

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos.319 to 323/Del./2017  
Assessment Years: 2009-10 to 2013-14

Mr. Vinay Sharma, C/o-AVK & Associates, CAs, KD-117, Pitampura, Delhi	<b>Vs.</b>	DCIT, Central Circle-1, New Delhi
<b>PAN :BTBPS1237C</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	None
Respondent by	Smt. Sushma Singh, CIT (DR)

Date of hearing	12.02.2020
Date of pronouncement	20.02.2020

**ORDER**

**PER O.P. KANT, AM:**

These appeals have been filed by the assessee against a common order dated 08/09/2016 passed by the learned CIT(Appeals)-23, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2009-10 to assessment year 2013-14. As these appeals are arising from the common impugned order and identical grounds have been raised in different assessment years, all these appeals were heard together and disposed of by way of this consolidated order for convenience and avoid repetition of facts. As identical grounds have been raised in all the above

appeals, we are reproducing here grounds of appeal only for assessment year 2009-10 as under:

1. *That the appellant is an individual and based at Himachal Pradesh.*
2. *That the appellant worked as an employee Director of M/s. India Technomac Co. Ltd. & other group companies during the assessment year in question.*
3. *That a search and seizure operations u/s 132 of the Income Tax Act were carried out at the residence of the assessee on 09.01.2013. Subsequently, case of the assessee was centralized.*
4. *That for the assessment year 2009-10, the appellant submitted his return of income from salary amounting to Rs.2,32,000/- and interest income amounting to Rs.2,570/- and claimed deduction u/s 80C for Rs.95,000/-.*
5. *That vide order passed u/s 153A read with section 143(3) income of the assessee has been assessed at Rs.6,46,396/- and tax on the Income including interest u/s 234 A & B has been imposed amounting to Rs.1,76,263/-, the addition mainly pertains to non-furnishing of proof u/s 80C and documents seized during search operations.*
6. *That vide orders passed by the CIT(A)-23, New Delhi, the appellant has been granted relief for one addition amounting to Rs.1,29,920/- and one addition has been enhanced by a sum of Rs.1,44,608/-.*

**2.** At the outset, we may like to mention that despite notifying none attended on behalf of the assessee, nor any adjournment application has been filed. In the circumstances, we are of the opinion that the assessee is not interested in prosecuting the appeal and accordingly, the same were hard *ex parte* qua the assessee.

**3.** Briefly stated facts of the case are that, the assessee was employee Director of M/s Indian Technomac Co. Ltd (ITCOL) during relevant period. The search and seizure action under section 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out at the residence of the assessee along with the search and seizure action at the premises of M/s. ITCOL and their

Directors. Consequent to the search, notice under section 153A of the Act were issued 01/05/2014 for the relevant years asking the assessee to file return of income. Subsequently, notice under section 142(1) of the Act was also issued along with questionnaire. No compliance was made by the assessee till 05/03/2015 though notice under section 271(1)(b) of the Act dated 09/12/2014 proposing levy of the penalty of Rs 10,000 and summons under section 131 of the Act dated 09/12/2014 asking the assessee to appear on 15/12/2014 were issued. On 05/03/2015, Authorized Representative of the assessee appeared and filed required documents and assessments were accordingly completed after making certain addition/disallowances including addition for unexplained deposit in bank accounts.

**3.1** The assessee filed appeal before the Ld. CIT(A) but did not comply with the notices issued by him for a very long period. Thereafter, some additional evidences were filed on behalf of the assessee. The Ld. CIT(A) though deleted most of the additions, however on the issue of the bank deposits, he enhanced the additions. He also confirmed the addition on the basis of the seized documents rejecting the additional evidence filed by the assessee.

**3.2** Aggrieved with the additions, the assessee is before the Tribunal raising the grounds in respect of appeals. The assessee is mainly aggrieved with no opportunity provided before enhancing the income of the assessee and not admitting the additional evidences filed by the assessee.

**4.** We have heard submission of the learned Departmental Representative and perused the relevant material on record

including the order of the lower authorities. We find that the Ld. CIT(A), in impugned order for all the years involved in the appeals before us, enhanced the income observing as under:

*“4.5 Ground no. 03 in AY 2009-10 and ground no. 04 in AYs 2010-11 to 2013-14 relate to additions on account of deposits in the bank accounts of the appellant, and in AYs 2009-10 & 2010-11 the net receipts determined by the AO on deposits in bank accounts and as per the document page-1 of Annx.-A seized from appellant’s residence. In this regard as per the copies of bank statements in the name of the appellant filed with the WS filed on 06.05.2016 for AY 2009-10 & 26.08.2016 for AYs 2010-11 to 2013-14 the following facts emerge.*

		AY 2009- 10	AY 2010- 11	AY 2011- 12	AY 2012- 13	AY 2013- 14
<b>4. Bank accounts (Amt. in Rs.)</b>						
Bank statement of the bank account no.8256 of the appellant with Punjab & .Sind Bank, Paonta Sahib Branch, (no narration)	Cash	-	26000	-	-	-
	Other deposits	751887	100734	232901	72510	'
	Total deposits	751887	126734	232901	72510	
	Interest	334	151	712	1089	146
Bank statement of the bank account no. 11693024271 of the appellant with State Bank of India, Chamukha Sab, Kangra Branch (no narration)	Cash	-	-	100000	110000	397310
	Other deposits	-	600	-	-	1265822
	Total deposits	-	600	100000	110000	1663132
	Interest	24	30	44	13	
Bank statement of the bank account no.352302010060 731 of the appellant with Union Bank of India, Chamukha Sab, Kangra Branch (with narration)	Cash	-	115000	318000	41000	-
	Other deposits	-	426638	349098	425348	127329
	Total deposits	-	541638	667098	466348	127329
	Interest		239	1064	1428	1040
Bank statement of the bank account no.	Cash	-	535	458	140000	-
	Other deposits	-	-		585420	

155DP0020009 67 of the appellant with Kangra Central Cooperative Bank Ltd., Shantla Branch (no narration)	Total deposits	-	535	458	725420	"
	Interest		9	22	90	
Bank statement of the bank account no.20155011449 of the appellant with Kangra Central Cooperative Bank Ltd., Shantia Branch (no narration)	Cash	-	-	-	-	-
	Other deposits	-	-	-	1146	233225
	Total deposits	-	-	-	1146	233225
	Interest				9	509
Total	Cash	-	141000	418458	291000	397310
	Total deposits	751887	669507	1000457	1375424	2023686
	Interest	358	429	1842	2629	1695

From the above it is observed that a total deposits, including cash deposits, and the interest credited in the bank accounts of the appellant are as above. The AO has taken the figures of Rs.7,52,301/-, Rs.6,67,906/-, Rs. 15,98,242/-, Rs.27,68,527/- & Rs.54,72,430/- as total deposits in the 05 respective years. While the AO has also considered Rs.4,50,000/- loan received on 30.10.2010 from SBI for purchase of Bolero, Rs.15,00,000/- received from appellant's father, Sh. M.L. Sharma, deposited in the SBI account on 12.03.2012 in AY 2012-13 and Rs.5,94,175/-, Rs. 20.00 lakh being receipt from New India Insurance Company (against theft of Bolero on 16.03.2012) and loan from ITCOL respectively in AY 2013-14, there are marginal differences in other years. The figures calculated by me are taken for consideration in this appeal. The receipt of money from Sh. M.L. Sharma as above is considered separately herein below, and the insurance receipt cannot be considered as income.

4.5.2 In the AYs 2009-10 & 2010-11 the AO has further considered the entries in the seized document page-1 of Annx.-A the appellant had explained before the AO mentioned at para-12 of the assessment order of these two years, that the amount mentioned in these pages pertain to expenses incurred by the mine manager Sh. K.C Pant, and employ of the same company, and relate to expenses at the lime stone mine and the entries do not relate to the appellant. But the AO concluded that in the absence of any supporting document the contention of the assessee cannot be accepted. But the AO has not made any further enquiry nor did he examine as to whether the entries/expenses as per this document related to M/s Indian Technomac Company Ltd. (ITCOL) which was also assessed

*by the same AO the primary search being against this company group of Sh. R.K. Sharma, and if these expenses were not accounted the same could have been considered in the accounts of the said company. Besides, the unexplained-deposits in the bank accounts of the appellant have been duly considered for taxation by the AO which could be from any such business carried by the appellant as alleged by the AO, and no co-relation of these entries with the entries in the bank accounts of the appellant including cash deposits and withdrawals as well have been established by the AO. Yet the AO set off the expenses of Rs.1,44,608/- and Rs.8,490/- as per this document against the total deposits in the bank accounts in the two AYs 2009-10 & 2010-11 and brought to tax only the net amount of Rs.3,76,906/- and Rs.4,19,416/- after giving credit for Rs.2,30,787/- and Rs.2,40,000/- on account of salary deposited in the bank accounts in the two respective assessment years. In view of the fact that there is no evidence linking the said seized page with the appellant, which the appellant also has denied, and as per my finding herein above it is held that the said seized page do not have any relation with the appellant and cannot be considered in the assessment of income of the appellant. The income assessed in these two assessment years would accordingly be enhanced by the said amount of Rs.1,44,608/- and Rs.8,490/- respectively.*

*4.5.3 As regard the bank account, as mentioned at para-4.2 herein above, the appellant was asked to submit an excel sheet statement explaining the source of deposits and the deposits accepted by the AO in respect of the bank account statements but the appellant/appellant's AR failed to appear or submit said details/explanation. It is therefore held that the entire deposits in the bank accounts of the appellant are to be assessed as undisclosed income of the appellant in all the years, except for those considered separately as noted at para-4.5 above, with due allowance for the salary credited in the bank accounts and already accepted by the AO, as also Rs.4,50,000/- loan received on 30.10.2010 from SBI for purchase of Bolero, Rs. 15,00,000/- received from appellant's father, Sh. M.L. Sharma, deposited in the SBI account on 12.01.2012 in AY 2012-13, considered separately herein below, and Rs.5,94,175/- & Rs. 20,00,000/- lakh being receipt from New India Insurance Company (against theft of Bolero on 1.6.08.2012) and loan from ITCOL respectively in AY 2013- 14. Further, Rs. 1,500/- and Rs.4,500/- have been found deposited against reimbursement of tuition fees in AYs 2012-13 & 2013-14 which have apparently not been claimed u/s 80C of the Act in the regular returns filed and I have already directed the AO to allow deduction u/s 80C of the Act on account of LIP payments as claimed.*

4.5.4 The appellant has also submitted and a common affidavit dt. 02.05.2016 in all the years wherein he has beside statements regarding the seized diary, sale of bus and purchase of Bolero, and FDs in the name of his father, Sh. M.L. Sharma, he has claimed that he was reimbursed monthly fuel and other day-to-day expenses which included entertainment expenses, travelling expenses, conveyance expenses and factory expenses. With the affidavit a certificate signed by Sh. Vivek Gupta, Manager of ITCOL has been submitted wherein various amounts are shown as paid to him by ITCOL by cheque and cash - Rs.2,78,352/- including Rs. 1,35,000/- in cash in AY 2010- 11, Rs.6,63,053/- including Rs.3,70,000/- in cash in AY 2011-12, Rs.3,64,743/- including Rs.41,000/- in cash in AY 2012-13 and Rs.1,44,801/- in AY 2013-14. On perusal of the certificate enclosed with the affidavit it is observed that the appellant has attempted to explain the cash deposits in the bank accounts by alleging receipts from ITCOL but there is no independent corroborative evidence to substantiate this statement. It is settled law that an affidavit without corroborative and supporting evidence is no evidence. Hence, no cognizance of the affidavit is taken to this extent.

4.5.5 Thus, the income to be considered for assessment in these five years would be as under:

	AY 2009-10	AY 2010-11	AY 2011-12	AY 2012-13	AY 2013-14
Total deposits in bank accounts	7,51,887	6,69,507	10,00,457	13,75,424	20,23,686
Less:					
Salary:	2,32,000	2,40,000	2,35,000	2,72,500	3,55,000
Net Income	5,19,887	4,29,507	7,65,457	11,02,924	16,68,686

*The income assessed on this account would get modified/enhanced accordingly. These grounds are accordingly dismissed.”*

**4.1** On perusal of above finding of the Ld. CIT(A), it is apparent that no notice has been issued by the Ld. CIT(A) before enhancing the income of the assessee. In absence of issue of notice before enhancing the income, the assessee has been deprived from submitting his explanation and which has resulted in violation of the principle of the natural justice. In the circumstances, we are of the opinion that matter should be restored back to the Ld. CIT(A) for following the principles of natural justice while

adjudicating the appeal of the assessee. In the interest of substantial justice, the additional evidences filed by the assessee, may also be examined in accordance with law. Accordingly, the grounds raised in these appeals are restored back to the file of the Ld. CIT(A) for deciding the same afresh in accordance with law. It is needless to mention that both the parties, i.e, the assessee as well as the Assessing Officer shall be afforded adequate opportunity of being heard.

**4.2** In the result, all the above appeals of the assessee are allowed for statistical purposes.

***Order pronounced in the open court on 20<sup>th</sup> February, 2020.***

***Sd/-***  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

***Sd/-***  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 20<sup>th</sup> February, 2020.

RK/-(D.T.D.S.)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi