

INCOME TAX APPELLATE TRIBUNAL, NEW DELHI BENCHES,

NEW DELHI 'SMC' BENCH

SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA NO. 408/DEL/2016

A.Y. 2011-12

KESHAV GARG B-2/39, SECTOR-6, ROHINI, DELHI - 110 085 (PAN:AEHPG5861J)	Vs.	ITO, WARD 38(2), NEW DELHI
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AND

ITA NO. 409/DEL/2016

A.Y. 2011-12

HARDIK GARG B-2/39, SECTOR-6, ROHINI, DELHI - 110 085 (PAN:AIHPG7191H)	Vs.	ITO, WARD 37(1), NEW DELHI
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Assessee by : Sh. G.S. Kohli, CA

Department by: Sh. Rakesh Kumar, Sr. DR

**ORDER**

These Appeals by the different Assesseees are directed against the separate Orders both dated 14.12.2015 for the A.Y. 2011-12 of the Ld. CIT(A)-32, New Delhi. Since the issues involved in these appeals are common and identical, hence, the appeals were heard together and are being disposed of by this common order for the sake of brevity.

2. The only common ground pressed in ITA No. 408/Del/2016 for AY 2011-12 read as under:-

“3. The Ld. AO as well as the Ld. CIT(A) were not justified in applying the adhoc rate to estimate the profit on total deposit of Rs. 3,48,00,626/- in undisclosed saving accounts. The applied rate must be supported with some evidence / material.”

3. The only common ground pressed in ITA No. 409/Del/2016 for AY 2011-12 read as under:-

“2. The Ld. AO as well as the Ld. CIT(A) was not justified in applying the adhoc rate to estimate the profit on total deposit of Rs. 1,14,66,457/- in undisclosed saving accounts.”

4. During the course of hearing, the Ld. Counsel for the assessee, at the very outset stated that in assessee's own case i.e. Sh. Keshav Garg vs. ITO, the ITAT, SMC-I Bench, New Delhi vide its order dated 28.10.2016 has decided the similar and identical issue in ITA No. 609/Del/2016 (AY 2010-11) in favour of the assessee, by which the present issue is squarely covered in favour of the assessee. Hence, he requested that by respectfully following the precedent in the assessee's own case for the assessment year 2010-11, both the present appeals of the different assesses may be allowed.

5. In his rival submissions, the Ld. DR although supported the Order of the AO, but could not controvert the aforesaid contentions of the Ld. Counsel for the Assessee.

6. I have considered the submissions of both the parties and carefully gone through the material available on record. In the present case, it is noticed that the similar ground in the assessment year 2010-11 was allowed in assessee's own case vide the Order dated 28.10.2016 by the 'SMC-I' Bench of the ITAT, Delhi passed in ITA No. 609/Del/2016 and relevant finding has been given vide para no. 10 & 11 which read as under:-

*"10. I have considered the submissions of both the parties and have perused the record of the case. Admittedly in earlier year the AO had estimated the assessee's income from unaccounted cash deposits @6% of the total deposit which was made the basis by Ld. CIT(A). the submission of Ld. Counsel is that in earlier year since the tax liability was nominal, therefore, no appeal was filed. This plea cannot be accepted because when the assessee was aware of the fact that he had carried out similar business in subsequent year, therefore, this percentage would become a precedence for subsequent year also. However, the AO himself has observed in para 4(iii) of his order that "...Business presupposes the existence of sales as well as purchases and other connected expense". The GP rate does not take into consideration these expenses. Keeping in view the fact that most of the expenses must have been claimed in main business, I consider it in the interest of justice to allow 2% towards connected expenses. Accordingly, addition is to be restricted to 4% of the total deposits. I order accordingly.*

11. *In the result, assessee's appeal is partly allowed."*

7. After considering the totality of the facts as discussed hereinabove, I am of the view that the issues involved in the present appeals are squarely covered in favour of the assessee by ITAT decision dated 28.10.2016 for the assessment year 2010-11 by the 'SMC-I' Bench of the ITAT, Delhi passed in ITA No. 609/Del/2016, in assessee's own case. Therefore, respectfully following the above precedent, the grounds raised in both the appeals are partly allowed, in terms of the Tribunal's order dated 28.10.2016, as aforesaid.

8. In the result, both the Appeals filed by the different Assesseees stand partly allowed.

Order pronounced in the Open Court on 17/02/2017.

**SD/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Date 17/02/2017

**"SRBHATNAGAR"**

**Copy forwarded to: -**

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

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By Order,

Assistant Registrar,  
ITAT, Delhi Benches