

523 & 526
23/11/09

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' : NEW DELHI

BEFORE SHRI DEEPAK R. SHAH, ACCOUNTANT MEMBER
AND SHRI RAJPAL YADAV, JUDICIAL MEMBER

I.T.A.Nos.3057, 3058, 3061, 3062, 3063 & 2684/Del/2009
Assessment Years : 2000-01, 2001-02, 2003-04, 2005-06,
2006-07 & 2004-05

Mrs. Deepa Bhatia,
31-B, Rajpur Road, Delhi.
PAN : AASPB0922G

Asstt. Commissioner of I.Tax,
Vs. Central Circle-17, New Delhi.

(Appellant)

(Respondent)

Appellant by : Shri Kapil Goel, CA
Respondent by : Shri Manish Gupta, DR.

ORDER

PER DEEPAK R. SHAH , ACCOUNTANT MEMBER

These appeals by the assessee are directed against the orders of learned Commissioner of Income-tax (Appeals)-II, New Delhi dated 17th April, 2009 in Appeals against orders dated 17/04/2009 framed u/s 153C read with section 153A/143(3) of the Income Tax Act (Act). Since common issues are involved in all the appeals, we heard them together and deem it appropriate to dispose off them by this common order.

2. Brief facts relating to these common appeals are that, there was search operation on the dealers/traders engaged in the trade of Hing on 13/12/2005. Assessee is part of Laxman Dass Bhatia group of cases who are subjected to

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action u/s 132. After initiating action u/s 153C, the total income of the assessee for various years in assessment framed u/s 153C/read with section 153A was computed as under:

Asst Year	Additions by Assessing Officer ACT CC -17	Additions by CIT-A in First Appeal/ Additions of AO as sustained by CIT(A)
2000-2001	On a/c of lower GP: Rs. 335,000	AO's addition deleted by CIT(A) but fresh addition for lower personal drawings: Rs 20,000
2001-2002	On a/c of lower GP : 299,000	AO's addition deleted by CIT-A but fresh addition for lower personal drawings: Rs 25,000
2003-2004	On a/c of unexplained investment in property: 440,000 On a/c of unexplained investment in jewellery: 115,634	Except for addition of Rs 30,000 (stamp paper), whole AO's addition deleted & fresh addition for lower personal drawings: Rs 25,000
2004-2005	Addition on a/c of LIC Money back 105,000	AO's addition deleted but fresh addition for lower personal drawings: Rs 25,000
2005-2006	Addition on a/c of unexplained jewellery Rs 279,770 Addition on a/c of LIC Money back Rs. 60,000	AO's addition deleted but fresh addition for lower personal drawings: Rs 20,000
2006-2007	Addition on a/c of	AO's additions



	unexplained interest u/s 24(b) Rs 150,000 Addition on a/c of unexplained Gift Rs 70,000	sustained and fresh addition for lower personal drawings: Rs 20,000
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3. The ground of appeal as taken by assessee in present appeals basically relates to additions sustained by CIT(Appeals) and fresh additions made by CIT-Appeals on account of low house hold withdrawals.

4. As regards common & fresh addition in impugned orders relating to low household withdrawals is concerned, finding of Ld CIT(A)-II is reproduced hereinbelow (from order for AY 2000-2001):

“However, I find the quantum of drawings for personal expenses are very meagre, hence it calls for addition of Rs 20,000 to the total income of the assessee..”

5. In aforesaid background, Ld AR Shri Kapil Goel submitted before us that since there was neither any enhancement notice was issued by Ld CIT(Appeals) for said fresh addition of low withdrawals nor there is any iota of material to support the same besides suspicion, therefore same deserves to be deleted. On the other hand, Ld DR Shri Manish Gupta relied on orders of Ld CIT (Appeals).

6. As regards addition of Rs.30,000 for stamp paper for property purchased as sustained by Ld CIT(A) in its order for AY 2003-2004, it is

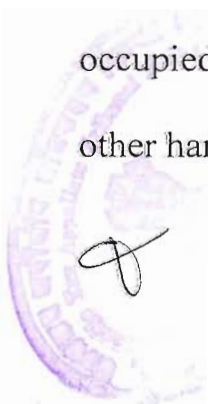
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submitted that assessee lady married about 15 years back, living with her husband and father in law, it is probable and practicable that out of PIN Money (saved from her personal receipts) said amount can be saved and invested.

7. As regards addition in Assessment Year 2006-2007 for gifts received from husband by assessee (Amount: Rs 70,000), Ld AR submitted that same deserves to be deleted in view of section 56(2)(v) which exempts gifts from relatives. Further to prove genuineness, it is submitted that the assessee has recd a gift of Rs 70,000 from her husband (Sanjay Bhatia). The amount has been recd^{ive} from the a/c of her husband. The husband is separately assessed to tax. His capital account showing gift of Rs 70,000 has been accepted by AO of her husband. The husband is maintaining books of accounts which are audited. In any case, once the capital account has been accepted there is no reason to disbelieve the gift particularly in the hands of the wife. Ld DR Shri Manish Gupta relied on orders of Ld CIT(Appeals).

8. As regards addition in Assessment Year 2006-2007 for housing loan interest (Amount Rs 150,000), Ld AR submitted that merely because house is not found occupied throughout the year, and same is undisputedly occupied for some part of the year, addition cannot be sustained. On the other hand, Ld DR Shri Manish Gupta relied on orders of Ld CIT (Appeals).



9. We have considered the rival submissions and perused the record carefully. We have gone through impugned orders of Ld CIT(A) carefully. After giving considerable thought to the issues posed before us, we find merit in the submissions of Ld AR which deserves to be accepted. We are of the opinion that addition for low house hold withdrawals is purely based on surmises and conjectures and accordingly deserves to be deleted. No evidence is found that any household expenditure is incurred but not recorded by assessee. The assessee is staying in family and withdrawal for household expenses by family is not found to be less than standard expenses. The assessee is not found to be incurring expenses for family. Therefore merely on estimate, no addition is sustainable.

10. Further as regards addition for stamp paper, on basis of human probability and surrounding circumstances, we find that assessee lady has capacity to invest Rs 30,000 from past savings. Therefore this addition is deleted.

11. As regards addition for Rs. 150,000 on account of housing loan interest u/s 24(b), we find that the condition germane for the same is that the concerned house should be self occupied. In the instant case, no material is brought on record to dislodge the assessee's contention that same is ~~not~~ self occupied and merely because assessee lady at the time of search was found

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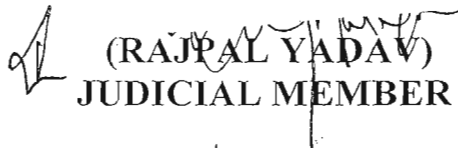
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at other premises cannot be a ground to disallow assessee's claim. Therefore this addition is deleted.

12. As regards addition for Rs 70,000 on account of gift from husband, we find merit in assessee's submission that same stands exempted from taxation under the provisions of section 56(2)(v) of the Income Tax Act. The gift is genuine in nature for being given by husband earning handsome income from own business. We therefore delete this addition also.

13. In result all the appeals of the assessee are allowed.

Pronounced in the open court on 20th November, 2009.

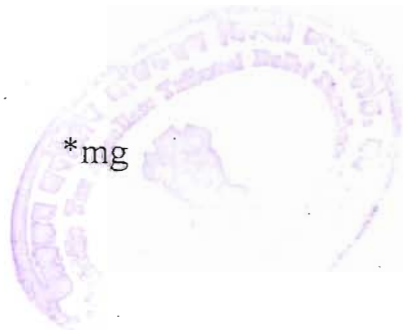

(RAJPAL YADAV)
JUDICIAL MEMBER


(DEEPAK R. SHAH)
ACCOUNTANT MEMBER

Dated: 20th November, 2009.

Copy of the order forwarded to:-

1. Appellant *By Hand*
2. Respondent
3. CIT
4. CIT(A)
5. DR



By Order

Deputy Registrar, ITAT.

Assistant Registrar
आयकर अपीलारीय अधिकारी
Income Tax Appellate Tribunal
दिल्ली क्षेत्र, नई दिल्ली
Delhi Division, New Delhi