

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 764/Del/2022
Asstt. Year: 2014-15

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| Sandeep Dhingra B-163, Amar Colony, Lajpat Nagar, New Delhi - 110 024 PAN AFNPD6143D | Vs. | ACIT, Central Circle-26, Delhi. |
| (Appellant) | | (Respondent) |

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|------------------------|-----------------------------|
| Assessee by: | Ms. Shilpi Jain, CA |
| Department by: | Shri H.K. Chaudhary, CIT-DR |
| Date of Hearing: | 03.04.2023 |
| Date of pronouncement: | 25.04.2023 |

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals) - 29, New Delhi ("**CIT(A)**") dated 23.03.2022 pertaining to the Assessment Year ("**AY**") 2014-15.

2. The assessee has taken the following grounds of appeal: -

- "1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*
2. *The Ld. C-IT(A) has erred both in law and circumstances of the cases in upholding the additions of Rs. 1,13,20,000 ignoring the facts of the case*
3. *That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in upholding the additions of Rs. 1,20,000 on account of salary received from 5 companies ignoring the fact that such addition has already been deleted by the office of Ld. CIT(A) 29 in other assessment years covered in Block assessment.*

4. *That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in upholding action of the AO, in making additions u/s 68 and 69 of the IT Act of Rs. 72,00,000/- and Rs.40,00,000/- are erroneous as the evidences relied by the Ld. AO are some pages of a diary which were even not related to the assessee*
 5. *That on the facts and in the circumstances of the case and in law, Ld CIT-A erred in not restoring the returned income declared by assessee in its return of income.*
 6. *That on the facts and in the circumstances of the case and in law, Ld CIT-A erred In not deleting the addition made by Ld AO which was also unlawful and made in violation of principles of natural justice.”*
3. It is a search case. Search under section 132 of the Income Tax Act, 1961 (**the “Act”**) was conducted on 17.12.2015 in Anand Kumar Jain and Naresh Kumar Jain group of case and the assessee was also covered in the search. Notice under section 153A of the Act was served upon the assessee who filed return for the AY 2014-15 on 21.03.2017 declaring income of Rs. 60,760/-. No original return under section 139 of the Act was filed by the assessee.
4. During assessment proceedings, queries were raised based on the seized material (page No. 1 of Annexure A-2, Party Alfa-9) in search. The assessee offered explanation which is contained in para 4.1 of the assessment order. The Ld. AO reproduced the relevant portion as under:-

“4.1

This is in response to your show cause in which your honour has show cause me as to why Rs.40 lakh written on page no. 1 of Annexure A-2 Rs 40 lakh written on page no. 2 of Annexure A-2 and Rs. 72.66 lakh written on page no. 4 of Annexure A-2 should not be added in my income u/s 69 of the income Tax Act.

Sir, with regard to page no. 1 and 2 of Annexure A-2, I hereby submit that .since I am a LIC agent from past many years, many people approached me for their LIC Polices. I used to take cheques/cash from these people and deposited the same to LIC office on their behalf as an agent. Some of the names of the people and the amount written against their names on page no. 1 and page no. 2 of Annexure A-2 is a record of holders who had given their cheques/cash to me to deposit the same to LIC Office for their ongoing Policies which I had deposited to LIC before search Further, Some of the names of the people and the amount written against their names on page No. 1 and page No. 2 of Annexure A-2 is a record of UC holders showing their total sum assured of UC Policy which I had done in past years as I was calculating my commission income on the same. Sir it was nothing but merely a record so that I won't miss any name for submitting their cash/cheques.

With regard to page no. 4 of Annexure A-2. I hereby submit that the house i.e. B-163, Amar Colony, Lajpal Nagar, Delhi - 110024 in which I am living is ancestral property and is in the name of my mother Raj Dhingra. Details written on page No 4 of Annexure A-2 was rough estimate written by me during early days of 2011 on behalf of my mother who want to do the rough calculation of her wealth so to distribute among her children i.e between me and my sisters. Amount written as 60 00.000 was value calculated by my mother for her above mentioned house. Later on in the F.Y. 2013-14 and 2014-15 . my mother had sold the top floor under collaboration agreement with the dealer and received the proceeds for sale of top floor in the bank account which was spend by her on the construction Of house. (Copy of relevant bank statement is enclosed)

Amount written as Rs 50000 kitty was savings of my mother Rs.416000 written as Glaxo was the shares of Glaxo in my father's name and the same in the year 2012 was transferred in my brother in law name.

Amount written against gold and silver of Rs.450000 and Rs. 80000 was the jewellery belonging to my mother and was distributed among my sister and my wife. Lastly the NSC of Rs.270000 was in the name of Mother and father, the pre maturity proceeds of which is later on credited in my mother account. (Copy of bank statement is enclosed).

Sir, Further, I would to like to clarify that no document/evidence/cash has been found from my house which proves that details written on page no. 1- 4 of Annexure A-2 is my undisclosed income.

Also the loose sheets found in my premises are wholly irrelevant as evidence and hence not being admissible to make any addition on the basis of these loose sheets as the same was decided in the case of Common Cause (A Registered Society) vs. Union of India. (Copy of order is enclosed)

Hence, I request you not to add amount written on page no. 1,2 and 4 of Annexure A-2 as these does not belongs to me.”

4.1 The explanation was not acceptable to the Ld. AO for the following reasons recorded by him in para 5.2 of his order which resulted in addition of Rs. 40,00,000/- on account of unaccounted investment under section 69 of the Act:

- “(i) During the course of search action statement was recorded on oath u/s 132 of the Act on 17.12.2017 of the assessee. The assessee was confronted with the seized material annexure A-2, page 1 to 4 vide in answer to question no. 10 with respect to page no. 1 assessee has a admitted that the said page written by the assessee and stated that page no. 1 contains client wise/party wise details of LIC payments made by the assessee during F.Y. 2013-14. He further stated that he owed them the money so he has made payment of LIC premium during F.Y. 2013-14 on behalf of clients. With respect to page no. 2 the assessee has submitted that page no. 2 is person wise details with reference to cash payments mentioned against each person name.*

These payments were made by me in the year 2013-14 since I owed them these outstanding amounts taken as loan in the past.

- (ii) *In the reply of show cause notice the assessee has submitted that "since I am a LIC agent from past many years, many people approached me for their LIC Policies. I used to take cheques/cash from these people and deposited the same to LIC office on their behalf as an agent. Some of the names of the people and the amount written against their names on page no. 1 and page no. 2 of Annexure A-2 is a record of LIC holders who had given their cheques/cash to me to deposit the same to LIC Office for their ongoing Policies which I had deposited to LIC before search. Further, Some of the names of the people and the amount written against their names on page No. 1 and page No. 2 of Annexure A-2 is a record of LIC holders showing their total sum assured of LIC Policy which I had done in past years as I was calculating my commission income on the same. Sir, it was nothing but merely a record so that I won't miss any name for submitting their cash / cheques. "*
- (ii) *During the course of search action the assessee has stated that he has paid LIC premium on behalf of assessee's client and in reply to show cause notice the assessee has stated that "assessee has take cheques/cash from clients and deposited the same to LIC office on behalf of assessee's clients." With respect to page no. 2 the assessee has submitted that page no. 2 is person wise details with reference to cash payments mentioned against each person name. These payments were made by me in the year 2013-14 since I owed them these outstanding amounts taken as loan in the past.*
- (iv) *Both the reply submitted by the assessee is contradictory."*

5. In response to query based on seized material (page No. 2, Annexure A-2, Party Alfa-9) the assessee made submissions which the Ld. AO recorded in para 6 and 6.1 of his order which is reproduced below:

"6. During the course of search action the assessee has submitted with respect to page no. 3 and 4 that against building Rs.60,00,000/- is mentioned this is a combined sale consideration of sale of basement of their house to Sh. B.L. Malhotra their neighbor and amount received from builder in lieu of 2nd floor is part of building agreement. Similarly, Rs.50,000 was received from Kitty Rs.4,16,000 from sale consideration of shares of Glaxo, these shares were allotted to my late father, who was employee with Glaxo Rs.217000/- raised on account of redemption of NSC/NSS held jointly in the name of Late father and my mother in some certificated I am the joint holder Rs.4,50,000/- & Rs. 80,000/- were raised by selling Gold items & silver items of my wife and my mother. In total Rs.72 lakh 66 thousand were raised to repay my liabilities in the market & to bear expenses (medical) on myself, my son and my mother and to bear the household expenses since I was unemployed for more than 4 years.

6.1 *The assessee has furnished in response to show cause notice "that the house i.e. B-163, Amar Colony, Lajpat Nagar, Delhi - 110024 in which I am living is ancestral property and is in the name of my mother Smt. Raj Dhingra, Details written on page No.4 of Annexure A-2 was rough estimate written by me during early days of 2011 on behalf of my mother who want to do the rough calculation of her wealth so to distribute among her children i.e. between me and my sisters. Amount written as Rs.60,00,000 was value calculated by my mother for her above mentioned house. Later on in the F. Y. 2013-14 and 2014-15, my mother had sold the top floor under collaboration agreement with the dealer and received the proceeds for sale of top floor in the bank account which was spend by her on the construction of house. Amount written as Rs. 50000 kitty was savings of my mother Rs.416000 written as Glaxo was the shares of Glaxo in my father's name and the same in the year 2012 was transferred in my brother in law name. Amount written against gold and silver of Rs.450000 and Rs. 80000 was the jewellery belonging to my mother and was distributed among my sister and my wife. Lastly the NSC of Rs.270000 was in the name of Mother and Father, the pre maturity proceeds of which is later on credited in my mother account."*

5.1 Rejecting the assessee's explanation for want of documentary evidence to verify the transactions the Ld. AO made an addition of Rs. 72,00,000/- on account of unaccounted receipts under section 68 of the Act.

6. In para 7 of his order, the Ld. AO stated that the assessee is dummy director in five companies. As per statement recorded under section 132(4) the assessee is not actual director in any company. Since salary was not reflected in the return of the assessee, the Ld. AO estimated salary @ Rs. 2000/- per month from the above five companies and accordingly added Rs. 1,20,000/- to the income of the assessee.

6.1 Total income of the assessee was thus computed at Rs. 1,13,80,760/- in the assessment framed by the Ld. AO under section 153A/143(3) of the Act on 28.12.2017.

7. The assessee carried the matter in appeal before the Ld. CIT(A). During appellate proceedings despite numerous opportunities, the notices remained uncomplished with. The Ld. CIT(A) therefore, decided the appeal of the assessee ex parte. The Ld. CIT(A) confirmed the additions made by the Ld. AO for the

reason that the assessee did not come forward to controvert the findings of the Ld. AO. Therefore, the assessee could not justify that the impugned additions made by the Ld. AO were not correct.

8. Aggrieved with the appellate order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

9. We have heard the Ld. Representative of the parties and perused the record. It is not in dispute that during assessment proceedings the assessee submitted detailed reply to the entries contained in the seized material (page No. 1 and page No. 2 of Annexure A-2). However, the explanation furnished by the assessee was not acceptable to the Ld. AO. There is no inkling that while deciding the appeal the Ld. CIT(A) has considered the explanation of the assessee. He has confirmed the impugned additions relying on the findings of the Ld. AO which according to the Ld. CIT(A) remained uncontroverted as no reply/submissions were made by the assessee before him during appellate proceedings. In such a scenario, we are of the considered view that the matter needs to be restored to the file of the Ld. CIT(A) with a direction to him to decide the appeal of the assessee afresh after giving adequate opportunity of hearing to the assessee as also to the Ld. AO. Both the parties shall present their respective case before the Ld. CIT(A) and thereafter the Ld. CIT(A) shall pass speaking order in accordance with law. We order accordingly. Consequently, the order of the Ld. CIT(A) is set aside for making order denovo.

10. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 25th April, 2023.

sd/-

**(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

Dated: 25/04/2023

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

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Copy forwarded to -

1. Applicant
2. Respondent
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4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

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| Date of dictation | |
| Date on which the typed draft is placed before the dictating Member | |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr. PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr. PS/PS | |
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