

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,  
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 9434/DEL/2019 [A.Y 2011-12]

Shri Ravinder Singh  
10, Birbal Road  
Jangpura, New Delhi

Vs.

The I.T.O  
Ward - 54(2)  
New Delhi

PAN: AIOPS 8010 N

[Appellant]

[Respondent]

Assessee by : Shri Hiren Mehta Adv

Revenue by : Shri Atigu Ahmed, Sr. DR

Date of Hearing : 01.12.2020

Date of Pronouncement : 04.12.2020

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the  
CIT(A)-35, Delhi dated 20.11.2019 pertaining to A.Y 2011-12.

2. The grievances of the assessee read as under:

"1. That on the facts and circumstances of the case and in law, the order passes by the Id. CIT(A) - 35 New Delhi is contrary to facts and bad in law.

2. That on the facts and circumstances of the case and in law, the CIT (A) was not justified in not admitting the additional evidence

2.1 That having forwarded the additional evidence to assessing officer for comments/ remand report, the action of CIT(A) in refusing to admit additional evidence is not as per settled law.

3. That on the facts and circumstances of the case and in law, the CIT (A) was not justified in upholding the action of AO in sustaining addition of Rs. 1,49,95,369/- on account of un explained credit entries in the bank account as the bank statements were not available with the assessee during assessment proceedings and further refusing to admit the additional evidence submitted along with application for additional evidence under rule 46A.

4. That on the facts and circumstances of the case and in law the IT (A) was not justified in sustaining addition of Rs. 23,93,637/- being expenses remaining unexplained during the assessment proceedings u/s 68 of the Income Tax Act and further rejecting the application filed under rule 46A of the Income Tax Rules.

5. That on the facts and circumstances of the case and in law, the IT (A) was not justified and has erred in sustaining addition of Rs 7,00,000/- u/s 69 of the Income Tax Act as unexplained investment based on cash deposited by the seller in his bank account by relying upon the statement of the seller without providing any opportunity to the appellant for rebuttal.

6. That on the facts and circumstances of the case and in law, the Id. CIT(A) erred in sustaining addition of Rs 22,828/- being difference in the interest earned in the bank account and interest shown in the return of income.

3. Representatives of both the sides were heard at length. Case records carefully perused.

4. Briefly stated the facts of the case are that the assessee is an individual, engaged in the business of civil contracting and during the year under consideration, has started the activity of a builder. Return was filed declaring taxable income of Rs.11.02 lakhs. Assessment was completed under section 143(3) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] vide order dated 29.03.2014 by making the following additions:

(1)	undisclosed/unexplained credits in the bank account	-	Rs. 1,49,95,369/-
(2)	income from undisclosed sources used for incurring expenses	-	Rs. 23,93,637/-
(3)	unexplained investment in immovable property	-	Rs. 97,00,000/-
(4)	undisclosed interest under the head income from other sources	-	Rs. 22,828/-

5. During the course of scrutiny assessment proceedings, the Assessing Officer examined the bank account with HDFC bank. On examining the bank statements, the Assessing Officer found that the same has been credited by an amount of Rs.3.05 crores. The Assessing Officer, on the basis of TDS certificates, came to the conclusion that the contract receipts were to the tune of Rs.95,66,489/- and the

assessee has shown gross receipts at Rs.98,24,795/-. The assessee was asked to explain the excess deposits found in the HDFC bank.

6. In its reply, the assessee explained that he has received unsecured loans from five persons totalling to Rs. 62.10 lakhs. The Assessing Officer was of the opinion that the assessee was able to explain credits of Rs.1.55 crores in the bank account out of Rs.3.05 crores and according to the Assessing Officer, the balance amount of Rs.1.49 crores remained unexplained. Accordingly, he made addition of Rs.1.49 crores credited in the bank account with HDFC bank.

7. Proceeding further, the Assessing Officer found that the assessee has debited expenses amounting to Rs. 96,29,565/-. The assessee was asked to furnish ledger account, vouchers, bills of expenses claimed in the profit and loss account. Requisites details were furnished. The Assessing Officer was of the opinion that Rs.72 lakhs had been incurred in cash. The assessee was asked to furnish cashbook but instead, the assessee furnished certificate from HDFC bank certifying that the cash of Rs.48 lakhs has been withdrawn from the bank during the year under consideration.

8. The Assessing Officer was of the opinion that the assessee has not furnished any details in respect of difference of Rs. 23,93,637/- and accordingly, made addition of the same as income from other sources.

9. Proceeding further, the Assessing Officer noticed that the assessee has purchased property from one Shri Ram Babu for an amount of Rs.1.05 crores. However, during the assessment proceedings of Shri Ram Babu the counsel of Shri Ram Babu stated that the cash amounting to 97 lakhs, which was found to be deposited in the bank account of Shri Ram Babu, was given by the assessee as 'On Money' for purchase of property.

10. Believing on the statement of the counsel of Shri Ram Babu, Assessing Officer made addition of Rs.97 lakhs as investment from undisclosed sources.

11. The Assessing Officer further noticed that the assessee has earned interest of Rs.55,360/- in the SBI account with HDFC bank whereas the assessee has shown interest of Rs.32,532/- only and accordingly, added the same as income from other sources.

12. We have carefully perused the order of the CIT(A). We find that the assessee furnished some evidences in support of his claim and all the evidences were rejected by the CIT(A) holding that the conditions stipulated in Rule 46A are not satisfied. Without going into the merits of the additions, the CITA dismissed the appeal of the assessee.

13. In so far as the addition on account of credit in the bank account is concerned, we find that the assessee has taken loans from several persons, which was partly repaid during the year under consideration and again the loans were taken from the same persons. The Assessing Officer has simply seen credits in the bank account without realising that the same amount is recycled. We find that detailed explanation alongwith re-conciliation has been furnished by the assessee before the CIT(A) but the same was dismissed out-rightly.

14. Similar is the fate of expenditure treated by the Assessing Officer as paid in cash in excess of cash withdrawals. We find that out of the alleged difference, most of the payments have been made by account payee cheques on account of salaries and wages, tyre purchases and diesel expenses, which totalled to Rs.24.65 lakhs. These details were also furnished before the CIT(A) but such details received the same

fate. We are of the considered view that when the assessee has explained everything with evidences, the CITA should not have rubbished those evidences without recording any specific findings.

15. However, in the interest of justice and fair play, we remit both these issues to the file of the Assessing Officer. The assessee is directed to furnish all necessary evidences which were furnished before the CIT(A) and the Assessing Officer is directed to examine each and every evidence/explanation and decide these two issues afresh after affording reasonable opportunity of being heard to the assessee.

16. Ground Nos.1 to 4 are treated as allowed for statistical purposes.

17. Facts relating to addition of Rs.97 lakhs have been explained hereinabove. The entire addition has been made only on the admission of the ld. counsel of Shri Ram Babu that the assessee has paid Rs.97 lakhs to Shri Ram Babu in cash for purchase of the impugned property. In our considered view, the AO has grossly erred in simply believing the contention of the counsel of Shri Ram Babu. It appears that Rs.97 lakhs was deposited in cash in the bank account of Shri Ram Babu and to

explain the source, the ld. counsel simply stated that Shri Ram Babu has received the same from the assessee.

18. Interestingly, Shri Ram Babu died in on 14.11.2013 as per the death certificate exhibited at page 18 of the paper book. Assessment proceedings of Shri Ram Babu took place subsequent to his death. A pertinent question arises as to how the counsel of Shri Ram Babu knew that Rs. 97 lakhs were received by Shri Ram Babu from the assessee when he has left for heavenly abode on 14.11.2013. Order sheet entries are placed at pages 1 to 3 of the paper book. Assessment proceedings are dated February 2014, which means that the assessment proceedings in the case of the assessee were much after the date of death of Shri Ram Babu.

19. In our considered view, the entire addition has been made on assumptions and surmises and on the statement of counsel of Shri Ram Babu which do not have any evidentiary value keeping in mind that Shri Ram Babu died in 2013. Considering these facts in totality, addition of Rs.97 lakhs is directed to be deleted. Ground No. 5 is accordingly allowed.

20. Ground No. 6 relates to the addition on account of difference of interest as per bank statement and as per books of account. The assessee is directed to reconcile the same and explain the difference, if any, and the Assessing Officer is directed to examine the issue afresh and decide the same after giving opportunity of being heard to the assessee. This ground is, accordingly, treated as allowed for statistical purposes.

21. In the result the appeal of the assessee in ITA No. 9434/DEL/2019 is allowed in part for statistical purposes.

The order is pronounced in the open court on 04.12.2020.

Sd/-

**[SUDHANSHU SRIVASTAVA]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 04<sup>th</sup> December, 2020

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	01.12.2020
Date on which the typed draft is placed before	03.12.2020
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Date on which the file goes to the Bench Clerk	03.12.2020
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The date on which the file goes to the	
Date of dispatch of the Order	