

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.5651/Del./2018  
Assessment Year 2014-2015

M/s. IBG Private Limited, New Delhi – 110 059. PAN AAACI2314L C/o. G.S. Kohli & Co. C.As R-739 (Basement), New Rajinder Nagar, New Delhi. PIN – 110 060.	vs.,	The Income Tax Officer, Ward – 12 (1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri G.S. Kohli, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	27.08.2019
Date of Pronouncement :	06.09.2019

**ORDER**

This appeal by assessee has been directed against the order of Ld. CIT(A)-22, New Delhi, Dated 20<sup>th</sup> February, 2018, for the assessment year 2014-15.

2. Briefly the facts of the case are that the assessee company filed return of income declaring NIL income. The assessing officer on perusal of the bank statement of the assessee company observed that there is a cash deposit

amounting to Rs.3 lacs. The assessing officer vide Order sheet dated 15<sup>th</sup> November 2016 asked Shri Surjit Singh to explain the cash deposit in the bank account on 22<sup>nd</sup> November 2016. The assessee has not furnished any explanation regarding cash deposit of Rs.3 lacs. Vide Order sheet dated 22<sup>nd</sup> November 2016 Shri Surjit Singh one of the Director admitted the said cash deposit of Rs.3 lacs to be added to the returned income on agreed basis. The assessing officer, accordingly, made addition of Rs.3 lacs.

3. The assessee challenged the addition of Rs.3 lacs before the Ld. CIT(A). The Ld. CIT(A) while considering the appeal of assessee, called for the record from the assessing officer. On perusal of the record, it was noted that bank statement of A/c.No.67170726788 held by the assessee in State Bank of Travancore, there is a cash deposit of Rs.35 lacs in the account of the assessee. The assessee did not furnish any explanation before assessing officer. Therefore, notice for enhancement dated 9<sup>th</sup> February 2018 was sent to the assessee. The case was fixed on 22<sup>nd</sup> February 2018 and

in the absence of assessee, the Ld. CIT(A) decided the appeal of assessee.

3.1. As regards addition of Rs.3 lacs made by assessing officer, the Ld. CIT(A) noted that addition is made because the Director of the assessee-company agreed for the addition. Therefore, this ground of appeal of assessee were dismissed.

3.2. As regards enhancement of Rs.35 lacs, the Ld. CIT(A) noted that there is no compliance to the enhancement notice, therefore, in the absence of any reply from the side of the assessee, the Ld. CIT(A) made the addition of Rs.35 lacs and enhanced the income by the said amount.

4. The assessee in the present appeal has challenged both the additions of Rs.3 lacs and Rs.35 lacs.

5. I have heard the Learned Representative of both the parties and perused the material available on record.

6. Learned Counsel for the Assessee as regards addition of Rs.3 lacs submitted that there was sufficient cash available with the assessee. Books of account have been ignored by the assessing officer. Therefore, there was no reason for the assessee to agree to the addition. The cash is deposited out of the cash in hand and there is no provision under the Income Tax Act to agree to the addition. I do not subscribe to the view of the Learned Counsel for the Assessee. It is well settled that no appeal lies on agreed additions. I rely upon the Judgment of Hon'ble Bombay High Court in the case of **Jivatlal Purtapshi vs Commissioner Of Income-Tax [1967]** 65 ITR 261 (Bom.), Judgment of Hon'ble Kerala High Court in the case of CIT vs. Vamadevan Bhanu 330 ITR 559 (Kerala) and Judgment of Hon'ble Punjab and Haryana High Court in the case of Banta Singh Kartar Singh 129 ITR 239 (P&H). Learned Counsel for the Assessee admitted that assessee did not move any application under section 154 of the Income Tax Act before the assessing officer, in case assessee did not agree for the addition. Since the assessing officer has

specifically mentioned in the order sheet and assessment order that the Director of the assessee-company agreed for the above addition and did not file any explanation at assessment stage and assessee did not take any steps for correction of the Order sheet, it is clear that the addition has been made on agreed basis. Thus, no appeal lies before the Ld. CIT(A) against the agreed addition. I, therefore, confirm the addition. This ground of appeal of assessee is dismissed.

6.1. However, as regards addition of Rs.35 lacs on account of enhancement made by Ld. CIT(A), Learned Counsel for the Assessee submitted that the enhancement notice dated 9<sup>th</sup> February 2018 was not served upon assessee and that the account number mentioned by the Ld. CIT(A) in the appellate order does not belong to the assessee. Copy of such account is filed at Page No. 37 of the paper book to show that it is in the name of Mr.Surjeet Singh. He has, therefore, submitted that addition is wholly unjustified.

7. The Ld. D.R. relied upon order of the Ld. CIT(A) and produced the Ld. CIT(A) record to show that enhancement notice have been issued to the assessee which have not been complied with.

8. I have heard the rival submissions and perused the Ld. CIT(A) folder as well. The Order sheet of the Ld. CIT(A) shows that he has issued enhancement notice on 9<sup>th</sup> February 2018 fixing the case on 22<sup>nd</sup> February 2018. The Ld. CIT(A) on 22<sup>nd</sup> February 2018 noted that there is no compliance and order have been passed on 20<sup>th</sup> February 2018 that is much before the date of the hearing. It is not clear from the appeal folder whether notice of enhancement have been served upon the assessee ? No proof of service of such notice is available in appeal folder. Since notice have been given for compliance on 22<sup>nd</sup> February 2018, Ld. CIT(A) should not have pass the order on 20<sup>th</sup> February 2018. The copy of the bank account referred to by the Ld. CIT(A) for making addition of Rs.35 lacs have been filed at page 37 of the paper book, which shows that the account is in the name of Shri Surjit Singh. Thus, the assessee has *prima*

*facie* case to explain that the impugned addition cannot be justified. However, these facts have not been examined by Ld. CIT(A) and that no proper opportunity of being heard have been provided to assessee. It is a case of denial of opportunity of being heard to the assessee. Therefore, the matter requires reconsideration at the level of Ld. CIT(A). I accordingly, set aside the impugned order of the Ld. CIT(A) and restore this issue to the file of Ld. CIT(A) with a direction to re-decide the issue afresh on the addition of Rs.35 lacs, by giving reasonable and sufficient opportunity of being heard to the assessee and the assessing officer. This ground of appeal of assessee is allowed for statistical purposes.

9. In the result appeal of Assessee partly allowed.

Order pronounced in the open Court.

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 06<sup>th</sup> September, 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.