

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "SMC-3", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

	I.T.A. No. 735/DEL/2015	
	A.Y. : 2010-11	
VIKASH YADAV, PROP. M/S VIRENDRA AUTO MOBILES, NEAR DHARUHERA CHOWK, CIRCULAR ROAD, REWARI (PAN: AABPY7907P)	VS.	ITO, WARD-2, REWARI
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by : Sh. Gautam Jain, CA  
Department by : Sh. A. Sreenivasa Rao, Sr. DR

**Date of Hearing : 11-07-2016**

**Date of Order : 02-08-2016**

**ORDER**

**PER H.S. SIDHU : JM**

Assessee has filed this Appeal against the impugned Order dated 25.11.2014 passed by the Ld. CIT(A), Rohtak relevant to assessment year 2010-11 on the following grounds:-

1. That the order passed by the Learned CIT (A) Rohtak is against law and facts of the case. Further' he has grossly erred' in not discussing the written submission nor the same are contradicted.

2. That the findings of the Learned CIT (A) Rohtak that the alleged payments under dispute received by the appellant and FDRS Interest credited to his (appellant) bank accounts is totally wrong. Even the TDS as per Form 26AS on that disputed amount are not claimed by the appellant nor the credit is given. Further the Learned CIT (A) has erred in ignoring the facts as per written submission which are on record and duly discussed in the order .
3. That to sustain the additions of Rs.1278760/- by the Ld. CIT (A) under three heads are quite arbitrary and unjustified.
4. That ignoring the submission of the appellant by the Learned CIT (A) are contrary to the provisions of Law and facts of the case. Further That all the figures returned, books version, method of accountancy are duly accepted and provisions of Section u/s 145 not applied.
5. That the appellant craves the leave to add, modify amend or delete any of the grounds of appeal before or at the time of hearing.

2. The brief facts of the case are that the assessee electronically transmitted the data of its return of income in ITR-4 on 23.9.2010 declaring an income of Rs. 8,72,240/-. The assessee derives income from trading in Motor Cycles and Workshops. The case was picked up for scrutiny under manual selection. Statutory notices and questionnaire were issued. Assessee's counsel attended the proceedings from time to time and written replies were filed which have been considered by the AO. Books of accounts were produced and test checked. AO observed that assessee has not shown the receipts in his books of accounts and accordingly, he made the addition of Rs. 12,78,760/- and Rs. 23,396/- vide his order dated 4.3.2013 passed u/s. 143(3) of the I.T. Act, 1961 by assessing the income at Rs. 21,74,400/-.

3. Against the order of the Ld. AO, assessee appealed before the Ld. CIT(A), who vide impugned order dated 25.11.2014 has dismissed the appeal of the assessee by holding as under:-

*"A perusal of the facts on record and the submissions made by the appellant show that the AO made an addition on the grounds that there was difference in the amount shown in 26AS and that declared by the appellant in his return. Even*

*before me, no cogent explanation has been offered in relation to the addition of Rs. 11,605/- (IndusInd Bank), Rs. 8,47,592/- (National Insurance Company Limited) and Rs. 4,19,563/- (PNB FDR interest). Merely by stating that the amount did not relate to him when payments are received by him alone, i.e. in his bank accounts is not a satisfactory explanation. Moreover, the explanation in relation to the FDR interest as being relating to his wife is preposterous considering the fact that it has been credited to him and is hence, not accepted.*

*In the absence of any explanation/ evidence to show that this amount did not relate to him, the addition was justified. I, therefore, sustain the said addition of Rs. 12,78,760/-."*

4. Aggrieved with the aforesaid finding of the Ld. CIT(A), Assessee is in appeal before the Tribunal.

5. Ld. Counsel of the Assessee stated that no sum is credited in the books of accounts of the assessee. It was further stated that once no sum is credited in the books of accounts of the assessee, it

is really not known how any figure reflected in Form 26AS can be treated as income of the assessee as Form 26AS neither forms part of books of accounts of the assessee. He further stated that it is a well settled law that the bank account is not books of account of the assessee. Hence, he further stated that Form 26AS cannot be made a basis for addition. As regards the TDS Certificate is concerned, he stated that the National Insurance Company has issued a TDS Certificate in the name of the assessee and mere issue of TDS certificate does not establish that there is any income credited to the income of the assessee as no sum is either due to the assessee or any sum has been actually received by the assessee and thus the addition of Rs. 11,605/- and Rs. 8,47,592/- may kindly be deleted.

5.1 As regards addition of Rs. 4,19,563/- relating to FDR interest, it was stated by the Ld. Counsel of the Assessee that this amount relates to Smt. Sarita Yadav, W/o Sh. Vikas Yadav and her minor son. It was further stated that Smt. Sarita Yadav is a regular income tax assessee. The FDRs interest and TDS claim was duly made in her return. The TDS deducted under the assessee PAN actually its belong to her. Nor the interest is claimed by the assessee nor the benefit of TDS is availed. It is only a clerical

mistake by Bank. Therefore, he requested that the addition in dispute may be deleted.

6. On the other hand, Ld. DR relied upon the orders of the authorities below and stated that no cogent explanation has been offered before the lower authorities. He further stated that the AO has rightly observed that assessee has not shown the receipts in his books of accounts and accordingly, the addition in dispute was rightly made by the AO. In view of above, Ld. DR requested that the Appeal of the Assessee may be dismissed and order of the Ld. CIT(A) may be upheld.

7. I have heard both the parties and perused the records available with me. I find that assessee is engaged in the business of sales of bikes and owner of bikes are insured with M/s National Insurance Co. Ltd. or assessee IndusInd Bank. All sums received by the assessee as job charges of Rs. 12,47,468/- duly declared. No dealings of the assessee with National Insurance Co. Ltd. and books of accounts has been accepted. No such sums received by the assessee. On perusing a Certificate from the Bank enclosed at Page no. 23 of the Paper Book alongwith copy of FDR (pages 25 to 27 of the Paper Book) it shows that the interest is on account of FDRs of wife of the assessee Smt. Sarita Yadav. I am of the view that

once no sum is credited in the books of accounts of the assessee, it is really not known how any figure reflected in Form 26AS can be treated as income of the assessee as Form 26AS neither forms part of books of accounts of the assessee. I find considerable cogency in the assessee's counsel that it is a well settled law that the bank account is not books of account of the assessee, therefore, the Form 26AS cannot be made a basis for addition. As regards the TDS Certificate is concerned, on perusing the records, I note that the National Insurance Company has issued a TDS Certificate in the name of the assessee and mere issue of TDS certificate does not establish that there is any income credited to the income of the assessee as no sum is either due to the assessee or any sum has been actually received by the assessee, thus the addition of Rs. 11,605/- and Rs. 8,47,592/- is not tenable in the eyes of law, hence, the same are deleted. With regard to addition of Rs. 4,19,563/- relating to FDR interest, from the records, it reveals that this amount relates to Smt. Sarita Yadav, W/o Sh. Vikas Yadav, who is a regular income tax assessee. The FDRs interest and TDS claim was duly made in her return. The TDS deducted under the assessee PAN actually its belong to her. Nor the interest is claimed by the assessee nor the benefit of TDS is availed. Hence, the addition in dispute is untenable and the same is deleted. My

aforesaid views are fully supported by the ITAT, Delhi Bench decision dated 31.3.2015 in the case of ITO vs. Basant Kumar in ITA No. 4679/Del/2012 (AY 2009-10) wherein in almost identical circumstances, the Tribunal has upheld the order of the Ld. CIT(A) deleting the addition on the basis of Form 26AS by holding as under:-

"6. *It is only elementary that information as per database of the revenue authorities cannot be, by itself, a legally sustainable basis for addition being made to the income of the assessee and that such inputs are at best starting points for appropriate inquiries. There is nothing more than these information inputs which have been put against the assessee. We have also noted that, as evident from affidavit a copy of which is placed before us at page 26 of the paper book, the assessee has categorically stated that the impugned "amount of Rs.58,78,256 shown in form No. 26AS was neither received by me nor receivable to me" and that "the above stated amount of Rs.58,78,256j- was directly paid by*

*the Vodafone Essar Digilink Ltd to the retailers of the company, a complete list of which is provided by the company and placed on file". We have further noted that vide letter dated 15.12.2011 (duly acknowledged by the office on 23.12.2011 - evidence placed on record at page 27 of the paper book), Vodafone, Digilink Ltd has given a complete break up of Rs.58,78,256 and given details of the retailers to whom the related payments have been made. There is no materil to come to the conclusion that assessee ever received any such coupons or payments nor the same are reflected in his books of accounts or bank statements. The fact that these payments are made by coupons and vouchers etc. can also not be put against the assessee since the assessee never received the same and there is no evidence to the contrary. Apparently, entire confusion has started from the fact that, perhaps as a measure of abundant caution, Vodafone deducted tax at source in*

*respect of the vouchers etc and, for whatever reasons, stated, the name of distributor as collective recipient of entire sum. On these facts, in our considered view, learned CIT(A) was quite justified in deleting the impugned addition of Rs.58,78,256. We approve his conclusions, and decline to interfere in the matter.*

7. *Ground No.1 is thus dismissed."*

8. In the result, the Appeal filed by the Assessee stands allowed.

Order pronounced in the Open Court on 02/08/2016.

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

*Date 02/08/2016*

**"SRBHATNAGAR"**

**Copy forwarded to: -**

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

Assistant Registrar, ITAT, Delhi Benches