

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
ITA No. 882/Del/2018, (A.Y.2015-16)**

Garima Bhushan C/o RRA Tax India , D-28, South Extension, Part-1 New Delhi PAN No: AAZPY020H	Vs.	DCIT Central Circle, Noida Uttar Pradesh
(Appellant)		(Respondent)

Appellant by	Dr. Rakesh Gupta, Adv & Sh. Somil Agarwal, Adv
Respondent by	Shri Dayainder Singh Sidhu, CIT (DR)

Date of Hearing	23/10/2024
Date of Pronouncement	27/11/2024

ORDER

PER YOGESH KUMAR U.S., JM :

This appeal is filed by the Assessee against the order of Commissioner of Income Tax (Appeals)-IV, Kanpur ["Ld. CIT(A)" for short], dated 21/11/2017 for the Assessment Year 2015-16.

2. The grounds of Appeal are as under: -

"1.) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in making an addition of Rs.9,20,025/- on account of unexplained credit / transaction u/s 68 of the Act, and that too by alleging failure of the assessee to give any

satisfactory explanation/ evidence and more so when there was no incriminating material found as result of search.

2) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. A.O. in making an addition of Rs. 1,20,000/- on account of household withdrawals vide para-7 of the assessment order and more so when there was no incriminating material found as a result of search.

3) That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 1,20,000/- is bad in law and against the facts and circumstances of the case.

4) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in passing the impugned order and that too without giving adequate opportunity of hearing and without observing the principle of natural justice.”

3. Brief facts of the case are that, a search and seizure operation u/s 132 of the Income Tax Act, 1961 ('Act' for short) was conducted on 27/11/2014 in the case of Maconn's, Meenu and Yadav Singh group cases. Thereafter, notice u/s 142(1) of the Act was issued on 25/02/2016 to the Assessee. In response, the Assessee filed his return showing income of Rs. 1,16,990/-. Subsequently, a notices u/s 142(1) and 143(2) were issued to

the Assessee. The assessment order came to be passed u/s 153C r.w. Section 143(3) of the Act on 28/12/2016 by making an addition of Rs. 9,20,025/- on account of unexplained loan and deposit and Rs. 1,20,000/- on account of houses hold expenses. Aggrieved by the assessment order dated 28/12/2016, the Assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) vide order dated 21/11/2017, dismissed the Appeal filed by the Assessee affirming the additions made by the A.O. Aggrieved by the order of the Ld. CIT(A) dated 21/11/2017, the Assessee preferred the present appeal.

4. The Assessee filed additional grounds of Appeal contending that the date of search in the searched person was 27/11/2014 and the satisfaction note u/s 153C of the Act was recorded in the case of the Assessee on 25/02/2016, therefore, the assessment could not have done without issuing notice u/s 153C. The Ld. Counsel relied on following judicial decisions and submitted that the additional ground of the Assessee deserves to be allowed by quashing the assessment order :-

- 1). BNB Investment & Properties Ltd. DCIT (PB 80-106)
- 2) Vishnu Bhagwan vs DCIT (PB 107-117)
- 3) Sanjay Thakur vs DCIT (PB 118-164)
- 4) CIT vs. RRJ Securities Ltd. 380 ITR 612 (Del) (PB 64-79)
- 5) PCIT vs. Sarwar Agency P Ltd. 397 ITR 400 (Del)(PB 60-63)

- 6) CIT vs. Jasjeet Singh 458 ITR 437 (SC)
- 7) Ojuss Investment vs. PCIT (Del)(HC)
- 8) Raja Varshney vs. ITO (Del) (ITAT) ITA 1459/Del/2024 dt.
- 9) Jasjit Singh (Del)(HC)
- 10) Pavitra Realcon Del (HC)

5. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities and sought for dismissal of the Appeal.

6. We have heard both the parties and perused the material available on record. It is observed that a search and seizure operation has been conducted u/s 132 of the Act on 27/11/2014 in the case of Maconns, Meenu and Yadav Singh group cases, thereafter notice u/s 142(1) and 143(2) was issued. Later on, an assessment has been framed u/s 153C read with Section 143(3) of the Act. Since the date of satisfaction note was 25/02/2016 the same date will be the deemed date of search in terms of Explanation to Section 153C and hence years falling u/s 153C would be preceding six years i.e. 2015-16, 2014-15 and so on. Thus, the assessment could not have been done without issuing notice u/s 153C of the Act in the year consideration. Considering above referred judicial precedents relied by the Assessee. Accordingly, the assessment order and the order of the Ld. CIT(A) are hereby quashed.

7. In the result, the Appeal filed by the Assessee is allowed.

Order pronounced in open Court on 27th November, 2024

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 27/11/2024

R.N, Sr. PS

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT, NEW DELHI