

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "F", NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos.7119, 7120 & 7121/Del/2017
Assessment Years: 2005-06, 2008-09 & 2010-11

Shri Vinay Subhikhi, R-8, New Prasad Nagar, New Delhi	Vs.	DCIT, Central Circle-23, New Delhi
PAN :APOPS0708Q		
(Appellant)		(Respondent)

Appellant by	Shri Rohit Garg, Adv. & Shri Vasudevan G., Adv.
Respondent by	Smt. Sulekha Verma, CIT(DR)

Date of hearing	12.09.2019
Date of pronouncement	14.10.2019

ORDER

PER O.P. KANT, A.M.:

These three appeals by the assessee are directed against three separate orders, all dated 28/09/2017, passed by the Ld. Commissioner of Income-tax (Appeals)-18, New Delhi [in short the Ld. CIT(A)] for assessment year 2005-06; 2008-09 and 2010-11 respectively. In all the three appeals, common issue of unexplained household expenses is involved, and thus all the three appeals were heard together and disposed off by way of this consolidated order for the sake of convenience.

2. The grounds raised in all the three appeals are identical, except the amount of unexplained household expenses under dispute. Thus, for brevity, the grounds of the appeal raised in ITA No. 7119/Del/2017 for assessment year 2005-06 are only reproduced as under:

1. *That the CIT(Appeals) erred on facts and in law, affirming the addition to the extent of Rs.3,86,960/- on account of alleged unexplained household expenses incurred by the appellant.*
- 1.1 *That the CIT(Appeals) erred on facts and in law in not providing reasonable opportunity of being heard to the Appellant and drawing adverse inference without appreciating the submissions and documents place on record.*
- 1.2 *That the CIT(Appeals) erred on facts and in law in confirming the above addition merely on the basis of the remand report of the Assessing Officer without appreciating that the Tribunal had earlier set aside the matter to CIT(A) for fresh adjudication.*

3. In ITA No. 7120/Del/2017 for assessment year 2008-09 addition of Rs.2,63,202/- and in ITA No.7121/Del/2017 for assessment year 2010-11 addition of Rs.3,37,313/- have been disputed.

4. The briefly stated facts of the case are that in the case of the assessee a search operation under section 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out on 26/11/2009 at his premises along with premise of M/s Tody group. During the course of search, incriminating documents, particularly a diary having certain noting of expenses was seized. In the course of statement recorded under section 132(4) of the Act, the assessee stated that the notings in the said diary contained detail of household expenses. Consequent to the search proceedings, notice under

section 153A of the Act was issued in respect of the assessment years involved in the three appeals along with other assessment years and in the course of assessment proceedings, the Assessing Officer asked the assessee to explain the source of household expenditure appearing in the seized diary.

4.1 In the said seized diary household expenses of Rs.4,94,022/- for assessment year 2005-06; Rs.5,76,962 for assessment year 2008-09 and Rs.5,79,592 for assessment year 2010-11 is appearing. For the assessment year 2010-11, the Assessing Officer projected total house-hold expenses at Rs.8,87,755/-. The Assessing Officer found household withdrawal in capital account of the assessee at Rs.1,02,932/- for assessment year 2005-06; Rs.3,13,760/- for assessment year 2008-09 and Rs.5,50,442/- for assessment year 2010-11, accordingly, after allowing the household withdrawals shown in capital account, the Assessing Officer made addition for unexplained household expenditure of Rs.3,91,090/- for assessment year 2005-06; Rs.2,63,202/- for assessment year 2008-09 and Rs.3,37,313/- for assessment year 2010-11. Aggrieved with the additions made, the assessee filed appeal before the Ld. CIT(A), however, due to non-prosecution by the assessee, the Ld. CIT(A) dismissed the appeals against the additions made. On further appeal by the assessee before the Tribunal, the matter was set aside to the Ld. CIT(A) with observations as under:

“4. In view of the above, we set aside the matter to the file of the first appellate authority for fresh adjudication in accordance with the law, after giving adequate opportunity of being heard to the assessee. The assessee shall present himself before the learned CIT(A) on 30th December, 2015 and take service of the notice and, thereafter, cooperate in disposing of the appeals.”

4.2 Consequently, the assessee filed necessary document in support of its claim before the Ld. CIT(A). The Ld. CIT(A) forwarded all the documents to the Assessing Officer calling for remand report on the documents filed by the assessee. After taking into account the remand report submitted by the Assessing Officer and rejoinder of the assessee, the Ld. CIT(A) upheld the addition in dispute in all the three years.

5. Before us, the Ld. counsel of the assessee filed a combined paper-book for all the three appeals, containing pages 1 to 66 and submitted that the Ld. CIT(A) has not appreciated the evidences furnished by the assessee in support of source of house-hold expenditure recorded in seized diary. Accordingly, he submitted issue in dispute may be restored to the file of the Assessing Officer for deciding afresh.

6. The learned DR, on the other hand, relied on the order of the Ld. CIT(A) and submitted that Ld. CIT(A) has already allowed relief corresponding to the source of expenditure explained by the assessee and, therefore, she opposed restoring the matter back to the Assessing Officer.

7. We have heard rival submissions and perused the relevant material on record. On perusal of the assessment orders, we find that the Assessing Officer has made addition of unexplained household expenditure based on the entries found recorded in the seized diary. The relevant finding of the Assessing Officer in assessment year 2005-06 is reproduced as under:

“2.6.3 On perusal of the capital account of the assessee it is seen that it has shown total drawings of Rs.1,02,932/- during the F.Y. 2004-05. But on the other hand the details of household expenses/drawings of the assessee as per the

seized page number 11-12 of Annexure A-l, party H-9 are as under:

S. No.	Month	Amount (in Rs.)
1.	April 2004	43,231
2.	May 2004	27,04-1
3.	June 2004	66,000
4.	July 2004	91,261
5.	Aug 2004	38,419
6.	Sep 2004	23,998
7.	Oct 2004	42,895
8.	Nov 2004	34,470
9.	Dec 2004	29,694
10.	Jan 2005	51,448
11.	Feb 2005	22,336
12.	March 2005	23,229
Total		4,94,022

Thus as per page number 11-12 of Annexure A-l, party H-9, the assessee has incurred household expenses of Rs.4,94,022/- during the FY 2004-05. Thus the household expenses of Rs.3,91,090/- (4,94,022- 1,02,932) have not been accounted by the assessee i.e. have not been shown by the assessee in its books of accounts.

2.7 Despite giving various opportunities, the assessee has not offered any explanation whatsoever regarding the source of these unaccounted household expenses of Rs.3,91,090/- incurred by him during the FY 2004-05.

2.8 To summarize, for the FY 2004-05, the amount of unexplained household expenses of the assessee is Rs.3,91,090/- and the amount of unexplained credits in its various bank accounts of the assessee is ? 63,888/- (over and above professional receipts) i.e. the amount of unexplained household expenses is more than the amount of unexplained credits in the various bank accounts of the assessee.

2.9 Subject to discussion above, as the amount of unexplained household expenses is more than the amount

of unexplained credits in the various bank accounts of the assessee, the amount of unexplained household expenses of Rs.3,91,090/-, the source of which has not been explained by the assessee, is treated as undisclosed income of the assessee.

(Addition of Rs.3,91,090/-)"

8. In second round of proceedings before the Ld. CIT(A), in assessment year 2005-06 the assessee filed copy of bank statements explaining the credit entries and other documents, the Ld. CIT(A) adjudicated the issue as under:

*".....
On a comparative consideration of the arguments forwarded by the AO as well as the Appellant, it was indisputably found that the Appellant had no explanation regarding the source of house hold expenditure for the amount of Rs.[3,91,090-(3000+1400)]. In this view of the matter the differential amount is held as unexplained expenditure of the Appellant. The addition, therefor, is required to be made for an amount of Rs.3,86,690/-."*

9. We note from para 2.8 of the assessment order for assessment year 2005-06, in the case of the assessee that credit appearing in some bank account was also unexplained. The learned Assessing Officer has not given benefit of said unexplained credit against unexplained house-hold withdrawal and addition has been made for the sum, which is maximum out of the two. As per law, benefit of only explained income or income on which tax has been paid (including exempt income) can be given against unexplained house-hold income, which the AO has partly given. If the unexplained credits in bank accounts, which are not utilized towards house-hold expenditure and used somewhere else, then a separate addition was required for those unexplained credits.

10. The facts and circumstances are identical in other two assessment years. In our opinion, the Ld. CIT(A) has not appreciated all the evidences furnished by the assessee and therefore, we feel it appropriate to set aside the order of the learned CIT(A) and restore the issue in dispute involved in all the three assessment years to the file of the Assessing Officer with the direction to the assessee to file necessary evidence in support of source of household expenditure declared in the books of accounts including household withdrawals declared in the capital account of the family members, who contributed household expenditure of the assessee. The Ld. Assessing Officer is directed to adjudicate the issue in dispute in accordance with law after allowing adequate opportunity of being heard to the assessee. Accordingly, the grounds raised in all the three appeals are allowed for statistical purposes.

10. In the result, all the appeals are allowed for statistical purposes.

Order is pronounced in the open court on 14th October, 2019.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 14th October, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

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