

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

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
AND MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 2753/Del/2015
AY: 2010-11**

Saroj Bhadana C/o. R.B. Arora & Co., CAs, DSM- 127, DLF Towers, Shivaji Marg, Moti Nagar, New Delhi, Pin: 110015	Vs.	DCIT Circle- 52(1) New Delhi
PAN No: AIEPB6167F		
APPELLANT		RESPONDENT

Assessee by : Dr. Rakesh Gupta, Adv.
Shri Somel Aggarwal, Adv.
Revenue by : Shri Amit Katoch, Sr. DR
Date of Hearing : 28/05/2019
Date of Pronouncement : 12/06/2019

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER

This appeal is filed against the order dated 30.03.2015 passed by the CIT(Appeals)-18, New Delhi for AY 2010-11.

2. Grounds of appeal read as under:

“1. The Ld. CIT(A) had erred, both in law as-well-as in facts of the case, in not appreciating the explanation filed during the course of appeal proceedings and recording findings which are not supported by documents on records.

2. *The Ld. CIT(A) had erred both, in law as-well-as in facts of the case, in recording that “The addition of Rs.2,04,38,520/- made by the Assessing Officer in this account is justified and the same is confirmed. However, the amount of Rs.21,00,000/- has to be assessed under the head income from other source and no deduction u/s 24(a) can be allowed on this amount. The remaining rental receipt of Rs.1,45,02,588/- has to be assessed under the head income from House Property.”*

3. *That the Ld. CIT(A) committed a grave mistake in recording above findings in spite of her findings “The assessee has submitted copies of lease deed of the above mentioned properties. From the perusal of lease deed, the above claim of the assessee seems to be justified.”*

4. *That the Ld. CIT(A) had erred both in law as-well-as in facts of the case in upholding addition of Rs.1700000/- as deposit of cash in bank account as income from undisclosed sources on frivolous grounds.*

5. *That the Ld. CIT(A) had erred both, in law as-well-as in facts of the case, in upholding addition of Rs.74,19,534/- as unexplained credits in bank account.”*

3. During the year under consideration, the assessee filed return showing income of Rs. 1,16,17,700/- on 16.01.2012 which was processed u/s 143(1) of the Income Tax Act, 1961. On selection of case for scrutiny, notice u/s 143(2) of the Act was issued on 26.08.2011 and duly served through speed post. However, no compliance was made and subsequently, notice u/s 142(1) of the Act along with questionnaire and details was also issued on 26.04.2012 and was served on assessee through speed post. Again no compliance was made. Thereafter, a number of show-cause notices were issued to the assessee but no one appeared and furnished the details before the Assessing Officer. The Assessing Officer proceeded u/s 144(1) and made various additions, thereby assessed income at Rs. 3,45,21,410/-.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. As regards, Ground Nos. 1, 2 & 3 relating to addition of Rs. 2,04,38,520/- by the Assessing Officer thereby holding the same as income from other sources as against income from house property, the Ld. AR submitted that the assessee showed total rental income at Rs. 1,66,02,588/- in its return of income and claimed 30% statutory deduction u/s 24(a) of the Act. Thus, deducting the net income from house property at Rs. 1,15,45,586/-, the Assessing Officer accepted the rental income from ICICI Bank Limited as an income from house property. The assessment order shows three figures of Rs. 2,04,38,520/-, Rs. 1,45,02,588/- and Rs. 1,66,02,588/- out of which the correct figure is Rs. 1,66,02,588/-. The Ld. AR submitted that there is a mathematical error in the assessment order. The actual rental income including two months advance of Rs. 21 lakhs was Rs. 1,66,02,588/- and not Rs. 2,04,38,520/- as shown by the AO. The error occurred at the end of assessment order by showing a figure of Rs. 1,53,24,360/- separately and Rs. 29,72,240/- separately and Rs. 18,52,120/- separately, whereas last two figures of Rs. 29,72,214/- and Rs. 18,52,120/- were already part of Rs. 1,53,24,360/-. In fact property at F-13, Okhla Industrial Area, New Delhi was let out for 8 months to M/s Society for Excellence in Higher Education and 4 months the M/s Bharti Telesoft Ltd./Comviva Technologies Ltd. for an aggregate amount of Rs. 1,53,24,360/-. Therefore, Ld. AR submitted that these figures have to be changed and the correct figures have to be adopted by the Assessing Officer. The above amounts were rental income accepted by the CIT(A) in the order under challenge. For AY 2011-12 and 2012-13 these very properties were let out and were assessed as income from house property.

6. The Ld. DR relied upon the order of the CIT(A) and the assessment order.

7. We have heard both the parties and perused all the relevant material available on record. The CIT(A) though has accepted this income as rental income and directed the Assessing Officer to assess under the head "income from house property", but confirms the addition, which is without any finding or

reasons. During the hearing, the Ld. AR pointed out the mathematical errors in this rental income which has also not been taken into account by the CIT(A). The Revenue for AY 2011-12 and 2012-13 has accepted these properties which were let out and its income was held as income from house property. Therefore, the Revenue cannot change its stand for a particular year, wherein the similar circumstances have occurred. Therefore, it will be appropriate to remand back this issue to the file of the CIT(A) to consider this income as rental income and assessed the same under the head "income from house property" and also to make mathematical corrections as pointed out by the Ld. AR during the hearing after verifying the same. Needless to say that the assessee be given opportunity of hearing by following principle of natural justice. We further direct the Assessing Officer to place its remand report as regards to the mathematical error in the figures. Ground nos. 1, 2 & 3 are partly allowed for statistical purpose.

8. As regards Ground No. 4 is concerned relating to addition of Rs. 17,00,000/- being the amount of cash deposits in bank based on AIR Information, the Ld. AR submitted that the details were submitted before the CIT(A). The Ld. AR further submitted that since assessee has carried on no business, no books of accounts were maintained by her. It is the will of the assessee when she wishes to withdraw her legitimate money as long as all taxes have duly been paid by her on her income. The Ld. AR further submitted that the assessee proved beyond doubt that funds were withdrawn from her other account and transferred to her accounts only. Thus, the same cannot be taxed again in her hands.

9. The Ld. DR relied upon the assessment order and the order of the CIT(A).

10. We have heard both the parties and perused all the relevant material available on record. The bank statement of the banks from which the cash was withdrawn has been immediately deposited on the very same day or within a month by the assessee which has been explained with the documentary proof

before the CIT(A). Thus, the CIT(A) failed to take into account that the assessee was having her own money which was deposited by her in the bank account. Therefore, the CIT(A) is not right in making addition u/s 69 of the Act. Ground No. 4 is allowed.

11. As regards Ground No. 5 the Ld.AR submitted that the relevant evidences were submitted before the CIT(A) by the assessee as relates to rent receipts and thus, all the credit entries in bank account of the assessee was thoroughly explained.

12. The Ld. DR relied upon the order of the CIT(A) and the assessment order.

13. We have heard both the parties and perused all the relevant material available on record. The CIT(A) held as under:

“4. “Ground No.8:

4.1 *I have considered the ground raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant.*

4.2 *The appellant has raised ground against the addition of Rs. 1,16,29,534/- as undisclosed income being unexplained cash credits. The appellant had deposited various amounts in the bank account which remain unexplained when the Assessing Officer verified other credits. It is relevant to mention that the only source of income of the assessee admitted during the year is receipt from five parties mentioned in the order of assessment and interest income. The date wise payment made to the assessee by the said five parties does not match with the date or deposit of cheque in the bank account. Neither the amount paid nor the date of payment/date of deposit matches with the credits in the bank account.*

4.3 *The Assessing Officer made following addition of Rs. 1,16,29,534/- as under on account of unexplained investment in bank account: -*

S.No.	Cheque No.	Date	Amount of Deposit (Rs.)	Actual Nature of Transaction
1.	0135592	22.05.2009	7,91,972	Rent received from Bharti Telesoft Ltd.
2.	0837169	23.06.2009	37,00,000	Security

				<i>received of 4 months rent from Society for excellence in Higher Education (37 + 5 lacs)</i>
3.	0837168	23.06.2009	5,00,000	<i>Security received of 4 months rent from Society for excellence in Higher Education (37 + 5 lacs)</i>
4.	0837180	01.08.2009	6,00,000	<i>Amount received against sale of old furniture from NDIM</i>
5.	0076297	29.09.2009	15,00,000	<i>Rent received from Bharti Telesoft ltd.</i>
6.	0076298	01.10.2009	15,00,000	<i>Rent received from Bharti Telesoft Ltd.</i>
7.	0475761	11.11.2009	35,00,000	<i>Advance received from Piyush Infrastructure India Pvt. Ltd.</i>
			116,29,534	

4.4 *The assessee has submitted that credit entries appearing on Sl. No. 1, 5 & 6 are rental receipt from Bharti Telesoft Ltd. which have already been offered to tax under the head income from house property. However, the assessee has not submitted any documentary evidence in support of this claim. Confirmed copy of account of the above party has not been submitted. Further, the amount mentioned in the above entries does not reconcile with the amount of monthly rent mentioned in the lease deed as well as 26AS. Therefore, this claim of the assessee is baseless.*

4.5 *The assessee has submitted that credit entries appearing on Sl.No. 2 & 3 amounting to Rs. 37,00,000/- and Rs. 5,00,000/- are security deposits equivalent to four months rent received from Society for Excellence in High Education. In this regard, a notice u/s 133(6) was issued to the said party and the party has confirmed having paid security deposits of Rs. 42,00,000/-*

*as per cheque no. mentioned at sl. no. 2 & 3 of the above table. The above fact is also verifiable from the lease deed wherein vide para no. 10, it has been mentioned that lessee shall pay security deposit equivalent to four months rent. In view of the above, the credit entries appearing at sl. no. 2 & 3 seems to be explained. Hence, addition of Rs. 42,00,000/- deserves to be **deleted.***

- 4.6 *With regard to credit entry at Sl. No. 4, the assessee has claimed that some old furniture were sold to Society for Excellence in Higher Education (New Delhi Institute of Management) and Rs. 6,00,000/- were received against this sale of furniture. The assessee has submitted confirmation from the above party in this regard. The assessee has not submitted any other documentary evidence to substantiate that actually any furniture or any other material was sold to the above party. However, as the above claim of the assessee is accepted, even then the above sale consideration is taxable after allowing the cost of purchase of these items. However, no such details or documentary evidence have been produced. In view of the above, the AO rightly assessed this amount under the head income from other sources.*
- 4.7 *With regard to credit entry at sl. no. 7, the assessee has claimed that advance of Rs. 35,00,000/- was received from Piyush Infrastructure Pvt. Ltd. The assessee has also submitted confirmation from the above party in this regard. However, the assessee has not submitted any reason for which advance was received from the above party. No other documentary evidence or any agreement to substantiate this claim has been submitted by the assessee. The ITR filed by the said party has shown Nil income (Loss of Rs. 2,71,94,041/-), therefore, the creditworthiness of the above party is also doubtful. Mere confirmation from the party doesn't absolve the assessee of his responsibility to explain true nature of this receipt. In view of the above, the AO rightly assessed this amount under the head income from other sources.*
- 4.8 *In view of these facts, I am not inclined to accept the explanations filed by the appellant during appeal proceedings. The addition of Rs. 42,00,000/- is directed to be deleted and the balance amount is confirmed. Ground raised in appeal is **partly allowed.***

The CIT(A) after verifying all the relevant material has given a finding that the credit entries appearing on Sl. No. 1, 5 & 6 are rental receipt from Bharti

Telesoft Ltd. which have already been offered to tax under the head income from house property. However, the assessee has not submitted any documentary evidence in support of this claim as well as confirmed copy of account of the above party has not been submitted. Further, the amount mentioned in the above entries does not reconcile with the amount of monthly rent mentioned in the lease deed as well as 26AS. With regard to credit entry at Sl. No. 4, the assessee has claimed that some old furniture were sold to Society for Excellence in Higher Education (New Delhi Institute of Management) and Rs. 6,00,000/- were received against this sale of furniture. The assessee has submitted confirmation from the above party in this regard. The assessee has not submitted any other documentary evidence to substantiate that actually any furniture or any other material was sold to the above party. However, as the above claim of the assessee is accepted, even then the above sale consideration is taxable after allowing the cost of purchase of these items. With regard to credit entry at sl. no. 7, the assessee has claimed that advance of Rs. 35,00,000/- was received from Piyush Infrastructure Pvt. Ltd. The assessee has also submitted confirmation from the above party in this regard. However, the assessee has not submitted any reason for which advance was received from the above party. No other documentary evidence or any agreement to substantiate this claim has been submitted by the assessee. The ITR filed by the said party has shown Nil income (Loss of Rs. 2,71,94,041/-), therefore, the creditworthiness of the above party was held doubtful by the CIT(A). With regard to credit entry at sl. no. 7, the assessee has claimed that advance of Rs. 35,00,000/- was received from Piyush Infrastructure Pvt. Ltd. The assessee has also submitted confirmation from the above party in this regard. However, the assessee has not submitted any reason for which advance was received from the above party. No other documentary evidence or any agreement to substantiate this claim has been submitted by the assessee. The ITR filed by the said party has shown Nil income (Loss of Rs. 2,71,94,041/-), therefore, the creditworthiness of the above party is also doubtful. The Ld. AR submitted that

all the documentary evidence was produced before the CIT(A) but the same was not taken cognizance by the CIT(A). From the records it can be seen that the issues herein decided by the CIT(A) was not properly verified, by the CIT(A). Therefore, this issue needs to be remanded back to the file of the CIT(A) and after taking into account the evidences provided by the Assessee correct findings to be given by the CIT(A). Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Hence, the Ground no. 5 is partly allowed for statistical purpose.

14. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 12/06/2019

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT
Dated: 12/06/2019
*Kavita Arora

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	11.06.2019
Date on which the typed draft is placed before the dictating Member	12.06.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	12.6.19
Date on which the fair order is placed before the Dictating Member for pronouncement	12.6.19
Date on which the fair order comes back to the Sr. PS/PS	12.6.19
Date on which the final order is uploaded on the website of ITAT	12.6.19
Date on which the file goes to the Bench Clerk	12.6.19
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	