

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 128/Del/2016
(Assessment Year: 2012-13)

Shri Mohan Lal, 4561, Mahavir Bazar, Cloth Market, Fatehpuri, Delhi PAN:AAAPL5263C	Vs.	ITO, Ward-47(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Sh. V. D. Agarwal, CA
Respondent by:	Sh. K. K. Jaiswal, DR
Date of Hearing	16/03/2016
Date of pronouncement	13/05/2016

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is appeal filed by the assessee against the order of the Id CIT (A)-16, New Delhi dated 24.11.2015 for the Assessment Year 2012-13.
2. The brief fact of the case is that the assessee is an individual engaged in the business of the trading of cotton yarn and consignment business. Assessee filed his return of income on 17.09.2012 showing income of Rs. 762350/-. During the course of assessment proceedings addition of Rs. 82074/- was made on account of maturity amount of life insurance and further sum of Rs. 35937/- were added on account of additional VAT demand. Both these additions were contested before the Id CIT (A), who in turn confirmed them. Therefore in appeal before us the assessee has raised the following grounds of appeal:-
 1. *Ld. CIT (Appeal) is erred in law and facts and circumstances of the case in confirming the addition of Rs.82,074/- on account of so called addition in the account of minor son of assessee Shubham Gupta.*
 2. *Ld.CIT(Appeals) is grossly erred in law and facts and circumstances of the case in confirming addition of Rs. 35,937/- made on account of disallowance considering as non business expenditure.*
 3. *Ld. CIT(APPEALS) is not justified in law and facts and circumstances of the case in passing the Order without taking into account submission and documents furnished before Assessing Officer as well as before the CIT(APPEALS)."*

3. Ground No. 1 is against addition of Rs. 82074/- because of unsecured loan. During the course of assessment proceedings, it was found that on 12.12.2011 Rs. 79362/- was transferred from the assessee and on the same date Ms. Subham Gupta transferred Rs. 75000/- to the assessee. The source of funds in the hands of the lender was is maturity amount received from Max Life Insurance co Ltd. Ld Assessing Officer did not believe the explanation of the assessee that it is an insurance maturity amount received which was returned to the account of minor first and then accepted as loan from him. Ld. AO also worked out interest of Rs 2712/- on this sum and made addition thereof. Ld CIT (A) also confirmed the addition.
4. We have heard the rival contentions on this issue. Ld AR of the assessee has submitted that on 13.12.2011 a sum of Rs. 79362.57 was received in the a/c of the assessee with ICICI Bank Ltd. This sum was received pertaining to the policy No.428525083 taken in 2006 where the life insured was of Master Shubham Gupta and nominee was the assessee. Premium of policy was paid on 08.11.2006 and the maturity date was 08.11.2011. for this assessee has submitted the insurance receipts showing all these details . On receipt of this sum in the bank account of the assessee, he transferred it to the a/c of minor and Rs. 79362/- was taken from that a/c of minor son as loan. In view of this the assessee has explained the sources of fund received from Master Shubham Gupta of Rs. 79362/-. Therefore, the addition made in the hands of the assessee on account of this sum is deleted. Further, addition of Rs. 2712/- on account of interest is also deleted consequently. In the result, Ground No 1 of the appeal is allowed.
5. Ground No. 2 of the appeal is against the disallowance of Rs. 35937/- on account of additional VAT demand paid. The Id Assessing Officer rejected the contention of the assessee that the above VAT demand is not penalty and disallowed the same. On appeal before the Id CIT(A), he confirmed the disallowance holding that it is non business expenditure. Before us, Id AR has submitted the VAT demand notice where in it is apparent that assessee has sold a car for Rs. 250000/-which is taxed @ 12.5% and assessee was to pay tax of Rs. 31250/- and interest thereon of Rs. 4637/-. The assessee submitted that the VAT payment is on account of traded goods and not on account of sale of any motor vehicle and further assessee has produced the form DVAT

24 which shows that it is not a penalty but tax and interest only. As on perusal of the records it is not clear whether the assessee has assessee has paid VAT as a trader or on sale of motor car. If it is paid as a trader of goods then the VAT payment is allowable as deduction and if it is paid for the sale of motor car it is not for the purpose of the business and hence not allowable. In view of above this ground of appeal is set aside to the file of Assessing Officer to verify the details of VAT liability and if it is for the traded goods then same may be allowed. In the result ground No. 2 of the appeal is allowed with above direction.

6. Ground No. 3 of the appeal is general in nature and therefore the same is dismissed.

7. In the result the appeal of the assessee is partly allowed.

Order pronounced in the open court on 13/05/2016.

-Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 13/05/2016

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi