

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

ITA No. 5332/Del/2018
Assessment Year: 2014-15

SH. PRADEEP KUMAR
41, SCS, TRIVENI MARKET,
PASCHIM VIHAR,
NEW DELHI – 63
(PAN: ADSPK2934L)
(APPELLANT)

VS. ITO, WARD 10(1),
C.R. BLDG., NEW DELHI

(RESPONDENT)

Assessee by : SH. PRAMOD KUMAR JAIN, CA
Department by : SH. S.L. ANURAGI, SR. DR.

ORDER

This appeal has been filed by the Assessee against the order dated 28.6.2018 of the Ld. CIT(A)-22, New Delhi relating to assessment year 2014-15 on the following grounds:-

1. The Id. CIT(Appeal) and Ld. AO is bad in law and against the facts of the case.
2. That the Id. AO erred in invoking provisions of section 68 of the Act.
3. That the Ld. AO erred in not allowing specific exemption under section 10(38) for long term capital gain.

4. That the Ld. CIT(Appeals) erred in sustaining the addition made by the Id. A.O. on account of unexplained cash credit u/s 68 of the Income Tax Act amounting Rs. 26,05,780/-.
5. That the Ld. CIT(Appeals) erred in confirming the addition made by the Id. AO on account of commission paid for taking service from the entry operator amounting Rs. 1,30,290/- calculated on adhoc basis.
6. That the Ld. CIT(Appeals) erred in sustaining the addition despite agreeing to the fact of the case evidencing genuineness of the transactions and did not finding any adverse in the documents submitted before the Ld. AO and himself..
7. That the Id. AO did not provide any evidence against appellant while making addition in his order.
8. That the Id. CIT(A) and Ld. AO also erred in not following various judgments of High Court and ITAT.
9. That the appellant carves leave to add, alter, modify or delete any of the ground of appeal.

PRAYER

On the facts and in the circumstances of the case and in view of judicial precedents, it is humbly prayed that:

1. Order passed u/s 143(3) be quashed and set aside;
 2. Addition of Rs. 27,36,070/- be deleted; and
2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.
3. Ld. Counsel of the assessee stated that the Ld. CIT(A) has passed the impugned order 28.6.2018 without adjudicating the ground no. 1.1 and 1.3 raised before him. Hence, he requested that the issues in dispute may be set aside to the file of the Ld. CIT(A) with the directions to decide the same alongwith the ground no. 1.1 and 1.3 raised before him by the assessee, afresh and pass a speaking order thereon. In this regard, he filed a Paper Book containing pages 1 to 75 containing the copy of reply filed before the AO dated 15.11.2016 for the AY 2014-15 alongwith copy of share certificate; contract note of sale of shares; copy of bank statement showing payment for the purchase of shares of Smartchamps; account statement and DMAT account for the FY 2013-14 issued by SMC Global Securities; copy of Form 10DB

reflecting payment of ST; copy of reply dated 19.12.2016 filed before the AO in response to show cause notice dated 13.12.2016; copy of reply dated 27.12.2016 filed before the AO in response to show cause notice dated 23.12.2016; copy of submission filed before the Ld. CIT(A) dated 8.1.2018 proving genuineness of the transactions; copy of ITAT, Kolkata Bench decision in the case of Navneet Aggarwal vs. ITO, ITA No. 2281/Kol/2017 dated 20.7.2018, reflecting similar facts in appellant's case and also filed the synopsis.

4. On the other hand, Ld. DR relied upon the orders of the authorities below and also relied upon various case laws on the merits of the case by way of filing the Written Submissions. But did not raise any serious objection for setting aside the issues in dispute alongwith the ground no. 1.1. and 1.3 to the file of the Ld. CIT(A), raised before the Ld. CIT(A) by the assessee for fresh consideration.

5. I have heard both the parties and perused the records and the case laws cited by both the parties and the Paper Book filed by the assessee containing pages 1 to 75, as discussed above. I find considerable cogency in the contention of the Ld. Counsel for the assessee that Ld. CIT(A) has passed the impugned order dated 28.6.2018 without adjudicating the ground no. 1.1 and 1.3 raised

before him, which are also raised before the Tribunal vide ground no. 2 and 7 respectively. For the sake of convenience, I am reproducing hereunder the ground no. 1.1 and 1.3 raised before the Ld. CIT(A) by the assessee :-

“.....1.1 That the Ld. AO erred in invoking provisions of section 68 of the Act.

.....

.....

1.3 The Ld. AO has not provide any evidence against appellant while making addition in his order.....”

5.1 After perusing the aforesaid grounds raised before the Ld. CIT(A) by the assessee which are reproduced at page no. 2 of the impugned order of the Ld. CIT(A) and also raised before the Tribunal vide ground no. 2 & 7 respectively and after perusing the impugned order and in the interest of justice, I am of the considered view that the above mentioned grounds i.e. ground no. 1.1 and 1.3 raised before the Ld. CIT(A) are very much essential to be adjudicated by the Ld. CIT(A) in the impugned order, which he has not adjudicated in his impugned order. Hence, in the interest of justice, I set aside the issues in dispute before the Tribunal to the file of the Ld. CIT(A) with the directions to decide the same alongwith ground no. 1.1 and 1.3 raised before him by the

assessee, afresh and pass a speaking order thereon, after considering all the aforesaid documentary evidences and the case law referred above and give adequate opportunity of being heard to the assessee. The assessee is also directed to fully cooperate with the Ld. CIT(A) in the proceedings and did not take any unnecessary adjournment and file the necessary documents to substantiate his case before him, if necessary.

6. In the result, the Appeal filed by the Assessee stands allowed for statistical purpose.

Order pronounced on 05/02/2019.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Dated:05/02/2019

SR BHATNAGAR

Copy forwarded to: -

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

By Order,

ASSISTANT REGISTRAR