

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “F” BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA Nos.2856 to 2858/Del/2018

[Assessment Years : 2008-09, 2010-11 & 2011-12]

Piyush Tiwari, D-203, Sector-47, Noida, Uttar Pradesh-201301. PAN-ADRPT7904N	v s	DCIT, Central Circle, Noida, Uttar Pradesh.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Sh.T.Kipgen, CIT DR	
Date of Hearing	16.12.2021	
Date of Pronouncement	24.01.2022	

ORDER

PER KUL BHARAT, JM :

This bunch of three appeals filed by the assessee against the consolidated order of the Ld.CIT(A)-IV, Kanpur dated 12.01.2018 pertaining to Assessment Years 2008-09, 2010-11 & 2011-12 respectively. Since identical grounds have been raised, all appeals were taken up together for hearing and are being disposed off by way of consolidated order for the sake of brevity.

2. We first take **ITA No.2856/Del/2018** pertaining to **Assessment Year 2008-09** as a lead case.

3. At the time of hearing, no one appeared on behalf of the assessee. The notice sent by the Registry through speed post as per address given by the assessee was returned unserved with remark “*left without address*” by the Postal Authority. The assessee has not provided any changed address to the Registry. Therefore, the appeal is being decided in the absence of the assessee and on the basis of material available on record and after hearing Ld. CIT DR.

ITA No.2856/Del/2018 [Assessment Year : 2008-09]

4. Now, we take up the **ITA No. 2856/Del/2018 [Assessment Year : 2008-09]** wherein the assessee has raised following grounds of appeal:-

1. *“That the CIT(A) has erred in upholding the addition of Rs. 5,00,000/- on account of Expenditure incurred on foreign Travelling without going into the submission or supporting documents filed.*
2. *That the CIT(A) has erred in upholding the addition of Rs. 33,95,000/- on account of Expenditure incurred on occasion of marriage as unexplained expenditure u/s 69c of the IT Act, without going into the submission or supporting documents filed.*

3. That the appellant reserves his right to amend, alter or raise any other additional ground of appeal before or during the course of appellate proceedings.”

5. Facts giving rise to the present appeal are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 (“the Act”) was conducted on 09.10.2013 on the premises of the assessee comprising Shubhkamna Buildtech Pvt.Ltd., group of cases. The premises of the assessee at D-203, Sector-47, Noida was also covered u/s 132 of the Act. Subsequently, notice u/s 153A of the Act was issued on 11.12.2015. Further, notice u/s 142(1) of the Act alongwith questionnaire was issued on 11.01.2016. Thereafter, a notice u/s 142(1) of the Act was issued on 16.02.2016 to the assessee. In response thereto, the assessee filed its return of income on 04.03.2016 declaring total income of Rs.4,59,060/-. Notice u/s 143(2) of the Act was issued on 04.03.2016 fixing the compliance on 07.03.2016. On the date so fixed, no one attended the proceedings, therefore, the assessment was completed u/s 144 of the Act ex-parte to the assessee on the basis of material available on record. Thereby, the Assessing Officer assessed the income at Rs.43,54,060/- against the declared income of Rs.4,59,060/-. The Assessing Officer had made addition in respect of the foreign

travelling expenses of Rs.5 Lakhs and the expenses of Rs.33,95,000/- noted at page No.12 of Annexure A-1 which was recovered during the search action.

6. Aggrieved against the ex-parte order, the assessee filed an appeal before Ld.CIT(A), who after considering the submissions, confirmed the addition made by the Assessing Officer and dismissed the appeal of the assessee.

7. Aggrieved against this, the assessee is in appeal before this Tribunal.

8. Ground No.1 of assessee's appeal is against the confirmation of addition of Rs.5,00,000/- made on account of expenditure incurred on foreign travel.

9. Ld.CIT DR supported the orders of authorities below and submitted that the assessee grossly failed to explain the source of the expenditure. Therefore, in the absence of supporting evidences, the authorities below are justified in making addition and sustaining the same.

10. We have Ld.CIT DR and perused the material available on record. It is seen from the records that the assessee failed to

substantiate the expenditure made by him on the foreign travel. Even before this Tribunal, no evidence is furnished regarding his foreign travel. Under these facts, we do not see any reason to interfere in the finding of Ld.CIT(A), the same is hereby affirmed. Thus, Ground No.1 raised by the assessee is dismissed.

11. Ground No.2 in assessee's appeal is against upholding the addition of Rs.33,95,000/- on account of expenditure incurred on occasion of marriage.

12. Ld.CIT DR supported the orders of authorities below and submitted that during the course of search, incriminating documents containing the details of expenses related to marriage functions was found at page 12 of Annexure A-1. The appellant could not explain these entries. Therefore, the Assessing Officer was justified in making the addition.

13. We have heard Ld.CIT DR and perused the material available on record. We find that Ld.CIT(A) has decided this issue by observing as under:-

“During the course of hearing, Ld.AR was specifically pointed out towards above observations and was required to explain

the necessity and circumstances to note these entries and kept with him so long till the date of search.

In response, Id. A.R. only reiterated that this is a rough paper and appellant does not know about these entries and relied upon case laws mentioned above. In absence of any cogent submission from Id. A.R., it remained unexplainable that paper under consideration is a rough sheet and does not relates to the assessee.

In this regard, it is Seen from the upper portion of paper that a word wedding was written which has struck out later. The date of wedding is written as 25.11.2007 When, ld. A.R. was called upon to provide date of marriage of Shri Piyush Tiwari, he could not come out with any documentary evidence. Then, undersigned has gone through the submission given by the appellant for foreign travelling expenses. It was submit by the ld. A.R. that from 27.11.2007 appellant alongwith her wife went to their honeymoon trip to U.S.A. This information creates a circumstantial evidence that appellant's marriage must be happened on 25.11.2007 & 26.11.2007. Since, during the course of hearing, ld. A.R. was silent about the fact, therefore, it is obvious to accept that these details are in respect of appellant's marriage which was happened on 25.11.2007. Further, to ascertain the real picture of expenses incurred on marriage of the appellant, the ld. A.R. was also called for to furnish details of expenses of the appellant. But ld. A.R. could not file or show a single piece of details regarding marriage of the appellant. This act of Id. A.R. self explains the fact that all

notings on above said incriminating document is related to expenses incurred on marriage of appellant. Thus, after above detailed discussion, it is very clearly that this is not a rough paper as claimed by the appellant. It is an incriminating document which has been from the premises of the appellant. This paper has undisclosed details of marriage expenses incurred by the appellant which were not recorded in the books of account. It is established preposition of law u/s 132(4A) & 292C of the Act that incriminating document found during search belongs to the person from whose custody it was found and the details of entries mentioned therein are true/correct. Appellant has not brought out any materials to rebut this presumption of law. Therefore, undersigned is of the view that AO has rightly addition of Rs. 33,95,000/- on this account. Hence, addition of Rs. 33,95,000/- is hereby confirmed, this ground of appellant is dismissed.”

14. The assessee has not brought any material on record, rebutting the above finding on fact recorded by the Ld.CIT(A). In the absence of such material, we do not see any reason to disturb the finding of Ld.CIT(A), the same is hereby affirmed. This ground of appeal is thus, dismissed.

15. In the result, the appeal of the assessee is dismissed.

16. Now, we take up the **ITA No. 2857/Del/2018 [Assessment Year 2010-11]** wherein the assessee has raised following grounds of appeal:-

1. *“That the CIT(A) has erred in upholding the addition of Rs.5,00,000/- on account of Expenditure incurred on foreign Travelling without going into the submission or supporting documents filed.*

2. *That the appellant reserves his right to amend, alter or raise any other additional ground of appeal before or during the course of appellate proceedings.”*

17. The only effective ground in this appeal is against the upholding of addition of Rs.5,00,000/- on account of expenditure incurred on foreign travel.

18. The facts are identical as were in ITA No.5826/Del/2018 pertaining to Assessment Year 2008-09. Ld.CIT DR has adopted the same arguments. We have decided this issue against the assessee in Assessment Year 2008-09 by holding as under:-

“We have Ld.CIT DR and perused the material available on record. It is seen from the records that the assessee failed to substantiate the expenditure made by him on the foreign travel. Even before this Tribunal, no evidence is furnished regarding his foreign travel. Under these facts, we do not see any reason

to interfere in the finding of Ld.CIT(A), the same is hereby affirmed. Thus, Ground No.1 raised by the assessee is dismissed.”

19. Therefore, taking the consistent view and following our decision in the Assessment Year 2008-09, the ground raised by the assessee is rejected.

20. In the result, the appeal of the assessee is dismissed.

21. Now, we take up the **ITA No. 2858/Del/2018 [Assessment Year : 2011-12]** wherein the assessee has raised following grounds of appeal:-

1. *“That the CIT(A) has erred in upholding the addition of Rs. 5,00,000/- on account of Expenditure incurred on foreign Travelling without going into the submission or supporting documents filed.*

2. *That the authority below has erred in not adjudicating the addition of Rs. 28,90,000/- on account of unexplained cash credit u/s 68 of the IT Act without passing a speaking order on this issue violating the principle on natural justice.*

3. *That the authority below has erred in not adjudicating the addition of Rs. 6,20,700/- on account of undisclosed income on account of entries, without passing a speaking order on this issue violating the principle on natural justice.*

4. *That the appellant reserves his right to amend, alter or raise any other additional ground of appeal before or during the course of appellate proceedings.”*

22. Apropos to Ground No.1 raised by the assessee is against the upholding the addition of Rs.5,00,000/- on account of expenditure incurred on foreign travel.

23. Ld.CIT DR submitted that facts are identical to ITA No.2856/Del/2018 pertaining to Assessment Year 2008-09. We therefore, taking the consistent view and following our decision in the Assessment Year 2008-09, Ground No.1 raised by the assessee is rejected.

24. Ground No.2 is against the sustaining of addition of Rs.28,90,000/- on account of credit entries amounting to Rs.28,90,000/- in the bank account of the assessee and the assessee failed to give any explanation regarding the credit entries. Ground No.3 is against the sustaining the addition of Rs.6,20,700/- on account of undisclosed income on account of entries.

25. Ld.CIT DR supported the assessment order.

26. We have heard Ld.CIT DR and perused the order of authorities below. We find that Ld.CIT(A) has not given any finding

on these additions. In the absence of any finding by the Ld.CIT(A) on the merit of these additions and any submissions by the assessee, we hereby dismiss the grounds of assessee's appeal.

27. In the result, the appeal of the assessee is dismissed.

28. In the final result, appeal of the assessee in ITA No.2856/Del/2018 for Assessment Year 2008-09 is dismissed and other appeals of the assessee in ITA Nos.2857 & 2858/Del/2018 for Assessment Years 2010-11 and 2011-12 are dismissed.

Order pronounced in the open Court on 24th January, 2022.

Sd/-

(R.K.PANDA)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

R. N/Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI