

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos.3605 & 3606/Del./2016
Assessment Years: 2009-10 & 2010-11

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| Shri A.K. Aggarwal, H. No. 1711, Sector-9, Karnal | Vs. | ACIT, Circle Karnal, Haryana |
| PAN :AAPPA3464M | | |
| (Appellant) | | (Respondent) |

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| Appellant by | Shri Ved Jain, CA |
| Respondent by | Shri Jagdish Singh Dahiya, Sr. DR |

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| Date of hearing | 26.08.2020 |
| Date of pronouncement | 27.08.2020 |

ORDER

PER O.P. KANT, AM:

These two appeals by the assessee are directed against a common order dated 29/03/2016 passed by the learned CIT(Appeals)-I, Gurgaon [in short 'the Ld. CIT(A)'] for assessment years 2009-10 and 2010-11 respectively. As identical issue-in-dispute is involved in both these appeals, thus, both these appeals were heard together and disposed off by way of this consolidated order.

2. The grounds raised in ITA No. 3605/Del/2016 for assessment year 2009-10 are reproduced as under:

1. *That learned CIT (A) has erred in confirming the action of the AO for issue of notice u/s 148 of the IT Act, when the same is bad in law as after search proceeding, assessment cannot be reopened u/s 147 of the IT Act, hence the assessment order passed u/s 143(3), r.w.s. 147 is bad in law, as the assessment is framed consequent to search proceedings cannot be reopened u/s 147, but, assessment can be done only u/s 153A read with sec 153C of the Act.*
2. *That learned CIT (A) has erred in confirming the action of the AO for issue of notice U/s 148 of the Income Tax Act, when the reasons are not as per law.*
3. *That learned CIT (A) has erred in confirming the addition of Rs.4.65 Lacs when no such amount have been received*
4. *That the appellant craves leave to add delete or modify any ground of appeal before the same is heard or disposed off.*

2.1 The grounds raised in ITA No. 3606/Del./2016 for assessment year 2010-11 are reproduced as under:

1. *That learned CIT (A) has erred in confirming the action of the AO for issue of notice u/s 148 of the IT Act, when the same is bad in law as after search proceeding, assessment cannot be reopened u/s 147 of the IT Act, hence the assessment order passed u/s 143(3), r.w.s. 147 is bad in law, as the assessment is framed consequent to search proceedings cannot be reopened u/s 147, but, assessment can be done only u/s 153A read with sec 153C of the Act.*
2. *That learned CIT (A) has erred in confirming the action of the AO for issue of notice U/s 148 of the Income Tax Act, when the reasons are not as per law.*
3. *That learned CIT (A) has erred in confirming the addition of Rs. 3 Lacs when no such amount have been received*
4. *That the appellant craves leave to add delete or modify any ground of appeal before the same is heard or disposed off.*

3. The assessee filed an application for condonation of delay of seven days in filing the appeal. The Learned Counsel of the assessee contested that appeal documents in the case were sent through courier on 20/05/2016 through DTDC express Ltd, which was delivered on 23/05/2016. The assessee has enclosed a copy of receipt of booking of document for delivery at Patiala and delivery at Delhi. The learned Counsel submitted that the appeal

was sent well within the time limit, however it was acknowledged by the Income Tax Appellate Tribunal only on 16/06/2016. According to him, there is no fault on the part of the assessee and therefore, delay in filing the appeal pointed out by the Tribunal, might be condoned. The Learned DR did not object for condoning the delay.

3.1 We have heard both the parties on the issue of the condonation of the delay of seven days in filing the appeal. We find that the Learned CIT(A) has passed the impugned order on 29/03/2016 and the assessee has sent the appeal documents on 20/05/2016, which have been delivered in the office of the Tribunal on 23/05/2016 as per the receipt of the courier, who has delivered the appeal papers. Though the same has been acknowledged by the office of the Tribunal on 16/06/2016, but the assessee has filed well within the period of the 60 days from the receipt of the impugned order passed by the Learned CIT(A). In our opinion, there is no fault on the part of the assessee and accordingly, we condone the delay in filing the appeal.

4. Briefly stated facts of the case are that the assessee, an individual, during relevant period of assessment year 2009-10 and 2010-11 was working as Chief Operating Officer with a company, namely, M/s Modern Dairy Ltd. A search and seizure operation was carried out by the Income-Tax Department at the premises of "M/s Modern Dairy Group" of the cases, wherein certain documents pertaining to the assessee were found and seized. According to the Assessing Officer, in the document marked as A-1 (pages 63-71) certain entries of salary paid to Sh. A K Agrawal (the assessee) and two other persons were noted,

which were not recorded in the books of accounts of M/s Modern Dairies Ltd. The Assessing Officer of M/s Modern Dairies Ltd. made addition of Rs.19,63,000/- & Rs.7,50,000/- respectively in the case of the said company for assessment years 2009-10 & 2010-11 based on those entries. The additions made were further upheld by the CIT(Appeals)-Central, Gurgaon.

4.1 Based on the above information received by the Assessing Officer, from the Deputy Commissioner of Income Tax, Central Circle -II, Chandigarh, notice under section 148 of the Income-tax Act, 1961 (in short 'the Act') was issued in the case of the assessee for both assessment years 2009-10 and 2010-11 after recording reasons for escapement of income. The assessments under section 147 read with section 143(3) of the Act were completed on 08/07/2014 and addition of ₹ 4,65,000/- and ₹ 3,00,000/- were made in assessment years 2009-10 & 2010-11 respectively. On further appeal the Learned CIT(A) upheld the addition, observing as under:

“5.2 I have given careful consideration to the facts of the case and find that the appellant has made a feeble attempt of finding holes in the seized papers which are palpably clear showing that additional salary has been received by the appellant on the strength of these papers. The Assessing Officer has given number of reasons before arriving at a conclusion that the loose documents are undisclosed income of the appellant. In para 6 of the assessment order the Assessing Officer has given complete details in this regard which include reasons that the appellant was involved in expansion of modern dairies and he admitted in statement that these slips pertain to salary of the appellant but stated that this was a proposal/request. The Assessing Officer has also dealt with the argument in this regard to come to conclusion that proposal are more formal than on loose slips. The paper seized are not dumb documents and has been correctly appreciated by the Assessing Officer. The ground of appeal is dismissed.”

5. Before us, both the parties appeared through videoconferencing facility. The Learned Counsel also filed a paper-book and other documents electronically.

6. The Learned Counsel of the assessee submitted that in the instant case, the assessment has been reopened on the basis of the documents found from the premises of M/s Modern Dairy Ltd. and the addition made in the case of the M/s Modern Dairy Ltd. based on those documents have been deleted by the Tribunal, Chandigarh Bench in order dated 18/04/2017 in ITA No. 335 and 336/Chd/2013 for assessment year 2009-10 & 2010-11. Accordingly, he submitted that the very basis of the reopening has fallen and therefore no addition can be survived in the instant case.

7. The learned DR, on the other hand, relied on the order of the lower authorities.

8. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The Learned Counsel referred to the reasons recorded for assessment year 2009-10 available on page 46 of the paper-book. The Assessing Officer has also reproduced said reasons in his assessment order. Identical reasons have been recorded in assessment year 2010-11. It is evident from the reasons recorded that cases for both assessment years have been reopened on the basis of the information from the Assessing Officer of M/s Modern Dairy Ltd. that details of salary paid to the assessee along with other two persons was found recorded in seized documents, which was not recorded in the books of accounts of the said company.

8.1 Before us, the Learned Counsel of the assessee has referred to the order of the Tribunal (supra) in the case of M/s Modern Dairy Ltd., wherein the additions made based on those seized documents have been deleted by the Tribunal. The relevant finding of the Tribunal is reproduced as under:

“9. We have perused the statements given by Sh. K.K.Goel during search proceeding and also of Shri. A.K. Aggarwal and Shri. P.K. Jain during the assessment proceedings. Nowhere in the statements the matter of amount being received in cash has been established by the Revenue. In all the three statements, it was categorically said that there were request for hike in salary. Under these circumstances there is no need for a cross examination by the assessee also where as the Ld. CIT (A) has observed that cross examination was declined by the assessee. Nowhere the Revenue could prove or establish that this amount represents the cash paid or any evidence that the amount have been received by the recipients. The Ld. CIT was also not sure where the amount have been paid or payable. The Revenue has ,o prove that these documents represents unaccounted payments by either direct evidence or corroborative evidence which was not so in this case. Hence the addition is hereby deleted. The assessee gets relief of Rs. 16.03.900/- for the Assessment year 2009-10 and Rs. 7,50,000/- for the Assessment year 2010-11.”

8.2 We find that on the very same documents, the addition of ₹ 4,65,000/- and Rs.3,00,000/- have been made in assessment years 2009-10 in 2010-11 respectively in the case of the assessee. In the case of the Modern Dairy Ltd., the addition was made for salary expenditure incurred out of the books of accounts, whereas in the case of the assessee addition has been made for salary received and not reported in the return of income. In our opinion, when the very basis of the addition made has been deleted by the Tribunal, the addition made on the basis of those documents in the case of the assessee cannot survive. Accordingly, we delete the additions made of ₹ 4,65,000 and

Rs.3,00,000/- in assessment years 2009-10 and 2010-11 respectively. The grounds of both the appeals of the assessee are accordingly allowed.

8.3 In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 27th August, 2020.

**Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER**

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

Dated: 27th August, 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