

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI
BEFORE SHRI J. S. REDDY, ACCOUNTANT MEMBER
AND
SHRI C. M. GARG, JUDICIAL MEMBER**

**I.T.A. Nos.572 to 577 /Del/2013
Assessment Years: 2003-04 to 2008-09**

Shri Rajeev Gupta,
4-A, Prithvi Raj Road,
New Delhi.

Vs.

ACIT
Central Circle-II, ARA
E-2, Jhandewalan Extension
New Delhi.

**PAN: ACFPG9713R
(APPELLANT)**

(RESPONDENT)

**Assessee by: Shri. Ashok Jain, CA.
Revenue by: Shri Vivek Wadekar, CIT. DR.
Date of Hearing: 24/06/2015
Date of Pronouncement: 15th/07/2015**

ORDER

PER J. S. REDDY, AM:

These six appeals are filed by the assessee directed against the separate but identical orders of CIT (Appeals), New Delhi, dated 03.12.2012 for the Assessment Years 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09. As the issues arising in all these appeals are common for the sake of convenience they are heard together and disposed of by way of this common order.

2. The facts in brief: The assessee is an individual. A search and seizure operation u/s 132 of the Income Tax Act was carried out at the residential premises of assessee i.e. 4-A, Prithvi Raj Road, New Delhi. A notice u/s 153A of the Act was issued and duly served on the assessee. In response the assessee filed its return of income.

3. The sole addition in dispute for all the assessment years, is the addition made by the AO and confirmed by the Id. CIT(A), on account of inadequate house hold expenses. The AO in the assessment years has held as follows:

“4. From the statement of drawings, it is observed that the assessee has shown drawings of Rs.1,14,480/-. Further, it is observed that the assessee has shown less drawings as compared to his status. Also very low drawings have been shown by his family members. The assessee has shown his income from salary from the partnership firm M/s Shri Ram Hari Ram, wherein the assessee is also a partner and getting share out of profit. The assessee has also shown income from other sources which include interest income from partnership firm as well as from other parties. As during the year, the assessee has not furnished any statement of affairs, no drawings have been made for house hold expenses, living in posh area of Delhi with luxurious style of living, therefore, gives a clear picture of assessee’s earnings out of undisclosed sources of income. Hence, in the absence of any Statement of Affairs and books of account, it is presumed that the assessee is meeting out the personal expenses out of undisclosed sources of his income. Hence, it is estimated that the assessee is

incurring expenditure of Rs.20,000/- per month on account of household expenses. In view of the above, the total disallowance on this account comes to Rs.2,40,000/- (Rs.20,000/- X 12).

(Addition : Rs.2,40,000/-)”

4. Aggrieved the assessee carried the matter in appeal challenging the addition, both on legal grounds, as well as on factual grounds. The assessee challenged the jurisdiction of the AO to making additions u/s 153A of the Act for the assessment years 2003-04 to 2007-08 on the ground that no incriminating material was found during the course of search and as the assessments for these assessment years have abated and hence the addition is bad in law. For the A.Y. 2008-09, as well as for the earlier assessment year the addition was challenged on merit. The first appellate authority rejected the contentions of the assessee on the issue of additions made u/s 153A for abated assessments on the ground that here was no incriminating material found during the course of search. The Id. CIT(A) held that;

a) Valuables were found during the course of search and these are part of the Panchnama drawn up on the date of search and this is incriminating material found during the course of search.

b) Assessment order u/s 153A is to be mandatory passed, even if there is no incriminating material found during the course of search.

6. The reliance was placed on the judgment of the Honøble Delhi High Court in the case of Anil Bhatia(Supra).

7. On merits, the first appellate authority considered the fact that the assessee and his family own 7 luxurious vehicles and other valuable assets and also the fact that the assessee has not furnished the details sought by the AO such as, area of the house, number of rooms, details of electricity/water expenses, copy of passport and details of insurance and medical policies etc. and came to a conclusion that the AO has correctly made the additions. He dismissed the appeal.

8. Aggrieved the assessee filed these appeals on the following grounds:

- “1. That Ld. Commissioner of Income Tax (Appeals) has acted arbitrarily and on presumptions basis, contrary to principles of natural justice and provision of law as such the action and findings based thereon stands vitiated and order is bad in law.*
- 2. On the facts and circumstances of the case the notice u/s 153A is misconceived and illegal being without jurisdiction, contrary to facts and provision of law and hence the assessment based thereon must be quashed as erroneous and void.*
- 3. On the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeal) is not justified in confirming an ad hoc addition of Rs.2.40,000/- on account of household expenses made by Ld. AO without any basis which is based on surmises and conjectures, contrary to the principles of natural justice and*

applicable law, as such the action of Ld. CIT(A) need to be undone and the addition confirmed by him needs to be deleted.

4. *On the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeal) is not justified in holding that assessment cannot be concluded on processing of return under section 143(1) of the Income Tax Act, 1961 and intimation u/s 143(1) does not amount to assessment which can abate which is based on surmises and conjectures and contrary to provisions of law, as such the action of Ld. CIT(A) needs to be undone and it is to be held that assessment is concluded on processing of return u/s 143(1) of the Income Tax Act, 1961 if no notice u/s 143(2) of the Income Tax Act 1961 is issued within statutory time period allowed and can abate.*
5. *On the facts and circumstances of the case the Commissioner of Income Tax (Appeal) is not justified in holding that list of valuables found at the time of search and stated in Panchnama are incriminating evidence though Ld. AO has not drawn any such inference or made any addition on account of these valuables, as such the action of Ld. CIT(A) is based on surmises and conjectures and contrary to provisions of law and the same needs to be undone and any addition confirmed which is based on such inference needs to be deleted.*
6. *On the facts and circumstances of the case the Commissioner of Income Tax (Appeal) is not justified in confirming the action of Ld. AO in disturbing the completed assessment u/s 143(1) of the Income Tax Act, 1961 which does not abate in the absence of any seized material pertaining to the assessment year under*

consideration and making an ad-hoc addition of Rs.2,40,000 on account of household expenses which is based on surmises and conjectures, contrary to the principles of natural justice and applicable law, as such the action of Ld. CIT(A) need to be undone and the addition confirmed by him needs to be deleted. ”

9. We have heard Mr. Ashok Jain, the counsel for the assessee and Shri Vivek Wadekar, Ld. CIT DR on behalf of the revenue. Mr. Ashok Jain vehemently contended that there is no incriminating material found during the course of search and hence no addition whatsoever can be made u/s 153A of the assessment years 2003-04 & 2007-08 as these assessment have abated. He relied a number of judgment and specifically on the recent judgment of the Honøble Bombay High Court in the case of Continental Ware Housing Corporation (NHAVA SHEVA) 58 Taxman. Com 78 (Bom) dt. 21.04.2015. He also relied on the following case law.

- a) *MGF Automobiles Limited Vs. ACIT In ITA No. 4212 &4213/Del/2011 dated 28.06.2013.*
- b) *Kabul Chawla 151 ITD 55 (Delhi-Tribunal) 2014*
- c) *Parival Properties (P) Ltd. 148 ITD 617 (Delhi-Trib.) 2014*
- d) *Jai Steel (India) Vs. ACIT 259 CTR 281 (Raj)*
- e) *All Cargo Global Logistics Limited Vs. DCIT 137 ITD 287 (MUM) TM*

10. On merits, he submitted that the first appellate authority has committed an error in coming to the conclusion that the assessee is living along with seven adult members, without considering the two HUFs were also having drawings

and that there were only five family members. He argued that drawings of all member and HUFs during the year 2008-09 was Rs.9,74,555/- which is more than adequate as the assessee is an orthodox and conservative family, with no club membership. He submitted that no evidence found during the course of search evidencing huge domestic personal expenses. He prayed that the addition be deleted.

11. Mr. Vivek Wadekar, the ld. CIT DR relied on the orders of the first appellate authority. He drew the attention of the bench to the nature of luxurious cars owned and maintained by the assessee and also the fact that the assessee has not given any details sought by the first appellate authority and submitted that the ld. CIT(A) was right in upholding the order of the AO. While agreeing that no material or document/evidence, was found regarding household expenditure, he submitted that the valuables found during the course of search are given in Annexure to the ld. CIT(A)'s order and submitted that this material is found during the course of search and based on this material an inference was drawn by the AO in abated assessments also. While supporting, the finding of the first appellate authority that the addition is based on the material seized during the course of search, he took this bench through the copy of Panchnama drawn during the course of search.

12. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, a perusal of the papers on record and the orders of the authorities below, we hold as follows;

13. It is true that no addition can be made in respect of unabated assessments, if no incriminating material is found during the course of search. The recent judgment of the Honøble Bombay High Court in the case of Continental Warehousing Corporation (Supra) supports that the argument of the assessee. In this case during the course of search, certain valuables were found. A list of the same is found in the panchnama. There valuable assets include billiards table, piano, expensive paintings, chandler, centrally air conditioner system etc. Thus in our view the Id. CIT(A) is correct in coming to a conclusion that, certain material was found during the course of search, based on which assessment can be done, even in the case of the abated assessments. Owning luxurious cars etc. indicate that the monthly expenditure on maintenance would be higher than the personal drawing disclosed. In our view, the valuable found during the course of search, indicate the standard of living the assessee and his other members and these are material based on which an addition can be made for low drawing. Thus this legal argument of the assessee is dismissed on the issue of addition made u/s 153A r.w.s. 143(3) on abated assessments.

14. Coming to the argument on merits, the first appellate authority at Para 6 to 6.7 held as follows;

“6. Now coming to the merits of additions, it is seen that the appellant is staying in a mansion alongwith his family members consisting of 7 adult individuals at 4-A, Prithvi Raj Road, New Delhi which is one of the poshest locality not only in Delhi but in whole of National Capital Region (NCR). From the evidence available during the search it is seen that the appellant and his family members own and drive 7 luxurious vehicles the details of which are as under: (refer Q. No. 11 of Rajiv’s statement recorded at the time of search)

| S. No. | Vehicle number | Make |
|--------|----------------|---------------------|
| 1. | DL 1CG 0348 | Toyota Land Cruiser |
| 2. | DL 7C 9333 | Honda Accord |
| 3. | DL 3CY 3870 | Toyota Carolla |
| 4. | DL 3CY 5111 | Honda City |
| 5. | DL 2F BH 0900 | Toyota Innova |
| 6. | HR 07 OD 9000 | S-350, Mercedes |
| 7. | HR 7 OH 5555 | Rover |

6.1 The details submitted by the appellant further shows that their joint household withdrawals during different assessment years are as under and hence the monthly withdrawal per family members are depicted in following table:-

| Particulars | Assessment Years (Amount in Rs.) | | | | | | |
|--|-------------------------------------|----------|----------|----------|----------|----------|----------|
| | 2002-03 | 2003-04 | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
| Withdrawal per annum | 3,91,050 | 4,48,745 | 5,80,745 | 5,48,000 | 5,64,000 | 9,65,080 | 9,74,555 |
| Therefore withdrawal per month will be | 32,587 | 37,395 | 48,395 | 45,666 | 47,000 | 80,423 | 81,171 |
| Hence | 4,555 | 5,342 | 6,913 | 6,523 | 6,714 | 11,489 | 11,595 |

| | | | | | | | |
|---|--|--|--|--|--|--|--|
| <i>withdrawal per family member per month will be</i> | | | | | | | |
|---|--|--|--|--|--|--|--|

6.2 From the above chart it is quite surprising to note that the appellant who is living with 7 adult family members in a mansion at Prithvi Raj Road, New Delhi and driving best of the vehicles, can meet their household expenses in approx. Rs.32,000 p.m. during the assessment year 2002-03 and within the range of Rs.47,000 p.m . in assessment year 2006-07 and within the range of Rs.80,000 approx in assessment years 2007-08 and 2008-09.

6.3 However to be fair to the appellant and to see whether the AO was justified in making the addition on account of low household withdrawals, during the appellate proceeding, the appellant was asked to provide the following details so as to ascertain their household expenses:

- (a) Area of the house where they are living
- (b) Number of rooms
- (c) Details of electricity/water expenses
- (d) Copy of the passport so as to know the foreign visits
- (e) Details of insurance/medical policies etc.

6.4 But instead of providing any of the above information the appellant simply give a general reply vide their letter dated 27.11.2012 stating “that they are not living any luxurious life style, rather their’s an orthodox and conservative family with no club membership and they are teetotallers”.

It is pertinent to mention here that the above mentioned details viz. the area of the house, number of rooms would have given an idea

whether the appellant and its family were having the luxury of availing domestic help in the form of gardner, servants etc., also the electricity expenses would through the light on the appellant's standard of living and the copy of the passport would have indicated about their style and standard of living and details of medical and insurance policies would have shown whether the household withdrawals were adequate or not. But the appellant did not gave any of the above information, no copy of passport was provided etc.

6.5 *With regard to insurance details which were requisitioned, the appellant stated that the same was verified by the AO but when during the appellate proceeding the appellant was asked to give the details of policies and other details which were provided to the AO at the time of assessment proceedings, the appellant again back tracked and did not produce any of the evidence /information provided to AO during the assessment proceedings.*

6.6 *In view of the total non compliant attitude from the appellant's side and keeping in view the fact that the appellant and his family consisting 7 of adults which are:-*

- * Staying in a mansion having a basement, ground floor, first floor and second floor at Delhi's poshest locality i.e. Prithviraj Road,*
- * driving the best of luxurious cars ranging from Mercedes, Land rover, Cruiser etc.*
- * having a billiards table, piano expensive paintings, chandler, centrally air-conditioned house etc. (refer to*

panchnama filed by the appellant alongwith its submissions)

I hold that it is impossible to believe that the appellant and his family can maintain themselves on a monthly expenditure ranging from Rs.32,000 p.m. to Rs.47,000 p.m. during the assessment year 2002-03 to 2006-07 and around Rs.80,000 p.m. in the assessment years 2007-08 and 2008-09.

6.7 Taking into consideration all the above facts and circumstances and also the fact that the appellant is avoiding in giving the requisite details viz. details of insurance policies, electricity expenses, copy of passport and also considering that the appellant is having a luxurious life style (refer to valuables which were found during the search and the copy of Annexure A-6 of Panchnama is part of this order), I come to the inevitable conclusion that the appellant cannot survive on a monthly expenditure of Rs.32,000 approximately which is just around approximately Rs.4500 per family member p.m. Accordingly, AO is right in making an addition on account of low household withdrawals to the extent of Rs.2,40,000 in appellant's hands in the year under consideration, and the addition made by him is therefore upheld.

6.8 Apart from the household withdrawals, the AO has made an addition of Rs.35,464 on account of interest as no details were submitted to the AO during the assessment proceeding. However, from the details furnished by the appellant during the appellate proceeding it is seen that the interest of Rs.35,464 was already offered for tax as share of partner in Shri Ram Hari Ram, hence in view of this evidence

which is available in the computation sheet, the addition so made deserves to be deleted.”

15. We find no infirmity in these findings of the ld. CIT(A). The argument of the ld. Counsel for the assessee the two HUF have been considered as adult members, do not help his case. The AO in our view is justified in estimating this household expenditure. Further in this case, the assessee did not provide the details as sought by the first appellate authority. This lead to adverse inference. In view of above discussion we dismiss all the appeals of the assessee.

16. In the result, the appeals of the assessee is dismissed.

Order pronounced in the open Court on 15th /07/2015.

Sd/-

**(C. M. GARG)
JUDICIAL MEMBER**

Sd/-

**(J. S. REDDY)
ACCOUNTANT MEMBER**

Dated: 15th /07/2015

AK VERMA

Copy forwarded to:

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

ASSISTANT REGISTRAR