

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI
BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.3069/Del/2022
(ASSESSMENT YEAR 2013-14)**

**ITA No.3070/Del/2022
(ASSESSMENT YEAR 2014-15)**

Mandeep Singh Anand 130, Narang Colony Janak Puri New Delhi-110 058 PAN-ADDPA 1920H (Appellant)	Vs.	ACIT Central Circle-4 Delhi (Respondent)
---	-----	--

Assessee by	Sh. Anup Mehta, CA
Department by	Sh. Subhra Jyoti Chakraborty, CIT-DR

Date of Hearing	21/12/2023
Date of Pronouncement	12/01/2024

ORDER

PER M. BALAGANESH AM:

Both the appeals filed by Assessee arises out of the separate orders of the Learned Commissioner of Income Tax (Appeals)-23, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal Nos.23/10281/2019-20 & 23/10282/2019-20 dated 28/10/2022 & 17/11/2022 against the assessment order passed by Assistant

Commissioner of Income Tax, Central Circle-4, Delhi (hereinafter referred to as the 'Ld. AO') u/s 2153A r.w.s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 23/12/2019 for Assessment Years 2013-14 & 2014-15 respectively.

2. Identical issues are involved in both the appeals, hence, they are taken up together and disposed of by this common order for the sake of convenience.

3. We have heard the rival submissions and perused the materials available on record. The assessee filed his original return of income u/s 139 of the Act on 31/07/2013 declaring total income of Rs.20,69,420/-. A search and seizure action u/s 132 of the Act was carried out in ETPPL group of cases on 10/08/2017. A search warrant of authorization u/s 132 was issued in the name of the assessee on 10/08/2017. Pursuant to the search, the notice u/s 153A was issued to the assessee on 09/05/2019. In response to the said notice, the assessee filed his return of income on 04/12/2019 declaring total income of Rs.20,69,420/-. During the year under consideration, the assessee has shown salary of Rs.17,90,400/- received from Spring Travels Pvt. Ltd. and has also shown income

from house property and income from other sources. During the search, documents vide Annexure-1/ Party No. DR-2 was seized from the assessee's residential premises of the assessee. Some transactions were reflected at pages 91-92 of the seized document showing that an amount of Rs.30,753/- was paid to HDFC on 20/03/2013 by the assessee. At the time of search, statement u/s 132(4) of the Act was recorded wherein with regard to this seized document, the assessee explained that the same might represent personal expenditure incurred by him in cash. The Ld. AO, accordingly, in the search assessment held that this expenditure was paid by the assessee in cash for which proper source is not explained by the assessee, hence, the same is to be added as unexplained expenditure u/s 69C of the Act.

4. Before the Ld. CIT(A), the assessee stated that the said expenditure of 30,753/- was paid to HDFC by M/s Spring Travels Pvt. Ltd. and the said expenditure was also claimed as business promotion expenses by M/s Spring Travels Pvt. Ltd. It was also submitted that M/s Spring Travels Pvt. Ltd. had paid this expenditure of Rs. 30.753/- by cheque. In support of this, the

assessee submitted the copy of bank statement of M/s Spring Travels Pvt. Ltd. This was filed as an additional evidence before the Ld. CIT(A). Accordingly, the remand report was sought by the Ld. CIT(A) from the Ld. AO. The Ld. AO in the remand report admitted to the fact that the transaction of Rs.30,753/- pertains to Company M/s Spring Travel Pvt. Ltd. and not to the assessee. However, in view of the statement given by assessee u/s 132(4) of the Act that the said expenditure was incurred in cash, the ld. AO stated that the addition needs to be sustained.

5. The Ld. CIT(A) observed that the expenditure of Rs.30,753/- has been paid from the bank statement of M/s Spring Travels Pvt. Ltd. and the same pertains to M/s Spring Travels Pvt. Ltd. However, he concluded that the same would be treated as prerequisite as it is a payment made on behalf of its Director u/s 17(2) instead of section 69C of the Act.

6. From the above narration of facts which are undisputed, it could be seen that the lower authorities had categorically agreed that a sum of Rs.30,753/- paid to HDFC by M/s Spring Travels Pvt. Ltd. by regular banking channels and the same was claimed as

business promotion expenses by M/s Spring Travels Pvt Ltd. The same was treated as an unexplained expenditure in the hands of the assessee by the Ld. AO. Once it is proved that the said expenditure is reflected in the books of Spring Travels Pvt. Ltd. and sourced out of regular banking channels from the funds of the said company, the same cannot be added as unexplained expenditure in the hands of the assessee u/s 69C of the Act. But what has been done by the Ld. CIT(A) is treating the very same sum as perquisite in the hands of the assessee on the premise that the said expenditure has been incurred by M/s Spring Travels Pvt. Ltd. on behalf of its director u/s 17(2) of the Act. This in our considered opinion, becomes a new source of income which CIT(A) is not entitled to add/enhance under the powers provided to him under the statute. In any event, the Ld.CIT(A) had also not given any enhancement notice to the assessee proposing to shift the addition from unexplained expenditure u/s 69C of the Act to perquisite u/s 17(2) of the Act, thereby violating the requirements of provisions of section 251(2) of Act. Hence, in any case, the addition made by the Ld. AO and sustained by the Ld. CIT(A) are on different count and

deserves to be deleted. Accordingly, the grounds raised by the assessee are allowed.

7. The decision rendered hereinabove for Asst Year 2013-14 shall apply with equal force for Asst Year 2014-15 also in view of identical facts except with variance in figures.

8. In the final result, both the appeals filed by the assessee are allowed.

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

Sd/-
(YOGESH KUMAR U.S)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 12/01/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI