

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-1 : NEW DELHI
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.5597/Del/2019
Assessment Year: 2010-11

Deepak Singhal,
1981-B, FF, Pratap Vihar,
Multani Mohalla,
New Delhi.

Vs. ACIT,
Central Circle-04,
New Delhi.

PAN: BLOPS8039K

(Appellant)

(Respondent)

Assessee by	:	Shri Rohit Agarwal, CA
Revenue by	:	Shri Om Prakash, Sr.DR
Date of Hearing	:	02.11.2021
Date of Pronouncement	:	16.11.2021

ORDER

This appeal filed by the assessee is directed against the order dated 30th April, 2019 of the CIT(A)-23, New Delhi, relating to Assessment Year 2010-11.

2. The grounds raised by the assessee are as under:-

01. That the assessment order as framed by the Id. A.O. is illegal and unlawful, as the notice u/s 148 was issued by the Id. A.O. on the basis of borrowed satisfaction without applying his independent mind to reach satisfaction about escapement of income in the hands of appellant.

2. That the Id. CIT(A) has erred in law as well as on the facts of the case by confirming the following additions:

a) An addition of Rs.5,62,340/- holding that the source of payment through credit cards upto that extent remained unexplained.

b) An addition of Rs.4,31,368/- as unexplained expenditure towards alleged other expenses.

The various findings and observations made for making aforesaid additions are farfetched and devoid of any supporting material on record and the amounts of additions have inaccurately been reached on the basis of incorrect and wrong calculations.

3. That the Id. CIT(A) has erred in law as well as on the facts of the case by not admitting the proofs of bank withdrawals made by mother of the appellant as submitted during appellate proceedings for technical and venial reasons of not filing rule 46A application.

4. That the authorities below have erred in law as well as on the facts by making and confirming the addition of purchases and expenses as made through credit cards, as unexplained u/s 69C of the Income Tax Act, 1961.

5. That the appellant craves leave to add, modify and delete any grounds of appeal.ö

3. Facts of the case, in brief, are that from the NMS data of his Circle, the AO noted that the assessee has made expenses of Rs.11,92,172/- against credit card bills and had not filed any return of income for the year under consideration. He, therefore, reopened the assessment as per provisions of section 147 after recording reasons and issued notice u/s 148 of the Act. In response to the said notice, the assessee filed return of income on 17th October, 2017 declaring the total income at Rs.2,55,848/-. During the course of assessment proceedings, the assessee filed the details of purchases through credit cards to the tune of Rs.14,18,295/- and personal expenses to the tune of Rs.1,86,024.66 and declared income at Rs.78,736/- being profit @ 5% on the sale of materials so purchased for a sale consideration of Rs.15,70,275/-. However, the AO did not accept the

explanation of the assessee and made addition of Rs.11,92,172/- being purchases made through credit cards.

4. In appeal, the Id.CIT(A) gave part relief by observing as under:-

4.20 As mentioned earlier, vide order sheet entry dated 11.05.2018, the appellant was asked to prove identity and credit worthiness of the persons making these payments and other such instances where the appellant is claiming that the payment was made by the third parties against the expenditure made through by the above stated credit cards. Vide this order sheet entry, the appellant was also asked that since appellant is not explained the sources or such payments, why enhancement should not be made and the same (order sheet entry) be treated as compliance to the section 251(2) of the Income Tax Act, 1961.

4.21 No evidence, whatsoever were produced in support of identity and creditworthiness of these persons. In case of Smt. Urmila Singhal(relative of appellant), a simple xerox copy of a sheet (which is difficult to read) was produced and claimed to be a bank statement. This sheet does not mention name of the account holder or account number or the bank to which it belongs. Appellant also submitted a photo-xerox copy of a blank cheque belonging to Punjab National Bank, Shakurbasti, Sainik Vihar, De n-110034 branch. This cheque is for account # 3720000100097085 and at the place of the signatory, name of Urmila Singhal w/o Lt. S.S.S. Singhal is mentioned. As such these are additional evidence and cannot be accepted without the route of rule 46A. In any case, these documents do not show any identity or creditworthiness of the person who is the source of claimed funds. Nor, it proves genuineness of the transaction. More-over as per this sheet, the cash withdrawal of Rs. 3,20,000/- is by Anshu Singhal. It is also noted that the cash withdrawal of Rs. 1,80,000/- (dated 25/03/209) was in the earlier F.Y and there is no evidence that this amount remained with the appellant till its purported use (payment of credit card bills- on account of medical expenses of Shri.Neeraj Singal).The appellant must have accounted for the same in opening balance as per Deepak Signal Capital a/c, which is shown to have been utilized against house hold expenses, during the previous year relevant to the AY under consideration.

4.22 It is clear from the above that, even if the story of trading is not rejected, the following sources cannot be accepted as explained.

i) Cheque payments of Rs.5,62,380/- purportedly received from Shri Sandeep Manocha but no evidence has been produced in support of identity, credit worthiness of the purported payer(Shri Manocha) and genuineness of the transaction.

ii) Cash of Rs. 8,61,055/-, purportedly received from Shri Sandeep Manocha, but no evidence produced in support of identity. Credit worthiness of the purported payer(shri Manocha) and genuineness of the transaction.

iii) Cash of Rs. 1,80,000/- and Rs.3,20,000/-, claimed to have been withdrawn on 25.03.2009 and 06.04.2009, respectively from the bank account of Smt. Urmila Singhal (as discussed in para 4.21, above)

4.23 As discussed above, there is no evidence of actual business activity except averment of the appellant. However, even if a lenient view is taken at the most it can be assumed that items purchased through credit cards were sold in local market to generate in cash (which the appellant is claiming to have been received form Shri. Sandeep Manocha). However, there is no evidence to suggest that Shri Sandeep Manocha paid the cheques (amounting to Rs. 5,62,380/-) Moreover, in spite of various opportunities, no evidence about his identity or credit worthiness was provided. In fact, in absence of any evidence, it cannot be assumed that any purchases were made by Shri Sandeep Manocha from the appellant. Hence, against the credit card purchases of Rs. 14,23,395/- (claimed to be for business purposes) the source of payment up to the extent of (at least) Rs.5,62,340/- remains unexplained and addition to this extent is confirmed.

4.24 Now coming to other expenses of Rs.4,31,368/-, the appellant has income from salary to the extent of Rs. 1,76,848/- , income of Rs. 264 from other sources and income of Rs. 78,738/- from purported business(for which there is no evidence). Also as per copy of Deepak Singhal Capital account, submitted by the appellant, he had household expense of Rs. 3,34,425.71/-. Also, Rs. 9,646/- have been paid for PF deduction; Rs. 2,366/- have been paid for mediclaim policy and Rs. 15,000/- have been paid as LIC premium. Therefore, it is not difficult to discern that hardly any amount is left which can be said to have been applied to meet the expenses (of Rs.4,31,368/-) under consideration.

4.25. The appellant claimed that expenses to the turn of Rs. 21,750.06 were made for official duty which was re-impressed by the employer, however, neither before. AO, nor before the under signed any evidences was submitted in support of this averment. The appellant also claimed that Rs. 1,13,620/- being hospital expenses of the brother were re-impressed by his brother, mother and family members. However, neither before. AO, nor before the under signed any evidences wise submitted in support of this averment except the two sheet of papers discussed in para 4.21, above). It has already been discussed in para 4.24 above, that there is hardly any amount which can be said to be available form declared sources i.e (salary income purported business income and income for other sources), after meeting declared house hold expenses, P.F. payment, LIC payment and

mediclaim policy .Therefore, this expense of Rs. 4,31,368/- also remains unexplained and addition to this extent is also., confirmed.

4.26 In view of the above discussion, the sole ground of appeal is partly allowed and addition to the extent of Rs. 9,93,708/- (Rs.5,62,340/- +Rs.4,31,368/-) is confirmed and the balance addition is deleted.ö

5. The Id. Counsel for the assessee submitted that given an opportunity, the assessee is in a position to substantiate his case to the satisfaction of the AO by filing necessary documents. The Id. DR has no objection to the above submission of the Id. Counsel. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the AO with a direction to grant one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also directed to appear before the AO and substantiate its case without seeking any adjournment under any pretext failing which, the Id.CIT(A) is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 16.11.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 16th November, 2021.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi