

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 1636/DEL/2015 (A.Y 2007-08)

Shiv Kumar Nayyar 2B/12, East Punjabi Bagh New Delhi AAFPN7449D (APPELLANT)	Vs	ITO Ward-25(3) New Delhi (RESPONDENT)
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ITA No. 1637/DEL/2015 (A.Y 2007-08)

Neetu Nayyar 2B/12, East Punjabi Bagh New Delhi AAFPN7484A (APPELLANT)	Vs	ITO Ward-25(3) New Delhi (RESPONDENT)
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Appellant by	Sh. Salil Aggarwal, Adv
Respondent by	Sh. Saras Kumar, Sr. DR

Date of Hearing	17.02.2020
Date of Pronouncement	05.05.2020

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the order dated 06/1/2015 passed by CIT(A)-XIV, New Delhi for Assessment Years 2007-08.

2. The grounds of appeal are as under :- **(ITA No. 1636/DEL/2015)**

“1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining an order of assessment under section 147/ 143(3) of the Act at an income of Rs. 18, 39, 120/- as against returned income of Rs. 3, 21, 741/-.

2. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in sustaining the initiation of proceedings under section 147 of the Act and, further completion of assessment under section 143(3)/147 of the Act without satisfying the statutory pre-conditions for initiation of the proceedings and, completion of assessment under the Act.

3. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining an addition of Rs. 6, 91, 875/- on account of alleged unexplained investment in the commercial property at Indirapuram Habitat Centre, Ghaziabad.

3.1. That in doing so, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the basic fact that the said investment amounting to Rs. 6, 91, 875/- was duly explained to have been made out of cash balance available with the assessee - appellant and in order to substantiate the same, copy of cash flow statements were filed before learned assessing officer and CIT (A) both, but the same has been arbitrarily brushed aside by learned CIT (A) on basis of mere subjective opinion, which is wholly untenable in law and as such, the addition deserves to be deleted.

3.2. That the learned Commissioner of Income Tax (Appeals) has grossly erred in sustaining the aforesaid addition on irrelevant and extraneous considerations without there being any adverse material and evidence and as such the aforesaid addition is purely based on surmises and conjectures and is liable to be deleted.

4. That the learned Commissioner of Income Tax (Appeals) has further erred in law and on facts in sustaining an addition of Rs. 8, 25, 505/- on account of alleged addition to the capital account of the assessee - appellant.

4. That the learned Commissioner of Income Tax (Appeals) has grossly erred in failing to appreciate that the appellant has filed complete documentary evidences which establishes the genuineness of the transactions which led to addition in capital amount of Rs. 8, 25, 505/-, as such, burden which lay

upon the appellant has duly been discharged and thus, addition made and sustained without there being any adverse material or evidence, is unsustainable and contrary to law and deserves to be deleted.

5. That the learned Commissioner of Income Tax (Appeals) has further erred in law and on facts by denying deduction under section 80C of the Act amounting to Rs. 50, 000/-.

6. That the learned Commissioner of Income (Appeals) Tax has further erred in framing the assessment without providing to the assessee, a fair, proper and meaningful opportunity of being heard, violating the principles of natural justice and thus such an order of CIT (A) is vitiated both on fact and in law.

7. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining the levy of interest under section 234A and section 234B of the Act, which interest is not leviable on the facts and circumstances of the case of the appellant.”

ITA No. 1636/DEL/2015

“1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining an order of assessment under section 147/ 143(3) of the Act at an income of Rs. 19, 61, 370/- as against returned income of Rs. 3, 13, 955/-.

2. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in sustaining the initiation of proceedings under section 147 of the Act and, further completion of assessment under section 143(3)/147 of the Act without satisfying the statutory pre-conditions for initiation of the proceedings and, completion of assessment under the Act.

3. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining an addition of Rs. 6, 91, 875/- on account of alleged unexplained investment in the commercial property at Indirapuram Habitat Centre, Ghaziabad.

3.1. That in doing so, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the basic fact that the said investment amounting to

Rs. 6, 91, 875/- was duly explained to have been made out of cash balance available with the assessee - appellant and in order to substantiate the same, copy of cash flow statements were filed before learned assessing officer and CIT (A) both, but the same has been arbitrarily brushed aside by learned CIT (A) on basis of mere subjective opinion, which is wholly untenable in law and as such, the addition deserves to be deleted.

3.2 That the learned Commissioner of Income Tax (Appeals) has grossly erred in sustaining the aforesaid addition on irrelevant and extraneous considerations, without there being any adverse material and evidence and as such the aforesaid addition is purely based on surmises and conjectures and is liable to be deleted.

4. That the learned Commissioner of Income Tax (Appeals) has further erred in law and on facts in sustaining an addition of Rs. 9, 55, 542/- on account of alleged addition to the capital account of the assessee - appellant.

4.1. That the learned Commissioner of Income Tax (Appeals) has grossly erred in failing to appreciate that the appellant has filed complete documentary evidences which establishes the genuineness of the transaction which led to addition in capital amount of Rs. 9, 55, 542-, as such, burden which lay upon the appellant has duly been discharged and thus, addition made and sustained without there being any adverse material or evidence, is unsustainable and contrary to law and deserves to be deleted.

5. That the learned Commissioner of Income Tax (Appeals) has further erred in law and on facts by denying deduction under section 80C of the Act amounting to Rs. 72, 546/-.

6. That the learned Commissioner of Income (Appeals) Tax has further erred in framing the assessment without providing to the assessee, a fair, proper and meaningful opportunity of being heard, violating the principles of natural justice and thus such an order of CIT (A) is vitiated both on fact and in law.

7. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining the levy of interest under section 234A and

section 234B of the Act, which interest is not leviable on the facts and circumstances of the case of the appellant.”

3. Firstly we are taking up the brief facts of ITA No. 1636/Del/2015. The Assessing Officer received an information from ADIT (Inv), Unit-III(3), Delhi that the assessee made investment in cash for the purchase of a commercial space at Indirapuram Habited Centre, Ghaziabad. In fact, a search and seizure operation was carried out on M/s AEZ Group (part of Aerens group) of companies on 17.08.2011 and during the course of search operations, certain disks, loose papers were sized. During the course of investigation, it was gathered that AEZ group was constructing various projects and sold commercial spaces to various parties after receiving cash payments. Such cash payments were not accounted for in the books of relevant company and the same were also found to be not recorded in the books of the investors. The Assessing Officer observed that the investors accepted that they had made cash payments for booking/purchase of property in the above said project. The amount accepted by them to have been paid in cash exactly matched with the amounts mentioned in the extracted sheets of hard disk. In the case of the assessee, the following details were found to be recorded regarding investments in Indirapuram Habited Centre Project, Ghaziabad:-

Name:	Shri Neetu Nayyar and Shri Shiv Kumar Nayyar
Unit:	Ground Floor, Commercial 750 sq. ft.
Date:	16.03.2007
Amount paid by cheque:	Rs. 9,22,470
Amount paid by cash:	Rs. 13,83,750
Total amount paid:	Rs. 23,06,220

On the basis of the aforesaid information, the Assessing Officer issued notice u/s 148 of the Income Tax Act, 1961 on 08.06.2012 and served on the assessee. During the course of assessment proceedings, the Assessing Officer asked the assessee to furnish the details/source of the investments of Rs. 23,06,220/-. In response, the assessee submitted part details and in the absence of complete details of source of investments, the Assessing Officer

made the addition of Rs. 15,17,380/- to the total income of the assessee. The Assessing Officer also disallowed the claim of deduction u/s 80C for want of evidence of investment and completed the assessment u/s 143(3) of the Act at the taxable income of Rs. 18,39,120/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the assessee is an individual aged about 56 years resides in joint family in their own house and filing return of income regularly since past several years for which the financial statements (summarized) extracted herein below:

S. No.	A.Y	Date of return filing	Income returned (Rs.)
1	2005-06	02/02/2006	201800
2	2006-07	18/12/2006	257823
3	2007-08	21/07/2007	378125

The ADIT(Inv.) unit-III(3), New Delhi intimated that a search and seizure operation was carried out on AEZ Group(Part of Aerens Group) on 17.08.2011 and during search certain discs, loose papers were seized. AEZ group is constructing various projects and sold commercial spaces to different parties receiving cash payments. During the course of search/survey operation of AEZ group, it has been accepted by investor that they have made cash payments for booking/ purchase of property in the above said project. On the basis of information the then ITO after recording satisfaction in writing, initiated proceeding u/s 147 of the Act with the approval of Addl. Commissioner of Income Tax, Range -25, New Delhi and issued notice u/s 148 to the assessee on 08.06.2012. Assessee in response to Notice u/s 148 submitted return earlier filed on dt. 21.09.2007 for the impugned year containing resources of

income namely Director Remuneration from M/s R.G. Consultants Pvt. Ltd., Rental Income , Short Term Capital Gain and income from other at an Total Income of Rs.3,21,741/-. The proceedings were continued and an addition amounting Rs. 15,17,380/- has been added comprising Rs. 6,91,875/- as investment in property in cash and Rs. 8,25,505/- as addition to capital from undisclosed sources and not allowing deduction u/s 80C amounting Rs. 1,00,000/- in absence of any receipt. Assessee has invested in AEZ group for purchase of half portion of Ground Floor Commercial space in cash amounting Rs. 6,91,875/- out of cash balance lying in books. The Ld. AR submitted that the entire family is earning a handsome amount either in individual parity or as HUF and entire cash amount is out of disclosed & declared sources. The Assessing Officer made the said addition overlooking that other members/HUF also contributing to household expenses and the assessee has generated the cash out of personal savings for which the assessee has filed cash flow statement and cash account for the impugned year too. The Assessee's C.A. attended the proceedings on various dates i.e. on 17.01.2013, 28.01.2013, 05.01.2013, 11.02.2013, 18.02.2013 and 28.02.2013. However, when the Assessing Officer issued notice u/s 142(1) dt. 6.3.2013 requiring certain details on dt. 11.3.2013 to be furnished, assessee's C.A. fell ill (high fever and Diarrhea) on dt. 11.03.2013 and was not in a position to attend the case. The Ld. AR submitted that the assessee handed over the required documents to C.A. but could not submitted the same due to abovementioned fact. The Ld. AR pointed out that the assessee was having all the documents/details regarding addition to capital amounting Rs. 8,25,505/- from friends and relatives was the source of receipt of capital which was available with the assessee but due to unavoidable circumstances, the same could not be submitted and the Assessing Officer completed the assessment proceedings on 12.03.2013 which is 19 days prior to last date of time barring i.e. 31.03.2013. The Ld. AR submitted that the Assessing Officer should have given one more opportunity as the assessee's counsel was appearing regularly and on one date he could not appear due to unavoidable circumstances, all these

documents/details are open for verification. The Ld. AR further submitted that the Assessee explained all the factual evidence before the CIT(A) as well but the CIT(A) has not at all considered the same. Thus, the Ld. AR submitted that the additions does not sustain.

6. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. The Ld. AR during the hearing submitted that the assessee is not pressing Ground No. 2, hence Ground No. 2 is dismissed. It is pertinent to note that the CIT(A) observed that since no withdrawal was shown in the return of income by the HUF, therefore, it is difficult to believe that the HUF has contributed for the household expenses of the assessee. Besides that the CIT(A) also rejected the contention of the assessee that the assessee required the cash in hand for his probable medical expenses. But the fact remains that the assessee has also explained the introduction capital of Rs. 8,25,505/- as capital by stating that he had received money from his father in law of Rs. 5,00,000/-, amount transferred from minor son saving bank account of Rs. 1,41,800/-, amount transferred from minor daughter's saving account of Rs. 23,000/-, amount transferred from wife's saving account of Rs. 63,000/- apart from dividend income and mutual fund receipts. The Assessing Officer as well as CIT(A) both did not look into the evidences brought on record by the assessee. The CIT(A) also has not given any cogent reason as to why said addition sustains. In fact, the observation of the CIT(A), that no documentary evidence was shown in respect of father in law and wife is incorrect and needs to be verified. Therefore, it will be appropriate to remand back this matter to the file of the Assessing Officer to verify the evidences which were produced by the assessee before the CIT(A). Thus, we remand back the matter to the file of the Assessing Officer for fresh adjudication as regards to evidence which was brought on record by the Assessee and decide the matter a fresh. Needless to

say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 1, 3, 3.1, 3.2, 4, 4.1 are partly allowed for statistical purpose. As regards to Ground No. 5, the CIT(A) was rightly rejected the deduction u/s 80C of the Act amounting to Rs. 50,000/-. Hence, Ground No. 5 is dismissed. As regards to Ground No. 6 is general in nature hence dismissed. As regards to Ground No. 7, the same is consequential, hence it is not adjudicated upon at this juncture. Thus, appeal of the assessee being ITA No. 1636/Del/2015 is partly allowed for statistical purpose.

8. As regards to ITA No. 1637/Del/2015, the facts of this case is also identical to the earlier appeal decided hereinabove. Hence, appeal of the assessee being ITA No. 1637/Del/2015 is partly allowed for statistical purpose.

9. In result, both the appeals being ITA No. 1636/Del/2015 and ITA No. 1637/Del/2015 are partly allowed for statistical purpose.

Order pronounced on this 05th Day of May, 2020.

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 05/05/2020
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	17.02.2020
Date on which the typed draft is placed before the dictating Member	18.02.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	13.05.2020
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	