

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 368/DEL/2017
[Assessment Year: 2012-13]

BHIM PAL DAGAR,
S/O SH. BHARAT LAL,
DAGAR PROP.
MANIKAM ENGG DAGAR
FARM HOUSE,
RAJEEV COLONY,
SECTOR-56A,
BALLABHGARH
FARIDABAD
(PAN: ADYPD9119N)
[Appellant]

Vs. ADDL. CIT RANGE-I,
FARIDABAD

[RESPONDENT]

Assessee by: Shri Sanjay Chandak, CA & Sh.
Rakesh Gupta, Adv.
Revenue by : Sh. Pradeep Singh Gautam,
Sr. DR.

ORDER

This appeal is filed by the assessee is against the order of the Ld. Commissioner of Income Tax [Appeals], Faridabad dated 20.01.2016 pertaining to assessment year 2012-13 on the following grounds:-

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO in disallowing 1/5th of all expenses debited in the audited profit and loss account for the year ending 31.3.2012 by confirming the suo moto addition of amounting to Rs. 293670/- without considering the fact that the accounts are duly audited by CA and AO does not have any justification and material on records to make such addition to the income.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO making addition of Rs. 1300600/- in the capital account of the appellant as the unexplained income under section 68 of the Act by rejecting the affidavit filed by appellant on the ground that the same was not duly notarised and the amount of gift received from relatives is not in round figure.
3. That the appellant craves the leave to add, amend, modify, delete any of the grounds of appeal before or at the time of hearing and all the above grounds are without prejudice to each other.

2. At the time of hearing Ld. Counsel for the assessee stated that Ld. CIT(A) has not given sufficient opportunity to the assessee for substantiating the claim in dispute. He further stated that assessee is having all the documentary evidences for substantiating the claim which he has filed before the Ld. CIT(A) in the shape of Paper Book. He has also filed the same before the Tribunal in the shape of paper book containing pages 1-65. He requested that the issues in dispute may be set aside to the Ld.CIT(A) with the directions to decide the same afresh, as per law, after giving adequate opportunity of being heard to the assessee with the directions to consider all the evidences. He also undertakes that he will not take any unnecessary adjournment and will cooperate in the appellate proceedings.

3. Ld. DR relied upon the order of the Ld. CIT(A).

4. I have heard both the parties and perused the records, especially the impugned order and the documentary evidences filed by the assessee in the shape of paper book containing pages 1-65 in which he has attached the copy of computation of income and copy of ITR filed by assessee on 30.9.2012; copy of assessment order u/s. 144 dated

16.1.2015 by ITO; copy of audited balance sheet and profit and loss account for the year ending 31.3.2012 and copy of Auditor's report u/s. 44AB of the Act on Form 3CD dated 28.9.2012; copy of questionnaire dated 17.12.2013 alongwith notice u/s. 142(1) of the Act, issued to assessee by AO; copy of order dated 20.1.2016 passed by Ld. CIT(A), Faridabad u/s. 250(6) of the Act; copy of submissions filed before Ld. CIT(A) during the proceedings; copy of medical documents and death certificate of father, related to medical problem of the father of assessee and consequently death on dated 22.2.2015; copy of the order dated 14.3.2017 passed by AO, Ward-1(2) Faridabad dropping of penalty initiated u/s. 271A for the AY 2012-13. He has also given the certificate that the documents mentioned in the Paper Book at Serial No. 1-4 are part of record with the AO and Ld. CIT(A). I am of the view that Ld. CIT(A) has stated the brief facts of the case in the impugned order and passed the non-speaking order on the issues in dispute, which is not sustainable in the eyes of law. I also find that Ld. CIT(A) has rejected the written submissions filed by the assessee on some technical grounds and requested that the issues in dispute may be set aside to Ld. CIT(A) to decide the same afresh, as per law, after giving adequate opportunity of being heard to the assessee and consider all the documentary evidences filed by the assessee in the shape of paper book.

5. In the result, the Appeal of the Assessee is allowed for statistical purposes.

The order pronounced on 03.02.2020.

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

Dated:03-02-2020

SRB

Copy forwarded to:

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

Asst. Registrar,
 ITAT, New Delhi