

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

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 6354/Del/2018
Assessment Year: 2004-05

RAJESH PRASAD,
13/34, WEA KAROL BAGH,
NEW DELHI – 110 005
(PAN: AALPR2566B)
(ASSEESSEE)

vs. ACIT, CENTRAL CIRCLE-29,
NEW DELHI

(RESPONDENT)

AND

I.T.A. No. 6355/Del/2018
Assessment Year: 2004-05

PRAMOD KUMAR,
13/34, WEA KAROL BAGH,
NEW DELHI – 110 005
(PAN: ALJPK6448A)
(ASSEESSEE)

vs. ACIT, CENTRAL CIRCLE-29,
NEW DELHI

(RESPONDENT)

Assessee by: Sh. Anunav Kumar, Adv.
Revenue by: Sh. Amrit Lal, Sr. DR.

ORDER

These two appeals are filed by the different assessees against the respective Orders passed by the same Ld. CIT(A)-21, New Delhi relating to Assessment Year 2004-05 on the following grounds.

GROUND RAISED IN ITA NO. 6354/DEL/2018 (AY 2004-05)

1. That the CIT(A) is upholding addition the of RS.16,55,550/- made by A.O. being cash deposit in bank account u/s 68 of the Income-tax Act without appreciating the fact that the appellant was working as a small employee of Mr. Tarun Goyal, who has been

admittedly carrying on the business of providing accommodation entries through various entities and who had also appeared before the A.O. in earlier proceedings, as recorded in assessment order dated 30.11.20j 1 and had mentioned that only the

commission income in respect of the amount of cash deposited in the account of the appellant had been earned and commission income had also been surrendered by Mr. Tarun Goyal in his income tax return for A.Y. 2009-10, the year in which the search had taken place in his group entity on.15.09.2008.

2. That the CIT(A) also failed to appreciate that since the cash deposited in the bank account in the name of the appellant was part of business of providing accommodation entries carried on by Tarun Goyal, no addition in the case of the appellant could be made on account of cash deposit in the bank account.

3. That the CIT(A) also failed to appreciate that in the facts of the case of the appellant there is no possibility to earn such an amount as an income and, therefore, addition on account of cash deposit could not be made as unexplained case credit in view of the decision of Supreme Court in the cases of CIT Vs. Smt. P.K. Noorjahan, 237 ITR 570 (SC) and CIT v. Bharat Engineers & Construction Co. 83 ITR 187 (SC).

4. That the CIT(A) also erred in not appreciating that since in certain other cases of Tarun Goyal Group, only the commission has been considered in respect of all credit entries, in the case of the appellant also only the commission income could be determined with reference to amount of cash deposit and total amount of cash deposit could not be considered as unexplained income u/s 68 of the Act.

5. Without prejudice to above, the CIT(A) also failed to appreciate that no addition can be made u/s 68 of the Act on the basis of entry appearing the bank account of the assessee.

6 That the appellant craves the leave to add, amend, withdraw, modify or vary any of the grounds raised above on or before the date of hearing.

GROUNDINGS RAISED IN ITA NO. 6355/DEL/2018 (AY 2004-05)

1. That the CIT(A) erred in uphold the addition of Rs.12,97,500/- being cash deposit in bank account u/s 68 of the Income-tax Act without appreciating that the appellant was working as a small employee of Mr. Tarun Goyal, who has been admittedly carrying on the business of providing accommodation entries through various entities and who had also appeared before the A.O. in earlier proceedings, as recorded in assessment order dated 30.11.2011 and had mentioned that only the commission income in respect of the amount of cash deposited in the account of the appellant had been earned and commission income had also been surrendered by Mr. Tarun Goyal in his income tax return for

A.Y. 2009-10, the year in which the search had taken place in his group entity on 15.09.2008.

2. That the CIT(A) failed to appreciate that since the cash deposited in the bank account in the name of the appellant was part of business of providing accommodation entries carried on by Mr. Tarun Goyal, no addition in the case of the appellant could be made on account of cash deposit in the bank account.

3. That the CIT(A) also failed to appreciate that in the facts of the case of the appellant there is no possibility to earn such an amount as an income and, therefore, addition on account of cash deposit could not be made as unexplained case credit in view of the decision of Supreme Court in the cases of CIT Vs. Smt. P.K. Noorjahan, 237 ITR 570 (SC) and CIT v. Bharat Engineers & Construction Co. 83 ITR 187 (SC).

4. That the CIT(A) also erred in not appreciating that since in certain other cases of Tarun Goyal Group, only the commission has been considered in respect of all credit entries, in the case of the appellant also only the commission income could be determined with reference to amount of cash deposit and total amount of cash deposit could not be considered as unexplained income u/s 68 of the Act.

5. Without prejudice to above, the CIT(A) also failed to appreciate that no addition can be made u/s 68 of the Act on the basis of entry appearing the bank account of the assessee.

6. That the appellant prays for addition/modification of any of the grounds at that time. of hearing of the appeal.

2. Since the grounds of appeal raised in both these appeals are similar and identical, hence, we have heard both the appeals together which are being disposed of by this common order for the sake of convenience, by dealing with ITA No. 6354/Del/2018 (AY 2004-05) and the result thereof will apply *mutatis mutandis* to other appeal being ITA No. 6355/Del/2018 (AY 2004-05).

3. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

4. At the time of hearing, Ld. Counsel for the assessee stated that AO has passed the *exparte* assessment order dated 21.10.2016 u/s. 254/144/148 of the Income Tax Act, 1961 (in short "Act") without giving sufficient opportunity to the assessee for substantiating the claim of the assessee. Similarly, Ld. CIT(A) has also passed the impugned *exparte* order without hearing the assessee. Ld. Counsel for the assessee further submitted that assessee is having all the necessary documents/evidences, which he has filed in the shape of Paper Book Page no. 1-89 in which he has attached the copy of bank account statement of the appellant on the basis of which addition has been made; copy of statement of Sh. Tarun Goyal dated 15.9.2008 recorded during the course of search proceedings u/s. 132 of Income Tax Act, in the case of Tarun Goyal Group; copy of order of assessment passed u/s. 144/148 dated 30.11.2011; copy of order of CIT(A) dated 29.11.2013 passed in the case of the appellant in first round of appeal; copy of consolidated order of Hon'ble Bench of ITAT dated 18.10.2013 passed in appeals in the cases of group companies of Tarun Goyal Group; copy of order dated 24.5.2016 passed by the ITAT in the case of appellant in first round of appeal; copy of letter dated 28.9.2016 filed in the office of the AO during the assessment proceedings in pursuance to order of ITAT dated

24.5.216; copy of submissions made before CIT(A) in second round of appeal; copy of submissions made before the Ld. CIT(A) during the course of first round of appeal; copy of chart giving details of cash deposited in different entities belonging to Tarun Goyal group and copy of consolidated order of Hon'ble Bench of ITAT dated 23.1.2019 passed in second round of appeals in the cases of group companies of Tarun Goyal Group, for substantiating the claim of the assessee. He requested that the issues in dispute may be set aside to the file of the Ld. CIT(A) with the directions to decide the same afresh, after giving adequate opportunity of being heard to the assessee and consider all the documents / evidences filed by the Assessee.

5. Ld. DR has not raised any objection on the request of the Ld. Counsel for the assessee.

6. I have heard both the parties and perused the orders of the revenue authorities. I am of the view that AO as well as Ld. CIT(A) has passed their exparte orders without considering the relevant evidences filed by the assessee and without giving sufficient opportunity of being heard for substantiating the case of the assessee. In the interest of justice, I am of the that the request of the assessee's counsel is genuine and deserve to be accepted. Hence, I accept the request of the Ld. Counsel for the assessee and accordingly, set aside the issues in dispute to the file of the Ld. CIT(A) with the directions to decide the issues in dispute afresh, after giving adequate opportunity of being heard to the assessee and consider all the evidences to be filed by the assessee including the Assessee's Paper Book containing pages 1-89, as mentioned above. In the result, the ITA No. 6354/Del/2018 (AY 2004-05) stands allowed for statistical purposes.

6.1 Following the consistent view as taken in ITA no. 6354/Del/2018 (AY 2004-05) in the case of Rajesh Prasad vs. ACIT as aforesaid, the issues involved in ITA No. 6355/Del/2018 (AY 2004-05) in the case of Pramod Kumar vs. ACIT are also set aside to the file of the Ld. CIT(A)

with the similar directions, as aforesaid. Accordingly, the ITA no. 6355/Del/2018 (AY 2004-05 also stands allowed for statistical purposes.

7. In the result, both the appeals filed by the assessee stand allowed for statistical purposes.

Order pronounced on 11/11/2019.

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

Date 11/11/2019

"SRB"

Copy forwarded to: -

1. Appellant -
 2. Respondent -
 3. CIT
 4. CIT (A)
 5. DR, ITAT
- TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches

