

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.245/Del./2019
Assessment Year 2010-2011

Mr. Satyender Yadav, UG-05, Bestech Center Point, Block, Sushant Lok-1, Gurgaon, Haryana. PIN 122 002. PAN ABAPY2570L	vs.,	The Income Tax Officer, Ward-4(1), Gurgaon, Haryana.
(Appellant)		(Respondent)

For Assessee :	Ms. Rano Jain, Advocate & Ms. Mansi Jain, C.A.
For Revenue :	Shri S.L. Anuragi, Sr.DR

Date of Hearing :	03.06.2019
Date of Pronouncement :	04.06.2019

ORDER

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-1, Gurgaon, Dated 19.11.2018, for the A.Y. 2010-2011.

2. Briefly the facts of the case are that assessee filed return of income declaring income of Rs.1,85,000/-. In the first round of appeal, the matter travelled up-to ITAT who have restored back the matter to the file of A.O. In the

background of these facts, I decide the appeal of assessee as under.

3. I have heard the Learned Representatives of both the parties and perused the findings of the authorities below.

4. Learned Counsel for the Assessee submitted that Ground Nos.1, 2 and 5 are general in nature and need no adjudication. Therefore, these grounds are dismissed.

5. On Ground No.3, assessee challenged the addition of Rs.2 lakhs. The A.O. made addition of Rs.3,91,600/- . The A.O. noted from the computation of income furnished during the course of assessment proceedings that assessee had shown income from consultancy in a sum of Rs.1,35,000/- and salary income of Rs.1,14,000/-, totaling to Rs.2,49,000/-. The A.O. observed that as against income of Rs.2,49,000/-, the assessee had shown cash deposits of Rs.3,91,600/- from consultancy and salary. The A.O. also noted that there was no separate withdrawals from the Bank for house hold expenses. The

A.O. observed that in these circumstances, income of Rs.2,49,000/- was utilised by the assessee against house hold expenses, therefore, the source of cash deposit of Rs.3,91,600/- remained unexplained. The assessee submitted before A.O. that the total transactions conducted by assessee is of Rs.35,28,500/-, out of this, his total deposit in Bank is Rs.30,78,500/- and his expenses for doing consultancy is Rs.1,09,000/- out of this mobile expenses is paid through his Bank account of Rs.20,071/- and balance Rs.88,893/- is cash expenses so balance of Rs.3,61,107/- is for house expenses. It was also submitted that his wife is also taking tuition and she is also an earning person in his family and some household expenses is also done from her income. The A.O. did not accept the contention of assessee because earlier assessee claimed that his wife is getting salary income, but, now it is claimed that she has tuition income. The A.O, therefore, treated the source of cash deposit to the tune of Rs.3,91,600/- unexplained, addition of the same was made.

6. The assessee challenged the addition before the Ld. CIT(A) and same submissions were reiterated. It was explained that source of the fund of Rs.3,91,600/- comprise of Rs.1,47,600/- from salary and Rs.2,44,000/- out of income from consultancy. The Ld. CIT(A) considering the explanation of assessee, restricted the addition to Rs.2 lakhs.

7. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to copy of the acknowledgment of filing of the return of income for assessment year under appeal and PB-22 which is computation of income in which assessee has shown net salary income of Rs.1,14,000/- and Rs.2,44,000/- as income from other sources out of consultancy. Learned Counsel for the Assessee, therefore, submitted that since this amount is shown as income in the return of income, therefore, no addition could have been made by the Ld. CIT(A). PB-27 is cash flow statement which includes salary of Rs.1,47,600/- and income from consultancy of Rs.2,44,000/-.

8. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

9. I have considered the rival submissions. The assessee has given an explanation regarding total cash deposit in the Bank Account. The assessee also explained that out of the total transactions and total cash deposit in the Bank account, there is still amount left for house hold expenses. The explanation of assessee was not found to be incorrect. The assessee further explained that he has salary and consultancy income which have been shown in the return of income. Whatever income have been shown in the return of income is available to the assessee to explain the cash deposited in the Bank account, therefore, there was no justification to restrict the addition to Rs.2 lakhs on this issue. I, accordingly, set aside the Orders of the authorities below and delete the addition of Rs.2 lakhs. Ground No.3 of the appeal of assessee is allowed.

10. On Ground No.4, assessee challenged the addition of Rs.3,21,900/-. The A.O. noted that assessee had claimed part of the cash deposit being made out of sale of

car for an amount of Rs.3,21,900/-. The A.O. observed that no satisfactory evidence has been furnished, therefore, addition of the same was made. The A.O. observed that assessee filed affidavit of the purchaser of the car which has neither been signed by the witness or Oath Commissioner and the R.C. is still in the name of the assessee showing the ownership. The A.O. did not accept the contention of assessee. The assessee explained before the Ld. CIT(A) that amount is available to assessee on sale of car. Affidavit of purchaser of Car Shri Parvender Singh is filed along with his bank statement to show withdrawal made by him from his Bank account for purchase of the Car. The Ld. CIT(A) did not accept the contention of assessee because car is not transferred in the name of the purchaser. This ground was dismissed.

11. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. She has referred to PB-24 which is affidavit of Shri Parvender Singh, purchaser of the car which was filed before the authorities below in which he has confirmed to have purchased the car

of assessee on cash payment of Rs.3,21,900/-. Pb-25 is Bank account of the purchaser to show that on the date of purchase of the car, he has withdrawn cash of Rs.1,12,500/- and Rs.3 lakhs respectively. Learned Counsel for the Assessee, therefore, submitted that addition is wholly unjustified.

12. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

13. I have considered the rival submissions. It is not in dispute that assessee is owner of the Car. The assessee explained that car is sold for cash of Rs.3,21,900/- to Shri Parvender Singh who has executed an affidavit in favour of the assessee, confirming the purchase of the Car. The A.O. did not examine the deponent of the Affidavit. The A.O. did not dispute the amount withdrawn by him from his Bank account. Thus, sufficient cash is available with the purchaser to purchase the car. However, the A.O. doubted the explanation of assessee because Affidavit is not attested by the Oath Commissioner and that registration of the Car is still in the name of the assessee. It generally happens in

case of purchaser of motor vehicle, purchaser did not get the vehicle transferred in their name for a longer time. If A.O. was having any doubt over the transaction, he could have summoned the purchaser of the car and record his statement to verify the facts. However, no inquiry has been done in the matter. Therefore, there was no justification to disbelieve the explanation of assessee. A.O. did not make any effort to verify whether car was still in possession of the assessee. In this view of the matter, I set aside the Orders of the authorities below and delete the addition. Ground No.4 of the appeal of Assessee is allowed.

14. In the result, appeal of Assessee partly allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 04th June, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "SMC" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.