

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "S.M.C." NEW DELHI]

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER, S. M. C.

आ.अ.सं./I.T.A No. 8401/Del/2019
निर्धारणवर्ष/Assessment Year: 2010-11

Ms. Priya Talwar, Legal Heir of Late Shri Rajeev Talwar, C/o. M/s. RRA TAXINDIA, D-28, South Extension, Part-I, New Delhi - 110 049.	<u>बनाम</u> Vs.	Income Tax Officer, Ward : 28 (1), New Delhi.
PAN : ACMPT6865E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितीकीओरसे / Assessee by :	Dr. Rakesh Gupta, Advocate, & Shri Saksham Agarwal, C. A.;
राजस्वकीओरसे / Department by :	Shri Toufel Tahir, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	21/11/2022
उद्घोषणाकीतारीख/Pronouncement on :	29/11/2022

आदेश / ORDER

PER SAKTIJIT DEY, J. M. :

1. This is an appeal by the assessee against the order dated 1.08.2019 of learned Commissioner of Income Tax (Appeals)-10 [hereinafter referred to as CIT (Appeals)] New Delhi, for assessment year 2010-11.

2. Grounds raised by the assessee are as under:-

“1. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order u/s 143(3)/147 without assuming jurisdiction as per law and thus Ld. CIT(A) ought to have quashed the impugned proceedings inter alia on the following grounds:-

- That ‘reason’ has been recorded without independent application of mind;
- That no valid approval/sanction of the higher authority has been obtained in accordance with law;
- That assessment should be completed u/s 153C and not u/s 147;
- That objection of assessee with regard to reopening has not been disposed in accordance with law;
- That various other conditions as stipulated u/s 147 to 151 have not been met.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in framing the impugned reassessment order u/s 143(3)/147, is bad in law and against the facts and circumstances of the case;

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making aggregate addition of Rs.41,83,821/- u/s 69C on account of purchases made from parties mentioned in the reassessment order and that too by recording incorrect facts and findings and without granting opportunity of cross examination and without providing the entire adverse material on records and without observing the principles of natural justice and disregarding the submissions, evidence and material placed on record by the assessee;

4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making aggregate addition of Rs.41,83,821/- u/s 69C, is bad in law and against the facts and circumstances of the case;

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B and 234C of Income Tax Act, 1961.”

3. However, at the time of hearing, Dr. Rakesh Gupta, Id. Counsel appearing for the assessee submitted that he will be arguing only on the merits of the addition of Rs.41,83,821/- made under section 69C of the Income Tax Act, 1961 (the Act) and not on other grounds. Accordingly, all other grounds except ground Nos. 3 & 4, are dismissed as not pressed.

4. As far as issue regarding ground Nos. 3 & 4 is concerned, briefly the facts are that the assessee is a resident individual. Assessment in case of the assessee was re-opened under section 147 of the Act on the allegation that certain purchases claimed to have been made are non-genuine. In the course of assessment proceedings the Assessing Officer called upon the assessee to prove the genuineness of purchases made from M/s. Kriya Impex Pvt. Ltd., M/s. Karnvat Impex Pvt. Ltd. and M/s. Kangan Jewels Pvt. Ltd. In response to the query raised, though, the assessee furnished some documentary evidences, however, the Assessing Officer remained un-convinced. Ultimately, he added back the entire purchases of Rs.41,83,821/- by invoking the provisions of section 69C of the Act. Though, the assessee contested the aforesaid addition before learned CIT (Appeals) however, he was un-successful.

5. Before me, learned Counsel appearing for the assessee submitted that in assessee's own case in some other assessment years, in respect of

purchases made from some of the very same parties, the Assessing Officer had adopted profit rate of 5% and restricted the disallowance to that extent. He submitted, adopting similar approach disallowance can be restricted to 5% in the present case also.

6. The learned Departmental Representative relied upon the observations of the Assessing Officer and learned CIT (Appeals).

7. I have considered rival contentions and perused the material on record. Undisputedly, the Assessing Officer has treated the purchases from certain parties as non-genuine and added back the entire amount to the income of the assessee. However, it appears on record that before the Assessing Officer the assessee has furnished the details of sales quantitative tally of purchase and sales etc. Therefore, the fact that the assessee had purchased the goods from some source is established. In such a situation, the entire purchase cannot be disallowed but the disallowance can be restricted to the profit element embedded in such purchases. In fact, adopting this approach in some other assessment years the Assessing Officer in assessee's own case has restricted the disallowance to 5% in respect of purchases made from very same parties. In my view, the same yard-stick can be applied in the impugned assessment year as well. Therefore, I direct the Assessing Officer to restrict the disallowance to 5% of the total purchases of Rs.41,83,821/-. These grounds are partly allowed.

8. In the result, the appeal is partly allowed.

Order pronounced in the open court on : 29/11/2022.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated : 29/11/2022.

MEHTA

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	24.11.2-22
Date on which the typed draft is placed before the dictating member	28.11.2022
Date on which the typed draft is placed before the other member	29.11.2-22
Date on which the approved draft comes to the Sr. PS/ PS	29.11.2-22
Date on which the fair order is placed before the dictating member for pronouncement	29.11.2-22
Date on which the fair order comes back to the Sr. PS/ PS	29.11.2-22
Date on which the final order is uploaded on the website of ITAT	29.11.2-22
Date on which the file goes to the Bench Clerk	29.11.2-22
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	