

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 497 & 498/Del/2015  
(Assessment Year: 2010-11 &2011-12)

Sandeep Wadhwa, C/o. M/s. RRA Tax India, D-28, South Extension, Part-I, New Delhi PAN: AAHPW8925D	Vs.	DCIT, Central Circle-8, New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Ashwani Taneja, Adv Shri Somil Agarwal, Adv
Revenue by:	Shri S. S. Rana, CIT DR
Date of Hearing	24/10/2018
Date of pronouncement	09/01/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. These are the two appeals filed by the assessee for the 2 different assessment years. They are heard together and disposed of by this common order.
2. For assessment year 2010 – 11, the assessee has filed appeal against the order of the learned Commissioner Of Income Tax (Appeals) – XXVII, New Delhi dated 11/12/2014 wherein in the appeal filed by the assessee against the assessment order passed under section 153A read with section 143 (3) of the income tax act dated 11/3/13 passed by the learned Deputy Commissioner Of Income Tax, central circle – 8, New Delhi the addition to the extent of INR 225,000 on account of foreign travel under section 69C of the income tax act has been confirmed. The assessee has preferred following grounds of appeal in ITA No. 497/Del/2015 for the AY 2010-11:-
  - “1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 153A/143(3) without assuming jurisdiction as per law and without serving the valid notices as per law and without recording requisite satisfaction as per law and

*without obtaining requisite approval as per law and without complying with other mandatory conditions under the Act and without serving the mandatory notices u/s 143(2) and 142(1) of Income Tax Act, 1961.*

- 2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.2,25,000/- on account of foreign travel u/s 69C of Income Tax Act, 1961.*
  - 3. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.2,25,000/- on account of foreign travel is bad in law and against the facts and circumstances of the case and in any case impugned addition is beyond the scope and jurisdiction of the impugned assessment order.*
  - 4. Without prejudice to the above grounds, additions/disallowances could not have been made in the present appeal because no incriminating material has been found as a result of search.”*
3. The brief facts of the case shows that the assessee filed his return of income under section 153A of the income tax act declaring total income of INR 1028411/- on 18/10/2011 pursuance to search under section 132 of the income tax act at the business and residential premises on 19/10/2010. The assessment under section 153A read with section 143 (3) of the income tax act was passed on 11/3/2013 where the addition on account of unexplained expenditure on foreign tour of INR 225,000 was made by the assessing officer. The brief facts of the disallowance is that it was found by the AO that assessee along with his wife visited Turkey and the expenses incurred on the trip were claimed to have been born by Godrej & Boyce Limited. The learned assessing officer rejected the contention of the assessee as assessee is not director of that company. The assessee was also asked to provide the certificate from that company which assessee failed. Therefore the learned assessing officer held that onus was on the assessee to prove the genuineness of the expenses on his foreign trip along with his spouse and where the expenditure incurred have been accounted for the same. According to the learned assessing officer, market enquiry were conducted to ascertain the estimated cost of the tour undertaken by the assessee and accordingly a sum of INR 225,000 was added under section 69C of the income tax act. The assessee aggrieved with the order has preferred an appeal before the learned CIT – A, who also confirmed the addition vide para number 14 of the order. Therefore the assessee

aggrieved with the order of the learned Commissioner of income tax appeals has preferred an appeal before us.

4. The learned authorised representative submitted that the addition has been made by the learned assessing officer on the basis of the estimate and no actual expenditure has been found to have been incurred by the assessee. He further relied upon the para number 13 of the order of the learned CIT – A where his submissions have been recorded.
5. The learned departmental representative vehemently supported the orders of the lower authorities and stated that assessee has failed to show the source of the expenditure incurred by him on his Turkey visit along with his wife. He further stated that he failed to submit any certificate from the company which he claimed to have born by the company . In view of this he stated that the addition deserves to be confirmed.
6. We have carefully considered the rival submission and perused the orders of the lower authorities. The fact is that assessee visited Turkey along with his spouse and the issue is about the source of expenditure incurred on such visit. The claim of the assessee is that such tour was organized by a company as per the scheme of the said company, assessee and his wife were invited for a tour, where all the expenditure are incurred by that particular company. The assessee was given such an offer only for the reason that assessee is a director in one of the company which was doing the business with that company as a dealer. The assessee also submitted the dealership certificate of that company which organized the tour, Unfortunately assessee could not get the certificate from that company but assessee submitted that such tour was organized by that company and assessee was part of that particular tour. The assessee also submitted some of the copies of the email and itinerary of the program where the name of that particular company was mentioned. Even otherwise the assessee stated that it has not incurred any expenditure on such tour. Despite search on the assessee no evidences of incurring of any expenditure on that tour was found. The learned assessing officer has also merely estimated the amount of expenditure which would have been incurred by the assessee based on the market survey. Therefore the whole addition made by the learned AO was on the estimate basis discarding the fact that assessee was

part of an entourage of a company. The learned AO also did not controvert the fact that assessee is a director of the company which was a dealer of the company who defray the expenditure for the foreign tour. Merely because assessee could not obtain a certificate from a company that such expenditure has been incurred by that particular company for the foreign tour of the assessee and his wife who were part of the dealership entourage of that company, addition cannot be made. Further the assessee was on a tour as a director of the company was a dealer of the organizing company. Therefore even if the addition is required to be made on account of the value of benefit of such tour it is required to be made in the hands of that particular company and not in the hands of the assessee. In view of this, we reverse the finding of the lower authorities and direct the learned assessing officer to delete the addition of INR 225,000 made under section 69C of the income tax act on account of unexplained expenditure incurred by the assessee on foreign tour of assessee along with his spouse. Accordingly ground number 2 and 3 of the appeal of the assessee are allowed.

7. Accordingly ITA number 497/del/2015 filed by the assessee for assessment year 2010 – 11 is allowed.
8. For assessment year 2011 – 12 assessee filed the appeal against the order of The Commissioner Of Income Tax (Appeals) – XX Vii, New Delhi dated 11/12/2014 for assessment year 2011 – 12 passed in appeal filed by the assessee against the order of The Deputy Commissioner Of Income Tax, central circle – 8, New Delhi (the learned AO) dated 11/3/2013 before him wherein certain additions made by the learned assessing officer are sustained. Assessee raised following grounds of appeal:-

- “1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the addition of Rs.37,95,000/- fully as made by Ld. AO on account of unexplained cash found u/s 69A and has further erred in sustaining the addition to the extent of Rs.3,32,103/- and that too without appreciating the facts and circumstances of the case.*
- 2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.3,32,103/- on account of unexplained cash found u/s 69A is bad in law and against the facts and circumstances of the case.*

- 3 *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.3,92,855/- on the ground that no services have been rendered by the assessee and without bringing any contrary material on record and impugned disallowance is beyond the scope and jurisdiction of the impugned assessment order.*
4. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*
9. The brief facts of the case shows that assessee is an individual and search and seizure operation u/s 132 of the income tax act 1961 were conducted at the business and residential premises of the assessee on 19/10/2010. The assessee has filed its return of income on 30/9/2011 declaring total income of INR 12524977/- The assessee is deriving income under the head income from salary and business income over and above income from other sources.
10. During the course of search cash of INR 4005000/- was found at the residence of the assessee. Out of the above cash found an addition of INR 3795000 was made to the total income of the assessee as unexplained cash. Certain other additions and disallowances were also made and consequently the total income of the assessee was assessed at INR 17282832/- vide order dated 11/3/2013 passed u/s 143 (3) of the income tax act 1961. The assessee preferred an appeal before the learned CIT – A. The learned CIT – A upheld the addition of Rs. 332103/- on account of cash found during the course of search and deleted the balance addition. Therefore assessee is in appeal before us.
11. The brief facts of the case shows that a sum of Rs 332103 it was explained that a sum of INR 290000 belongs to the assessee’s parents, INR 140,000 father of the assessee and INR 150,000 to the mother of the assessee which was lying in the premises and was kept by these persons as they are of old age to meet unforeseen exigencies. The balance amount of Rs. 42103/- belong to the wife of the assessee. The assessee further explained that this amount has been generated out of the past saving of the mother of the assessee who is a 74 years old person. The father of the assessee is also 80 years old person. Therefore the cash found with respect to these 2 persons are out of their past savings. It was further stated that during the course of search in the statement also in answer to question number 5 and

question number 9 the assessee stated that these cash belonged to the parents of the assessee. The assessee also submitted that they are assessed to the income tax with the same assessing officer and their case was also reopened by the learned assessing officer under section 153A of the income tax act. However the learned CIT – A rejected the explanation of the assessee and stated that as a legal heir of the father of the assessee the liability to discharge is also based with the appellant and therefore he confirmed the addition of INR 140,000 on account of cash belonging to the father of the assessee. With respect to the cash belonging to the mother of the assessee of INR 150,000 it was held by him that no return of income was filed for the year consideration and therefore the cash found in the course of search was rightly is of the appellant. Accordingly the sum of INR 150,000 with respect to the mother of the assessee was also added in the hands of the assessee. With respect to the addition of Rs 42103/- amount was stated to be belonging to the wife of the assessee but the assessee did not furnish any substantiated evidence and therefore the addition was confirmed in the hands of the assessee. The assessee aggrieved with the order of the learned Commissioner of income tax appeals has preferred an appeal before us.

12. The learned authorised representative submitted that during the course of search the above cash was found to be belonging to the parents of the assessee and wife of the assessee. He stated that same is the statement made by the assessee during the course of search and also during the course of assessment proceedings. He read his explanation made before the learned CIT – A with respect to the all the 3 above items relating to the cash found during the course of search. He further referred to his explanation submitted before the assessing officer Vide letter dated 20/2/2013 by the mother of assessee in her own assessment and the letter dated 25/2/2013 submitted by the late father of the assessee in his assessment proceedings explaining the source of the cash found. Both the parties stated that the above cash belong to them and is not an unexplained income of the parties. Therefore he submitted that looking to the status of the family and the age of the parents the above amount should not be added to the income of the assessee as the source of the above sum is explained. He further submitted that when in their own assessment proceedings the explanation was given

by the parents of the assessee, it was accepted and addition has not been made. Therefore there is no reason that such addition is made in the hands of the assessee.

13. The Id DR relied up on the orders of the lower authorities.
14. We have carefully considered the rival contention and perused the orders of the lower authorities. Apparently the cash found during the course of search was explained by the assessee belonging to his parents. Both the parents of the assessee during the course of their assessment proceedings have explained before their assessing officer that these cash belong to them. In the assessment order it is stated by the learned authorised representative that no addition was made by the assessing officer in their hands when they have owned it. It was further stated by the learned authorised representative that the assessing officer of the parent of the assessee and the assessee are the same. In view of the age of the parents of the assessee, looking at the family status of the assessee, income disclosed by the assessee, fact that father of the assessee is assessed to income tax , the queries raised by the assessing officer of the parents of the assessee in their assessment proceedings and accepted by the assessing officer without making any addition in the hands, we do not find any merit in confirming the addition in the hands of the assessee with respect to the cash belonging to the parents of the assessee. Therefore we reverse the finding of the lower authorities and direct the learned assessing officer to delete the addition of INR 150,000 INR 140,000 respectively belonging to the parents of the assessee on account of cash found during the course of search.
15. With respect to the addition of INR 42103/- said to be belonging to the wife of the assessee the assessee did not furnish any evidence before the learned Commissioner of income tax appeals and therefore the addition was confirmed. Before us also no substantiated evidence is with respect to the balance available with the wife of the assessee of Rs. 42103/- was submitted, therefore we do not find any infirmity in the order of the learned CIT – A confirming the above addition. Accordingly out of the total addition of rupees 332103/- the assessee is granted further relief of INR 290,000/- and the balance addition assistant. Accordingly ground number 1 and 2 of the appeal of the assessee are partly allowed.

16. Next ground number 3 of the appeal of the assessee is related to disallowance of INR 3 92855 out of the consultancy expenses. This was the ground number 5 before the learned Commissioner of income tax appeals who allowed the appeal of the assessee and had deleted the above addition. Therefore the grievance of the assessee does not.
17. Accordingly appeal filed by the assessee is partly allowed.  
Order pronounced in the open court on 09/01/2019.

-Sd/-

(BHAVNESH SAINI)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 09/01/2019  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi