

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.6102 & 6103/Del./2018
Assessment Year 2014-2015

Shri Naresh Kumar, Village-Sultanpur, Sector- 127, Distt. G.B. Nagar, Noida. Uttar Pradesh. PIN – 201 301. PAN AVGP5027Q	vs.,	The Income Tax Officer, Ward – 2(3), Noida.
(Appellant)		(Respondent)

For Assessee :	Shri Sandeep Jain, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	28.08.2019
Date of Pronouncement :	11.09.2019

ORDER

Both the appeals by the Assessee are directed against the different Orders of the Ld. CIT(A)-1, Noida, Dated 29.06.2018, for the A.Y. 2014-2015.

2. I have considered the rival submissions and perused the findings of the authorities below.

3. In ITA.No.6102/Del./2018 assessee challenged the additions on quantum contending that the Ld. CIT(A)

passed the Order without disposing of the grounds raised on merits and that some of the grounds were not agreed for addition.

4. Briefly the facts of the case are that return of income was filed on 27.03.2015 declaring net income of Rs.2,31,940/-. Initially there was no compliance to the statutory notice issued by the A.O. Later on some compliance have been made. The A.O. noted that assessee runs a P.G in the name and style of Pradhan P.G at village-Sultanpur, Sector-128, Noida. The statement of Shri Vishesh Kumar Tyagi on oath was recorded in which he has confirmed that assessee is owner of aforesaid P.G. and earns rental income. The A.O, therefore, after giving opportunity to the assessee and material on record made addition of Rs.9,81,750/- on account of undisclosed rental income. The A.O. also noted that assessee had sold two Flats, on which, short term capital gain was worked-out and addition was made on account of undisclosed capital gain of Rs.2,23,333/-. The A.O. further noted that there are cash deposits and investment which remain unexplained. The

A.O. therefore made addition of Rs.7,10,000/- on account of undisclosed cash deposit. The A.O. further observed that assessee had received interest of Rs.1,06,992/- in his S.B. Account which have not been disclosed in the income tax return. Therefore, after giving rebate of Rs.10,000/- under section 80TTA of the I.T. Act, the A.O. made addition of Rs.96,992/- on account of undisclosed income from other sources. The A.O. after making these four additions, computed the total taxable income of assessee at Rs.22,10,460/-.

5. The assessee challenged aforesaid four additions before the Ld. CIT(A). The Ld. CIT(A) noted in the appellate order that Counsel for Assessee at the very outset submitted that assessee had income from P.G. at village Sultanpur, Sector 128, Noida and same was not disclosed by him in his return of income. He has stated that assessee has also not disclosed the capital gains amounting to Rs.2,23,333/- in the return of income and same may be taken into consideration to compute the total income of assessee. Ld. CIT(A) also noted that Counsel for Assessee during the

course of hearing also stated that he is not pressing the Ground Nos.2 and 4 as taken in the grounds of appeal. Ld. CIT(A) noted that on Ground No.2 assessee challenged the computation of total taxable income at Rs.22,10,460/- as against the returned income at Rs.1,98,380/-. The Ld. CIT(A) also noted that on Ground No.4, assessee challenged the addition of Rs.2,23,333/- on account of undisclosed capital gains. The Ld. CIT(A), therefore, noted that since on all the four grounds addition has been made at Rs.22,10,460/- which is not pressed by Counsel for Assessee, therefore, there is no need to consider other grounds of appeal. The appeal of assessee was accordingly dismissed as not maintainable.

6. After considering the rival submission, I am of the view that the part matter requires reconsideration at the level of the Ld. CIT(A). Learned Counsel for the Assessee submitted that Counsel for Assessee only agreed for not pressing the Ground No.4 and 6 raised in the appeal. Same fact is also stated in the written submissions filed before the

Tribunal. He has, therefore, submitted that other grounds should have been decided on merits by Ld. CIT(A).

7. The Ld. D.R. relied upon orders of the authorities below.

8. It is well settled law that no appeal lies on agreed additions. I rely upon 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 125 ITR 239 (P&H). In this case, the Ld. CIT(A) noted in the appellate order that Counsel for Assessee at the very outset, submitted that assessee had income from P.G. at Village Sultanpur, Noida which have not been disclosed by him in his return of income. He has further stated that assessee has also not disclosed capital gains amounting to Rs.2,23,333/-. It would, therefore, show that Counsel for Assessee correctly agreed for not pressing these grounds of

appeals before the Ld. CIT(A). The Ld. CIT(A) noted in the impugned order that Counsel for Assessee did not press Ground Nos. 2 and 4 before him. Ground No.2 is general in nature which is raised with regard to computation of income at Rs.22,10,460/- as against the declared income and that on Ground No.4, addition of Rs.2,23,333/- have been challenged for capital gains. However, the fact remains that Counsel for Assessee submitted before the Ld. CIT(A) that assessee has income from P.G. at Noida which is not disclosed in the return of income. This would strengthen the findings of the authorities below that assessee has undisclosed rental income from running P.G. at Village Sultanpur, Noida. Learned Counsel for the Assessee admitted that assessee did not move any application for rectification before the Ld. CIT(A) to challenge the aforesaid findings of the Ld. CIT(A) that Counsel for Assessee made such a statement and did not press Ground Nos. 2 and 4 before the Ld. CIT(A). The assessee did not made any attempt to contradict the finding of fact recorded by the Ld. CIT(A) before filing of the appeal before the Tribunal by

moving any petition before the Ld. CIT(A). Learned Counsel for the Assessee in the written submissions filed before the Tribunal has categorically stated that Counsel for Assessee has agreed for not pressing Ground Nos.4 and 6 in the appeal. It would, therefore, support the findings of Ld. CIT(A) that Counsel for Assessee made the statement for not pressing these grounds of appeal before the Ld. CIT(A). Learned Counsel for the Assessee did not contradict the statements made before the Ld. CIT(A) that assessee has received rental income from P.G. at Village Sultanpur, Noida. These facts clearly show that assessee has undisclosed rental income and has also undisclosed capital gains. Therefore, these grounds have been rightly dismissed by the Ld. CIT(A). No interference is required in the matter. The Counsel for Assessee has agreed that Counsel for Assessee did not press Ground No.6 before the Ld. CIT(A) with regard to earning of undisclosed interest income in a sum of Rs.96,992/-, therefore, this ground is also dismissed.

9. The only ground left for consideration is undisclosed cash deposit of Rs.7,10,000/-. It appears from the impugned order that Ld. CIT(A) considering general ground of computing taxable income at Rs.22,10,460/- did not decide Ground No.5 of the appeal of assessee challenging the addition of Rs.7,10,000/- on account of undisclosed cash deposits. This ground, therefore, requires reconsideration at the level of the Ld. CIT(A).

10. Considering the above discussion, I confirm the Order of the Ld. CIT(A) in dismissing the appeal of assessee on the remaining grounds except on Ground No.5 challenging the addition of Rs.7,10,000/- on account of undisclosed cash deposit. In this view of the matter, I set aside the Order of the Ld. CIT(A) qua Ground No.5 only and restore this ground of undisclosed cash deposit in sum of Rs.7,10,000/- to the file of Ld. CIT(A) with a direction to re-decide this ground as per Law, by giving reasonable, sufficient opportunity of being heard to the assessee.

11. In the result, ITA.No.6102/Del./2018 of the appeal of Assessee partly allowed for statistical purposes to the above extent only.

12. In ITA.No.6103/Del./2018 assessee challenged the levy of penalty under section 271(1)(c) of the I.T. Act. The Ld. CIT(A) dismissed the appeal of assessee on account of penalty levied by the A.O. on the income to the extent of Rs.20,12,075/- i.e., on the above four additions. In the penalty order, the Ld. CIT(A) did not discuss the issue in detail on merits. Further, when on one ground which is not decided by the Ld. CIT(A) on merit, I have allowed appeal of assessee partly for statistical purposes, therefore, considering the penalty order to be non-speaking on each and every addition, I am of the view that the entire appeal requires reconsideration at the level of the Ld. CIT(A). In view of the above discussion, I set aside the penalty order and restore the appeal of assessee to the file of Ld. CIT(A) with a direction to re-decide the penalty matter strictly on merits as per Law, by giving reasonable, sufficient opportunity of being heard to the assessee.

13. In the result, ITA.No.6103/Del./2018 of the Assessee allowed for statistical purposes.

14. To sum-up, ITA.No.6102/Del./2018 of the appeal of Assessee partly allowed for statistical purposes and ITA.No.6103/Del./2018 of the Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 11th 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.

Date of dictation	26.08.2019
Date on which the typed draft order is placed before the dictation Member	09.09.2019
Date on which the approval draft comes to the Sr. PS	11.09.2019
Date on which the fair order is placed before the Dictation member for pronouncement	11.09.2019
Date on which the fair order comes back to the Sr. P.S.	11.09.2019
Date on which the final order is uploaded on the website of ITAT	11.09.2019
Date on which the file goes to the Bench Clerk	11.09.2019
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.	