

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

BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER

ITA No. 2517/Del/2017
Assessment Year: 2005-06

MR. RAGHUVeer SHARMA, F-41, JADUNATH ENCLAVE, SECTOR-29, FARIDABAD HARYANA-121008 (PAN:- AIMPS4642L)	Vs.	INCOME TAX OFFICER, WARD 47(2), NEW DELHI
(Appellant)		(Respondent)

Assessee by	Sh. V.K. Aggarwal, ITP
Department by	Sh. Manoj Kumar Chopra, Sr. DR.

ORDER

The assessee has filed the appeal against the impugned order dated 01.02.2017 passed by Ld. CIT(A)-36, Delhi relevant to assessment year 2005-06 on the following grounds:-

- "1. That Ld. CITA() has grossly erred on facts as well as in law in upholding the assessment order u/s. 143(3)/263 passed by the AO which was ex-facie illegal, arbitrary and without jurisdiction as the Ld. CIT did not set aside the original assessment order and in rejecting the addition ground on this issue.
2. The Ld. CIT(A) has grossly erred on facts as well as in law in rejecting the admission of additional evidences u/r. 46A.

3. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the addition of Rs. 34,65,096/- u/s. 68 of the I.T. Act.
4. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the addition on the basis of the AO's submissions and without considering the submissions filed by the appellant.
5. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the addition on the ground that notices issued u/s. 133(6) remained un-complied.
6. The Ld. CIT(A) has grossly erred on factst as well as in laws in directing the AO to look into the applicability of section 269SS which was beyond her jurisdiction as this issue was not considered during the assessment proceedings."

2. The brief facts of the case are that assessee filed its return of income at Rs. 1,26,576/- on 22-08-2005 which was processed u/s 143(1) of the Income Tax Act, 1961 (in short "Act") on 18-04-2006. A survey was conducted at the premises of the assessee and certain documents/papers were impounded. Information was accordingly received from the ITO, Ward 14(2), New Delhi that the assessee had invested a huge sum of money in booking of flats and properties although he was merely a salaried employee of M/s Pioneer Plastics Pvt. Ltd. As per the report, details of 26 entries of deposit through cheques/cash were given amounting to Rs. 46,00,892/-. The case of the assessee was accordingly reopened and notice u/s 148 was issued on 06-07-2009. Assessment was framed u/s 143(3)/147 on 27-07-2009 at a total income of Rs. 4,76,580/-. An addition of Rs. 3,50,000/- was made therein u/s 69A on account of unexplained investment being the amount of cash deposited on

24-01-2005 in account number 22525(010008)001 held with The Karnataka Bank Ltd, Faridabad. Thereafter, order u/s. 263 of the Act dated 30.3.2012 was passed by the Ld. CIT, Delhi-XVI, New Delhi in which the Ld. CIT, Delhi-XVI, New Delhi has pointed out various discrepancies in the assessment order of the AO, as mentioned at page no. 2-3 of the assessment order. In order to give effect to the order of the Ld. CIT, Delhi XVI, New Delhi, notice u/s. 143(2) of the Act alongwith a letter dated 22.11.2012 was sent to the assessee to submit his explanation alongwith documents/vouchers in support of his submission on 3.12.2012. In response to the same, AR of the assessee filed Cash Flow Statement from 1.4.04 to 31.3.05. He was again asked to furnish necessary documents and explain the source of deposit of Rs. 46,00,892/- which was further invested in properties and in response to the same the AR of the assessee filed the copy of Khatonis (3 pages) and confirmation letters from 06 persons mentioned at page no. 3-4 of the assessment order. AO observed that in the present case, the assessee has received a sum of Rs. 46,00,892/- in the form of cash / cheques and deposited the same in various bank accounts maintained by him. Accordingly, AO observed that since the assessee failed to discharge his onus to prove the genuineness, creditworthiness of the transaction and also not furnished the confirmations of persons from whom said loans were received, hence, he made the addition of Rs. 46,00,892/- vide order dated 30.01.2013 passed u/s. 143(3)/263 of the Act by completing the assessment at Rs. 47,27,468/- Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 01.02.2017 has partly allowed by sustaining the addition of Rs. 34,65,096/-. Against the impugned order 1.2.2017, assessee is in appeal before the Tribunal.

3. No doubt that assessee has filed the Written Submissions on all the grounds and at the time of hearing on asking the Bench, Ld. Counsel for the assessee only argued the case of the assessee on the merits i.e. ground no. 3 i.e confirmation of addition of Rs. 34,65,096/-. He stated

that Ld. CIT(A) has wrongly decided the issue in dispute against the assessee without considering the evidences filed by the assessee before the AO as well as Ld. CIT(A). In this regard, he draw my attention towards Paper Book and relied upon the same which contains pages 1 to 114 in which he has attached the various documentary evidences supporting the claim of the assessee. Ld. Counsel for the assessee stated that keeping in view of the documentary evidences filed before the revenue authorities, assessee has discharged the onus as required u/s. 68 of the I.T. Act, 1961. Assessee has also explained the creditworthiness and genuineness of the transaction of Rs. 34,65,096/- and requested to delete the addition in dispute.

4. On the contrary, Ld. DR relied upon the orders passed by the revenue authorities and stated that the AO as well as Ld. CIT(A) has decided the issue in dispute and confirmed the addition, after appreciating the evidences produced by the assessee and therefore, he requested that the appeal filed by the assessee may be dismissed.

5. I have heard both the parties and perused the orders of the revenue authorities especially the evidences filed by the assessee in the shape of Paper Book containing pages 1-114 in which the assessee has attached the copy of statement of bank account with Allahabad Bank; statement of bank account with Punjab National Bank; sale deed dated 22.5.2004; details of deposit of Rs. 46,00892/-; affidavit of Smt. Saroj Sharma; Affidavit of Smt. Raghuv eer Sharma; Remand Report dated 11.4.2014; Remand report dated 6.8.2014; Confirmation, Voter ID card , PAN card, jurisdictional details from Shri Govind Ram Sharma; Ledger account of Prem Kumar; relevant extract from the bank account of the assessee; affidavit of Sushil Kumar Yadav; Summary of Cash Flow Statement; Statement of account of Raghuv eer Sharma with Omaxe; Receipt of Rs. 4,50,000/- by Omaxe Construction Ltd.; request for issue of NOC to LIC Housing Finance Ltd; Endorsement Forms; Letter to Omaxe for transfer of

property in the name of buyers; copy of passport of Sh. Vinod Kumar Khera; Allotment letter of plot to the assessee by Omaxe; confirmation from Shri SK Bothra alongwith his income tax jurisdiction; confirmation from PAN card, voter ID card, Agricultural landownership documents etc. of Sh. Om Prakash; confirmation from PAN card, voter ID card, Agricultural land ownership documents etc. of Sh. Leeladhar; confirmation from PAN card, Voter ID card, Agricultural landownership documents etc of Sh. Kishan Lal; confirmation from PAN Card, Voter ID card, Agricultural landownership documents etc. of Sh. Bhagirath; confirmation from PAN card, Voter ID card, Agricultural landownership documents etc of Sh. Dularam; confirmation from PAN card, Voter ID card, Agricultural landownership documents etc of Sh. Bhagwana Ram; Application u/r 46A dated 1.7.2016; written submissions for filing additional ground dt. 29.2.2016; written submission dated 1.7.2016 filed before Ld. CIT(A); written submissions dated 28.9.2016 filed before Ld. CIT(A); order u/s. 263; adjournment letter filed before CIT(A) and Power of attorney filed before CIT(A). I have perused the documentary evidences filed by the assessee and find that assessee filed the affidavit of Smt. Smt. Saroj Sharma; Affidavit of Smt. Raghuveer Sharma to support the arguments of the assessee and to explain the addition in dispute. I have also perused the Remand Report dated 11.4.2014 & 6.8.2014. I have also perused the confirmation, Voter ID card , PAN card, Ledger account of Prem Kumar and affidavit of Sh. Sushil Kumar Yadav alongwith Cash Flow Statement and Statement of account of Raghuveer Sharma with Omaxe and others. Assessee has also filed a letter of Omaxe for transfer of property in the name of buyers; copy of passport of Sh. Vinod Kumar Khera; Allotment letter of plot to the assessee by Omaxe; confirmation from Shri SK Bothra alongwith his income tax return, confirmation, voter ID card and other documentary evidences for establishing the identity and genuineness of transactions. In the last, I have also thoroughly perused the documentary evidences in the shape of Paper Book and I am of the considered view that assessee has established the creditworthiness and genuineness of

transaction which require u/s. 68 of the Act and by establishing his onus. Keeping in view of the facts and circumstances of the case as explained above, I am of the view that addition in dispute is not sustainable in the eyes of law, because the assessee has discharged his onus u/s. 68 of the Act and therefore, the addition in dispute is hereby deleted.

6. In the result, the appeal of assessee is partly allowed.
The decision is pronounced on 20-01-2020.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 20.01.2020

"SRB"

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi