

22/12/16

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C': NEW DELHI

BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER, AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER.

ITA No. 5746/Del/2013
[Assessment Year: 2007-08]

Dr. Harvinder Singh
674, Kuan Road, Malyana
Meerut

Vs.

The I.T.O
Ward -1(3)
Meerut

PAN: AVLPS 5328 P

[Appellant]

[Respondent]

Date of Hearing : 01.12.2016
Date of Pronouncement : 22.12.2016

Assessee by : Shri Sandeep Sapra, Adv
Revenue by : Shri Amrit Lal. Sr. DR

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal has been filed by the assessee directed against the order of the CIT(A), Meerut dated 16/08/2013 passed in first appeal Nos. 383/2009-10 pertaining to A.Y 2007-08.

2. The assessee has raised the following grounds of appeal:

"1. That the Id. CIT(A) has erred in law as well as on the facts of the case by confirming and upholding additions of Rs.12,000/-, Rs.95,000/- and Rs.1,00,000/- being the amounts of loans from Dr. Mool Chand Saini, Shri Harpal Singh and Ekta Rathi respectively u/s 68 of the Income Tax Act, 1961 and the observations made by Id. CIT(A) for doing



so are unjust and unwarranted and the submissions of the appellant have not been considered in the right perspective thereof.

2. That the Id. CIT(A) has erred by confirming & upholding the addition of Rs. 1,94,500/- as unexplained investment in the purchase of property ignoring the availability of cash out of professional income and the various submissions made and the facts on record have not been considered by the Id. CIT(A) in the right perspective.

3. That the Id. CIT(A) has erred in law as well as on the facts of the case by confirming the addition of Rs.4,01,750/- under the head professional income by estimating total income at Rs.6,00,000/- as against declared income of Rs. 1,98,250/- and the estimation so made is based on pure guess work of the Id. AO and is totally unjust, unreasonable and highly excessive.

4. That without prejudice to the above grounds, the confirmations of various additions as above have resulted in double and excessive additions, as the estimated increase in professional income ought to have been considered as available source of other additions u/s 68 and 69, if any.”

Ground No. 1

3. Brief facts leading to this ground are that the addition of Rs. 12,000/-, Rs.95,000/- and Rs.1,00,000/- u/s 68 of I.T. Act were the amounts of loans raised from Dr. Mool Chand, Sh. Harpal Singh and Km. Ekta Rathi. The assessee received loan of Rs. 12,000/- from Dr. Mool Chand by account payee cheque No. 566313 dated 27/03/2007 drawn on SBI, Saharanpur. The said loan of Rs.12 000/- was duly confirmed by him as per confirmation

letter placed at page 16 of the paper book. Copy of return of income of Dr. Mool Chand for the year under consideration is placed at page 16 from which it is evident that he had declared gross income of Rs.8,12,494/-. The addition of Rs.38,000/- was also made by the AO on account of loan received from him which was deleted by the Id. CIT(A) against which no appeal has been filed by the Revenue.

4. The Id. AR reiterated the written submissions placed on record and submitted that the assessee received loans of Rs.50,000/-, 25,000/- and 20,000 aggregating to Rs.95,000/- from Sh. Harpal Singh by account payee cheques. Such loans were duly confirmed by him as per confirmation letters placed at page 18-20 of the paper book. Relevant bank statements (Syndicate Bank) of Sh. Harpal Singh from where he had advanced the above loans are placed at page 21, Copy of ITR of Sh. Harpal Singh is placed at pages 22-23 of the paper book. Assessee received loan of Rs. 1,00,000/- from Km. Ekta Rathi by account payee cheque No. 495026 dated 30/11/2006 drawn on District Co-Operative Bank, Baghpat Road, Meerut. The said loan of Rs.1,00,000/- was duly confirmed by her as per confirmation letters placed at pages 24-25 of the paper book. Relevant bank statement of Km. Ekta Rathi from where she had advanced loan of Rs. 1,00,000/- is placed at pages 26-27. The assessee relied on the following:

- a) Written submissions dated 11/03/2013 filed before the Id. CIT(A) at pages 10- 13 of the book.



- b) Rejoinder dated 28/05/2013 on the remand report of the AO filed before the Id. CIT(A) at pages 1-2.

In view of the above mentioned documentary evidence, the Id. AR submitted that the onus, which lay on the assessee to prove the identity, creditworthiness and genuineness of the above mentioned parties, had duly been discharged particularly when the AO had neither asked the assessee to produce such parties nor the AO had made independent enquiries from such parties. Therefore, the additions of Rs.12,000/-, Rs.95,000/- and Rs.1,00,000/- u/s 68 of I T. Act deserve to be deleted. The Id. AR lastly submitted that at any rate, the additions as sustained are very excessive.

5. The Id. DR relied on the orders of the authorities below and submitted that the Id. CIT(A) was right in sustaining the addition made by the A.O holding that the assessee was unable to discharge this onus and failed to prove the genuineness of the loan.

6. On careful consideration of the above, we find that the assessee has furnished evidence with regard the loans received from the three creditors whose confirmation letters were filed on record. Bank statements, return of income were also filed on record establishing the identity and credit worthiness and genuineness of the transactions. The A.O had neither asked the assessee to produce the parties nor made independent enquiries from such parties. We also find that the additions sustained are very excessive. Accordingly, we are satisfied that the assessee has discharged the onus cast



upon him by establishing the three essential ingredients of section 68 of the Act being the identity of the creditor, his credit worthiness and genuineness of the transactions. Therefore, the Id. CIT(A) was not at all justified in sustaining the additions of Rs. 12,000, 95,000/- and Rs. 1 lakh. Accordingly, we allow the ground of appeal No. 1 raised by the assessee.

Ground No. 2

7. Apropos Ground No. 2 which is against the addition of Rs.1,94,500/- as unexplained investment in the purchase of property, the Id. AR submitted that the assessee purchased two premises viz. residential house 269, Rishi Nagar, Baghpat Road, Meerut for Rs. 12,20,000/- and Plot No. 209, Sanjay Colony, Baghpat Road, Meerut for Rs.2,74,500/- during the year under consideration, the breakup of which is given at page 3 of the impugned assessment order. The Id. AR submitted that both the properties are duly reflected in the balance sheet of the assessee which is placed at page 32 of the paper book. However, the AO made addition of Rs. 1,20,000/- on account of investment made in cash on 07/12/2006 in respect of the first property and Rs.42,000/- & Rs.32,500/- aggregating to Rs.74,500/- on account of investment made in cash on 19/08/2006 in respect of the second property. The assessee produced cash book and ledger before the AO to prove that the above mentioned investment in cash was made out of cash available with him. Copy of cash book for the year under consideration is



placed at pages 33-58 of the paper book from which it is evident that the assessee had sufficient cash on 07/12/2006 and 19/08/2006 for making investment of Rs.1,20,000/- and Rs.74,500/- respectively. The Id. AR submitted that the AO was wholly unjustified in observing that since cash book and ledger produced before him were in the shape of loose sheets therefore, the explanation of the assessee that he had sufficient cash on the date of investments was not acceptable. The books of accounts were maintained by the assessee in computer software "tally" and the cash book & ledger A/cs extracted from such software were duly produced before the AO. The Id. AR further submitted that the explanation of the assessee that he had sufficient cash could not be rejected without pointing out any defects in the books of accounts viz. cash book and ledger. The AO is also factually incorrect in observing that bills/vouchers were not produced before the AO. In fact, the AO had not pointed out any expenditure which was unvouched/unverifiable. Copy of income & expenditure A/c is placed at page 31 of the paper book. The Id. AR also relies on the following:

- a) Written submissions dated 11/03/2013 filed before the Id. CIT(A) at pages 10 - 13 of the book.
- b) Rejoinder dated 28/05/2013 on the remand report of the AO filed before the Id. CIT(A) at pages 1-2.



8. The ld. AR contended that the additions of Rs.1,20,000/- and Rs.74,500/- aggregating to Rs.1,94,500/- deserve to be deleted. The ld. AR submitted that at any rate, the additions as sustained are very excessive.

9. Per contra, the ld. DR relied on the orders of the authorities below and submitted that the CIT(A) was right in observing that the income and expenditure account does show receipt of Rs. 3,55,850/- but it also shows expenses, presumably in cash, levying a net profit of Rs. 1,98,250/-. The ld. DR also submitted that the cash book submitted during the appeal proceedings is actually only an extract for the period 17.8.2006 to 19.12.2006. The brought forward amount in the extract shows a balance of Rs. 1,73,285 available with the assessee in cash and there was no explanation regarding the same. Therefore, the ld. DR submitted that the CIT(A) was justified in dismissing the ground of assessee holding that the assessee had not been able to explain satisfactorily the source of investment made in the cash in the house and the plot.

10. We have heard the rival submissions and have carefully perused the relevant material on record. We find that both the properties purchased by the assessee are reflected in the balance sheet filed by the assessee which is placed at page 32 of the assessee's paper book. The AO made addition on the basis that the assessee had made investment by purchasing the



properties in cash. A perusal of the cash book shows that the assessee made investment out of cash available with him and also reveals that the assessee had sufficient cash balance with him for making the said investment. Just because the cash book and ledger were in the form of loose sheets, the AO was not justified in not accepting the same. We find that the assessee maintains his accounts in computer software tally and accounts extracted from such software were produced before the AO. The AO has not pointed out any defects in the books of accounts or any expenditure which was unvouched or unverifiable. In view of the above, we are of the considered opinion that the CIT(A) was not at all justified in sustaining the baseless addition made by the CIT(A). Accordingly, we allow Ground No. 2 raised by the assessee.

Ground No. 3

11. Apropos Ground No. 3, the ld. AR submitted that the CIT(A) was not justified in sustaining the the addition of Rs.4,01,750/- by estimating net professional income at Rs.6,00,000/- as against declared at Rs.1,98,250/-. The ld. AR furnished copy of computation of income, income & expenditure A/c and balance sheet for the year under consideration which are placed at pages 30-32 of the paper book. The ld. AR further submitted that the AO was not justified in observing that professional receipts/expenses remained unverified because ledger and cash book in the shape of loose sheets were produced. The ld. AR again submitted that the cash book/ledger were



printed from the tally software and the AO had neither pointed out any defects in the books of accounts nor had pointed out any expenditure which was unvouched/unverifiable. The ld. AR submitted that nowhere the AO had rejected the account books as maintained by the assessee by applying provisions of section 145(3) of I.T. Act. Relying on the following case laws, the ld. AR contended that in the absence of such a finding, no addition towards the trading results could legally be made as held in the following case laws:

217 ITR 4, Dhansi Ram Aggarwal Vs. CIT (Gauhati H.C.), in which it was held as under:

“Where the genuineness and regularity of the accounts have not been challenged, the accounts are prima facie proof of the entries and the correctness thereof u/s 34 of the Evidence Act, 1872 (see page 8F,G).”

76 ITR 365, St. Teresa Oil Mills Vs. State of Kerala (Kerala H.C.), in which it had been held as under :-

“Accounts regularly maintained in the course of business have to be taken as correct unless there are strong and sufficient reasons to indicate that, they are unreliable. The department has to prove satisfactorily that the account books are unreliable, incorrect or incomplete before it can reject the accounts. Rejection of accounts should not be done light heartedly”.




291 ITR 214, Pyare Lai Mittal vs. ACIT (Gauhati H.C.), in which it had been held as under :-

“Income has to be deduced from the books of account and other documents furnished and there is no scope for any conjectures and surmises. If the method of accounting is not faulty and there is no suppression of material facts, the authority cannot embark upon a speculative assessment of notional profits”.

12. The ld. AR further submitted that the AO has not brought any evidence on record for estimating net professional income at Rs.6,00,000/- as against Rs.1,98,250/- declared by the Appellant and therefore, the net professional income estimated at Rs.6,00,000/- is legally untenable particularly when net professional income of Rs.1,14,640/- for the assessment year 2005-06 and Rs.1,93,270/- for the assessment year 2006-07 as declared had been accepted by the department.

13. Replying to the above, the ld. DR submitted that cash and ledger book in the shape of loose sheets cannot be accepted as sacrosanct and acceptable. Therefore, the A.O was right in estimating the income of the assessee. However, the ld. DR fairly accepted that the A.O has not rejected the books of accounts of the assessee and had not pointed out any defects or infirmities in the books of the assessee nor had pointed out any expenditure which was unvouched or unverifiable or alleged as bogus or baseless.



14. On careful consideration of the above rival submissions, at the very outset, we note that the AO had proceeded to estimate the income of the assessee without rejecting the books of accounts of the assessee and without alleging any defects or infirmity in the financial results of the assessee. At this stage, we may also observe that the main grievance of the AO was that the assessee submitted cash book and ledger in the form of loose sheets which were printed from the computer of the assessee. However, it cannot be a basis for rejecting the return of income of the assessee and to proceed to estimate the income without rejecting the books of accounts u/s 145(3) of the Act. From the assessment order as well as the impugned order, we note that the authorities below have impliedly denied to look into the cash book and ledger of the assessee merely because they were in the form of loose sheets and without application of mind proceeded to estimate the professional receipts of the assessee which is not a proper approach. Therefore, in our humble opinion, the action of the AO as well as the impugned order which upheld the estimate of income is not sustainable and we demolish the same. Accordingly, Ground No. 3 of the assessee is allowed.

Ground No. 4

15. Apropos Ground No. 4, the Id. AR submitted that without prejudice to the submissions made in Ground Nos. 1, 2 and 3, if any addition on account of estimation of net income is sustained as per Ground No. 3, then such



addition deserve to be telescoped with the addition sustained as per Ground Nos. 1 and 2. Since we have allowed Ground Nos. 1, 2 and 3 of the assessee and additions have been deleted in toto, therefore, prayer of assessee for providing telescoping becomes academic and infructuous and we dismiss the same as having become infructuous.

16. In the result, the appeal of the assessee is allowed.

The order is pronounced in the open court on 22.12.2016.

(J.S. REDDY)
ACCOUNTANT MEMBER

(C.M. GARG)
JUDICIAL MEMBER

Dated: 22 December, 2016

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi