

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.724/Chd/2016
(Assessment Year : 2003-04)

Sh.Bimal Jain Prop.
M/s Magic Paint Industries,
Indra Market Gill Road,
Ludhiana.

Vs.

The A.C.I.T.,
Central Circle-I,
Ludhiana.

PAN: AAZPJ9730H

(Appellant)

(Respondent)

Appellant by : Bimal Jain
Respondent by : Shri Bhim Singh, DR

Date of hearing : 03.11.2016
Date of Pronouncement : 04.11.2016

ORDER

PER ANNAPURNA GUPTA, A.M. :

This appeal filed by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-5, Ludhiana dated 16.3.2016 relating to assessment year 2003-04.

2. The assessee has raised the following ground of appeal :

“1. In the facts and circumstances of the case the learned CIT(A) has wrongly confirmed the addition of Rs.1,05,000 made on account of unexplained marriage expenses.”

3. The only issue in the present appeal is regarding the addition of Rs.1,05,000/- made on account of unexplained marriage expenses.

4. Brief facts relating to the issue are that search under section 132 of the Income Tax Act, 1961 (in short 'the Act') was conducted at the residential premises of the assessee on 12.10.2006. During the course of search, the statement of the assessee was recorded in which question Nos.22 to 24 were asked regarding academic qualification of the daughters and their marriages. Due reply was given by the assessee in which he stated that his elder daughter got married in 2002, while the younger one got married in 2006. The assessee also submitted that both were professionally qualified, the elder one being a software engineer and the younger one a doctor. The assessee also gave details of the marriages of both the daughters, the venue where the marriage took place and the approximate amount spent on the marriages of both the daughters being Rs.2 lacs each.

5. During the course of appellate proceedings, the assessee was specifically asked to furnish the details of the total expenses incurred on the marriage of his elder daughter, in response to which the assessee stated that the marriage was performed on 9.10.2002 and the total expenses incurred was

Rs.3,26,000/-, the source of which was detailed as under :

Rs.60,000/-	Shri Bimal Jain
Rs.35,000/-	Smt. Krishana Jain(mother)
Rs.31,000/-	Brothers of mother
Rs.1,00,000/-	Gift by Sh.S.P.Bansal
<u>Rs.1,00,000/-</u>	Shaguns by friends & relatives
<u>Rs.3,26,000/-</u>	

6. Regarding gift from Shri S.P. Bansal, the assessee produced copy of affidavit dated 18.12.2008. The assessee further stated that his financial condition was not good due to close of coal business and paint business too was at its initial stage. The Assessing Officer rejected the contention of the assessee stating that it was not believable that the assessee family had incurred only Rs.95,000/- on the marriage, while the rest was incurred by his relatives. The Assessing Officer also referred to various slips and documents i.e. A-24, found during search with regard to the marriage expenses incurred and held that in view of the same the expenses claimed to have been incurred by the assessee is estimated to Rs.2 lacs as against Rs.95,000/- claimed by the assessee. Accordingly, the addition of Rs.1,05,000/- was made to the income of the assessee, as expenditure out of undisclosed sources under section 69C of the Act.

7. Aggrieved by the same, the assessee preferred an appeal before the Ld. CIT (Appeals) who upheld the order of the Assessing Officer holding that the

Assessing Officer has mentioned basis of estimating the expenses as the documents seized during the course of search, which were confronted to the assessee and also the status of the family and, therefore, the estimation appeared to be reasonable. The Ld. CIT (Appeals) also held that the assessee submitted no proof of expenses incurred by the relatives and shaguns, etc. received in cash. He, therefore, confirmed the addition made by the Assessing Officer on this account.

8. Aggrieved by the same, the assessee preferred the present appeal before us. During the course of hearing, the learned counsel for the assessee pointed out that the issue of expenses incurred on the marriage of the daughters of the assessee was dealt with by the I.T.A.T., Chandigarh Bench in the case of the assessee relating to assessment year 2006-07 in ITA No.630/Chd/2016 dated 8.7.2016, wherein the issue of expenses incurred on the marriage of younger daughter was dealt with. The learned counsel for the assessee pointed out that in that year also the Assessing Officer had estimated the expenditure incurred by the assessee which was deleted by the Tribunal. The learned counsel for the assessee stated that the issue is squarely covered by the order of the I.T.A.T. in the case of the assessee for assessment

year 2006-07 and accordingly, pleaded for necessary relief in this regard.

9. The Ld. DR, on the other hand, relied upon the order of the lower authorities.

10. We have heard rival contentions and perused the orders of the authorities below as also the documents and orders referred to before us. On perusal of the order of the I.T.A.T. in the case of the assessee for assessment year 2006-07 in ITA No.630/Chd/2016 we find that the issue of addition made under section 69C of the Act on account of marriage expenses incurred on the marriage of the younger daughter of the assessee in the year 2006 was dealt with. The Hon'ble I.T.A.T. vide its order dated 8.7.2016 had deleted the addition made by holding that the basis of the addition was the slips found during the course of search, one of which related to assessment year 2005, while the other carried no date. The I.T.A.T. held that the total of the expenses as per the documents found amounted to Rs.4,92,790/-. The I.T.A.T. further held that undisputedly, the assessee had solemnized the marriage of his two daughters, one in 2002 and other 2006. The I.T.A.T. further held that the total expenses shown by the assessee in both the marriages amounted to Rs.7,27,000/- i.e. Rs.3,26,000/- in assessment year 2003-04 on the marriage of elder daughter and Rs.4,01,000/- on the

marriage of younger daughter in assessment year 2006-07. It was further held that the expenses shown by the assessee were more than that revealed by the seized papers and, therefore, the explanation of the assessee was acceptable. Further, it was held that the Assessing Officer had given no basis for estimating the expenses incurred over and above that shown by the assessee and that it was merely on the basis of presumption of the Assessing Officer. The addition made was, therefore, deleted in the absence of any specific material found against the assessee and in the absence of any basis for estimating the expenses incurred. The relevant findings of the I.T.A.T. at paras 5 to 7 of the order are as under :

5. After considering rival contentions, I do not find any justification for making addition of Rs. 1 lac in the hands of the assessee on account of unexplained marriage expenses. The Assessing Officer has specifically mentioned that as per annexure A-24, marriage expenses relating to the year 2005 were found to be Rs. 1,33,446/- while there are slips which did not carry the date and the total of these work out to Rs. 3,59,344/-.

6. The assessee submitted before ld. CIT(Appeals) that marriages of the daughters of the assessee were held in the previous year relating to assessment year 2003-04 and 2006-07. It was also pleaded that assessee had already shown total marriage expenses of Rs. 7,27,000/- i.e. Rs. 3,26,000/- in assessment year 2003-04 and Rs. 4.01.000/- in assessment

year 2006-07. Therefore, the marriage expenses as per seized document are less than the expenses shown by the assessee in two years on the marriage of daughters of the assessee. The submissions of the assessee have not been rebutted by the authorities below in any manner. The claim of the assessee was, thus, specific that when assessee performed marriage of his two daughters in two different years, marriage expenses of Rs. 7,27,000/- were spent in two marriages, however, as per seized papers, the total of the same marriage expenses were considered by the authorities below in a sum of Rs. 4,92,790/-. The contention of the assessee is supported by the fact that in some of the seized papers, assessment year under reference was mentioned but in majority of the seized paper, no date was mentioned. Therefore, explanation of the assessee is acceptable to the extent that addition is wholly unjustified. Further, the Assessing Officer has not given any basis as to how he has estimated Rs. 1 lac more expenses alleged to have been spent by assessee in the marriage of his second daughter. It is the presumption of the Assessing Officer that undated seized paper belongs to marriage expenses of his second daughter. The totality of the marriage expenses of both daughters have not been considered, so on presumption, such addition could not be made.

7. In the absence of any specific material found against the assessee and in the absence of any basis for estimating addition of Rs. 1 lac, I am of the view the addition of Rs. 1 lac is wholly unjustified. I, accordingly, set aside the orders of the authorities below and delete the addition of Rs. 1 lac on account of unexplained marriage

expenses. Further, the assessee made alternate claim that addition of Rs. 1 lac may be set off against additional income surrendered of Rs. 1 lac in the return of income. Since the addition on account of marriage expenses has been deleted, therefore, the alternate contention of the assessee has become infructuous and need no further adjudication.

11. It is evident from the above that the issue of expenses incurred on the marriage of the elder daughter in the impugned year was also covered in the order of the I.T.A.T. for assessment year 2006-07 and we further find that the addition made in the impugned case is identical to that in assessment year 2006-07 having been made in the absence of any specific material found against the assessee and being a mere estimation of expenses incurred. The Assessing Officer we find has relied upon very same documents i.e. Annexure A-24, which was relied upon in the case of the assessee for assessment year 2006-07 also for holding that the assessee had incurred more than the declared expenditure on the marriage of elder daughter. In view of the specific finding of the I.T.A.T. in this regard that one of the documents found during search relating to marriage expenses was related to the year 2005 while the others were undated and further in view of the fact that the assessee had solemnized marriage of two daughters, one in the year 2002 and other in the year 2006 and total of the

expenses claimed to have been claimed by the assessee on the two marriages being more than that found as per the seized documents, there was no case for making any addition at all. Moreover, in the present case also, we find that the Assessing Officer had estimated expenses incurred over and above that shown by the assessee without any basis at all. We, therefore, hold that the decision of the I.T.A.T. rendered in the case of the assessee in ITA No.632/Chd/2016 (supra), on the identical issue, squarely applies in the present case also, following which we delete the addition made.

12. In the result, the appeal of the assessee is allowed.[]

Order pronounced in the open court.

Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 4th November, 2016

Rati

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,
ITAT, Chandigarh