

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'SMC' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

**ITA No.3035/Del./2017  
(ASSESSMENT YEAR : 2006-07)**

Smt. Rashmi Chhibba Jauhar,  
C/o Chandra Shekhar Barola,  
204, F-155, CA Building,  
Near Sethi Market, Mangal Bazar,  
Laxmi Nagar,  
New Delhi – 110 092.

vs. ACIT, Circle,  
Noida.

**(PAN : ABIPC2132J)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Dr. Rakesh Gupta, Advocate  
Shri Somil Agarwal, Advocate

REVENUE BY : Shri Rajiv Kumar, Sr. DR

Date of Hearing : 10.11.2022

Date of Order : 23.11.2022

**ORDER**

This appeal by the assessee is directed against the order of the Id.  
CIT (A)-I, Noida dated 24.02.2017 for the assessment year 2006-07.

2. The grounds of appeal read as under :-

“1. That on the facts & in the circumstances of the case and in law, the order passed by the Ld. Commissioner of Income Tax (Appeals) [CIT(A)] is wrong and bad in law.

2. That the Ld. CIT (A) grossly erred on the facts and circumstances of the case and in law in confirming the action of the Ld. AO of disallowing the vehicle running and maintenance amounting to Rs.52,381/-.

3. That the Ld. CIT (A) grossly erred on the facts and circumstances of the case and in law in confirming the action of the Ld. AO of disallowing the travelling expenses amounting to Rs.1,28,341/-.

4. That the Ld. CIT (A) grossly erred on the facts and circumstances of the case and in law in confirming the action of the Ld. AO of making disallowance on account of purchase of jewelery and purchase of two cars.

5. That the Ld. CIT (A) grossly erred on the facts and circumstances of the case and in law in enhancing the income by making an disallowance of Rs.4,93,085/- on account of repayment of car loan to Kotak Mahindra Bank.”

3. Brief facts of the case are that the assessee in this case is engaged in consultancy services. Assessee filed return of income declaring total income of Rs.30,00,216/- earned from salary and professional services. The AO made aggregate addition under section 69 of the Income-tax Act, 1961 (for short 'the Act') on account of alleged unexplained investment amounting to Rs.16,27,809/- comprising addition of Rs.32,871/- for purchase of jewellery and additions of Rs.5,80,417/- & Rs.10,14,521/- for purchase of two cars. Ld. CIT (A) confirmed the addition to the extent of Rs.8,32,871/- comprising addition of Rs.32,871/- for purchase of jewellery and additions of Rs.3,00,000/- out of addition of Rs.5,80,417/- & Rs.5,00,000/- out of addition of Rs.10,14,521/- on account of investment for purchase of two cars.

4. Against this order, assessee is in appeal before us. I have heard both the parties and perused the records.

5. Ld. Counsel of the assessee submitted a synopsis and a paper book giving an explanation that various details were already before the authorities below and there is lack of appreciation which has led to the additions partly sustained by the ld. CIT (A). Detailed submissions of the ld. Counsel of the assessee in this regard read as under :-

“In connection with addition of Rs.32,871/- on account of purchase of jewelry made by Ld. AO and confirmed by Ld. CIT(A), it is respectfully submitted that the assessee has purchased jewelry through credit card and payment of the same has been made out of her income earned during the year under consideration which has been duly offered to tax.

Ld. AO has discussed the issue on page 4 of the assessment order and Ld. CIT(A) has discussed the issue in para 11 on page 3 of the appellate order.

The evidences to substantiate the fact are as follows:

PB 43 is the extract of assessee's CITI Bank Credit Card Statement showing debit entry (payment) of Rs.32,871.23 dated 23.10.2005 for the jewelry purchased.

PB 43 & 139 are the relevant extract of assessee's CITI Bank Credit Card Statement showing credit entries Rs.28,837/- dated 14.11.2005 and Rs.92,320/- dated 13.12.2005 showing payment made for the credit card through assessee's saving bank account.

PB 145 & 73 are relevant extract of assessee's saving bank (ABN Amro) account statement showing debit entry of Rs.28,837/- dated 16.11.2005 and Rs.92,320/- dated 14.12.2005 towards Citi Bank Credit Card payment. The said statements would show the credit entries on account of consultancy income of Rs.79,594.75 on 16.11.2005 and Rs.92,547.90 on 14.12.2005 as a source of above payments.

Further, it is pertinent to submit that the consultancy income has been offered to tax by the assessee in her return of income. The copy of computation of income (PB 102), audited balance sheet (PB 114-118), return of income (PB 101), ledger of consultancy income (PB 120) enclosed herewith for your kind perusal.

PB 37 is copy of submissions filed before Ld. CIT(A) regarding the above issue.

Adverse Observations by Ld. AO and Ld. CIT(A)

- Ld. AO has observed and mentioned in the assessment order on page 4 that "Perusal of credit card statement does not show any entry of Rs.32,871/- as claimed by the assessee for purchase of jewelry nor the narration in credit card reveals purchase of jewelry" .

It reply it is submitted that the credit card statement enclosed at PB 43 clearly shows the payment of Rs.32,871.23 towards 'O'SEAS SPEND DAMASCUS JEWELLER AED FOREIGN AMOUNT'. Hence, the observation of Ld. AO is incorrect.

- Ld. CIT(A) has observed and mentioned in para 11 on page 3 of the appellate order that "the addition is correctly made as the expenditure of Rs.32,871/- on purchase of jewelry was not included in the accounts of the appellant and the claim of the appellant before the Ld. AO that the said jewelry was purchased through credit card was found to be incorrect by the Ld. AO".

In reply it is submitted that the observation of Ld. CIT(A) is incorrect in as much as that the purchase of jewelry is duly shown in the Fixed Asset Schedule (PB 23) and is admitted by Ld. AO on page 4 of the assessment order. Further, it is mentioned that the claim of appellant before Ld. AO that the said jewelry was purchased through credit card was found to be incorrect by the Ld. AO. However, the fact is clearly substantiated by the credit card statements enclosed at PB 43 and 139 evidencing the same.

In connection with addition of Rs.3,00,000/- sustained by Ld. CIT(A) out of addition of Rs.5,80,417/- made by Ld. AO on account of cost of Car-1 (Hyundai Accent), it is respectfully submitted that the assessee has purchased the car (Hyundai Accent - Car 1) from "Samara Hyundai" on 13.04.2005 and sold the same on 13.10.2005. Further, Rs4,50,000/- was paid through Kotak Bank Loan Account which is not in dispute and the balance consideration was paid by the assessee from her own income.

Ld. AO has discussed the issue on page 4-5 of the assessment order and Ld.CIT(A) has discussed the issue in paras 12-18 on Pages 3-4 of the appellate order.

PB 56 is copy of insurance cover note for Accent Car.

PB 64 is the copy of assessee's bank account statement showing cash withdrawal of Rs.1,50,000/- from its own bank account on the same date i.e. 13.04.2005. It can also be seen that the major source of cash withdrawal is consultancy income of Rs.1,47,657/- credited on 21.04.2005 which has already been offered to tax by the assessee and the balance was paid out of savings of assessee and her family.

It is not out of place to submit that the aforesaid consultancy income has been offered to tax by the assessee in her return of income as is evident from the copy of computation of income (PB 102), audited balance sheet (PB 114-118), return of income (PB 101), ledger of consultancy income (PB 120) enclosed herewith.

The balance amount was paid out of the past savings and cash in hand available with the appellant out of withdrawal of cash of Rs.1,40,000/- on 17.03.2005 as is evident from copy of bank statement of the appellant enclosed at PB 148.

PB 44/144 is the ledger of the assessee in the books of vendor (Samara Hyundai) to substantiate the payments made by the assessee.

PB 52 & 53 is copy of submissions filed before Ld. CIT(A) filing the above facts.

Thus, in view of above submissions, it is humbly prayed that the addition sustained by Ld. CIT(A) of Rs.3,00,000/- is bad in law and on facts and may please be deleted.

Adverse observation by Ld. CIT(A)

Ld. CIT(A) observed and mentioned in para 14 on page 3 & 4 that "For this investment the appellant has taken a loan of Rs.4,50,000/- from Kotak Mahindra Prime Ltd. and has claimed to have incurred the rest of the expenditure by withdrawing money from its bank with the ABN Amro Bank and the details of withdrawal has been claimed by the appellant to be 16/12/2005 (Rs.50,000/-), 26/12/2005 (Rs.1,50,000/-), 03/01/2006 (Rs.1,00,000/-) and 07/01/2006 (Rs.30,000/-). It was claimed on behalf of the appellant that the expenditure of Rs.3,00,000/- was incurred by the appellant on purchase of vehicle in the month of April, 2005 from the withdrawals made by her in the month of December, 2005 and January, 2006" and in para 16 at page 4 it is mentioned that "the claim of the appellant to have paid for the expenditure on purchase

of vehicle from the withdrawals made in the month of December 2005 and January 2006 is clearly an afterthought.”

In reply it is respectfully submitted that above said cash withdrawals alleged by the CIT(A) were not claimed by the appellant against the payment of Car purchased in the month of April 2005. It is reiterated at the cost of repetition that for the payment above said Car, in addition to the loan from Kotak bank which is not in dispute, the appellant had withdrawn cash amounting to Rs.1,50,000/- & Rs.1,40,000/- as is evident from bank statement enclosed at PB 64 & 148. The fact was also submitted before Ld. CIT(A) as is evident from PB 52 & 53. Therefore, the observation of Ld. CIT(A) is incorrect and against the facts.

In connection with addition of Rs.5,00,000/- sustained by Ld. CIT(A) out of addition of Rs.10,14,521/- made by Ld. AO on account of cost of Car 2 (Scorpio), It is respectfully submitted that the assessee has purchased the Scorpio Car for Rs.10,14,521/- from "Sri Durga Automobiles" on 12.10.2005.

Ld. AO has discussed the issue on page 4-5 of the assessment order and Ld.CIT(A) has discussed the issue in paras 20-24 on Pages 5-6 of the appellate order.

The appellant obtained loan of Rs.5,00,000/- from HDFC bank which is not in dispute and the balance payments have been made in the following manner:

Date	Amount (Rs.)	Mode of Payment	Source of Funds
12.10.2005	1,25,720	Cash	Cash Withdrawal on 04.10.2005 and 08.10.2005 aggregating to Rs.1,35,000/- out of consultancy income earned (PB 146, 147)
13.10.2005	16,732/-	Cash	Cash in Hand available from above withdrawals and savings.
10.12.2005	1,79,000/-	Cash	Cash consideration received against sale of car (Hyundai Accent-Car 1) of Rs.6,40,000/- received on 13.10.2005.
26.12.2005	1,50,000/- 6,310/-	Cash	Cash withdrawal on 16.12.2005 and 26.12.2005 aggregating to

			Rs.2,00,000/- out of consultancy income (PB 73, 149)
04.01.2006	16,732/-	Cheque	Consultancy income earned (PB 149)
04.01.2006	16,982/-	Cash	Cash withdrawal on 03.01.2006 of Rs.1,00,000 out of consultancy income earned (PB 149)
06.01.2006	3,445/-	Cash	Cash in Hand available from above withdrawals.

It is reiterated at the cost of repetition that the source of amounts withdrawn from bank is out of consultancy income earned by the assessee during the impugned year which is evident from ledger of consultancy income and bank statement enclosed. It is not out of place to submit that the aforesaid consultancy income has been offered to tax by the assessee in her return of income as is evident from the copy of computation of income (PB 102), audited balance sheet (PB 114-118), return of income (PB 101), ledger of consultancy income (PB 120) enclosed herewith for your kind perusal.

PB 52 & 53 is copy of submissions filed before Ld. CIT(A) on the above lines.

In view of above submissions, it is humbly submitted that Ld. CIT(A) has erred in not appreciating the facts correctly and therefore, it is prayed that the addition sustained by Ld. CIT(A) may kindly be deleted.

Ground No.5 This ground is against the enhancement of Rs.4,93,085/- made by Ld. CIT(A) on account of repayment of car loan to Kotak Mahindra Bank. Ld.CIT(A) has discussed the issue in para 19 at page 4 of the appellate order.

It is submitted that the assessee has sold the car 1 (Hyundai Accent) on 13.10.2005 for Rs.6,40,000/- as is evident from copy of the report of transfer of ownership of a motor vehicle (Form 30 and 29) enclosed at PB 59-61.

PB 57-58 is copy of foreclosure letter from Kotak Mahindra Bank dated 26.10.2005 showing full and final amount of Rs.4,45,389/- received from the assessee on 13.10.2005 against the car loan taken for Car - 1. It is submitted that the said payment has been made by the assessee from the cash received against the sale consideration of

Accent Car. Further, it is pertinent to submit that the appellant has paid Rs.47,696/- against the Kotak Bank Loan in four equal installments of Rs.11,924/- on 15.06.2005, 15.07.2005, 15.08.2005 and 15.09.2005 (PB 146) through banking channels and the same is out of the consultancy income earned by the assessee and duly offered to tax.

PB 62-63 is the copy of confirmation Kotak Bank confirming the amounts received against the loan.

PB 52 & 53 is copy of submissions filed before Ld. CIT(A) filing the above facts.

In view of above submissions, it is prayed that addition made by Ld. CIT(A) may kindly be deleted.

Adverse Observations by Ld. CIT(A)

Ld. CIT(A) has observed and mentioned in para 21 on page 5 of appellate order that "admittedly the appellant has sold the first vehicle being DL3C AQ 1269 to M/s Ved Mediserve Pvt. Ltd. on 18.02.2006 as is evident from Form 30 under Rule 55(2) & (3) of the Motor Vehicle Rules a copy of which has been filed by the appellant in the present proceedings. Obviously, the appellant could not have financed the purchase of second vehicle in October 2005 from the alleged sale proceed of the first vehicle in February 2006."

It reply it is submitted that general practice of selling the car through dealer is that the dealer paid the consideration amount against vehicle sold on the same day and ownership of vehicle transferred when the dealer finds the buyer and the vehicle is actually transferred to the said buyer. Therefore, the date mentioned on the Form 30 and 29 of transfer of ownership of motor vehicle i.e. 18.02.2006 is different from the date of consideration received by the assessee i.e. 13.10.2005."

6. Ld. DR for the Revenue after going through the synopsis and the submissions of the Id. Counsel of the assessee agreed that the matter should be remitted to the AO to examine the matter afresh in view of the submissions made by the Id. Counsel of the assessee.

7. Upon careful consideration, in the interest of justice, we are inclined to remit the issue to the file of the Assessing Officer. The Assessing Officer should examine the matter afresh in the light of the submissions made by the Id. Counsel for the assessee with reference to the paper book. Needless to add, assessee shall also be given adequate opportunity of being heard.

8. In the result, this appeal by the assessee stands allowed for statistical purposes.

**Order pronounced in the open court on this 23<sup>rd</sup> day of November, 2022.**

**Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 23<sup>rd</sup> day of November, 2022  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-I, Noida.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.