

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA Nos.1699 & 1700/Del/2021
(Assessment Years: 2011-12 & 2012-13)**

Mitali Narayan Dey,
(Prop. M/s. Gunu Enterprises),
59-A, DDA Flats,
Mansarover Park, Shahdara,
Delhi – 110 032.

vs. ITO, Ward 59 (8),
Delhi.

(PAN : AFNPD0701M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vineet Garg, Advocate
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 10.01.2024
Date of Order : 12.01.2024

ORDER

These appeals by the assessee are directed against the order of Id. CIT(A)-37, New Delhi both dated 26.06.2019 for the Assessment Years 2011-12 & 2012-13.

2. Since the issues are common & connected and the appeals were heard together, these are being consolidated and disposed off by this common order.

3. For the sake of convenience, I am referring to the facts from the AY 2011-12. The facts of AY 2012-13 are similar.

4. Brief facts of the case are as under :-

“The assessee filed its return on 28.03.2012 declaring an income of Rs.4,68,240/-.

3.2 In this case, an information was received from DDIT(Inv.)-II, Ludhiana that during the course of search in the case of M/s Sportking India Ltd. various incriminating documents were found and seized, in which M/s Gunu Enterprises has purchased old machinery amounting to Rs.52,750/- from M/s Sportking Synthetics (a unit of Sportking India Limited) and made payment by cheque No. 528425 dated 23.02.2011. On the other hand Mis Sportking Synthetic has received cash from M/s Gunu Enterprises on various dates totalling to Rs.22.50 lacs (RsAlacs during the F.Y. 2010-11, Rs.18.50 lacs during the F.Y. 18.50 lacs respectively)

3.3 On the basis of the above information, the case was re-opened is u/s 147 of the I.T Act, 1961 and notice u/s 148 was issued on 28.01.2014 and served upon the assessee. Assessee vide its letter dated 07.10.2014 requested the Assessing Officer that the return filed on 13.02.2013 for A.Y. 201-13 may be treated the return filed in response to notice u/s 148. Subsequently, notice u/s 143(2) and 142(1) alongwith questionnaire were issued and served upon the assessee.

3.4 During the course of assessment proceeding, the AR of the assessee confronted the documents seized as page no. 46 of Annexure-1 during the search wherein the assessee has paid cash on various dates to M/s Sportsking Synthetics. AR of the Assessee was asked to produce Mitali Nayaran Dey, the assessee. On 19.01.2015, the AR of the assessee along with Sh. Mitali Nayaran Dey, the assessee himself attended and reasons recorded for reopening the case u/s 148 were conveyed. Assessee's statement was recorded on oath by giving summon u/s 131 of the I.T. Act, 1961. Assessee clearly ignored the documents seized and said that he has not knowledge about the cash transactions but accepted that he had business relation with M/s Sportking Synthetics.

3.5 Assessing Officer found that though having the business terms with M/s Sportking Synthetics (a unit of Sportking India Limited), but to protect himself from litigation, assessee had not accepted that he had paid cash of Rs.4,00,000/- to M/s Sportking Synthetics. Accordingly, Rs.4 lacs was added to the income of the assessee as undisclosed payment in cash from undisclosed sources u/s 68 of the LT. Act, 1961. Accordingly, Assessing Officer passed an order and assessed income at Rs.8,68,240/-.”

5. Upon assessee's appeal, ld. CIT (A) confirmed the addition.

6. Against this order, the assessee has filed appeal before us. I have heard both the parties and perused the records.

7. The assessee has raised various grounds. At the outset, ld. Counsel of the assessee prayed that the assessee was not represented before the ld. CIT(A) and prayed that an opportunity may be given to the assessee to prove the case before the first appellate authority.

8. Ld. DR for the Revenue, on the other hand, did not have any objection to this proposition.

9. Accordingly, in the interest of justice, I remit the issue to the file of ld. CIT (A). Ld. CIT (A) shall consider the issue afresh after giving the assessee proper opportunity of being heard. Ld. Counsel of the assessee has undertaken to cooperate in the proceedings. Accordingly, the appeal is allowed for statistical purposes.

10. Our above order applies *mutatis mutandis* to AY 2012-13.

11. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on this 12th day of January, 2024.

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 12th day of January, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-37, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**