

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : G : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.2512/Del/2017
Assessment Year: 2011-12

Varun Garg,
R-2/57, Raj Nagar,
Ghaziabad.

PAN: AHVPG2255K

Vs DCIT,
Circle-2, CGO-II,
Hapur Road,
Ghaziabad.

(Appellant)

(Respondent)

Assessee by	:	Shri Vipin Garg & Shri Krishna Goel, Advocates
Revenue by	:	Shri S.S. Rana, CIT, DR
Date of Hearing	:	04.12.2019
Date of Pronouncement	:	06.12.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 28.02.2017 of the CIT(A), Ghaziabad, relating to assessment year 2011-12.

2. Although a number of grounds have been raised by the assessee, they all relate to the order of the CIT(A) in sustaining the addition of Rs.3,93,050/- made by the Assessing Officer.

3. Facts of the case, in brief, are that the assessee is an individual and derives income from salary, interest, etc. A search was carried out in the case of the assessee on 23rd August, 2012. Subsequently, locker No.77 with Bank of Baroda, Raj Nagar, Ghaziabad was conducted. The locker was in the joint name of the assessee and his wife Smt. Priyanshi Agarwal. In response to the notice u/s 153A, the assessee filed return of income declaring income of Rs.18 lakhs. The Assessing Officer, during the course of assessment proceedings, noted from the statement of affairs that the assessee has purchased a property at Dasna, Ghaziabad, which is shown at Rs.56,25,000/-. From the perusal of the purchase deed, he noted that the purchase value is Rs.56,10,000/-, stamp duty and other expenses is Rs.3,93,000/- and registration expenses is Rs.10,050/- excluding legal expenses paid by the assessee. Thus, the total investments comes to Rs.60,13,050/. Since the assessee had shown the investment of Rs.56,25,000/- only, the Assessing Officer made addition of Rs.3,93,050/- being the unexplained investment made by the assessee. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal raising the following grounds:-

“i. Because the Ld CIT (A) has erred in facts and law in confirming the additions made by Ld.AO of Rs. 3,93,050/-.

ii. Because the Ld. CIT (A) has erred in facts and law while confirming the addition of Rs. 3,93,050/- and rejecting the ground taken by the appellant that it was a case of completed assessment and squarely covered by the decision of Delhi High Court in the case of Kabul Chawla (380 ITR 573).

iii. Because the Ld CIT (A) has erred in facts and law in confirming the additions made by Ld. AO of Rs. 3,93,050/- rejecting the ground taken by the appellant that the assessment order was made without any oral hearing and in gross violation of principles of natural justice.

iv. Because the Ld CIT (A) has erred in facts and law in making the addition of Rs.3,93,050/- pertaining to Stamp Duty and Registry Expenses on the presumption that the same was incurred by the Appellant as Purchaser whereas on the facts of the case, the same was borne by the Seller.

v. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

5. Grounds of appeal No.(i) and (v) being general in nature are dismissed. So far as ground No.(ii) is concerned, we find the issue stands decided against the assessee by the decision of the Hon'ble Allahabad High Court in the case of *CIT vs. Raj Kumar Arora (2014) 52 taxmann.com 172 (All)* and in the case of *CIT vs. Kesarwani Zarda Bhandar Sahson Allahabad [ITA No.270 of 2014 (All)]*. In both the decisions, it was held that the Assessing Officer has the power to reassess the returns of the assessee not only for undisclosed income found during the course of search operation, but also with regard to the material available at the time of original assessment. Accordingly, ground No.(ii) raised by the assessee is dismissed.

6. So far as Grounds of Appeal No.(iii) and (iv) are concerned, it is the submission of the ld. counsel that the Assessing Officer without asking any query at the time of assessment, made the addition of the same. Although the assessee had stated before the CIT(A) that the stamp duty was borne by the seller, however, he has brushed aside the same. He submitted that given an opportunity, the

assessee is in a position to substantiate the same to the satisfaction of the Assessing Officer.

7. The Id. DR, on the other hand, heavily relied on the order of the CIT(A) and submitted that the assessee was given enough opportunities before the Assessing Officer and the CIT(A) and he has not explained the same, therefore, this matter should be decided here itself and the addition made by the Assessing Officer and sustained by the CIT(A) should be upheld.

8. We have considered the rival arguments made by both the sides and perused the record. From the order of the Assessing Officer, we find that there is no query raised by the Assessing Officer regarding the expenditure of Rs.3,93,050/- on account of stamp duty, registration expenses, etc. Although the assessee before the CIT(A) has categorically stated that stamp duty expenses was paid by the seller out of part consideration of Rs.8,10,000/- paid in cash and, therefore, not added to the cost of acquisition as per the statement of affairs, however, there is no discussion by the CIT(A) on this issue. It is the submission of the Id. counsel that given an opportunity, he is in a position to substantiate the same before the Assessing Officer. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant an opportunity to the assessee to substantiate the source of the registration expenses and decide the issue as per fact and law after giving due

opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee on this issue are allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

The decision was pronounced in the open court on 06.12.2019.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 06th December, 2019

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi