09. Subsequently, Ld. AO raised query to explain nature and source of expenses mentioned in diary. In reply, assessee submitted that seized diary belonged to his married daughter, who lives in England. It was also observed by Ld. AO that married daughter was present at residence of assessee on the day of search, who flew back to England and diary was impounded from her bag. It was also submitted by assessee that said diary was maintained by assessee's daughter and contained her assignment relating with her employment, as well as other notings regarding her expenditure. Assessee thus submitted that since seized diary belonged to his daughter assessee was not in a position to explain details mentioned in it.

**3.2.** Assessee however had admitted to expenses incurred amounting to Rs.64,75,423/-on his daughter's marriage, during year under consideration. Ld. AO however under section 132 (4A) of the Act presumed that seized diary belonged to assessee, and contents of documents were true. He thus cast onus upon assessee to explain contents of seized diary satisfactorily. Since assessee failed to rebut legal presumption under section 132 (4A) as regards ownership of documents with supporting

evidence Ld.A.O. split up expenses for 2 years and made addition in respect of A.Y. 2008-09 and 2009-10 amounting to Rs. 75 Lakhs each.

**4.** Aggrieved by order of Ld. AO assessee preferred appeal before Ld.CIT(A), who deleted addition made by Ld.AO in respect of both A.Ys under consideration.

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

**6.** Ld.Sr.DR placed reliance upon order of Ld. AO.

**7.** Ld.AR on the contrary submitted that addition made by Ld. AO is based upon seized diary, that belonged to assessee's daughter. It was submitted by him that assessee had stated seized diary, belonging to his daughter at the time of search, and therefore conclusion of Ld.A.O. by raising presumption under section 132 (4A) of the Act, was not legally sustainable. There is no other cogent material that has been brought on record to prove that seized diary entries represented expenditure incurred by assessee. He placed reliance upon decision of *Hon'ble Delhi High Court* in case of *CIT vs. Ved Prakash Choudhary* reported in (2008) 169 Taxmann 130, wherein *Hon'ble Court* held as under:

*"It is true that section 132 (4A) of the act enables the court to presume the truth of the content of such books. However, it is a presumption which can be rebutted. Moreover the presumption and discharged therein is only a factual presumption. It is in the discretion of the court, depending upon other factors, to decide whether the presumption must be drawn. The expression used in subsection is "may be presumed" as is used in section 114 of the*

*Evidence Act, 1872. It is not a mandate that whenever the books of account are seized, the court shall necessarily draw the presumption, irrespective of any other factors which may dissuade the court from doing so.”*

Ld.AR submitted that assessee rebutted presumption at the stage of search itself, by submitting that seized diary belonged to his daughter, who lives in England after marriage.

**8.** We have heard both sides in light of records placed before us.

**9.** The only grievance of revenue is in respect of addition of Rs.75 lakhs being deleted on account of unexplained expenditure.

**9.1.** From assessment order, it is observed that, assessee admitted to have spent a sum of Rs.64,75,423/- on marriage of his daughter in the years under consideration, which has been found to be reflected in books of accounts of assessee by Ld.CIT(A). It was also submitted that seized diary belonged to assessee's daughter and therefore presumption under section 132 (4A) stood rebutted at initial stage itself. It is further observed that Ld.A.O. himself admitted circumstantial evidence of his daughter working with “Star Magna” being an event management company wherein, she was drawing salary and her income tax returns were also filed for relevant assessment years. Ld.A.O. also acknowledges the visiting card that was found from seized diary, wherein daughter's name was mentioned showing her employment with “Star Magna”. Under such circumstances invoking presumption under section 132 (4A) regarding ownership of seized diary with assessee, without any

supporting evidence is not acceptable. In our opinion we agree with Ld.CIT (A) that Ld.AO failed to discharge his onus to prove that seized diary belongs to assessee and contents mentioned in seized diary represented undisclosed income of assessee.

It is observed that Ld.CIT (A) while deciding issue has referred to assessee's statement recorded under section 132 (4) of the Act, wherein, assessee categorically submitted that seized diary belonged to his daughter, and only she could explain entries made therein. Ld.CIT (A) granted relief to assessee by observing as under:

*“7.1. From the above it amply clear that during the very initial stage of the search the appellant had stated that the diary belonged to her daughter who could only explain the contents thereof. Therefore, the observation of the A.O. that the statement of the appellant that the diary belonged to her daughter was only an afterthought is not well founded. Further, the A.O. did not bringing on record any cogent material to prove that the entries contained in the said diaries represented the expenditure incurred by the appellant in connection with the marriage of his daughter. In fact, during the course of assessment proceedings, the appellant duly filed the details of expenditure incurred on the marriage of her daughter which were reflected in the statement of affairs filed before the Assessing Officer. Although no adverse inference was made by the Assessing Officer with respect to the details of marriage expenses of her daughter filed by the appellant, yet he proceeded on the unfounded presumption that the contents of the seized diary, represented unexplained marriage expenses incurred by the appellant from undisclosed sources without discharging the*

*onus of proving that the appellant was the owner of the seized document. It was submitted before the Assessing Officer as well as contended before me that the daughter of the appellant was present in India at the house of the appellant with her husband and a son at the time of search and flew back to England on the same afternoon with the permission of the officer present at the house at that time and the dairy in question was impounded from her bag after searching her entire luggage. This submission of the appellant was not rebutted by the Assessing Officer in the assessment order. Therefore, considering all these facts, I hold that the Assessing Officer was not at all justified in making the impugned addition to the income of the appellant. Accordingly, the addition of Rs.75,00,000/- made by the Assessing Officer as undisclosed of the appellant is **deleted**.*

**9.2.** We do not find any infirmity in above observations by Ld.CIT (A) and same is upheld.

**9.3. Accordingly ground raised by revenue in this appeal stands dismissed.**

#### **10. A.Y: 2009-10**

Facts admittedly is similar for Assessment Year 2009-10 and only issue raised by revenue is in respect of addition being deleted on account of undisclosed expenditure.

**10.1.** We have already discussed at length, this issue in immediately preceding Assessment Year and have dismissed appeal filed by revenue.

**10.2.** We do not find any distinguishing facts in year under consideration to deviate from aforestated reasoning.

**10.3. Accordingly ground raised by revenue in this appeal stands dismissed.**

**11. In the result appeals filed by revenue for Assessment Year 2008-09 and 2009-10 stand dismissed.**

Order pronounced in the Open Court on 28.11.2018

Sd/-  
**( N.K. SAINI )**  
**VICE PRESIDENT**

Sd/-  
**(BEENA A PILLAI)**  
**JUDICIAL MEMBER**

Dt. 28.11.2018

*\*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

