

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. KUL BHARAT, JUDICIAL MEMBER**

ITA No.111/Del/2021
Assessment Year: 2017-18

Harmeet Singh 1/10, Vijay Nagar, New Delhi-110009 (APPELLANT)	Vs	ACIT Central Circle – 32 New Delhi (RESPONDENT)
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Appellant	None
Respondent	Sh. M. Baranwal, CIT (DR)

Date of hearing:	31/10/2022
Date of Pronouncement:	02/11/2022

ORDER

PER N.K. BILLAIYA, AM:

This appeal by the assessee is against the order of the CIT(A)-30, New Delhi dated 17.08.2020 pertaining to A.Y.2017-18.

2. The grievance of the assessee read as under :-

1. The Ld. AO erred in law and on facts in making and the Ld. CIT(A) in confirming the addition of Rs. 5,75,500/- u/s 68 of the Act in the facts and circumstances of the case.
2. The Ld. AO erred in law and on facts in making and the Ld. CIT(A) in confirming the addition of Rs. 5,75,500/- u/s 68 of the Act in the facts and circumstances of the case. It is apparent from the proceedings on record that the Appellant did not receive any commission on the deal in question. As per evidence on record, the appellant declared income on receipt basis. The authorities have not brought on record any evidence adverse to the assessee or any evidence to substantiate the addition.
3. The Ld. AO erred in law and on facts in making and the Ld. CIT (Appeal) in confirming the addition of Rs. 5,75,500/- u/s 68 merely on the basis of presumption and assumptions.
4. The Ld. AO erred in law and on facts in making and the Ld. CIT (Appeal) in confirming the addition of Rs. 5,75,500/- u/s 68 in the assessment framed u/s 153-A while no incriminating material qua the appellant was found during the course of search on the appellant u/s 132 of the Act.
5. The appellant craves leave to raise additional grounds and/or alter, amend, delete, modify all or any of the grounds of appeal.

3. None appeared on behalf of the assessee inspite of notice, therefore, we decided to proceed exparte. The DR was heard at length. Case record carefully perused.

4. We find that there is a delay in filing the appeal. The assessee has explained the cause for the delay in filing the appeal by way of an affidavit dated 10.02.2021 in which the assessee has stated that due to the ongoing pandemic of Novel Coronavirus the appeal could not be filed on time.

5. We have carefully perused the contents of the affidavit. We find that the delay in filing the appeal was due to circumstances beyond control of the assessee, therefore, the delay is condoned.

6. Briefly stated the facts of the case are that during the course of search and seizure operation carried out at the various premises of Bajaj Group and its associates including the assessee various incriminating documents/ books of accounts were found and seized. Some of the documents related to sale of immovable property. One of the documents related to the payment of commission to the assessee in respect of property deal of plot No.11, Model Town, New Delhi.

7. The assessee was asked to explain why the commission should not be treated as his income. In his reply the assessee stated that he has not received any brokerage with regard to the said property due to some misunderstanding / dispute with the party. The assessee stated that as soon as he receives the commission the same shall be accounted for. It was explained that brokerage income is always accounted for once it is received which is a normal practice in this line of trade. The explanation of the assessee did not find favour with the AO who computed the brokerage @ 0.5% of total sale consideration and made the addition of Rs.575500/-.

8. Assessee agitated the matter before the CIT(A) and reiterated what has been stated before the AO. After considering the facts and the submissions, the CIT(A) found that in his statement the assessee has admitted before the authorized officer on 22.04.2017 that after bargaining Sh. Vikram Bajaj had promised

to give brokerage @ 0.5%. The addition was confirmed by the CIT(A).

9. We are of the considered view that there is no dispute so far as the percentage of commission is concerned as the same has been accepted by the assessee during the search proceedings as well as during the assessment / appellate proceedings. The only point of concern is whether the assessee has actually received the brokerage. We find that there is no evidence whatsoever brought on record by the lower authorities to prove that the payer have actually paid the brokerage to the assessee. Since no evidence has been brought on record to demonstrate that the brokerage has been actually paid to the assessee and the assessee has actually received the brokerage on the said deal of the immovable property, the same cannot be treated as income of the assessee. Considering the facts and the lack of evidences we direct the AO to delete the impugned addition of Rs.575500/-.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 02.11.2022.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary
Date:-02.11.2022

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER