

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 4872/Del/2015

AY: 2009-10

ACIT, Circle – 6(2) Room No.390 C.R. Building New Delhi	vs.	Crayons Advertising Ltd. NSIC Complex, Maa Anandmaye Marg Okhla Industrial Estate Phase III New Delhi 110 020 PAN: AAACC1063C
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Cross Objection No.487/Del/15

(In ITA No. 4872/Del/2015)

AY: 2009-10

Crayons Advertising Ltd. New Delhi 110 020	Vs.	ACIT, Circle – 6(2) Room No.390 C.R.Building New Delhi
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(Appellant)

(Respondent)

Department by : Sh. Surender Pal, Sr. D.R.

Assessee by : Sh. Gautam Jain, Adv.

Date of Hearing : 08/11/2018

Date of Pronouncement: 27/11/2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by revenue and Cross Objection by assessee against order dated 31/03/15 passed by Ld. CIT (A)-2 for Assessment Year 2009-10 on following grounds of appeal:

ITA No. 4872/Del/15

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.2,31,00,000/- made u/s 68 of Income Tax Act, 1961 ignoring the fact that the assessee company failed to file the confirmations despite the opportunities.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.25,00,000/- made by the AO against the cash receipts for sale of car ignoring the facts that the car was not registered in the name of company.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.62,52,198/- on account of difference in receipts ignoring the fact that the assessee company failed to reconcile the difference between the declared receipts and— gross receipts.*
4. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

CO No. 487/Del/2015

- 1 *That learned Assistant Commissioner of Income Tax, Circle-3(1), New Delhi has grossly erred both in law and on facts in determining total income of the appellant company at Rs. 9,57,29,480/- as against returned income of the appellant company at Rs. 6,38,77,280/- in an order of assessment under section 143(3) of the Act dated 30.12.2011.*

2 That the learned Assistant Commissioner of Income Tax has erred both in law and on facts in making an addition of Rs. 2,56,00,000/- representing alleged unexplained cash deposits in the bank account of the appellant company by invoking section 68 of the Act.

2.1 That the learned Assistant Commissioner of Income Tax has failed to appreciate that cash deposits aggregating to Rs. 2,31,00,000/- represented advertising receipt of the appellant company for providing advertising services which had been duly declared as income and were supported by necessary bills and vouchers and, therefore could not held to be unexplained cash credit u/s 68 of the Act.

2.2 That furthermore the learned Assistant Commissioner of Income Tax has failed to appreciate sum of Rs. 25,00,000/- represented receipts against sale of car and as such had been reduced from the block of assets and have could not have been brought to tax u/s 68 of the Act.

2.3 That addition has been made mechanically, arbitrarily in disregard of the facts and position of the law and therefore untenable. In fact, it is a case of double taxation which is not permissible, as has been held by the Apex Court in the case of *Laxmipat Singhania vs. CIT* reported in 72 ITR 291 and thus, addition made is invalid.

2.4 That various adverse findings recorded in the order of assessment are contrary to facts and law and, have been recorded

without granting any opportunity much less valid and proper opportunity and therefore, vitiated, untenable and, unsustainable.

2.5 That further finding that “since the identity of the person who deposited cash with the assessee has not been established by way of the exercise carried out, it is held that the assessee was not able to establish the identity of the persons which is one of the primary conditions on the part of the assessee” and “the assessee company was required to prove the creditworthiness and genuineness of the transactions in order to discharge the onus u/s 68 of the Act which it has failed to do” overlooks the facts, contrary to law, is highly misconceived and, misplaced.

3. That the Ld.ACIT has erred both in law and on facts in making addition of Rs.62,52,198/- representing alleged undisclosed receipts by appellant company.

3.1. That while making the aforesaid addition by the Ld.ACIT has proceeded on arbitrarily calculation and assumptions contrary to facts and therefore, untenable.

4. That the impugned assessment has been made by Ld.ACIT without granting any fair and proper opportunity of being heard and the same is contrary to principles of natural justice.

The respondent craves, to consider each of the above grounds of Cross Objections without prejudice to each other and craves, leave to add, alter, delete or modify all or any of the above grounds of cross objections.”

2. Brief facts of the case are as under:

Assessee filed its return of income on 26/09/09, declaring income of Rs.6,38,77,280/-. Return was processed under section 143 (1) of the Income Tax Act, 1961 (the Act), subsequently notices under section 143(2) was issued along with notice under section 143(1) and questionnaire. In response to statutory notices, representative of assessee appeared before Ld.AO and filed necessary details.

3. Ld.AO observed that assessee is engaged in business of advertising i.e. Print Media and Visual Media, as well as in event management, Ad film production, public relation services etc.

4. During assessment proceedings, Ld.AO observed that, certain cash transaction amounting to Rs.2,30,00,000/- was appearing in bank account of assessee. Apart from that, cash was introduced in cash book of assessee, amounting to Rs.2,60,00,000/-. Assessee was accordingly called upon to explain cash deposited in bank, and credited in cash book. Assessee was also required to prove identity, genuineness and creditworthiness within section 68 of the Act. Assessee vide reply dated 16/12/11 furnished copies of accounts of parties, which contained details of billing made on account of advertising services, provided by assessee and payments received against those invoices. On perusal of submissions advanced by assessee, Ld. AO held that, assessee could not prove creditworthiness and genuineness of transaction, in order to discharge complete onus under section 68 of the Act. Ld. AO accordingly made addition of Rs.2,56,00,000/-under section 68 of the Act.

5. Assessee was also required to explain reasons for gross receipt, shown in P&L account and billing amount. In response, it was submitted that service tax was included in gross receipts as per billing amount, and accordingly assessee furnished details of service tax branch-wise. Ld. AO after perusal of details filed, held that assessee disclosed less receipts by Rs.62,52,198/-. Accordingly addition of such amount was made in hands of assessee.

6. Aggrieved by order of Ld.AO, assessee preferred appeal before Ld.CIT(A). Before the Ld.CIT(A) assessee filed additional evidences under rule 46A which was forwarded to Ld.AO for his remand report. Ld.CIT (A) has recorded that remand report was obtained after a period of 2 years. Upon considering remand report, Ld.CIT(A) recorded that Assessing Officer has sought necessary clarifications from assessee vide replies dated 15/10/10 and 20/10/10. Ld.CIT(A) thus concluded that, entire evidence has been considered by Ld.AO, which were duly examined by him. Ld.CIT(A) also observed in remand report that there was no specific objections raised, so far as to warrant non-consideration of any specific evidence relied upon by assessee, and Ld.AO has also not highlighted any evidence, which has not been placed on record, but not examined by him in remand proceedings.

7. Ld.CIT(A) on appreciation of remand report, as well as submissions advanced by assessee, deleted addition made by Ld.AO.

8. Aggrieved by order of Ld.CIT (A), revenue is in appeal before us now.

9. Ground No.1 raised by revenue is in respect of addition amounting to Rs.2,31,00,000/- made under section 68 of the Act being deleted.

10. Ld.Sr.DR submitted that assessee has not been able to establish source of cash received on 01.09.2009 amounting to Rs. 1,00,000/- and on 20/07/08 amounting to Rs. 25,00,000/-. He submitted that explanation given by assessee regarding purchase of old car during financial year 2006-07 for a sum of Rs.34,85,385/- and subsequent sale during year under consideration cannot be accepted. He submitted that assessee failed to prove identity of cash transaction. He placed reliance upon orders of Ld. AO in support of his arguments.

11. On the contrary, Ld.Counsel submitted that Rs. 25 lakhs represents cash credit in books of account on sale of car. It was submitted that assessee purchased car for Rs.34,85,395/- during financial year 2006-07 and written down value of said car during year of purchase was Rs.25,02,04/-. The said car was sold during the year under consideration for a sum of Rs. 25 lakhs. He submitted that confirmation copy dated 20/07/08 of purchase of car has been submitted to authorities below. Ld.AR further submitted that, assessee computed WDV of car from fixed assets and claimed depreciation on it, which has been allowed by Ld.AO in preceding Assessment Years. He thus submitted that no doubt can be raised on sale of car during year under consideration.

12. We have perused submissions advanced by both sides in the light of records placed before us.

13. Ld.CIT(A) while analysing the issue observed that addition relates to cash deposits aggregating to Rs.2,30,00,000/- in bank account and Rs.26,00,000/- in cash book break-up of which is as under:

Sl. No.	Particulars	Amount- Rs.	Date
i.	Cash deposits in bank account	30,00,000	5.1.2009
		50,00,000	5.3.2009
		50,00,000	6.3.2009
		75,00,000	28.3.2009
		25,00,000	30.3.2009
	Total:	2,30,00,000	
ii)	Cash Deposit in books of accounts	25,00,000	20.07.2009
		1,00,000	01.01.2009
	Total:	26,00,000	
iii)	Total	2,56,00,000	

He submitted that out of aforesaid cash deposit amounting to Rs.2,31,00,000/- in bank account, same has been declared in income for year under consideration. It has been observed as submitted by Ld. Counsel that invoices in respect of each parties from whom amount has been received by assessee is placed on record and verified by authorities below. It is also observed that Service Tax/TDS has been deducted in respect of payments received. Ld.AO neither in assessment order nor in remand report rebutted the above submissions. It was only for the reason that no confirmations were filed in respect of parties from whom said sum was received, Ld.AO made addition in hands of assessee under section 68, as unexplained cash deposits. Ld.CIT(A) has observed that, said amount has either been declared as income in hands of

assessee for year under consideration, or in Assessment Year 2010-11, as has been observed by him from orders passed under section 143 (3) of the Act.

13.1. Ld. CIT (A) while deleting addition observed as under:
“6.4. Having regard to the above judicial position, it is evident that once the appellant had declared the said cash deposits as part of its total/gross income, which fact has not been disputed by A.O., then such sum could not be added again u/s 68 of the Act. Moreover, there is no evidence on record, which may prove that the appellant had ever given cash for receiving remittances against invoices raised by it. It was submitted that once the invoices and addresses of the parties were furnished & because payments were received both through account payee cheques and cash, burden of the appellant could be said to have been validly discharged. The A.O. was required to bring on record that the evidence furnished by the appellant with regard to rendering of services to clients was not genuine. He ought to have conducted enquiries to enable himself to arrive at the conclusion that the transactions were not genuine without merely doubting such transactions. Having regard to the above, addition made to the extent of Rs.2,31,00,000/- is deleted.”

13.2. We do not find any infirmity in aforestated observations of Ld.CIT(A) and more so when Ld.AO during remand proceedings has not challenged authenticity/veracity of documents filed by assessee, which was verified by him. It is further pertinent to note that assessee declared said sum as its income and there was full disclosure of such sum as has been

recorded by Ld. CIT(A). We therefore do not find any infirmity in decision of Ld. CIT(A) in respect of cash found deposited in bank account amounting to Rs. 2,30,00,000/-.

14. Accordingly this ground raised by revenue stands dismissed.

15. Ground No. 2 is in respect of the addition amounting to Rs. 25 lakhs deleted by Ld.CIT(A) against cash receipts for sale of car.

15.1. Both parties before us argued upon this issue while arguing Ground No. 1 hereinabove.

16. We have perused submissions advanced by both sides in light of records placed before us.

17. It is observed from order passed by Ld.CIT(A) that assessee claimed depreciation of Rs.90,55,990/-, out of which Rs.17,98,023/- relates to depreciation on motor car. Ld.CIT(A) records that depreciation as claimed, stands allowed after reducing said sale of car. The assessee in support of sale produced cash receipt and confirmation before authorities below. Ld.CIT(A) further records that Ld.A.O. during remand proceedings made enquiries with Motor Licensing Officer who has furnished copy of vehicle particulars, wherein name of owner has been mentioned as M/s. History Logistics, which leads to conclusion that, vehicle was originally registered in name of M/s. History Logistics since 08/02/2005. It is further observed from therein that, no change of name in ownership of car has been recorded. Upon a query raised by Ld.AO, proprietor of M/s. History Logistics submitted that, he purchased car being (Porsche Cayenne) and took delivery of the

same, from assessee, against which payment of Rs. 25 lakhs was made to assessee.

18. Brief facts regarding sale of car as submitted by Ld.Counsel is that: Assessee purchased the car for Rs.34,85,395/-during financial year 2006-07 and had written down value of said car at beginning of said financial year at Rs.25,02,044/-. The seller provided assessee with all requisite documents at the time of purchase, and assessee applied for registration of said car in its favour with appropriate authority. It has been submitted that assessee was not aware about antecedents of seller M/s History Logistics and therefore there was no reason to believe regarding any legal issue regarding transfer of car. Subsequently transfer of car was refused to assessee in its name by registering authorities as seller had committed some customs duty violation and was facing enquiries/personal proceedings. It was submitted that Assessee realised that seller imported number of cars and sold to various persons but due to his Customs violation Government Authorities imposed blanket ban on transfer of all cars imported by M/s History Logistics. It is submitted by Ld.Counsel that to save itself from unnecessary legal hurdles, assessee resold car back to M/s History Logistics, as it had no other option because car's ownership was not getting transferred.

18.1. Ld. CIT (A) while deciding this issue observed as under:
"6.8. It was also explained in the remand proceedings that the appellant company had purchased a car for Rs. 34,85,395/- from M/s History Logistics (Prop. Mr. Sanjay Bhandari) in F.Y. 2006-07

relevant to A.Y. 2007-08 and written down value of the said car at the beginning of the instant financial year was Rs. 25,02,044/-. It was explained that the seller had provided the company all requisite documents at the time of purchase of the car and the appellant applied for registration of the said car in its favour with the appropriate authority. However the transfer of car in favor of the appellant company was refused by the registering authorities as the seller had committed some custom duty violations and the government authorities imposed blanket ban on transfer of all cars imported by the said seller M/s History Logistics. Thus to save itself from unnecessary legal hurdles the appellant company sold the car back to M/s History Logistics. The appellant also placed following evidences on record:-

- “i) Copy of Customs certificate dated 14-02-2007 evidencing import of Car by M/s History Logistics in the year 2005 (page 307 of paper book)
- ii) Copy of Form No. 29 and 30 duly signed by M/s History Logistics in favour of M/s Crayons Advertising Limited evidencing sale of car to the appellant by History Logistics (page 308 to 309 of paper book)
- iii) Copy of Registration Certificate of Car (page 311 of paper book)
- iv) Copy of Ledger Account of the car in question in the books of the appellant (page 70 of Paper Book)

6.9. From the aforesaid it is apparent that both purchase and sale of car was from one person, namely, Shri Sanjay Bhandari, Prop. History Logistics. Thus the mere fact that RC was still in the name of

History Logistics cannot be a ground to reject the contention of the appellant particularly when sale of car and depreciation thereon stood accepted in the order of assessment. Accordingly addition made of Rs.25,00,000/- is also deleted. Ground nos. 2 to 2.5 of the appeal are accordingly allowed.”

19. We have perused entire details submitted by assessee before authorities below and arguments advanced by Ld.Counsel, observations made by Ld.AO as well as Ld.CIT(A) regarding this issue.

19.1. Main contention advanced by Ld.Counsel is that, during interregnum period, from date of alleged purchase of car during financial year 2006-07 till sale of car during financial year relevant to assessment year under consideration, undisputedly, assessee has been granted depreciation by Ld.AO. It is thus contended by Ld. Counsel that, once Ld.AO admitted purchase of said car thereby allowed depreciation claimed during preceding assessment years, he cannot dispute sale of car to M/s History Logistics in year under consideration, when all necessary details regarding sale of car and reason for sale to same person from whom it was purchased has been submitted by assessee along with confirmation from proprietor of M/s History Logistics.

19.2. On deliberating on facts, at this juncture, we do not think, Ld.AO has any right to interfere with genuineness of transaction now. We observe that Ld.AO grossly erred in accepting purchase of car, in the year of purchase thereby granting depreciation on it during preceding years, and it is merely impossible to rectify this

error in the year under consideration, when sale occurred. In our considered opinion Ld.A.O. during year under consideration, cannot improve upon error committed by not verifying transaction of purchase of car during financial year 2006-07.

19.3. We have no option but to uphold observations of Ld.CIT (A).

20. Accordingly, this ground raised by revenue stands dismissed.

21. Ground No. 3 is in respect of addition of Rs.62,52,198/-, being deleted by Ld.CIT (A).

22. Ld.Sr.DR submitted that assessee was required to furnish details of bills raised for advertising services. From details filed, it was observed by Ld.AO that billing amount of Rs.1,52,16,35,741/-, was later on corrected to Rs.1,39,04,40,325/-. He submitted that assessee when called upon to explain difference in gross receipts shown in P&L account and billing amount, it was submitted that, service tax amount was included in gross receipt. Assessee was accordingly called upon to furnish details of service tax amount. Ld.Sr.DR submitted that even after considering explanation offered by assessee, and taking into consideration service tax expenses included in gross receipt, there has been understatement of gross receipts to the extent of Rs.62,52,198/-.

23. On the contrary Ld.Counsel placed heavy reliance upon reconciliation statement filed before Ld.CIT(A) which was sent to Ld. AO for remand. He relied upon specific observation of Ld. AO in remand report, which is reproduced in impugned order at page 26 which reads as under:

“although the assessee company has explained the figures in written submission, but has failed to substantiate the statement and has not explained the reason as to why this exploration could not be given during the course of assessment proceedings. The assessee wide letter dated 15/10/14 has claimed that he has received rental income amounting to Rs. 45 Lacs which has been included in gross billing but no rental income/income from house property has been declared. Hence the reconciliation furnished by assessee company cannot be accepted or relied upon since it has not been supported by relevant documents.”

23.1. In reply to above reproduced observation by Ld.CIT(A) regarding rental income, Ld.Counsel submitted that rental income was not separately offered as part of house property, instead it was offered as business income as part of gross receipts, because it is income earned in course of business.

23.2. He thus placed heavy reliance upon submissions offered by assessee before Ld.CIT(A) and specific observations of Ld.CIT(A) in support of his arguments.

24. We have perused submissions advanced by both sides in light of records placed before us.

25. It is observed that, Ld.CIT(A) deleted addition by observing as under:

“8. I have perused the order of assessment, submissions made by the appellant, remand report of the A.O. and rejoinder submission along with material placed on record. It is noted that in the profit and loss account the appellant declared receipts of Rs.132,93,17,636.42

and gross advertising revenue has been declared at Rs.139,04,40,325/- which has been reconciled in the manner hereunder.

S.No.	Particulars	Amount (Rs.)
i)	Gross receipts	139,04,40,325/-
ii)	Less: Service Tax	5,48,57,729/-
iii)	Less: Deduction	1,23,24,471/-
iv)	Balance	132,32,58,125/-
v)	Add: Accrual receipts	60,59,512/-
	Total:	132,93,17,637/-

8.1. 8.1 The AO in the remand report has not disputed any of the factual claims made by the appellant other than to state that no explanation has been given for not furnishing the same during the assessment proceedings. This objection is without merit. The appellant has explained that the difference between the declared receipts and gross receipts is on account of accrued receipts which have been offered as income in the instant year but the bills for which were issued in the succeeding year and this stand accepted in the assessment framed for A.Y. 2010-11. The basic issue which remains is of the deduction claimed by the appellant of Rs. 1,23,24,471/-. The appellant has provided branch wise client wise list on account of discount allowed to the clients or deductions made by the clients other than a sum of Rs. 45,00,000/- which represents rental income. The AO has not disputed the discounts/deductions but vis-a- vis rental income he has observed that the same cannot be accepted since it has not been supported by the relevant documents. However, I find that a copy of the agreement with M/s Mega Corporation Ltd. has been furnished in the Paper Book. The appellant

has also enclosed copy of ledger account of rental income as part of the Paper Book. Thus, it is seen that during the instant year appellant had incurred an expenditure on rent of Rs. 1,33,63,632/- out of which Rs. 45,00,000/- was recovered from M/s Mega Corporation Ltd. and the appellant had claimed net expenditure on rent of Rs. 88,63,632/-. Thus once the AO has allowed deduction of rent at Rs. 88,63,632/- there remains no basis to suggest that such rental income should not be reduced from the gross receipt, as the same was netted separately from rental expenses. Having regard to the above, the addition made of Rs. 62,52,198/- is deleted and these grounds raised by the appellant are allowed.

26. We have perused remand report reproduced in impugned order. We agree with Ld.CIT(A) that Ld.AO, has not disputed claim made by assessee, other than to state that no details/explanation was furnished during assessment proceedings. We agree with Ld.CIT(A) that this objection is without any merit. From assessment order, it is apparently clear that assessee had explained difference between declared receipt and offered receipt for taxation on account of accrual basis during year under consideration, whereas the bills in respect of these receipts were issued in succeeding assessment year and has been accepted by Ld.AO, while framing assessment for assessment year 2008-09.

26.1. We therefore do not find any infirmity in observations of Ld.CIT (A) and the same is upheld.

27. Accordingly this ground raised by revenue stands dismissed.

28. As we have dismissed the appeal filed by revenue, the Cross Objection filed by assessee becomes infructuous.

29. In the result appeal filed by revenue and cross objection filed by assessee stands dismissed.

Order pronounced in the Open Court on 27th November, 2018.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 27th November, 2018

- gmv

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	Date
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Draft discussed/approved by Second Member.	
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