

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA No.5447/Del/2012
Assessment Year: 2007-08

ITA No.3975/Del/2016
Assessment Year: 2007-08

Sanjeev Nath Anand,
P-164, Street No.7,
Bihari Colony,
New Delhi.

Vs

ITO,
Ward 35(1),
New Delhi.

PAN: ABWPS2480F

(Appellant)

(Respondent)

Assessee by	:	Ms Vandana Gopal Sharda, CA
Revenue by	:	Shri S.L. Anuragi, Sr. DR
Date of Hearing	:	31.07.2019
Date of Pronouncement	:	06.09.2019

ORDER

The above two appeals filed by the assessee are directed against the separate orders of the CIT(A)-37, New Delhi relating to assessment year 2007-08.

2. While the assessee in ITA No.5447/Del/2012 has challenged the order of the CIT(A) in sustaining the various additions made by the Assessing Officer, the assessee, in ITA No.3975/Del/2016, has challenged the order of the CIT(A) in confirming the penalty levied u/s 271(1)(c) of the Act amounting to Rs.51,273/-.

3. For the sake of convenience, these were heard together and are being disposed of by this common order.

ITA No.5447/Del/2012

4. Grounds of appeal No. 1 and 7 being general in nature are dismissed.

5. In Ground No.2, the assessee has challenged an addition of Rs.3,73,459/- made by the Assessing Officer and sustained by the CIT(A).

6. Facts of the case, in brief, are that the assessee is an individual and derives income from property dealing. He filed his return of income on 13th August, 2007 declaring the total income of Rs.1,72,452/-. The Assessing Officer, during the course of assessment proceedings, noted that the assessee has deposited a sum of Rs.11,84,500/- in cash in his saving bank account. On being questioned by the Assessing Officer, the assessee explained the source of such cash deposits the details of which are as under:-

a) Cash withdrawn from Bank	Rs.3,80,000/-
b) Property dealings	Rs.3,95,000/-
c) Loan & Advances reversed back	Rs.1,67,558/-
d) Data making (Maintenance charges received)	Rs.3,73,459/-
e) Electricity on account	Rs.1,77,277/-
f) Deepak	Rs.5,000/-

7. The Assessing Officer accepted the first two items. So far as the amount of Rs.3,73,459/- is concerned, it was explained by the assessee that as per clause 2 of maintenance agreement, the contract is commencing from 03.03.1999 and further

as per clause 3 of maintenance agreement charges agreed shall be payable in equal installments of Rs.12,000/- on every month in cash or by cheque in advance latest by 7th day of respective month, besides 10% yearly revision will be added as applicable. However, the Assessing Officer rejected the same on the ground that it is not understood as to how the assessee has carried on the maintenance work without receiving any amount from Datamation Consultants. Further, no other agreement was brought to his notice to substantiate that certain receipts were outstanding as on 31.03.2006 which was not received during the year. He, therefore, held that the deposit of cash to this extent is afterthought. He accordingly treated this as unexplained cash deposit in the bank account of the assessee. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer.

8. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

9. The Id. counsel for the assessee, at the outset, submitted that the assessee maintains the books on mercantile system basis. Referring to page 75 of the paper book, the Id. counsel drew the attention of the Bench to the demand note raised by the BSES Yamuna Power Ltd., amounting to Rs.42,000/-. Referring to page 13 of the paper book, she drew the attention of the Bench to the TDS certificate dated 30th March, 2006 for the period from 01.04.2005 to 31.03.2006 issued by Datamation Consultants Pvt. Ltd. Referring to page 21 of the paper book, she drew the attention of the Bench to the TDS certificate issued by Datamation

Consultants on 8th July, 2005 for the period from 01.04.2004 to 31.03.2005. Referring to page 55 of the paper book, she drew the attention of the Bench to the copy of maintenance agreement dated 22.02.1999. Referring to ledger account of Datamation in the books of the assessee for the period from 01.04.2004 to 31.03.2007, copies of which are placed at pages 66 to 68 of the paper book, she submitted that the assessee has shown the amount received from Datamation towards maintenance charges. She submitted that for the period from 01.04.2006 to 31st March, 2007, the assessee has received the maintenance charges in cash from the said company. She submitted that the assessee has filed the confirmation receipt from Datamation during the course of appeal proceedings before the CIT(A). Therefore, the addition made by the Assessing Officer is uncalled for.

10. The Id. DR, on the other hand, heavily relied on the order of the Assessing Officer and the CIT(A).

11. After hearing the rival arguments made by both the sides and on perusal of the various details furnished by the assessee in the paper book, I am convinced that the assessee has successfully demonstrated the cash deposit of Rs.3,73,459/- received from Datamation Consultants Pvt. Ltd. towards maintenance charges. Further, a perusal of the order of the CIT(A) shows that while adjudicating the penalty appeal the assessee filed certain certificates from Datamation which were forwarded to the Assessing Officer for his verification and the Assessing Officer in her report dated 11th March, 2016 had stated that although Datamation has not been

able to produce their books to show the payment, however, they have orally confirmed that they are paying maintenance and electricity charges to the assessee. Accordingly, the Id.CIT(A) had cancelled the penalty on this amount. Since the Datamation has already confirmed before the Assessing Officer during the remand proceedings that they are paying the maintenance charges to the assessee, therefore, I am of the considered opinion that the cash deposit in the bank account stands explained being the amount received from Datamation. Accordingly, the same is deleted. Ground of appeal No.2 by the assessee is allowed.

12. In ground of appeal No.3, the assessee has challenged the order of the CIT(A) in confirming the addition of Rs.1,77,277/- made by the Assessing Officer on account of electricity charges received from Datamation Consults Pvt. Ltd.

13. After hearing both the sides, I find the Assessing Officer made an addition of Rs.1,77,277/- on the ground that the assessee could not explain the source of such cash deposit in the bank account to this extent. The explanation of the assessee that he has debited the electricity bill from his bank account for electricity used by Datamation and other parties in the earlier years which were received by him in cash during the current financial year was rejected. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer. As mentioned in the preceding paragraph, during the penalty appeal before the CIT(A) the assessee had filed certain details/confirmations which were sent by the CIT(A) to the Assessing Officer for the remand report. The Assessing Officer, in the remand report had

confirmed that Datamation has orally confirmed that they are paying maintenance and electricity charges to the assessee. Since the statement of the assessee has been corroborated by Datamation during the remand proceedings before the Assessing Officer, therefore, I am of the considered opinion that no addition is called for. Accordingly, ground of appeal No.3 by the assessee is allowed.

14. In ground of appeal No.4, the assessee has challenged the order of the CIT(A) in confirming the addition of Rs.1,67,558/-being loans and advances received by it.

15. After hearing both the sides, I find the Assessing Officer made an addition of Rs.1,67,558/- on the ground that the assessee could not properly explain before him regarding the various parties to whom he has advanced cash in the earlier years which were received back during the current financial year since the assessee could not properly explain the details. I find the ld.CIT(A) sustained the addition so made by the Assessing Officer on the ground that the assessee in the preceding years had not filed any balance sheet and, therefore, no reliance can be placed on the various documents filed before the CIT(A). It is the submission of the ld. counsel that he has filed the balance sheet for assessment years 2005-06, 2006-07 and 2007-08 and the trial balance for the year ending 31.03.2005 and 31.03.2006. He has also filed the confirmations and PAN details and affidavit of the parties and, therefore, no addition should have been made by the Assessing Officer and the CIT(A) should not have confirmed the addition. I find merit in the arguments

advanced by the ld. counsel for the assessee. A perusal of the various documents filed by the assessee before the lower authorities show that the assessee has filed sufficient details regarding the receipt of loans and advances given in the earlier years. The affidavits filed by the assessee from all the parties with confirmations and their PAN details had not been found to be false or untrue. Further, the amounts are very small. Considering the totality of the facts of the case, I am of the considered opinion that the addition made by the Assessing Officer and sustained by the CIT(A) is not justified. Accordingly the same is deleted and the ground raised by the assessee is allowed.

16. In ground No.5, the assessee has challenged the order of the CIT(A) in confirming the addition of Rs.5,000/- made by the Assessing Officer being the amount received from Mr. Deepak.

17. After hearing both the sides, I find the Assessing Officer rejected the source of deposit of cash amounting to Rs.5,000/- on the ground that the assessee could not substantiate with evidence to his satisfaction that he has received cash from the office boy Deepak against which cheque was issued to him. He had also observed that no such office boy was employed by the assessee as no salary was debited in the P&L Account and it is an afterthought. I find the ld.CIT(A) sustained the addition made by the Assessing Officer. The ld. counsel also could not substantiate with any evidence so as to take a contrary view than the view taken by the CIT(A) on this issue. Accordingly, Ground No.5 is dismissed.

18. Ground No.6 was not pressed by the ld. counsel for which the ld. DR has no objection. Accordingly, the same is dismissed.

19. In the result, the appeal filed by the assessee is partly allowed.

ITA No.3975/Del/2016

20. The assessee in the grounds of appeal has challenged the order of the CIT(A) in confirming the penalty of Rs.51,273/- on account of addition of Rs.1,67,558/- made by the Assessing Officer being the loans and advances received back.

21. After hearing both the sides, I find the Assessing Officer made addition of Rs.1,67,558/- being the loans and advances received back from various parties during the year which were given in the preceding year. In appeal, the ld.CIT(A) confirmed the addition. Accordingly, the Assessing Officer levied penalty of Rs.51,273/- on this addition u/s 271(1)(c) of the IT Act which has been upheld by the CIT(A). In the preceding paragraphs I have already deleted the addition so made by the Assessing Officer and upheld by the CIT(A). Since the addition on which penalty was levied has been deleted, therefore, the penalty does not survive. Accordingly, the order of the CIT(A) sustaining the penalty is set aside and the Assessing Officer is directed to cancel the penalty.

22. In the result, ITA No.5447/Del/2012 is partly allowed and ITA No.3975/Del/2016 is allowed.

The decision was pronounced in the open court on 06.09.2019.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 06th September, 2019

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi