

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER R**

**ITA No. 1792/DEL/2020
Assessment Year: 2014-15**

Smt. Natasha Kohli, 15, Amrita Sher Gill Marg, New Delhi-110003. PAN- AGFPK1713P	<u>Vs</u>	ACIT, Central Circle-8, New Delhi.
APPELLANT		RESPONDENT
Assessee represented by	Shri Ved Jain, Adv.; & Ms. Supriya Mehta, CA	
Department represented by	Shri Subhra Jyoti Chakraborty, CIT(DR)	
Date of hearing	12.02.2024	
Date of pronouncement	29.02.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-24, New Delhi, dated 31.08.2020, pertaining to the assessment year 2014-15. The assessee has raised following grounds of appeal:

- “1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.
2. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the order of the AO, ignoring the fact that the notice issued under section 143(2) of the Act is bad and liable to be quashed as the same has been issued beyond the statutory period prescribed under the Act.
3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed by the AO is barred by limitation having been passed beyond the statutory period prescribed in the Act and hence liable to be quashed.
4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed by the learned AO is bad in law as the same has been passed without application of his own mind.
5. On the facts and circumstances of the case, the learned CIT (A) has grossly erred both on facts and in law in rejecting the contention of the assessee that the order has been passed by the AO without affording adequate opportunity of being heard to the assessee.
6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO, despite the fact that the additions made by the AO are unsustainable in law in the absence of any incriminating material belonging to the assessee being found during the course of the search.
7. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs. 11,77,102/- being the deposit in alleged bank account with Standard Chartered Trust (Guernsey)

(ii) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in arbitrarily rejecting the explanation and evidences submitted by the assessee in support of its contention.

8. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that Ld. AO has made the assessment without bringing any material or evidence that such amount represents income chargeable to tax in the hands of the assessee for the assessment year under consideration.*
9. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition ignoring the fact that the documents relied upon by the AO clearly indicated that there have been no transactions in the alleged bank account since 2009 and hence the same cannot be the basis for making addition under section 69 in the year under consideration.*
- (ii) *That the addition has been made ignoring the settled law that income tax authorities have no option to rely upon any document selectively against the assessee, and ignoring the portions of the document which are in favour of the assessee.*
10. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 5,17,508/- made by the AO on account of payment incurred through credit card bills of the assessee by the company, M/s Travancore Management Resources Pvt. Ltd treating the same as perquisites in the hands of the assessee under section 17(2)(iv) of the Act.*
- (ii) *That the addition has been confirmed ignoring the fact that these expenses have been incurred for the purpose of business activities of M / s Travancore Management Resources Pvt. Ltd and the same have been allowed in the assessment order passed under section 143(3) of the Act in the case of M/s Travancore Management Resources Pvt. Ltd.*
- (iii) *That the addition has been confirmed despite the fact that these payments have been made for the benefit of M/s Travancore Management Resources Pvt. Ltd and not for the benefit of the employee i.e., the assessee and accordingly, provisions of section 17(2)(iv) of the Income Tax Act are not attracted.*
11. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

2. Briefly stated facts are that a search and seizure operation u/s 132 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) was conducted on Shri Mon Mohan Kohli group of assesseees on 11.02.2014. The assessee was also covered in search operation. Thereafter, notice u/s 143(2) of the Act was issued and duly served upon the assessee. The AO while framing the assessment made addition of Rs. 11,77,102/- being the amount deposited in the foreign bank account. Further, the AO made addition on account of perquisite of Rs. 5,17,508/-, the amount paid by M/s Travancore Management Resources Pvt. Ltd. Thus, against the returned income of Rs. 27,80,310/- the AO assessed income at Rs. 44,74,920/-. Aggrieved against this the assessee preferred appeal before learned CIT(A), who sustained the addition. Now the assessee is in appeal before this Tribunal.

3. Shri Ved Jain, learned counsel for the assessee, submitted that authorities below are not justified in making the addition and sustaining the same. Learned counsel reiterated the submissions as made in the written synopsis. For the sake of clarity the submissions of the assessee are reproduced as under:

“Addition of Rs. 11,77,102/- on account of alleged undisclosed deposits in foreign bank account.

“1. This is an appeal filed by the assessee against the order passed by CIT(A) confirming the addition made by the AO of Rs. 11,77,102/- on account of balance lying in foreign bank account by alleging the assessee a joint holder along with her husband.

2. *Brief facts of the case are search and seizure u/s 132 was conducted on Mon Mohan Kohli Group on 11.02.2014 and the case of assessee was also covered in the search operation.*
3. *During the search operation, it was alleged that the assessee has a foreign bank account having balance of US\$ 39,414.09 as on 28.06/2013 at Standard Chartered Trust (Guernsey) (i.e. SCTGL) in the name of Five Seasons Ltd. in which she was alleged to be a sole beneficiary along with her husband. The Ld. AO asked the assessee to furnish details of sources of funds deposited in the account.*
4. *The assessee vide letter dated 04.11.2016 replied that she has no knowledge of the account and the companies. Copy of such reply is placed at PB pg. 23-27.*
5. *However, Ld. AO ignored the replies and explanations given by the assessee and proceeded to make an addition of 50% of US\$ 39,414.09 by the alleging the assessee to be a joint holder in the foreign bank A/c. For this purpose, conversion rate of 28.06.2013 was taken at Rs. 59.73 and thus addition amounting to Rs. 11,77,102/- was made in the hands of the assessee (US\$ 39,414.09 X Rs. 59.73 X 50%).*
6. *Aggrieved by the order of the Ld. AO, assessee filed an appeal before CIT(A).*
7. *During appellate proceedings, CIT(A) directed the AO to furnish the copies of material relied upon by AO for making the addition of Rs. 11,77,102/-.*
8. *Ld. AO submitted the remand report (PB pg. 49-56) vide letter dated 29.01.2018 wherein it was mentioned that information was received from FIU in the investigation wing regarding foreign account of the assessee. Also it was observed that the assessee is a beneficial owner of said account from FT & TR division of CBDT.*
9. *The assessee filed a rejoinder to the remand report (PB Pg. 57-58) vide letter dated 23.02.2018 wherein it was submitted that the assessee has not received the documents forming basis of additions of foreign bank account. Also, information in the remand report is incomplete and incorrect. The assessee also submitted that the assessee had made complaint to Enforcement Directorate on 21.05.2012 much before conducting of search and seizure on 11.02.2014. The assessee also submitted that she was made*

cosignatory with no authority to operate or withdraw any funds. However in the remand report her statement was twisted and amended as "she was made cosignatory with an authority to operate or withdraw any funds." Also, the appraisal note enclosed to remand report was incomplete.

10. *Further, another submission dated 25.09.2018 (PB pg. 59-62) was made by the assessee stating that*

There was a contradiction in the statements of Ld. AO. On one hand, Ld. AO said that it was during search operations that the information regarding foreign bank account was revealed and on the other hand it is said that communication in this regard was received from Foreign FIU. Also, the communication so received has nowhere mentioned the name of the assessee.

Also in the remand report, para 3.1.4, it was mentioned that SCTGL wished to move/close the Five seasons Ltd. A/c to which Shri. Mon Mohan Kohli strongly objected to his wife being informed which sufficiently proves that assessee was not aware of the funds.

The assessee had made complaint to Enforcement Directorate on 21.05.2012 much before conducting of search and seizure on 11.02.2014 and she was made cosignatory with no authority to operate or withdraw any funds. Thus she had no recourse to the said funds as she had no authority to operate the account and to withdraw the funds.

Also, in the remand report, para 3.1.4, it is mentioned that no transactions have taken place since 2009. And the department has no information as to the source of funds and the department has not brought on record any evidence that justifies that the assessee had any role in the said funds.

11. *The assessee further vide written submission dated 21.08.2020 (PB Pg. 89-100) submitted that a letter was received from Standard Chartered Trust (Guernsey Ltd) which said that the funds will be returned to the source being the account of Mr. Mon Mohan Kohli and the company will be terminated. Copy of letter is placed at PB Pg. 117. This clearly justifies that such amount was not contributed by the assessee and the money does not belong to the assessee. The assessee also submitted that the Ld. AO had not brought on record any document evidencing that such account was opened with the consent of the assessee or such amount was deposited by the*

assessee in the account. No transactions have been brought on record to support that the assessee had any knowledge of such account.

12. The assessee also submitted that the Declaration of Trust relied upon by the department is prima facie an unreliable document as the declaration of trust of We Nominee Two Limited has been signed by Nominee One Limited. Further it was asked to share the authority of Nominee One Limited signing on behalf of We Nominee Two Limited and the document evidencing any authority has been given by the assessee to the so-called Trustee.

13. The assessee also submitted that she was having dispute with her husband and copy of divorce proceedings were also filed. The assessee also submitted that she had been disowned from being beneficiary in all assets of her husband as per his will.

14. However, Ld. CIT(A) ignored the detailed submissions and explanations furnished by the assessee and confirmed the addition of Rs. 11,77,102/- made by the AO.

15. Aggrieved by the order of Ld. CIT(A), the assessee has filed an appeal before Hon'ble Tribunal.

16. It is also pertinent to note that the information regarding undisclosed foreign assets came to the notice of the AO under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 in the month of October, 2017 and subsequently proceedings were initiated under the said Act and an order u/s 10(3) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was passed on 25.03.2022 for AY 2018-19 wherein it was held that "the various foreign assets forming the basis of issue of the notice u/s 10(1) dated 27.06.2018 in the case of the assessee are actually not held by the assessee as the beneficial owner but are apparently held by Sh. Mon Mohan Kohli as the beneficial owner whose case proceedings are ongoing u/s 10(1)..." It was also held that "no addition is being made so far as the assessee Ms. Natasha Kohli is concerned A copy of such order is placed at PB Pg. 144-154.

17. Thus, when it has been already held by the AO under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 that the assessee is not the beneficial owner of such foreign bank A/c, therefore no addition can be made in the hands of the assessee.

18. Further reliance is placed on the following judicial pronouncements:

SH. KARAMJIT S. JAISWAL VERSUS THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-2 (2) (1), NEW DELHI AND ANAND PERSHAD JAISWAL VERSUS THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-2 (2) (1), NEW DELHI, 2021 (4) TMI 1025 - ITAT DELHI - Dated.- April 23, 2021

28...Since, the proceedings u/s 147 are extraordinary proceedings, the onus is on the Revenue to establish the existence of undisclosed income. Mere discovery of a foreign bank account in the name of the assessee is not sufficient to thrust the tax liability without bringing on record the chargeability of the same under the provisions of the Income Tax Act, 1961. It is the settled proposition of law that assessment cannot be carried out on the basis of guess work and there must be more than mere suspicion. In the present case, it is seen that there is no whisper of any enquiry or investigation carried out by the Assessing Officer to demonstrate the existence of source of income in India in respect of deposit found in foreign bank account.

Moreover, the Assessing Officer has not brought anything on record to prove that there is money trail which actually flew from India to the foreign bank account maintained abroad. Further, the learned counsel for the assessee also clarified that Sh. Ladli Pershad Jaiswal was not having any major stake or financial interest or business connection in India during the AY 2006-07 and 2007-08. Therefore, we find it difficult to subscribe to the reasoning given by the Assessing Officer while assuming that deposit in the foreign bank account in the year under consideration was sourced from India. In any case, when the addition made by the Assessing Officer is on the basis of peak credit in the month of January 2006 and when Sh. Ladli Pershad Jaiswal expired on 11.08.2005, it is not understood as to how any credit in January 2006 could be attributed to the deceased.

MR. VIKRAM BODHRAJ TANNA, M/S CAPSULATION SERVICES LTD. VERSUS ASST. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-20, MUMBAI AND DCIT CC 3 (2), CENTRAL

RANGE-3, MUMBAI VERSUS MR. VIKRAM BODHRAJ TANNA, M/S CAPSULATION SERVICES LTD.- 2022 (1) TMI 75-ITAT MUMBAI Dated.- November 25, 2021

8. Considered the rival submissions and material placed on record. We observe from the record that a search and seizure operation under section 132 (1) of the Act was conducted on the assessee and his related entities. Accordingly notice under section 153A of the Act was issued and served on the assessee and in response assessee filed his return of income. We observe from the record that the addition was made by the assessing officer during this assessment year pertains to a bank account in HSBC, Geneva. The relevant information on the bank account was not found during search proceedings nor found in the possession of the assessee. However, during search proceedings, the assessee was confronted with the Base Note which the Income Tax Department obtained under exchange of information between French government and Indian government under the provisions of DTAA. The investigation wing and the assessing officer heavily relied on the information contained in the Base Note which they have confronted with the expectation that assessee will accept the information contained in the Base Note. However, the assessee has denied the ownership of any bank account opened in the HSBC Bank, Geneva and denied the information on the base note except the personal informations. It is fact on record that the addition was made in the assessment under section 143(3) read with section 153A only based on the information contained in the base note, which was not the material found, during search, in the possession of the assessee or in the places where search were conducted. Before us, the Ld. AR made a detailed submissions by heavily relying on decision of the special bench in the case of All Cargo logistics Ltd (supra) and decision of the honourable jurisdictional High Court in the case of Continental Warehousing Corporation (supra), made a plea that no incremental material found during search to make the addition in the assessment completed under section 153A whereas the assessing officer used the information obtained from the external agencies, which is not the information obtained from the possession of the assessee during search.

8.1 We observe from the decision of the coordinate bench in the case of Arunkumar Ramniklal Mehta (supra) and ITAT Kolkata bench in the case of Bishwanath Garodia (supra) held that no additions can be made in respect of unabated assessment which have become final, if no incriminating material is found during the course of search. The facts are similar in the present case and it is fact on record that the addition made by the assessing officer wholly based on the information contained in Base Note which was not the material found during the search proceedings either in possession ion of the assessee or found in the premises were search conducted. The information obtained from outside agencies which was confronted with the assessee during the search cannot be considered as incriminating material found during search proceedings. It can only be considered as additional information in case it is found proper, can be used to make addition during assessment proceedings and cannot be used as the information found during search. There two aspects are completely different and gives different connotation. The information found during search alone can be considered for making addition u/s 153A of the Act. Therefore, we are inclined to accept the submissions of the Ld. AR and accordingly the ground No. 1 raised by the assessee is allowed.

COMMISSIONER OF INCOME TAX (CENTRAL) -III VERSUS KABUL CHAWLA, 2015 (9) TMI SO- DELHI HIGH COURT-Dated.- August 28, 2015

37 vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

Conclusion

38. The present appeals concern AYS, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was

unearthed during the search, no additions could have been made to the income already assessed.

19. Thus, in light of the above facts, submissions and explanations of the assessee, the addition amounting to Rs. 11,77,102/- made by Ld. AO and confirmed by Ld. CIT(A) is not tenable and is liable to be deleted.

Addition of Rs. 5,17,508/- alleged as perquisite u/s 17(2)(iv)

1. During the year under consideration, payments towards assessee's credit card bills have been done through assessee's own bank account, and from the accounts of M/s Travancore Management Resources Pvt. Ltd. M/s Filo Interior Decoration Pvt. Ltd. and Mr. Rishab Kohli. Assessee is a director in Travancore Management Resources Pvt. Ltd. and M/s Filo Interior Decoration Pvt. Ltd. and holds 99.99% shares in both the companies and she is mother of Rishab Kohli. The assessee has received salary from these companies.

2. It was asked from the assessee to show cause why the payment for credit card bills made by the company on her behalf to not be treated as her perquisites.

3. The assessee vide written submission dated 21.08.2020 (PB Pg. 89-100) submitted that assessee uses her credit card both for official and personal purposes. However, the credit card bills amounting to Rs.5,17,507/- which were paid by M/s Travancore Management Resources Pvt. Ltd. were incurred by the assessee on the behalf and in interest of the company. Details of such payment are enclosed at PB Pg. 35-39. Those were business expenses of the company and hence the same had also been charged to regular expense account in the books of the company. The assessee has also submitted the copy of ledger account of all credit card payments (PB Pg. 40-43) made by the company which clearly show that the payments were made for official purposes. The assessee further submitted that the company i.e. M/s Travancore Management Resources Pvt. Ltd. was also assessed by the same jurisdictional office and no adverse inference was drawn by the Ld. AO. A copy of order passed by Ld. AO in the case of M/s Travancore Management Resources Pvt. Ltd. is placed at PB Pg. 136-142. Thus, where the expense has been accepted by the Ld. AO as genuine business expense, it cannot be added as a perquisite in the hands of the assessee. As a consequence, such addition amounting to Rs.5,17,507/- is unsustainable and liable to be deleted.

4. After considering the facts and detailed submissions and explanations made by the assessee, Ld. CIT(A) confirmed the addition made by Ld. AO by holding that a part of expenses incurred through credit cards were personal expenses of the appellant and upheld the addition of Rs.5, 17,508/- u/s 17(2)(iv) of the Act. Made by the AO.

5. Aggrieved by the order of CIT(A), assessee has filed an appeal to the Hon'ble Tribunal.

6. It is an undisputed fact that:

The case of the company which has paid the credit card bills i.e. M/s Travancore Management Resources Pvt. Ltd. has also been accepted by the same jurisdictional office.

Expenses have not been questioned by the AO in the case of M/s Travancore Management Resources Pvt. Ltd.

No objection or observations have been pointed out in the ledger account of credit card in the books of the M/s Travancore Management Resources Pvt. Ltd.

7. Thus it is clear that the expenses have been incurred for the purposes of business only. Though the credit card was in the name of the assessee but the expenses which were paid for by the company were incurred in the interest of the company only. A summary of nature of expenses incurred and borne by the company is appended below:

<i>AEBC Card No. 376916899906005</i>	<i>55024.57</i>
<i>Boarding & Lodging</i>	<i>29500.3</i>
<i>Business Promotion</i>	<i>25524.27</i>
<i>AEBC Card No. 37693993143005</i>	<i>207955.85</i>
<i>Boarding & Lodging</i>	<i>127568.56</i>
<i>Business Promotion</i>	<i>31006.93</i>
<i>Purchase trading without form C</i>	<i>23872</i>
<i>Repair & Maintenance-Computer</i>	<i>6349</i>

<i>Staff Welfare</i>	<i>19159.36</i>
<i>Citi Bank Card No. 5241330520076364</i>	<i>97874.6</i>
<i>Office Exp</i>	<i>28000</i>
<i>Printing and stationery</i>	<i>29872</i>
<i>Purchase Hardware Central Without Form C</i>	<i>3399</i>
<i>Purchase trading without form C</i>	<i>30900</i>
<i>Repair & Maintenance-Computer</i>	<i>2450</i>
<i>Staff Welfare</i>	<i>515</i>
<i>Vehicle Running & Maintenance</i>	<i>2738.6</i>
<i>Manhattan Credit Card No. 4541982334898811</i>	<i>146679.91</i>
<i>Bank Charges</i>	<i>1678.2</i>
<i>Business Promotion</i>	<i>9594.48</i>
<i>Repair & Maintenance-Computer</i>	<i>87241.78</i>
<i>Travelling Expenses Domestic</i>	<i>48165.45</i>
<i>Grand Total</i>	<i>507534.93</i>

8. *All these above expenses have also not been disputed by Ld. AO and Ld. CIT(A)*

9. *AO as well as CIT(A) have arbitrarily made the addition in the hands of the assessee by relying on surmise and conjectures only.*

10. *No adverse material has been brought on record either by the AO or CIT(A).*

11. *Thus, the additions made on the basis of surmises and conjectures are not sustainable and liable to Be deleted.*

12. *Reliance is placed on the following judicial pronouncements wherein it has been held that no addition can b made on surmises and conjectures:*

SUPREME COURT in the case of LALCHAND BHAGAT AMBICA RAM VERSUS COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA, [1959] 37 ITR 288

"It is, therefore, clear that the Tribunal in arriving at the conclusion it did in the present case indulged in suspicions, conjectures and surmises and acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, or the finding was, in other words, perverse and this court is entitled to interfere. We are, therefore, of opinion that the High Court was clearly in error in answering the referred question in the affirmative. The proper answer should have been in the negative having regard to all the circumstances of the case which we have adverted to above."

SUPREME COURT in the case of COMMISSIONER OF INCOME-TAX, WEST BENGAL VERSUS CALCUTTA DISCOUNT COMPANY LIMITED, 1974 (3) SCC 260

"As seen earlier, the Appellate Assistant Commissioner came to the conclusion that, unless the Income-tax Officer on the basis of material before him is able to come to the conclusion that the assessee had really made profits in the transaction it is not permissible for him to add back to the assessee's return any fictional income. In our opinion, that conclusion is fully in accordance with law."

MADRAS HIGH COURT in the case of COMMISSIONER OF INCOME-TAX VERSUS K. BHUVANENDRAN AND OTHER, [2008] 303 ITR 235 (Mad)

"6. The reasoning of the Tribunal is based on valid materials and evidence. In the present cases, the Revenue failed to establish that there is actually on-money passed on to the seller and also there is no evidence to show that there is understatement of sale consideration in the document. If the Revenue is able to produce evidence to show that there is

understatement of sale consideration in the document, the Revenue may be right in inferring that on-money has been passed on to the seller. It would be otherwise harsh and inequitable to tax the assessee on income which has neither arisen to him nor is received by him. It amounts to tax on notional or fictional income. Hence, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference. Hence, no substantial questions of law arise for consideration of this court and accordingly, the tax cases are dismissed."

2017 (8) TMI 943-ITAT DELHI, M/s E-Smart Systems Private Limited Versus ITO Ward - 8 (3), New Delhi

"Lastly, it was submitted that while making the impugned addition, AO/CIT(A) did not bring any evidence to rebut the evidences furnished by the assessee and made the addition on suspicion and speculations. It is settled law that, no addition can be made on the basis of surmises, suspicion and conjectures. Reliance for this proposition is placed on 37 ITR 271 (SC) Uma Charan Shaw & Bros. Co. v. CIT. It has been further held in the following cases that suspicion howsoever strong cannot take the place of proof.

4. Learned DR opposed the submissions and supported the orders of the authorities below.
5. We have heard rival contentions.
6. Apropos to the addition of Rs. 11,77,102/- learned counsel for the assessee has drawn our attention to the assessment order to demonstrate that the impugned addition was made on the basis that the bank account in question was held jointly by the assessee with her husband. It is contended that the assessee was not having

any knowledge about the opening of the account and the sum credited into such account. The account was operated and managed by the husband of the assessee. Therefore, the action of the AO for attributing 50% of the sum credited into such account to assessee is not justified. The finding of lower authorities that the assessee is the beneficiary of the account is contrary to the records. In support, the contention the assessee has placed reliance on various case laws.

6.1 The stand of assessee is that she was having dispute with her husband and was disowned from being beneficiary in all assets of her husband. In support a copy of divorce proceedings was also filed. The assessee also relied on a letter received from Standard Chartered Trust (Guernsey Ltd) which stated that the funds would be returned to the source being the account of Mr. Mon Mohan Kohli and the company will be terminated. It is also contended that the assessee had made complaint to Enforcement Directorate on 21.05.2012 much before conducting of search and seizure on 11.02.2014 regarding no connection with the disputed foreign bank account.

6.2 Taking into account the submissions made on behalf of the parties on the issue in question we find that there is no dispute that the assessee was co-signatory along with her husband of the foreign bank account maintained with Standard Chartered Trust (Guernsey). However, the stand of the assessee from the very

beginning is that she was not having any knowledge about the opening of the account and the sum credited into such account and the account was operated and managed by the husband of the assessee; that there was dispute between wife and husband and the assessee was disowned from being beneficiary in all assets of her husband. It is also the stand of the assessee that she had never made any transaction into such account and she had made complaint to Enforcement Directorate on 21.05.2012 much before conducting of search and seizure on 11.02.2014 regarding no connection with the disputed foreign bank account. Therefore, to verify the veracity of assessee's claim, in order to subserve the ends of natural justice and to be fair to both the parties, we restore this issue to the file of the AO for decision afresh after affording reasonable opportunity of being heard to the assessee. The AO would verify the correctness of the claim of the assessee that the account in question was never operated and no transaction was made by the assessee and that the account was being managed and operated by the husband of the assessee and thereafter decide the issue in accordance with law. Ground is allowed for statistical purposes.

7. Apropos to the addition of Rs. 5,17,508/-, facts in brief are that during assessment proceedings the AO observed that payments for assessee's credit card bills had been made by M/s Travencore Management Resources Pvt. Ltd., in which she was director. The AO show caused the assessee to explain as to why

such payments be not treated as her perquisites. Rejecting the assessee's explanation that such expenses were business expenses, incurred in the interest of the company, the AO made addition of Rs. 5,17,507/- treating the same as perquisites of the assessee. In appeal, the learned CIT(A) affirmed the action of the AO. Aggrieved, now the assessee is in appeal before this Tribunal.

7.1 The assessee has demonstrated that the expenditure in question related to the business and there was no personal element involved into the same. In support the assessee had also filed summary of nature of expenses incurred before the authorities below which remained undisputed.

7.2 Learned DR opposed the submissions.

7.3 We have heard rival submissions and perused the material available on record. Considering the fact that the assessee has been able to prove that the expenses in question were incurred in connection with the business of the company in which she was director, we are of the considered view that the lower authorities were not justified in treating these payments as perquisite of the assessee and no addition thereof could be made in the hands of the assessee. Accordingly, orders of the authorities below on the issue in question are set aside and the addition on this account is deleted. Ground is allowed.

8. In the result, appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced in open court on 29th February, 2024.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
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