

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 5059/Del/2015 : Asstt. Year : 2009-10

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| Income Tax Officer, Ward-37(1), New Delhi-110002 | Vs | Vijender, 743, Pana Madaan, Harijan Mojan Pana, Bawana, Delhi-110039 |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. AEGPV6782C | | |

Assessee by : Sh. Vikas Goyal, CA

Revenue by : Ms. Bedobani Choudhari, Sr. DR

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| Date of Hearing : 15.03.2017 | Date of Pronouncement : 20.03.2017 |
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ORDER

This is an appeal by the department against the order dated 27.05.2015 of ld. CIT(A)-13, New Delhi.

2. Following grounds have been raised in this appeal:

“1. Whether on facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 21,50,000/- out of total addition of Rs. 22,40,000/- made by the A.O. as unexplained deposits u/s 68 of the I.T. Act 1961, without appreciating the facts that neither the assessee explained or produced any documents to substantiate his claim nor any remand report was called for by the Ld. CIT(A).

2. Whether on facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting addition of Rs.

11,57,487/- made by the A.O. as unexplained investments.

3. Whether on facts and in the circumstances of the case, the Ld. CIT(A) is correct to allow the deduction u/s 80C of the I.T. Act, 1961 amounting to Rs. 1,00,000/- without appreciating the facts that during the assessment proceedings assessee failed to explain or produce any document in this regard.

The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date, the appeal is finally heard for disposal.”

3. Facts of the case in brief are that the assessee filed the return of income on 05.05.2009 declaring an income of Rs.1,50,000/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Later on, the case was selected for scrutiny. During the course of assessment proceedings, the AO noticed that as per AIR information, the assessee had deposited cash amounting to Rs.22,40,000/- in his bank account with Corporation Bank. He asked the assessee to explain the source of cash deposits but the assessee had not furnished any documents in support of his claim. He, therefore, treated the deposits in the bank account as unexplained deposits u/s 68 of the Act and made the addition of the said amount. The AO also observed that the assessee had made payment to Religare Security amounting to

Rs.11,57,487/- but had not furnished any explanation or documents. Therefore, the said amount was also treated as income from undisclosed sources and added to the income of the assessee. The AO did not allow the claim of the assessee u/s 80C of the Act amounting to Rs.1,00,000/- for the reason that no documentary evidence was produced.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) and furnished the written submissions which have been incorporated in para 5.2 of the impugned order, for the cost of repetition, the same is not reproduced herein.

5. The Id. CIT(A) after considering the submissions of the assessee enhanced the addition by Rs.2,37,316/- but deleted all other additions made by the AO except Rs.90,000/- by observing in para 5.3 of the impugned order which read as under:

“5.3 The reason given by AO and the submission of the appellant are considered. The explanation given by the appellant were also submitted to AO during the assessment proceeding which can be seen from the impugned order that the appellant himself attended the proceeding and filed necessary details However, the AO neither rejected these explanations nor discussed about it. The sole basis of decision taken by AO is the failure on the part of appellant to maintain regular books of accounts and get it audited as stipulated u/s 44AB of the Act. The conclusion of the AO is unjustifiable as taxation has to be based on real income concept. Non maintenance of regular books of accounts and failure to get

books of account audited is an offence to be dealt under other provisions of the Act. While taxing the additional income, the explanation regarding the source of income and the source of cash deposited in the account are to be examined and verified. During the appellate proceeding, the explanations given by the appellant along with the relevant statement of account are thoroughly analyzed. During the relevant year, the appellant withdrawn money from HDFC Bank Account and Syndicate Bank account and deposited in the Corporation Bank account. The deposit in Syndicate Bank Account is out of premature encashment of fixed deposit of Rs.1100,000/- (on 27.10.2008) which is out of the compensation of Rs. 12,47,367/- received against land acquisition. It can be seen that out of the interest income of Rs.1,47,367/- (from fixed deposit in Syndicate Bank credited on 10.10.2008) and Rs.11,01,9587- deposited on 27.10.2008 in the Syndicate Bank Account the appellant withdrew Rs. 10,00,000/- in cash and deposited in Corporation Bank Account Rs.9,00,000/- on the same day. The appellant submitted certificate from the Bank regarding premature encashment of fixed deposit- That explains source of cash deposited in the Corporation Bank to the tune of Rs. 12,40,000/-. The appellant also deposited Rs.7,25,000/- in cash in the Corporation Bank account on 03.11.2008. As explained, the amount represents, advance taken from Ram Veer against sale of appellant's house. The examination of the statement of cash flow indicates that the other amounts deposited is partly out of cash withdrawn from Syndicate Bank account and mainly from HDFC Bank account. In the bank account of HDFC there are deposits by cheque from Religare Securities which was withdrawn in cash by the appellant and re-deposited in Corporation Bank account. The appellant also explained that some amount of cash loans received from relatives were deposited in the Corporation Bank account. Against these loans the appellant also paid Rs.40,000/-, Rs. 1,40,000/- and Rs.3,50,000/- by cheque from Corporation

Bank account to Suman, Harvinder and Harish on 11.11.2008, 12.11.2008 and 12.11.2008 respectively. It is submitted that, the money was handed over to the appellant subsequently. In support of the claim, the appellant submitted declaration from these three persons who are also related to the appellant. Thus, amount of Rs.4,00,000/- cash deposited on 05.01.2009 and Rs.50,000/- on 31.01.2009 is also explained through the statement of cash flow. However, the appellant failed to explain the source of cash deposited in the Corporation Bank account on 12.02.2009 amounting to Rs.90,000/-. In view of this, the addition made on account of cash deposited in the Corporation Bank account on 12.02.2009 to the tune of Rs.90,000/- is confirmed and the balance amount is deleted.

Regarding the investment made in Religare Security amounting to Rs.11,57,487/-, it can be seen that the amount is paid through account payee cheque from HDFC Bank account wherein receipts from Religare Security out of share trading are also reflected.

Accordingly, addition made on this account is not justifiable hence deleted. However, the appellant did not declare any income from trading in securities.

During the course of appellate proceedings, the appellant assessee offered following income for taxation which was not shown in the return:

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| <i>1. Profit from F&O transactions:</i> | <i>Rs. 1,46,426</i> |
| <i>2. Profit from intraday trading:</i> | <i>Rs.85,850</i> |
| <i>3. Saving bank interest:</i> | <i>Rs.5,040</i> |

In view of this, the AO is directed to make addition of Rs.2,37,316/- as income in the hands of appellant as mentioned above. Therefore, apart from Rs.90,000/- u/s 68 discussed above, additional income ascertained during the

appellate proceeding is Rs.2,37,316/-. Regarding deduction of Rs.1,00,000/- claimed u/s 80C, the appellant submitted evidence regarding insurance premium paid to Biral Sunlife Insurance (Policy No. 00161413) amounting to Rs.1,00,000/- and premium paid to LIC amounting to Rs.31,022/-. Since, the deduction claimed is supported by admissible evidence, the addition made is deleted. Accordingly, the grounds of appeal are partly allowed.”

6. Now the department is in appeal. The ld. DR strongly supported the order of the AO and further submitted that the assessee did not furnish any documents or evidence before the AO in support of its claim in spite of various opportunities given. It was further submitted that the ld. CIT(A) admitted the additional evidences and neither provided any opportunity being heard to the AO nor asked for the remand report. It was also submitted that the assessee although furnished the fresh evidences before the ld. CIT(A) but did not make any application under Rule 46A of the Income Tax Rules, 1962. Therefore, the ld. CIT(A) was not justified in allowing the relief to the assessee by considering the fresh documents which were not furnished before the AO.

7. In his rival submissions the ld. Counsel for the assessee reiterated the submission made before the ld. CIT(A) and further submitted that the AO had not given proper opportunity of being heard. Therefore, the documents which were relevant to decide the controversy were furnished before the ld. CIT(A) who after examining the same allowed the relief to the assessee.

8. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the Id. CIT(A) admitted the additional evidences which were not available to the AO as the same were not furnished during the course of assessment proceedings. The Id. CIT(A) did not ask the AO to furnish the remand report on the documents furnished by the assessee first time before him. I, therefore, considering the totality of the facts, deem it appropriate to remand this case back to the file of the AO to be decided afresh in accordance with law after providing a due and reasonable opportunity of being heard to the assessee.

9. In the result, the appeal of the department is allowed for statistical purposes.

(Order Pronounced in the Court on 20/03/2017)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 20/03/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR