

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'C', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 2303/Del/2013
Assessment Year: 2009-10**

Income-tax Officer, Ward 35(1), New Delhi (Appellant)	vs.	Hem Chand Gupta, 1/429/15, Gali No. 1, Friends Colony Industrial Area, Shahdara, Delhi. PAN- AALPH2688Q (Respondent)
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Appellant by	Sh. Amit Katoch, Sr. DR
Respondent by	S/ Sh. Salil Aggarwal, Adv., Shailesh Gupta, CA & Madhur Aggarwal, Advocate.

Date of Hearing	12.03.2019
Date of Pronouncement	08.05.2019

ORDER

Per L.P. Sahu, A.M.:

At an earlier occasion, this appeal stood disposed of by the Tribunal alongwith assessee's appeal No. 2493/Del/2013 for A.Y. 2009-10 vide consolidated order dated 01.11.2016, whereby the present appeal of the Revenue was dismissed. Thereafter, the Revenue filed a miscellaneous application bearing No. 239/Del/2017 on the averments that ground Nos. 2 & 3 raised by Revenue in its appeal were not adjudicated upon by the Tribunal while disposing of the appeal. Accordingly, the Tribunal vide order dated 28.09.2017 recalled its order dated 01.11.2016 for adjudication of Ground Nos. 2 & 3 of this appeal. It is how this appeal again came up for hearing before us for the limited

purpose to adjudicate upon ground Nos. 2 & 3 of this appeal. These grounds of appeal read as under :

“2. On the facts and in circumstances of the case, the Ld. CIT(A) has erred in law and on facts by deleting the addition of Rs.6,55,201/- on account of rental income in respect of house property without justifiable reason and without considering the reasoning given by the Assessing Officer for the computation of rental income of the said property.

3. On the facts and in circumstances of the case, the Ld. CIT(A) has erred in law and on facts that assessee had not shown such inherited jewellery in his balance sheet and deleted the addition of Rs.4,86,790/- made by the Assessing Officer on account of unexplained gold jewellery u/s. 69A of the IT Act, 1961.”

2. The facts relating to ground No. 2 are that the assessee had shown net income from its property situated at 537/2, Gali No. 8, Friends Colony, Delhi at Rs.7,272/-. The Assessing Officer observed that this property is constructed at an area measuring 2700 sq. feet having double storey building which was shown to have rented by assessee to its HUF at the monthly rent of Rs.3000/-. On being asked to justify its claim, the assessee filed rent agreement for two years. The Assessing Officer noticed that this agreement was made on a plain paper and was signed by the assessee himself as lessor and lessee, being Karta of its HUF. This agreement was neither on stamp paper nor was registered. Therefore, the Assessing Officer did not find it credible and after applying the Annual Rental value of that property at the rate of Rs.15/- per sq. ft. and giving statutory deductions, computed the net income from this property at Rs.6,62,473/- as against Rs.7,272/- declared by the assessee. He, therefore, added the difference of Rs.6,55,201/- to the total income of the assessee. The ld. CIT(A), after considering the submissions of the assessee deleted the addition observing that

the property in question was hired by the assessee and was subleased to his HUF; that the assessee had charged an amount of Rs.5,388/- to the P&L account as annual rent paid in respect of this property which was hired by him eight years back; that the Assessing Officer applied the market rate only in respect of receipts of rent by the assessee and not in respect of payments made for hiring of the property by assessee; and that if the market rate is applied to both the sides of transactions, i.e., payment of rent and receipt of rent, there would be no net addition respect of rental receipts.

3. The ld. DR, relying upon the assessment order, submitted that the ld. CIT(A) was not justified in deleting the addition, ignoring the fact that the rent agreement was made on a plain paper, signed by the assessee as lessor and lessee both and that there is no contrary material on record to justify that the Annual rental value applied by the Assessing Officer was arbitrary.

4. On the other hand, the ld. AR of the assessee, relying on the impugned order, submitted that the property was lease hold property which was taken 8 years back at a nominal rent and the same was sub-leased to its HUF and that market rate applied by the Assessing Officer is without any basis or approval by any Municipal Authority; and that the actual rent received is supported by lease agreement submitted before the Assessing Officer. It was also submitted that non-registration of lease agreement is a matter of stamp duty and had nothing to do with the Income-tax Act for the purpose of determining the income from property.

5. Having considered the rival submissions, and gone through the entire material on record, we find no infirmity in the findings reached by the Id. CIT(A). The Id. DR could not be able to rebut the finding of the Id. CIT(A), which read as under :

“7. I have carefully considered the appellant’s submissions, the points made by the AO in the assessment order and the facts of the case. The property under consideration was hired by the appellant and was sub-leased to his HUF. A copy of the lease agreement was filed by the appellant before the AO and was again placed on record during the course of the present proceedings. The appellant had charged an amount of Rs. 5,388/- to the P & L account as annual rent paid in respect of the property which was hired by him eight years back. Thus effectively in respect of this property rental payment had been claimed @ Rs. 450/- per month and rental receipts had been shown @ Rs. 3,000/- per month. The AO applied market rate only in respect of receipts of rent by the appellant and not in respect of payment for hiring of the property by him. Therefore, as the property was hired by the appellant and was in turn sub-leased to his HUF, applying market rate to both sides of the transaction i.e. payment of rent and receipt of rent there will be no net addition in respect of the rental receipts. Therefore, the addition made by the AO amounting to Rs 6,62,473/- is deleted.”

There being no contrary material on record, we find no substance in this ground of appeal raised by the Revenue. Accordingly, this ground deserves to be dismissed.

6. The relevant facts relating to ground No. 3 are that during the year, the assessee had shown to have sold gold jewellery weighing 1276.060 gms for Rs.14,95,009/-. As to the source of jewellery sold, the assessee filed a copy of declaration made under VDIS 1997 showing a declaration of jewellery valued at Rs.2,20,894/- acquired by him during A.Yrs. 1972-73 to 1986-87. The Assessing Officer worked out the weight of this jewellery at 860 gms and the prevailing

market rate of Rs.2570/- per 10 gms. As on 31.03.1987. Accordingly, the Assessing Officer observed that the assessee had sold excess jewellery weighing 416.06 gms., the source of which was not proved. Accordingly, he made addition of Rs.4,86,790/- by applying the prevailing market rate of Rs.1170 per gram as unexplained sale of jewellery. The Id. CIT(A) has deleted this addition vide impugned order.

7. The Id. DR submitted that the Id. CIT(A) was not justified in deleting the addition without considering the fact that the source of excess jewellery sold by assessee did not stand proved. The jewellery said to have been inherited by assessee was not shown in the balance sheet and the Assessing Officer has rightly discarded the reply of assessee.

8. The Id. AR on the other hand relied on the order of the Id. CIT(A) and reiterated the submissions made before the first appellate authority.

9. We have considered the rival submissions and have gone through the material on record and we find no infirmity in the order of the Id. CIT(A) on this score. It is notable that all the documentary evidences, such as death certificate of assessee's parent, their "will" etc. were produced before the Assessing Officer regarding inheritance of movable and immovable property. The contention of the assessee has been that the inherited property was personal asset of the assessee and it was not shown in the balance sheet which was prepared in respect of the proprietary business of the assessee named M/s. India Wire. This explanation has nowhere been discarded by the Assessing Officer. Therefore, the Id. CIT(A) was quite justified to hold that the excess jewellery sold was out of

inherited jewellery available with the assessee, particularly when no inconsistency or defect was pointed out by the Assessing Officer in the documentary evidences filed by the assessee. There being no contrary material on record, we, therefore, do not find any justification to interfere with the findings reached by the Id. CIT(A) on this score. Accordingly, this ground of appeal deserves to be dismissed.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 08.05.2019.

Sd/-

(H.S. Sidhu)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 08.05.2019

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Copy of order forwarded to:

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>Commissioner</i>	(4)	<i>CIT(A)</i>
(5)	<i>Departmental Representative</i>	(6)	<i>Guard File</i>

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*