

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “H” DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
&
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

I.T.As. No. 30, 31, 32, 33 & 34/DEL/2021
Assessment Years 2012-13, 2013-14, 2014-15, 2015-16 & 2017-18

Vishal Tyagi, C/o Saraswati Legal Professionals Pvt. Ltd., S-48, C-Block, Shalimar Garden, Extension-II, Sahibabad, Ghaziabad.	Vs.	DCIT, Central Circle, Ghaziabad.
TAN/PAN: AHRPT7851N		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Ms. Richa Khoda, CIT-DR		
Date of hearing:	20	10	2022
Date of pronouncement:	03	11	2022

ORDER

PER SHAMIM YAHYA, A.M.

These appeals by the Assessee are directed against the common order of the Commissioner of Income Tax (Appeals)-IV, Kanpur ('CIT(A)' in short) dated 16.10.2019 for the aforesaid assessment years.

2. For the sake of reference grounds of appeal for Assessment Year 2012-13 are mentioned as under:

“ITA No.30/Del/2021

1. That after having regard to the facts and circumstances of the case, the ld. CIT(A) has erred in law and on facts was not deleting the additions of Rs.2,86,839/- for the Assessment Year 2012-13.

2. *That in any view of the matter and in any case, the action of ld. CIT(A) is not reversing the action of Ld. Assessing Officer in making impugned addition of Rs.2,86,839/- for the Assessment Year 2012-13 is bad in law and against the facts and circumstances of the case.*

3. *That the order passed by the Ld. CIT(A) under section without providing proper opportunity to the assessee against the natural justice.*

4. *That the order passed by Ld. CIT(A) against the facts and circumstances of the case.*

5. *That the addition was confronted by the Ld. CIT(A) without considering the facts and circumstances of the case of the assessee.*

6. *That having regard to the facts and circumstances of the case, the ld. CIT(A) has erred in law and on facts in confirming the action of the ld. Assessing Officer was not providing proper opportunity to the assessee at the time of hearing against the provision of Income Tax Act, 1961.”*

3. At the outset, it is noted that there is a delay of 86 days in filing the appeal. The reasonable cause for the delay is stated to be misconception of the assessee wherein for all the five years one appeal was originally filed and thereafter upon the mistake being pointed out five separate appeals were filed. This lead to the delay and it has been prayed that the delay may kindly be condoned. Upon careful consideration, we condone the delay.

4. In all these cases, a search and seizure operation under Section 132 was conducted at the premises of the assessee comprising M/s. VVIP & SSG Group of cases. Assessment was hence framed under Section 143(3) r.w. Section 153A of the Income Tax Act. In the assessment order, Assessing Officer noted that during the course of assessment proceedings, the assessee has filed its bank account statement. From the reading of the same, it came to light that the assessee has made cash deposits of

Rs.1,13,000/- for Assessment Year 2012-13. Upon inquiry, the assessee stated that he has deposited the same from out of partly gross receipts and previous cash balance. On the same basis, the cash deposited in bank were added in other years also.

5. Before the Id. CIT(A), the assessee pleaded that Assessing Officer has passed the order without seeking any further clarification from the assessee and hence the order of the Assessing Officer was against the principles of natural justice. The assessee further referred to certain case laws. The Id. CIT(A) considered the submissions but distinguished the case law relied upon by the assessee and held that the same was not applicable. Referring to some other judgments, he confirmed the addition.

6. Against the order of the CIT(A), the assessee is in appeal before us.

7. We have heard the Id. DR and perused the records. None appeared on behalf of the assessee despite issuance of notices. Hence, we proceed to decide the appeal after hearing the Id. DR and perusing the records.

7.1 On careful consideration, we note that addition in this case has been made under Section 153A of the IT Act, pursuant to search and seizure activity. We note that Assessing Officer has not discussed the incriminating material found during the search on the basis of which assessment under Section 153A has been done. Furthermore, assessee's plea before the Id. CIT(A) was that the assessee explained the source of deposit and the Assessing Officer never confronted the assessee with his queries or further clarification. Further, the assessee's plea that addition under

Section 68 cannot be done on the basis entries in bank statement alone has also not been addressed. Hence, in the interest of justice, we remit the issue to the file of the Assessing Officer. The Assessing Officer is directed to consider the issue afresh and decide the appeals after giving the assessee effective and proper opportunity of being heard. The Assessing Officer shall bear in mind the submissions before the CIT(A) and our observations herein above. Hence, the appeal of the assessee is allowed for statistical purpose. Our above direction applies *mutatis mutandis* to all the appeals as above.

8. In the result, all the captioned appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 03/11/2022.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

DATED: 03/11/2022

prabhat

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER