

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.617/Del./2016
(ASSESSMENT YEAR : 2001-02)**

Himanshu Malhotra
(through Legal Heir of Late
Shri Ashok Malhotra),
House No.1310, Dr. Mukherjee Nagar,
Delhi – 110 033.

vs. ACIT, Circle 15,
New Delhi.

(PAN : AAPPM8352G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Amol Sinha, Advocate
Shri Nitin Gulati, Advocate
REVENUE BY : Ms. Smita Singh, Sr. DR

Date of Hearing : 10.08.2023
Date of Order : 18.09.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id.
CIT (Appeals)-27, New Delhi dated 30.12.2015 pertaining to the
assessment year 2001-02.

2. Grounds of appeal taken by the assessee read as under :-

“1. That the Ld. CIT(A) has erred on facts and law by
upholding the order of Ld. Assessing Officer which is bad in
law on facts and circumstances of the case.

2. That the Ld.CIT (A) has erred on facts and law by upholding that the reopening of completed assessment by the Ld. Assessing Officer is as per law and on facts & circumstances of the case, where as the same is based on flimsy grounds, conjuncture and surmises and is not as per the provisions and intention of law, hence the same is liable to be annulled.

3. That the Ld.CIT(A) has erred on facts and law by upholding the order u/s 263 of Income Tax Act, 1961 which is bad in law and facts and circumstances of case as all the requisite information is available on the initially reopening of the order and not as per the provision and intention of law, hence is liable to be deleted.

4. That the Ld.CIT(A) has erred on facts and law by upholding the addition of income from undisclosed source disclosed in the form of income of Share Rs.6,62,698/- as per the law and facts and circumstances of the case as all details, supportings to the above were duly provided during the course of assessment proceedings and also all third party evidences relied by the Ld. Assessing Officer were never confronted to the assessee and hence is liable to be deleted.

5. That the Ld.CIT(A) has erred on facts and law by upholding the addition of RS.8,23,300/- from the head Undisclosed sources utilized for purchasing the Cars/Income disclosed by various entities in the form of car rental/disallowances against the car/drivers salary is not as per law and facts and circumstances of the case, as all details, supportings to the above were duly provided during the course of assessment proceedings and also all third party evidences relied by the Ld. Assessing Officer were never confronted to the assessee and hence is liable to be deleted.

6. That the Ld.CIT(A) has erred on facts and law by upholding the addition of Rs.13,30,496/- on account of Undisclosed sources deposited in various bank accounts is not as per law and facts and circumstances of the case, as all details, supportings to the above were duly provided during the course of assessment proceedings and also all third party evidences

relied by the Ld. Assessing Officer were never confronted to the assessee and hence is liable to be deleted.

7. That the Ld.CIT(A) has erred on facts and law by upholding the addition of Rs.18,00,000/- on account of Undisclosed sources utilized for paying house hold expenses is not as per law and facts and circumstances of the case, as all details, supportings to the above were duly provided during the course of assessment proceedings and also all third party evidences relied by the Ld. Assessing Officer were never confronted to the assessee and hence the addition is liable to be deleted.

8. That the Ld.CIT(A) has erred on facts and law by upholding that the Ld. Assessing Officer has completed the assessment on the basis of certain documents which were never found at the premises or in possession of the assessee and the same were also never confronted with the assessee and hence the additions based on such documents is not as per law and are liable to be deleted.

9. That the Ld.CIT(A) has erred on facts and law by upholding the Ld. Assessing Officer has completed the assessment with only one intention to increase the assessed income at maximum level. While completing the assessment, the additions are made of the same items, more than once, by flouting the accounting principles and settled provisions of the law. Further, in case of such type of assessment, the settled method of calculating the undisclosed income have not been taken care of and hence the additions made are liable to be deleted.

10. That the Ld.CIT(A) has erred on facts and law by upholding the addition made on the ground of clubbing the income of family members in the hands of assessee which is bad in law as all members/individuals are assessed independently as all details, supporting to the above were duly provided during the course of assessment proceeding and also third party evidence co-related by the Assessing Officer has never confronted to assessee and hence liable to, be deleted.”

3. Brief facts of the case are that there was a CBI search at the resident of Shri Ashok Malhotra on 27.07.2007 and also simultaneous searches were conducted at the residences of some DDA officials. Later on, the matter was also taken up by the Income-tax Department. Shri Ashok Malhotra has died and legal heir is pursuing the appeal. As informed by Id. Counsel of the assessee, the CBI case has abated upon death of the assessee. The AO in this case has made following additions :-

(i)	Income from undisclosed sources disclosed in the form of share money	Rs.6,62,698
(ii)	Income from undisclosed sources utilized for purchasing the cars/income disclosed by various entities in the form of care rental/Disallowances against the Car/ Drivers salary not disclosed	Rs.8,23,300
(iii)	Income from undisclosed sources deposited in various bank accounts	Rs.13,30,496
(iv)	Income from undisclosed sources utilized house hold expenses	Rs.18,00,000

4. Ld. CIT (Appeals) has confirmed these additions.

5. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel of the assessee has made following submissions :-

“A. Addition of Share Income of Rs.6,62,698 received in cash which is deposited in bank accounts

1. AO observed that the assessee and his group entities have deposited cash of Rs.13,30,496/ - in bank accounts which is undisclosed, so an addition an addition of Rs.13,30,496 was made (ref page no page 67 of AO's order para 15.2).

2. The AO at page 59 Para 12 has held as:- "It was further noticed that all most all times profit from shares were received by the assessee in cash"

3. More over Addition of Rs.6,62,698/ - is on account of receipt of share profit in cash in bank by the following persons:-

1.	Monika Miglani	98,980/ -
2.	Ms.Deepti Malhotra	1,51,940/-
3.	Leela wanti	1,48,960/-
4.	Kishan Lal Malhotra(HUF)	1,16,670/-
5.	Ashok Malhotra(HUF)	<u>1,46,146/-</u>
	Total :	6,62,698/-

4. The above said addition has been shown by the above said 5 entities in their respective income tax returns and offered for taxation which can be seen from tabular representation at Page no.48 of AO's order.

5. Thus the above said addition of Rs. 6,62,698/ - is incorrect being added once again having been offered to tax already in the hands of the above 5 entities.

6. Without prejudice to the above benefit of telescoping ought to be given to the assessee as addition of Rs. 13,30,496 has been made on account of the assessee and his group entities having deposited cash in bank which is undisclosed.

B. Addition on account of disallowance of car expenses of Rs.8,23,300/-

7. Ref Page no. 65 of AO's order that Rs.92,640/- is added as the car income disclosed by various Assessee or entities being income of the Assessee from undisclosed sources. It is submitted as the receipts of car income was in cash which were deposited in various banks so once addition on account of cash deposited to the tune of Rs. 13,30,496/- has been made this addition is not sustainable as benefit of telescoping ought to be given to the assessee.

8. [Ref Page no. 65] An addition of Rs.5,36,208/ -, depreciation on cars. It has been claimed from business income as can be seen from the Computation of Income of the Assessee which was given in the paper book filed on 08.07.2023 (Page 1 of PB). It is submitted depreciation cannot be disallowed as it is an allowable expenditure. If cars' ownership is being attributed to the assessee then depreciation has to be allowed as per the extant provisions.

9. [Ref Page no. 65] Addition of Rs.1,76,452/- as insurance, interest on loan and other expenses as these were genuine expenses claimed by the Assessee and group entities and not denied by the AO ref page no 14- 15 of AO's order. Moreover insurance is mandatory as per the Motor Vehicle Act, 1988 and therefore cannot be denied.

10. [Ref Page no. 65] Rs.1,80,000/- as driver salary. First of all it was paid through cash withdrawals and addition is already made for cash deposits/withdrawals of Rs.13,30,496/- whereas it can be seen from the Assessment order at page no.67 out of the cash deposits of Rs.13,30,496/- an amount of Rs.9,20,000/- was withdrawn in cash. So Rs.1,80,000/- which was used to pay for driver salary was out of this cash withdrawal, so benefit of telescoping has to be given to assessee.

C. Addition on account of Lavish Lifestyle of Rs.18,00,000/-

11. It is submitted this addition has been made on surmises as without evidence and bringing anything on record it has been observed that Assessee was having 18 servants which is not possible by any stretch of imagination, there is no evidence which was unearthed during the course of search and moreover such an addition on mere guess and conjectures is highly improbable being about 20% of the total income assessed, whereas in most cases the department makes ad hoc disallowances to the tune of 5-10% only.

D. Addition on account of Rs.13,30,496/- in various bank accounts of Assessee and group entities:-

12. It is submitted out of the said amount Rs.13,30,496/- deposited in cash Rs.9,20,000/- was withdrawn Ref page no 67 of AO's order. Even if we take driver salary of Rs.1,80,000/- out of that benefit of remaining amount of Rs.7,40,000/- should be given to us as same was withdrawn and re deposited. So, in this regard out of Rs.13,30,496/- only Rs.5,90,496 is sustainable.”

7. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below.

8. Apropos the issue of addition of income from undisclosed sources disclosed in the form of share income of Rs.6,62,698/- : The contention of the assessee that this is double addition without any cogent basis. However, we find that in this regard, ld. Counsel of the assessee's contention that the benefit of telescoping ought to be given to the assessee as addition of Rs.13,30,496/- has been made for cash deposit in various accounts of the assessee, is acceptable. We direct accordingly. This income of Rs.6,62,698/- may be telescoped against the said amount of addition in bank account.

9. Apropos addition on account of disallowance of car expenses of Rs.8,23,300/- : The details in this regard is as under :-

(i)	Car income disclosed by various assessee/entities being income of the assessee from undisclosed sources shown in their hand	Rs.92,640/-
(ii)	Depreciation of above cars (Because not run for commercial business being personnel used) Rs.7360 i.e. Manish + 528848 Ashok Malhotra	Rs.5,36,208/-
(iii)	Other expenses of above cars other than depreciation (Because not run for commercial business being personnel used) Insurance 16097 (Basant G) + 44533 (Ashok Malhotra Intt. On car loan 115822	Rs.1,76,452/-
(iv)	Drivers salary paid out of undisclosed sources (3 x 60000 p.a.)	Rs.1,80,000/-
	TOTAL	Rs.27,29,292/-

10. On careful consideration on this account, we find that if car income has been added, then depreciation and other expenses if they are related to these cars from which income has been added, need to be considered.

Hence, as regards depreciation and insurance aspect is concerned, we remit the issue to the file of AO. AO shall examine the nexus between the income and expenses and decide accordingly.

10.1 As regards drivers' salary is concerned, the same can be telescoped against the cash withdrawal from the bank of Rs.9,20,000/--. Hence, this addition can accordingly be adjusted.

11. Apropos addition on account of lavish lifestyle of Rs.18,00,000/- : Upon careful consideration, we find that this addition has been based on estimate basis. On consideration of the facts and circumstances of the case, in our considered opinion, addition of 50% of the above i.e. Rs.9,00,000/- would serve the ends of justice. Accordingly, we restrict the addition to Rs.9,00,000/-.

12. Lastly, the addition on account of Rs.13,30,496/- in various bank accounts of assessee and group entities : We find that we have already directed for telescoping of the same from the addition of share money etc. The balance is to be added in the income of the assessee accordingly.

13. In the result, the appeal of the assessee is partly allowed as above.

Order pronounced in the open court on this 18th day of September, 2023.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

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

**Dated the 18th day of September, 2023
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-27, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.
