

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: H: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.2517/Del/2022
Assessment Year: 2020-21

Designers Point (India) P. Ltd., G-194, Lane No. 13, Western Avenue Sainik Farms, New Delhi 110062 PAN AAACD 3045 R	vs.	The ACIT, Central Circle 18, New Delhi
(Appellant)		(Respondent)

For Assessee:	Shri Akshat Jain, CA
For Revenue :	Shri Amit Katoch, Sr. DR

Date of Hearing :	20.07.2023
Date of Pronouncement :	06.09.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-27, New Delhi dated 22.09.2022 for A.Y. 2020-21.

2. The grounds raised by the assessee are as under:-

1. *That on the facts and circumstances of the case, Ld. CIT(A) has erred both on facts and in law in sustaining addition to the extent of Rs. 5,75,000/- u/s 69C being part salary alleged to be paid in cash to employees merely on the basis of unsubstantiated whatsapp conversation between two employees by ignoring the settled law that whatsapp chats has no evidentiary value.*

2. *That on the facts and circumstances of the case, Ld. CIT(A) has erred both on facts and in law in sustaining addition to the extent of Rs. 5,75,000/- u/s 69C being part salary alleged to be paid in cash to employees merely on the basis of statement recorded of employees without affording the appellant an opportunity of cross-examination of the deponents even though specifically requested by appellant.*

3. *That on the facts and circumstances of the case, Ld. CIT(A) has erred both on facts and in law in sustaining addition to the extent of Rs. 5,75,000/- u/s 69C without*

rebutting the claim of the appellant that no such cash was paid on account of salary to employees by adducing any corroborative evidence on record which were found during the course of search and seizure operation.

3. The learned AR submitted that the facts and circumstances of the case, Ld. CIT(A) has erred both on facts and in law in sustaining addition to the extent of Rs. 5,75,000/- u/s 69C being part salary alleged to be paid in cash to employees merely on the basis of unsubstantiated whatsapp conversation between two employees by ignoring the settled law that whatsapp chats has no evidentiary value. He also submitted that the facts and circumstances of the case, Ld. CIT(A) has erred both on facts and in law in sustaining addition to the extent of Rs. 5,75,000/- u/s 69C being part salary alleged to be paid in cash to employees merely on the basis of statement recorded of employees without affording the appellant an opportunity of cross-examination of the deponents even though specifically requested by appellant. He also pointed out that the facts and circumstances of the case, Ld. CIT(A) has erred both on facts and in law in sustaining addition to the extent of Rs. 5,75,000/- u/s 69C without rebutting the claim of the appellant that no such cash was paid on account of salary to employees by adducing any corroborative evidence on record which were found during the course of search and seizure operation.

4. The Id. AR drawing our attention towards statement of Shri Ashwani Kumar recorded u/s. 132(4) of the Income Tax Act submitted that the Director of assessee company replying to question no. 42 categorically stated that "We don't pay any salary in cash. All the appointment can be checked. It goes as per the decided salary which is mentioned in the appointment letter as well. She was hired on a salary of 75,000/- which is in per appointment letter as well, and not a single penny more. She is trying to take compensation as she has been told to leave the company. At times, the company has paid some amount to her in cash, when she was in need. However, this is not a regular practice. Hence I deny whatever she has said about herself and the other employees". Therefore no addition can be made in absence of any substantial adverse and positive evidence on the basis of whatsapp conversation between two employees

which has no evidentiary value as per law. Therefore the Id. AR submitted that the addition may kindly be deleted.

5. Replying to the above, the Id. Senior DR supported the orders of the authorities below and submitted that there was sufficient evidence showing unaccounted salary payment to the employees of company therefore the AO was right in making addition u/s. 69C of the Act.

6. On careful consideration of above submissions, from assessment order we note that the Assessing Officer has made addition of Rs. 9,50,000/- on account of unaccounted payment of salary in cash to four employees u/s. 69C of the Act. The Id. CIT(A) deleted amounts pertaining to Shri Dhananjay & Ms Yamini but confirmed the addition pertaining to Ms Seema Dutta and Aman Sehgal amounting to Rs. 5,75,000/- by relying on the statements of said two employees. The basis of addition is that during search & seizure operation two different offer letters were found & seized and during statement the said employees supported the factum of part cash payment of salary. However, we note that there was no other evidence in the hands of AO supporting the factum of cash payment to said two employees. It is also pertinent to note that under identical facts and circumstances the Id. CIT(A) has deleted part addition pertaining to other two employees Shri Dhananjay Singh & Ms Yamini Singh in absence of any sustainable and reliable evidence but confirmed the addition on account of alleged cash payment to said two employees. We are also in agreement with the contention of Id. AR that in absence of providing cross examination on the said two employees whose statements have been relied by the Assessing Officer, such statements cannot be used against the assessee for making addition on account of part payment of salary in cash to the said two employees only on the basis whatsapp chats which has no evidentiary value in absence of other collaborative adverse material against the assessee showing part payment of salary in cash to the said two employees.

7. This is also pertinent to mention that the Assessing Officer has proceeded to make addition on the basis of whatsapp chats between Ms. Seema Dutta and Mr. Aman Sheghal and their statements only and no other documentary evidence or adverse positive material has been found and searched during the course of search and seizure operation. We are unable to see any distinction between the cases of Shri Dhananjay Singh & Ms. Yamini Singh with the cases of Mr. Aman Sheghal & Ms. Seema Dutta. The whatsapp chats standalone basis is not having valid evidence to support the action of the Assessing Officer making addition u/s. 69C of the Act on account of alleged part payment of salary in cash to said two persons. Therefore sole grievance of assessee is allowed and Assessing Officer is directed to delete the addition.

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

Order pronounced in the open court on 06.09.2023.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER
Dated: 06th September, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi