

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1002/DEL/2021 [A.Y. 2016-17]

Shri Praveen Tyagi
R-9/242, Rajnagar
Ghaziabad

Vs.

The Dy. C.I.T.
Central Circle
Ghaziabad

PAN: AABCB 0102 A

(Applicant)

(Respondent)

Assessee By : Shri Ajay Wadhwa, Adv
Ms. Ayushi Gupta, CA

Department By : Ms. Sapna Bhatia, CIT- DR

Date of Hearing : 19.02.2024

Date of Pronouncement : 21.02.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A), Kanpur dated 14.06.2021 pertaining to A.Y. 2016-17.

2. The substantive ground argued before us reads as under:

“That on the facts and circumstances of the case and in law the CIT(A)/ AO failed to appreciate that no cash was found and seized during search though the appellant in its fiduciary capacity as director surrendered the undisclosed income amounting Rs. 13.45,00,379 in the hands of M/s Vaibhav Vibhor Infra Homes. Pvt. Ltd. Therefore the addition made is thus unjustified, unwarranted and bad in law and in any case very excessive.”

3. Briefly stated, the facts of the case are that a search and seizure operation was conducted u/s 132 of the Income-tax Act, 1961 [the Act, for short] on 03.11.2016 at various premises of VVIP Group alongwith residential premises of key management persons including the assessee and other family members.

4. The assessee was asked to explain the nature of seized documents and source of amount reflected in the loose sheets. One of such loose sheet is as under:

VAIBHAV TYAGI MARRIAGE A/C HISAB

PARTICULARS	AMOUNT	AMOUNT
JEWELLERY PURCHASE	-	219,21,415.00
CLOTHES PURCHASE	-	132,68,851.00
SHADI EXPENSES		
Plant Farm House	83,01,700.00	
CKY Decorator	34,00,000.00	
Event	24,00,000.00	
umar Shanu Event	14,00,000.00	
Whisky Expenses & Cock Tail	16,25,100.00	
Land Expenses	6,00,000.00	
Matka Expenses	4,20,000.00	
Diners Event	3,50,000.00	184,96,800.00
SHADI EXPENSES		
Gifts & Envelops	13,32,280.00	
Permanent Catering	20,20,000.00	
Photography & Video Expenses	13,39,782.00	
Wedding Card	11,19,026.00	
Melanish In Jaipur	9,72,000.00	
Watch Purchase	9,30,000.00	
Sweet Dancer	2,50,000.00	
Shudhadi Expenses	1,78,000.00	
Makeup Artist	1,30,000.00	
Mushbazi Expenses	1,10,500.00	83,81,588.00
OTHER EXPENSES		
Honeymoon Expenses	29,64,900.00	
Other Expenses Marriage	22,71,546.00	
Manoj Tyagi	9,91,388.00	
Manoj Ji	9,78,732.00	
Manoj Ji	9,50,000.00	
Manoj Ji	9,50,000.00	
Manoj Tyagi	3,40,000.00	
Manoj Ranjan (Whiskey & Other Expenses)	1,50,000.00	95,96,566.00
TOTAL EXPENSES		716,65,220.00

As per the above & gain one as retrieved from my
 mobile phone by the Income tax search team in front of me
 during such operation on 3/1/16

Manoj Tyagi

5. As can be seen from this loose sheet, it contains amounts spent on marriage ceremony of Shri Vaibhav Tyagi. The assessee was asked to explain the source of these expenses, admitted to have been incurred in the marriage of Shri Vaibhav Tyagi, as the assessee has not offered this amount in his return of income in spite of the fact that he had agreed to surrender the same.

6. Though the assessee may have surrendered the amount on 18.02.2017, the assessee retracted from his statement by filing detailed reply before the Deputy Director of Investigation, Ghaziabad.

Most relevant part of the retraction reads a under:

It is stated that no incriminating document of any other nature and no cash was found and seized except one or two rough papers which were not in the handwriting of any of the directors and/or its family members. The loose slips contained some typed-out figures. One document contained typed figure of Rs. 16,65,60,788/- alleged to be ON MONEY from the sale of such specified flats and other loose paper found contained typed out figure of Rs. 1,25,65,220/- purported to be marriage expenses. The unaccounted expenses are certainly met out of the unaccounted income if any. While working out the additional income, the applicant had adopted the sum total of all such documents and offered the same as an additional income. If the receipt of on money is treated as income, the expenses are to set off out of said income, while the applicant added up all the figures which amounts to double taxation and the applicant was not properly advised on the subject as a lay man and this request of the applicant needs to be considered by your honor judiciously. Free from the fall out of search, locker operation and demonetization of currency, the applicant has been advised by legal experts that offer made amounts to double taxation because unrecorded expenses are to be set off only out of unrecorded receipts and thus the surrender amount deserves to be reduced accordingly.

The applicant would take this opportunity to refer to the statement recorded at the time of search and thereafter under Section 132(4) of the Act to the extent that your honor may be pleased to consider the submission of the applicant judiciously and sympathetically so to allow the benefit for the set off of expenses with that of the ON MONEY found recorded on the loose sheet. It is an undisputed fact that no other incriminating document or cash was found or seized from the premises, from possession of any of directors and/or employees of the company. Accordingly it is confirmed that the assessee company and for that purposes any of the directors and employees have not received and/or collected any ON MONEY on the sale of flats of other projects excepting the Special 26 flats of 6300 sq.ft. each.

7. Before us also, the ld. counsel for the assessee vehemently contended that since no actual cash was found and since the explanation of the assessee has been accepted, benefit of set off of income surrendered in the hands of the company and matrimonial expenses incurred by the assessee should be given.

8. While deciding the appeal of the Revenue in ITA No. 1345/DEL/2021 in the case of Shri Vaibhav Infrahome Pvt Ltd in which the assessee is director, we have categorically held that since no actual cash was found, though the income in the loose sheet has been surrendered by the assessee company, the amount of Rs. 13,45,00,379/- must have been spent on some religious, matrimonial or other family functions.

9. Since no evidence of any investment whatsoever has been found, we are of the considered view that the income surrendered by the company for which no physical cash was available, it would be logical to presume that the said amount must have been spent in the marriage of son of Director Shri Praveen Tyagi, the assessee

10. Considering the facts in totality, the expenses found to be noted in the alleged loose sheet amounting to Rs. 7,16,65,220/- is directed to be considered in the income surrendered by the assessee company.

11. In the result, the appeal of the assessee in ITA No. 1002/DEL/2021 is allowed on the ground argued before us.

The order is pronounced in the open court on 21.02.2024.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 21st FEBRUARY, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	