

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

IT(SS)Nos.310 to 313/Ind/2017
Assessment Years 2010-11 to 2013-14

Shri Vivek Chouhan, 25-26, Walmi Road New Friends Colony Chuna Bhatti, Bhopal	Vs.	ACIT-(Central) II Bhopal
(Appellant)		(Respondent)
PAN No.ACWPC4065B		

ITA No.829/Ind/2017
Assessment Year 2014-15

Shri Vivek Chouhan, 25-26, Walmi Road New Friends Colony Chuna Bhatti, Bhopal	Vs.	ACIT-(Central) II Bhopal
(Appellant)		(Respondent)
PAN No.ACWPC4065B		

ITA No.833/Ind/2017
Assessment Year 2014-15

Jyotsana Chouhan 25-26, Walmi Road New Friends Colony Chuna Bhatti, Bhopal	Vs.	ACIT-(Central) II Bhopal
(Appellant)		(Respondent)
PAN No.ALPPC3551Q		

IT(SS)Nos.314 to 317 /Ind/2017
Assessment Years 2010-11 to 2013-14

Shri Vineet Chouhan, 25-26, Walmi Road New Friends Colony Chuna Bhatti, Bhopal	Vs.	ACIT-(Central) II Bhopal
(Appellant)		(Respondent)
PAN No. ACSPC 2560 M		

ITA No.830/Ind/2017
Assessment Year 2014-15

Shri Vineet Chouhan, 25-26, Walmi Road New Friends Colony Chuna Bhatti, Bhopal	Vs.	ACIT-(Central) II Bhopal
(Appellant)		(Respondent)
PAN No.ACSPC 2560 M		

For assesseees	Shri S.S. Deshpande, CA
For Department	Smt. Ashima Gupta, CIT-DR
Date of Hearing	26.03.2019
Date of Pronouncement	28.03.2019

ORDER

PER BENCH:

These appeals by the above assesseees are directed against different orders of the CIT(A)-3 Bhopal dated 27.07.2017, 25.07.2017 & 28.7.2017, respectively, pertaining to the above assessment years. This group of appeals is taken up for hearing together for the sake of convenience. First we take up assessee's appeal in case of Vivek Chouhan being lead case as both the parties submitted that similar facts and circumstances are involved in these group appeals. These appeals are time barred by 76 days. The ld. Counsel for the assessee contended that the assesseees sent the appeal papers through chartered bus to Mr. S.S. Deshpande but, the telephone number was incorrectly recorded on the delivery slip by the bus co. and for this reason, the appeal papers

could not be received on time. Subsequently, the bus co. had called the office of the local Counsel, who has sent the appeal papers, and after receipt of such information, follow up was made and the appeal papers were delivered to the office of Mr. S.S. Deshpande and then the appeals could be filed. On the other hand, ld. CIT/DR opposed the submission of the ld. Counsel for the assessee. After considering rival submissions, we find that the assesseees have filed applications for condonation of delay in filing the appeals along with the affidavit. We are of the view that assessee was not at fault for the delay, therefore, in the interest of justice, we condone the delay in filing the appeals.

2. The brief facts of the case as per assessment order are that a search u/s 132 of the IT Act, 1961 was conducted on the residential premises of the appellant assessee as well as on the premises of other related concerns/business associates on 29.01.2014. Since, the various concerns and individuals are inter-connected and have business associations, they have been put together under one common name. "Signature Group". The assessee is an individual and having business income, rental income and

other sources. Consequently, notices u/s 153A of the I.T. Act dated 12.09.2014 were issued to the assessee to file the returns of income. In response to notices u/s 153A, the appellant assessee has filed returns of income.

Issue No.1- Incriminating material

3. The assessee has taken first ground for A.Ys 2010-11 to 2013-14 with regard to sustaining the addition by the ld. CIT(A) holding that the AO was justified in making addition in the years where the assessment proceedings were not pending and no incriminating material was found during the course of search. The ld. counsel for the assessee submitted that since no incriminating material was found and seized during the course of search. Therefore, no addition is called for and assessment orders are null and void. Ld. CIT-DR vehemently opposed the submissions of the Ld. counsel for the assessee. After considering rival contentions and material available on record, we find that Ld. CIT(A) after perusal of the assessment order concluded that during search and seizure operations, books of accounts, document, loose papers etc. were seized. The seized documents and papers are the incriminating material on the basis of which additions have been made.

We, therefore, do not find any reason to interfere with the order of the Ld. CIT(A). Accordingly this issue is dismissed for A.Ys. 2010-11 to 2013-14.

Issue No.2- Unexplained Expenditure on foreign travel

4. The assessee has taken the grounds in respect of unexplained expenditure on foreign travel for A.Ys. 2010-11 to 2014-15. The AO made the additions on account of foreign tours undertaken by the assessee to various countries during the A.Ys. 2010-11 to 2014-15. The assessee submitted before the AO that the payments for tours undertaken for A.Y. 2012-13 to 2014-15 were made by assessee to the traveling agents. The AO did not accept the contention of the assessee on the ground that no supporting documentary evidences as payments made to the travel agents have been furnished. He further observed that the expenses shown by the assessee appears to be looked. Thus, the AO estimated the expenditure and made the additions of Rs.3,00,000/-, Rs.5,00,000/-, Rs. 4,97,175/-, Rs. 1,60,060/- & Rs.8,00,000/- u/s 69C, respectively for the A.Ys. 2010-11 to 2014-15.

5. Ld. counsel for the has reiterated the submission as

made before the authorities below and filed written synopsis. On the other hand, Ld. CIT-DR vehemently supported the orders of the authorities below.

6. We have heard both the parties and perused material available on record. We find that the AO has estimated unexplained expenditure on foreign tours undertaken by the assessee. Ld. counsel for the assessee has, during course of hearing, drew our attention to the various advertisements by the travel agents in respect of foreign tours offered by them. After considering totality of facts, we are of the view that it would serve the interest of justice if estimate by the AO is reduced to 50%. Therefore, the AO is directed to delete 50% of the additions i.e. Rs.3,00,000/-, Rs.5,00,000/-, Rs. 4,97,175/-, Rs. 1,60,060/- & Rs.8,00,000/- respectively for the A.Ys. 2010-11 to 2014-15 and rest are sustained in view of the fact that the assessee could not furnish any confirmation of the travel agents. Accordingly, this issue is partly allowed for A.Ys. 2010-11 to 2014-15.

Issue No.3- Unexplained investment in jewellery

7. In the assessment year 2014-15, the assessee has

challenged the order of Ld. CIT(A) on the ground that the Ld. CIT(A) erred in confirming that the AO was justified in holding that only 100grms of gold jewellery found with the assessee is explained out of the addition of Rs. 29,79,754/- made by the AO towards alleged unexplained investment in jewellery. During the course of search, 2936 gms gold ornaments were found at the residence, 643.30 gms gold ornaments were found in the bank locker and 3.733 kg silver utensils were found at the residence. The AO made the addition of 1045 gms plus 643 gms worth Rs.58,13,115/- on out of the total jewellery found in the room of the assessee and in the locker and Rs.59,59,508/- on account of silver utensils. The ld. CIT (A) allowed the deduction of 100 gms valued approximately at Rs.3,50,000/- in the hands of the assessee as per Board's Circular and maintained the balance addition.

8. Ld. counsel for the has reiterated the submission as made before the authorities below and filed written synopsis. On the other hand, Ld. CIT-DR vehemently supported the orders of the authorities below.

9. We have heard both the parties and perused the material available on record. We find that ld. CIT(A) has

given benefit of the Board's Circular. Ld. Counsel for the assessee contended that the addition made in the hands of individual i.e. assessee should not be sustained because assessee's family resides jointly with his two brothers and father. If the total jewellery is calculated as per the board's circular, the availability would be of 2500 gms. Assessee's brother Shri Vipin Chouhan has purchased jewellery of Rs.20 lacs through cheque which is estimated for 450 gms. Thus, the total jewellery of 2950 gms. stand explained whereas jewellery kept in locker belongs to his deceased mother who passed away on 26.9.2010 and the same was in the possession of the wife of the assessee for safe custody because she is the eldest daughter-in-law of the family. If this jewellery is considered then there would be no surplus. Looking to the rival submissions, we find that assessee was required to prove that jewellery was jointly held and since the jewellery have been recovered from the possession of the assessee, therefore, contention of the assessee could not be accepted. However, the contention of the assessee that apart from the jewellery covered by CBDT Circular, the assessee has certain jewellery where he has evidences of purchase of the same, this aspect requires verification at the level of the AO. Therefore, we deem it

appropriate to set aside the issue back to the file of the AO with direction to the assessee to furnish the requisite evidences in support of the claim and then the AO will decide the issue afresh in terms indicated hereinabove. Thus, this issue is allowed for statistical purposes only.

Issue No.4- Cash found

10. In the assessment year 2014-15, the assessee has challenged the order of Ld. CIT(A) on the ground that the Ld. CIT(A) erred in confirming the addition of Rs.2,95,333/- apportioning and treating the cash found during the course of search with the family as explained. The total cash found with all the family members was Rs.8,86,000/-. It was submitted that as per the cash book of the assessee, the cash is Rs.1,38,484/- and as per the cash book of the firm, the imprest cash balance with the brother of the assessee is Rs.9,30,000/-. Shri Vivek Chouhan is the partner in the firm and the cash of the firm was kept with him. However, the AO did not agree with the same and added one third cash in the hands of each one of the brothers. Thus, the AO made addition of Rs.2,95,333/- in hands of the present assessee. Ld. CIT(A) maintained the addition on the ground that the assessee failed to furnish the details of actual cash

and reconcile the same from the cash books.

11. Ld. counsel for the has reiterated the submission as made before the authorities below and filed written synopsis. On the other hand, Ld. CIT-DR vehemently supported the orders of the authorities below.

12. We have heard both the parties and perused the material available on record. We find that ld. Counsel for assessee has contended that the respective cash books have been seized and are verifiable and without verifying the same from the books, the additions are not justified. Considering the rival submissions, we are of the view that this aspect requires verification at the level of the AO. Therefore, we deem it appropriate to set aside the issue back to the file of the AO with direction to the AO to provide the copies of the required records to the assessee and then the AO will decide the issue afresh. The assessee is also directed to co-operate in this regard. Thus, this issue is allowed for statistical purposes only.

13. In result, the appeals of the assessee in case of Vivek Chouhan are partly allowed.

14 Now, we shall take the appeal in case of Smt. Jyotsana

Chouhan in I.T.A. No.833/ind/2017 for the assessment year 2014-15.

15 The assessee has raised the ground that Id. CIT(A) has erred in confirming the addition of Rs.29,79,754/- towards alleged unexplained investment in jewellery.

16. Both the parties submitted that facts and circumstances of this issue are identical to that of the case of Vivek Chouhan. Therefore, following the reason given in the case of Vivek Chouhan (supra), we deem it appropriate to set aside the issue back to the file of the AO with direction to the assessee to furnish the requisite evidences in support of the claim and then the AO will decide the issue afresh in terms indicated hereinabove. Thus, this issue is allowed for statistical purposes only.

17. In result, the appeal of the assessee is allowed for statistical purposes only.

18. Now, we shall take up the appeals in case of Vineet Chouhan in IT(SS)A Nos.314 to 317/Ind/2017 and I.T.A. No.830/Ind/2017 for the assessment years 2010-11 to 2014-15.

19. For the assessment years, 2010-11 to 2013-14, the assessee has taken first ground with regard to sustaining the addition by the ld. CIT(A) holding that the AO was justified in making addition in the years where the assessment proceedings were not pending and no incriminating material was found during the course of search. Both the parties submitted that facts and circumstances of this issue are identical to that of the case of Vivek Chouhan. Therefore, following the reason given in the case of Vivek Chouhan (supra), we do not find any reason to interfere with the order of the Ld. CIT(A). Accordingly this issue is dismissed for A.Ys. 2010-11 to 2013-14.

20. The assessee has taken the grounds in respect of unexplained expenditure on foreign travel for A.Ys. 2010-11 to 2014-15. The AO made the additions on account of foreign tours undertaken by the assessee to various countries during the A.Ys. 2010-11 to 2014-15. Both the parties submitted that facts and circumstances of this issue are identical to that of the case of Vivek Chouhan. Therefore, following the reason given in the case of Vivek Chouhan (supra), the AO is directed to delete 50% of the

additions for the A.Ys. 2010-11 to 2014-15 and rest are sustained in view of the fact that the assessee could not furnish any confirmation of the travel agents. Accordingly, this issue is partly allowed for A.Ys. 2010-11 to 2014-15.

21 In the assessment year 2014-15, the assessee has challenged the order of Ld. CIT(A) on the ground that the Ld. CIT(A) erred in confirming the addition of Rs.47,83,340/- on account of unexplained investment made in jewellery. Both the parties submitted that facts and circumstances of this issue are identical to that of the case of Vivek Chouhan. Therefore, following the reason given in the case of Vivek Chouhan (supra), we deem it appropriate to set aside the issue back to the file of the AO with direction to the assessee to furnish the requisite evidences in support of the claim and then the AO will decide the issue afresh in terms indicated hereinabove. Thus, this issue is allowed for statistical purposes only.

22. In the assessment year 2014-15, the assessee has challenged the order of Ld. CIT(A) on the ground that the Ld. CIT(A) erred in confirming the addition of Rs.2,95,333/- apportioning and treating the cash found during the course of search with the family as explained. Both the parties

submitted that facts and circumstances of this issue are identical to that of the case of Vivek Chouhan. Therefore, following the reason given in the case of Vivek Chouhan (supra), we deem it appropriate to set aside the issue back to the file of the AO with direction to the AO to provide the copies of the required records to the assessee and then the AO will decide the issue afresh. The assessee is also directed to co-operate in this regard. Thus, this issue is allowed for statistical purposes only.

Issue No.5 – Unexplained opening capital

23. The assessee has taken the ground that the ld. CIT(A) erred in holding that the AO was justified in making addition of Rs.1,04,44,784/- towards unexplained opening capital. Facts are that the assessee has earned capital gains and also profit from the partnership firm. The same have been disclosed in the returns filed earlier. No balance sheet was prepared in the earlier assessment years since the returns were filed on the presumption income u/s 44AD for the first time. The assessee prepared the balance sheet for the assessment year 2014-15. While preparing the balance sheet, the opening capital was shown at Rs.1,04,44,784/-. The AO asked to explain the justification

of the same. The assessee prepared the income chart based on the returns filed earlier to arrive at the quantum of the opening capital. However, the AO did not agree with the submission of the assessee and made the addition. Ld. CIT(A) confirmed the addition.

24. Ld. counsel for the has reiterated the submission as made before the authorities below and filed written synopsis. On the other hand, Ld. CIT-DR vehemently supported the orders of the authorities below.

25. We have heard both the parties and perused the material available on record. We find that the ld. Counsel for the assessee has claimed that all the details were furnished before the ld. CIT(A) but she did consider the same. Ld. Counsel for the assessee further submitted that opening balance is out of past savings of the assessee, investment in the partnership firms were verifiable from the books of accounts and bank balances were also verifiable. Therefore, we deem it appropriate to set aside the issue back to the file of the ld. C(IT(A) with direction to call for remand report from the AO on this issue and thereafter, the ld. CIT(A) would decide the issue afresh in terms indicated hereinabove. Thus, this issue is allowed for

statistical purposes only.

26. In result, the appeals of the assessee in case of Vineet Chouhan are partly allowed.

27. Finally, these group appeals filed by the above assesseees are partly allowed for statistical purposes.

This order was pronounced in the open Court on 28.03.2019.

Sd/-

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

(KULBHARAT)
JUDICIAL MEMBER

दिनांक /Dated : 28th March, 2019

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore