

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

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

I.T.A. No. 6445/DEL/2015 (A.Y 2012-13)

(THROUGH VIDEO CONFERENCING)

ACIT Central Circle-14, Room No. 354, E-2, ARA Centre, Jhandewalan Extension, New Delhi (APPELLANT)	Vs	Kusum Gupta 21/40, Shakti Nagar New Delhi AEDPG4771M (RESPONDENT)
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Appellant by	Sh. Rocktim Saikia, Sr. DR
Respondent by	Sh. Divyansh Jain, Adv & Sh. Rajat Jain, CA

Date of Hearing	06.09.2021
Date of Pronouncement	12.10.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against order dated 15/09/2015 passed by CIT(A)-XXVI, New Delhi for assessment year 2012-13.

2. The grounds of appeal are as under:-

1. *“On the facts and circumstances of the case, the CIT(A) has erred in law in deleting the addition of Rs. 3,41,812/- on account of ALV of two properties.*
2. *On the facts and circumstances of the case, the CIT(A) has erred in law in deleting the addition of Rs. 1,77,20,000/- made by AO on account of unexplained credits.*
3. *On the facts and circumstances of the case, the CIT(A) has erred in law in*

deleting the addition of Rs. 1,23,600/- made by AO on account of disallowance of interest.

4. On the facts and circumstances of the case, the CIT(A) has erred in law in deleting the addition of Rs.4,13,172/- made by AO on account of unexplained sale / purchase of shares.

5. On the facts and circumstances of the case, the CIT(A) has erred in law in deleting the addition of Rs.50,00,000/- made by AO on account of unexplained credits u/s 68 of the Income Tax Act, 1961.

6. That the CIT (A) has erred in facts and in law in allowing the appeal of the assessee without independently verifying the facts of the case, being a fact finding authority as mandated by the Hon'ble jurisdictional High Court Delhi in the case of CIT vs. Jansampark advertising rather than giving observation as to that the A.O. has failed to conduct requisite enquiries.

7. On the facts and circumstances of the case, the CIT (A) has erred in admitting fresh and additional evidences in the course of appeal without allowing any opportunity to the AO.

(a) The order of the Ld. CIT(Appeals) is erroneous and not tenable in law and on facts.”

3. The assessee filed e-return of income at loss of Rs. 3,79,885/- on 29/9/2012. The assessee derived income from house property, income from business, income from capital gain and income from other sources. The Assessing Officer made addition of Rs. 3,41,815/- on account of annual letting value of two properties, Rs. 1,77,20,000/- on account of unexplained credits, Rs. 1,23,600/- on account of disallowance of interest, Rs. 4,13,172/- on account of unexplained sale/purchase of shares, Rs. 50,00,000/- on account of unexplained credit u/s 68 of the Income Tax Act, 1961. Thus, the Assessing Officer assessed the income of the assessee at Rs.2,45,18,025/-.

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. As regards to Ground No. 1, the Ld. DR submitted that the assessee has paid house tax of Rs.10,404/- and Rs. 1,289/- on two properties and informed the Assessing Officer the ALV of Property No. 1 at Rs.34,725/- and regarding the commercial property at Wazirpur. The Ld. DR submitted that the assessee is paying MCD tax of Rs.10,404/-. The Ld. DR submitted that the ALV of the both properties at minimum will be Rs.3,00,000/- per annum and hence ALV is determining at Rs.3,00,000/-.

6. The Ld. AR submitted that it is just an estimation of ALV without any support or finding by the Assessing Officer. Therefore, the CIT(A) has rightly deleted this addition.

7. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the Assessing Officer without any basis, estimated the annual letting value of the said properties. The said properties were not let out during the present Assessment Year. As those properties were not in habitable conditions and no tenant was found in respect of those properties. Therefore, the CIT(A) has rightly deleted the addition. There is no need to interfere with the findings of the CIT(A). Hence, Ground No. 1 of the Revenue's appeal is dismissed.

8. As regards Ground No. 2 relating to addition of Rs. 1,77,020/- on account of unexplained credits, the Ld. DR submitted that the loan was taken from the daughter of the assessee and the assessee has not given any details relating to the amount of Rs. 61,00,000/-. The Ld. DR submitted that this aspect needs to be verified and the CIT(A) has incorrectly deleted this addition.

9. The Ld. AR submitted that the identity, creditworthiness and genuineness of the transaction with regard to the amounts credited as loan from assessee's daughter have been proved as Ms. Asima Gupta has disclosed

the particulars regarding long term capital gain earned by her in Assessment Year 2011-12. The source of credit in the lenders bank account are directly related to sales of shares and, therefore, there is no reason to doubt the genuineness. The Ld. AR relied upon the order of the CIT(A).

10. We have heard both the parties and perused the material available on record. It is pertinent to note that the CIT(A) has observed that the Assessing Officer has mislead the facts as only an amount of Rs. 61,36,000/- had been received as loan during the year under consideration from Ms. Asima Gupta. The evidences shown before the Assessing Officer has established the genuineness of the transaction and details related to the origin of the sales of the shares were also before the Assessing Officer. The CIT(A) has given a categorical finding that the sources of credit in the lenders bank account are directly related to the purchase of shares and the same was also placed before the Assessing Officer. Therefore, the CIT(A) has rightly deleted this addition. Hence, Ground No. 2 of the Revenue's appeal is dismissed.

11. As regards Ground No. 3, relating to addition of Rs. 1,23,600/- made by the Assessing Officer on account of disallowance of interest, the Ld. DR submitted that the assessee has given loan of Rs. 10,30,000/- without any interest to her spouse. The Assessing Officer has rightly charged the interest on the said additions at the rate of 12%.

12. The Ld. AR submitted that the assessee has not received any interest on the said advance/loan to her husband and the Assessing Officer has presumed the notional interest which was rightly deleted by the CIT(A).

13. We have heard both the parties and perused the material available on record. The Assessing Officer has presumed the notional interest at the rate of 12% without any basis. The Assessing Officer merely on surmises and conjunctures observed that the advance was interest bound and not interest

free. The assessee has given an advance to her husband without charging any interest. Thus, it is rightly deleted by the CIT(A). Ground No. 3 of the Revenue's appeal is dismissed.

14. As regards Ground No. 4 relating to addition of Rs. 4,13,172/- on account of unexplained sale/purchase, the Ld. DR submitted that the assessee has sold shares of MOIL at a consideration of Rs. 16,91,903/- against purchase of Rs. 21,05,075/- without any documentary evidence in respect of purchase and sale. The CIT(A) has deleted this addition only on the ground that the details were there before the CIT(A). Thus, the Ld. DR submitted that the addition may be sustained.

15. The Ld. AR relied upon the order of the CIT(A) as well as pointed out Page No. 46 and 49 of the paper book wherein the details of opening and closing stock of shares during the Financial Year 2011-12 was submitted.

16. We have heard both the parties and perused the material available on record. It is pertinent to note that the CIT(A) has gone through the details which were very much before the Assessing Officer and after going through the same has deleted this addition. The purchase of shares as well as the sales of the said shares were through recognized stock exchange and is supported by the broker note and the details thereof. Thus, the transactions were genuine and the CIT(A) rightly deleted this addition. Hence, Ground No. 4 of the Revenue's appeal is dismissed.

17. As regards Ground No. 5 relating to addition of Rs. 50,00,000/- on account of unexplained credits u/s 68. The Ld. DR submitted that the funds have been transferred in Karnataka Bank from Nina Bhartia of Rs.50,00,000/-, for which the assessee has not submitted any evidence. The Ld. DR further submitted that the CIT(A) has not taken cognizance that no evidence was filed before the Assessing Officer .

18. The Ld. AR relied upon the order the CIT(A) and further submitted that all the confirmations in respect of advance given and received back from Smt. Nina Bhartia was before the Assessing Officer along with her address and Permanent Account Number (PAN) as well as other details. Thus, the onus of identity, creditworthiness and genuineness has been established by the assessee before the Assessing Officer during the assessment proceedings. Therefore, the CIT(A) has rightly allowed the contentions of the assessee and deleted the addition.

19. We have heard both the parties and perused the material available on record. It is pertinent to note that all the records were before the Assessing Officer and there is a single sentence in the assessment order stating that the assessee has not given any evidence. But, the assessee's reply along with Annexure-13 dated 27/2/2015 was before the Assessing Officer which has explained the nature of the transaction and the advance given by Nina Bhartia. Hence, the identity, genuineness and creditworthiness was established by the assessee. The CIT(A) has rightly given finding that the transaction was genuine and deleted the addition. Hence, Ground No. 5 of Revenue's appeal is dismissed.

20. As regards Ground No. 6 to 8, they are general in nature. Hence, not adjudicated and dismissed.

21. In result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on this 12th Day of October, 2021

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

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 12/10/2021
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI