

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA Nos.4493 & 4494/Del/2016  
Assessment Years: 2008-09 & 2009-10

Balwant Singh Bindra,  
Prop. M/s Bindra Tyres,  
Shop No.178, Janta Market,  
Rani Jhansi Road,  
Jhandewalan,  
New Delhi.

Vs ITO,  
Ward-63(4),  
New Delhi.

PAN: ACIPB5134E

(Appellant)

(Respondent)

Assessee by	:	Shri K. Sampath, Advocate & Shri V. Raja Kumar, Advocate
Revenue by	:	Shri S.L. Anuragi, Sr. DR
Date of Hearing	:	05.02.2020
Date of Pronouncement	:	17.02.2020

ORDER

PER R.K. PANDA, AM:

The above two appeals filed by the assessee are directed against the separate orders dated 21.06.2016 of the CIT(A)-20, New Delhi relating to assessment year 2008-09 and 2009-10, respectively.

2. Since common issues are involved in both these appeals, therefore, these appeals were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. In both the appeals, the assessee has challenged the order of the CIT(A) in giving part relief to the assessee against the addition of Rs.62,80,100/- made by the AO for A.Y. 2008-09 and Rs.68,80,800/- for A.Y. 2009-10.

4. First we take up ITA No.4493/Del/2016 as a lead case. Facts of the case, in brief, are that the assessee is an individual and proprietor of M/s Bindra Tyre and used to deal in cold rubber on commission basis and repair tyre puncture. It filed its return of income on 30<sup>th</sup> March, 2009 declaring the total income at Rs.1,25,756/- (for A.Y. 2009-10, the assessee filed the return of income on 19<sup>th</sup> March, 2010 at a total income of Rs.1,63,596/-). On the basis of tax evasion information received from the Dy. Director of Income-tax (Inv.), Unit 1(3), New Delhi, the case of the assessee was reopened u/s 147 after recording reasons and notice u/s 148 of the IT Act was issued to the assessee. During the course of assessment proceedings, the AO noted that the assessee has made cash deposit of Rs.62,80,100/- directly in the account of M/s Midas Marketing which was admitted by Shri Balwant Singh Bindra, Prop. of M/s Bindra Tyres, i.e., the assessee during the course of his statement u/s 131 of the IT Act recorded on oath on 2<sup>nd</sup> September, 2013 by the DDIT (Inv.), Unit-1(3), New Delhi. The AO extracted the statement of the assessee and issued a show cause notice asking him to explain the

source of such cash deposit. Rejecting the various explanations given by the assessee and observing that the assessee could not justify such cash deposit to the account of the company, the AO, invoking the provisions of section 68 of the Act made addition of Rs.62,80,100/- to the total income of the assessee. Similar addition has been made by the AO amounting to Rs.68,80,800/- for A.Y. 2009-10.

5. In appeal, the Id.CIT(A) directed the AO to restrict the addition to 20% of the purchase amount of Rs.62,80,100/- for A.Y. 2008-09 and 20% of Rs.68,80,800/- for A.Y. 2009-10.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. The Id. Counsel for the assessee while submitting that the estimation of profit by the CIT(A) is justified, however, he submitted that in the line of business the assessee is engaged in, the net profit rate varies from 6-7%. He accordingly submitted that the estimation of profit at 20% by the CIT(A) is exorbitantly high and, therefore, a reasonable view should be taken.

8. The Id. DR, on the other hand, submitted that the Id.CIT(A) has already given substantial relief to the assessee which covers disallowance u/s 40A(3) and various other disallowances which the assessee could not substantiate. Since the CIT(A) has already given substantial relief and the Revenue is not in appeal,

therefore, he submitted that the order of the CIT(A) be upheld and the grounds raised by the assessee be dismissed.

9. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We find the AO, in the instant case, made addition of Rs.62,80,100/- for A.Y. 2008-09 and Rs.68,80,800/- for A.Y. 2009-10 on the ground that the assessee should have explained the source of cash deposits in the bank account of the company M/s Midas Marketing. We find the Id. CIT(A) directed the AO to restrict the addition to 20% of the said deposit and the Revenue is not in appeal before the Tribunal against the relief granted by the CIT(A). It is the submission of the Id. Counsel for the assessee that the estimation of profit @ 20% of the total cash deposits is on higher side, since, in the line of rubber trading, the net profit ratio cannot go beyond 6% to 7%, Considering the totality of the facts of the case and considering the fact that the estimation of profit @ 20%, in the instant case, is on higher side, we are of the opinion that adoption of profit rate of 12% under the facts and circumstances of the case will meet the end of justice. We, therefore, modify the order of the CIT(A) and direct the AO to restrict the disallowance to 12% of the cash deposits in the bank account of M/s Midas Marketing. The grounds raised by the assessee are accordingly partly allowed.

10. In the result, the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 17.02.2020.

Sd/-

(BHAVNESH SAINI)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 17<sup>th</sup> February, 2020.

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi