

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.1856/Del/2017
(ASSESSMENT YEAR 2012-13)**

Jasmine Infratech Pvt. Ltd. B-II/100, M.C.I.E, Delhi Mathura Road, Badarpur, New Delhi-44. PAN-AABCJ 7338N (Appellant)	Vs.	Income Tax Officer, Ward-13(2), New Delhi. (Respondent)
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Appellant By	Mrs. Indira Bansal, CA
Respondent by	Sh. Ajay Kumar, Sr. DR
Date of Hearing	07.10.2021
Date of Pronouncement	04.01.2022

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee against order dated 09/09/2016 passed by the Learned Commissioner of Income Tax (Appeals)-5, Delhi, [herein referred to as 'the CIT(A)] and pertains to Assessment Year 2012-13.

2. The brief facts of the case are that the assessee company is stated to be engaged in Real Estate business, although, as per the assessment order, no business activity had been carried out during the year under consideration. The return of income for the captioned year was filed declaring total income at Rs.13,33,113/-. The return of income was initially processed u/s 143(1) of the Income Tax Act, 1961 (in short 'the Act') and subsequently the case was selected for scrutiny under CASS parameters. During the course of assessment proceedings, the Assessing officer noted that there were additions to the fixed assets amounting to Rs. 5,20,000/- (as was reflected in the balance sheet). The assessee was required to furnish the details of addition to fixed assets along with documentary evidences. In response, the assessee submitted that the assessee had not incurred any expenditure on addition to fixed assets but had transferred the impugned amount from capital work-in-progress account to the fixed assets account. The assessee was again required to submit documentary evidences in respect of the same. It was submitted by the assessee that expenses were in respect of cleaning, leveling and filling of land. However, since the

assessee did not furnish details of the parties to whom these amounts were paid along with any documentary evidences, the Assessing officer proceeded to add this amount to the income of the assessee as 'unexplained expenditure' u/s 69C of the Income Tax Act, 1961. Apart from this, the Assessing officer also made a disallowance of Rs. 2,99,488/- in terms of provisions of Section 14A of the Act. The assessment was completed at an income of Rs. 21,52,601/-.

2.1 Aggrieved, the assessee carried the matter before the Ld. First Appellate Authority who deleted the disallowance made u/s 14A of the Act but upheld the addition made u/s 69C of the Act against which the assessee has now approached this Tribunal challenging the upholding of the addition by raising the following grounds of appeal:-

"1. The order passed by CIT(A)-V is bad in law and void ab-initio.

2. The CIT(A)-V has erred in confirming the addition to the Total Income of Rs.5,20,000/- as unexplained expenditure by invoking the

provisions of section 69C of the Income Tax Act, 1961. On following grounds:-

a. On the facts in the circumstances of the case, the assessing officer has erred in making addition to the Total Income, of Rs.5,20,000/- as unexplained expenditure by invoking the provisions of section 69C of the Income Tax Act, 1961. The same is liable to be fully deleted.

b. On the facts and in the circumstances of the case, the assessing officer has erred in making addition to the Total Income, of Rs.5,20,000/- as unexplained expenditure without appreciating the fact that in the instant case there is no dispute with regard to the source of capital expenditure and it is also not in dispute that the assessee incurred expenditure and it is not the case of Revenue that the assessee claimed such expenditure as business expenditure.

c. The Assessing Officer has wrongly interpreted the provisions of section 69C of the Income Tax Act, 1961 by ignoring conditions precedent for invoking the provisions of section 69C. Therefore, the addition is liable to be fully deleted.”

4. The appellant craves leave to add and alter grounds of appeal at the time of hearing.

3.0 The Ld. Authorised Representative (AR) drew our attention to the copy of balance sheet of the assessee placed at page 6 of the paper book and pointed out that as on 31.3.2011, Rs. 5,20,000/- was shown as capital work in progress under the head 'fixed assets'. He also drew our attention to pages 41 to 46 of the paper book, wherein, the ledger account of capital work in progress for the period 1.4.2010 to 31.3.2011 was reproduced and submitted that this ledger account showed the details of the capital work in progress for the immediately preceding assessment year which was capitalized under the head 'fixed assets' during the year under consideration. It was further submitted that no expenditure was incurred during the year under consideration and it was only a transfer from 'capital work in progress account' to 'fixed assets account' in the year under consideration and, therefore, the impugned additions had wrongly been upheld by the Ld. CIT(A).

4.0 Per contra, the Ld. Sr. DR supported the orders of the authorities below.

5.0 We have heard the rival submissions and have also perused the material on record. We have also perused the Balance Sheet along with its relevant annexures for the immediately preceding assessment year, wherein, it has been suitably demonstrated by the Ld. AR that the impugned amount represented capital work in progress as on 31.3.2011 and during the year under consideration, it has only been transferred from capital work in progress to fixed assets account. Therefore, undisputedly, no fresh expenditure has been incurred during the year under consideration and the addition to fixed assets is merely a transfer entry.

5.1 We have also gone through the copy of the ledger account for the capital work in progress for the year ended 31.3.2011 and we note that most of the work pertains to labour charges paid for cleaning and leveling of land. It is also a case in point that neither in the immediately preceding assessment year nor in the assessment year under consideration, the assessee has claimed the impugned amount as expenditure but has capitalized the same. We

also note that the Assessing officer has made the addition u/s 69C of the Act which reads as under:-

“69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year :

***Provided** that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.”*

5.2 A plain reading of section 69C as reproduced above, would show that a rigours of this provision are attracted in the financial year in which the assessee has incurred an expenditure and where he offers no explanation about the source of such expenditure. However, in the present case, neither has the impugned expenditure been incurred in the assessment year under consideration nor is it the Department's case that the assessee could not explain the source of such expenditure, as admittedly, and undisputedly, this expenditure has been routed through the books of account which are duly audited and have been accepted by

the Assessing officer. In such a situation, we are unable to uphold the order of the Ld. CIT(A). We set aside the same and direct the Assessing officer to delete the addition.

6.0 In the final result, the appeal of the assessee stands allowed.

Above decision was announced in the presence of both the parties on conclusion of Virtual Hearing on 04.01.2022

Sd/-
(R.K.PANDA)
ACCOUNTANT MEMBER
Dated: 04/01/2022
PK/PS / rkk

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI