

**INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "C": NEW DELHI]**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
A N D
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. Nos. 838, 839, 840 & 841/Del/2011
(Assessment Years: 2003-04 TO 2005-06 & 2007-08)

Shri Gautam Kumar, B-101/102, Cosmopolitan Society, Plot No. 33, Sector 10, Dwarka, N. Delhi. PAN: AIJPK0403M	Vs.	ACIT, Central Circle : 12, New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Rajnish Aggarwal, C. A.; & Shri Sumit Kant, C. A.;
Department by:	Shri Najmi [CIT] – DR;
Date of Hearing :	05/08/2021
Date of pronouncement :	28/09/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. These are the four appeals filed by the same assessee for Assessment Year 2003-04, 2004-05, 2005-06 and 2007-08. Issues arising out of the common search, parties argued them together and therefore these are disposed of by this common order.

Assessment year 2003 – 04

2. ITA No. 838/Del/2011 is filed by the assessee for Assessment Year 2003-04 against the order of the Id CIT (A)-1, New Delhi dated 27.10.2016. the assessee has raised the solitary ground of addition of Rs. 1,85,000/- in the hands of the assessee.
3. The brief facts of the case show that the assessee is an individual. A search and seizure operation was conducted on 12.12.2006 in case of the assessee along with other parties. Certain documents were found and therefore, proceedings u/s 153A was initiated. The notice was issued on

05.09.2008. on 21.10.2008 the assessee filed return of income declaring income of Rs. 7,02,000/- and no undisclosed income was shown in return.

4. During the course of assessment, statement on oath was recorded u/s 131 on 11.12.2018 wherein, the assessee was asked to furnish the details of vehicles maintained by him. The assessee submitted that it has several cars. The Id AO therefore presumed that the assessee is owner of the above vehicle. He therefore, held that Maruti 800 car is not available in the asset of the assessee and therefore, he estimated the cost of such vehicle for Assessment Year 2002-03 and therefore, made an addition of Rs. 1,85,000/-. The assessment order was passed on 29.12.2008. The assessee preferred an appeal before the Id CIT(A) who confirmed the above addition as assessee did not produce that the purchase of the above car was made out of know source of income.
5. Ld AR submits that
 - a. in this case searched or place on 12/12/2006, for assessment year 2003 – 04 assessee filed his return of income on 17/2/2004. The case of the assessee was not picked up for scrutiny. The due date for issue of notice elapsed on 30/9/2005. Therefore as on the date of search, it was a concluded assessment. Any addition could have been made based on incriminating material found during the course of search, the addition has been made merely based on the statement recorded during the course of assessment proceedings u/s 153A of the act on examination of the list of vehicles owned by the assessee. Therefore, there was no incriminating material found during the course of search on basis of which addition has been made. Therefore, he relied on the decision of the honourable Delhi High Court in case of Kabul Chawla and submitted that such addition deserves to be deleted.
 - b. second hand Maruti 800 car was purchased on 24.06.2005 as per vehicle registration authority website, which was submitted by the assessee before us. The addition has been made in the hands of the assessee for Assessment Year 2003-04. When in Assessment

Year 2003-04 the assessee did not own the asset but purchased on 24.06.2005, so no addition could have been made in the hands of the assessee for Assessment Year 2003-04. Furthermore, the statement recorded by the assessee is also dated 11.12.2008. Therefore, the Id AO has clearly made an addition on the basis of surmises that this Maruti Car has been purchased five year back and estimated cost of that car is Rs. 1,85,000/-. The RC status of the above vehicle shows that it has registered on 24.06.2005 and therefore, the addition could not have been made in Assessment Year 2003-04.

6. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that assessee has already filed his return of income on 17th/2/2004 declaring a total income of ₹ 702,000/- the search took place on 12/12/2006. Therefore as on the date of search, assessment for assessment year 2003 – 04 was not pending. Such assessment could have been disturbed only based on incriminating material found during the course of search. However, the learned assessing officer has made addition based on his statement recorded during the course of assessment proceedings and there is no reference of any incriminating material found during the course of search. Therefore, the issue is squarely covered in favour of the assessee by the decision of the honourable Delhi High Court in case of CIT versus Kabul Chawla 380 ITR 573. Furthermore, the fact also shows that the assessee has not purchased this vehicle during the impugned assessment year. Therefore, we reverse the order of the lower authorities and direct the Id AO to delete the addition of Rs. 1,85,000/- in the hands of the assessee because of unexplained investment on estimated basis of Rs. 1,85,000/- for purchase of Maruti 800 car.
7. The appeal of the assessee for Assessment Year 2003-04 in ITA No. 838/Del/2011 is allowed.

Assessment year 2004 – 05

8. ITA No. 839/Del/2011 is for Assessment Year 2004-05 .This is appeal is filed by the assessee against the order of the Id CIT(A)-1, New Delhi

dated 27.10.2010 for Assessment Year 2004-05 where the addition because of purchase of car is partly confirmed.

9. There is no change in the facts as stated in Assessment Year 2003-04 wherein, the addition has been made on the basis of statement on oath recorded on 11.12.2008 recorded during the course of assessment proceedings, wherein, the assessee admitted that 7 vehicles used by his family. The Id AO noted that the assessee has not shown the details of purchase of one Maruti 800 Car, White Maruti Zen Motor Car, and Hone Accord car. Therefore, in absence of any details of source of investment made for purchase of these vehicles he made an addition of Rs. 16,25,000/- by order dated 29.12.2008.
10. On appeal before the Id CIT(A), the Id CIT(A) deleted the addition. The Id CIT(A) accepted the claim of the assessee is that Honda Accord car was purchased out of financing which was also agreed by the Id AO in remand proceedings. Therefore, he upheld the addition with respect to two cars i.e. Rs. 1,85,000/- on account of Maruti 800 car and Rs. 2,40,000/- on account of Maruti Zen Car. However, he upheld addition of Rs. 8,18,400/- . Therefore, the assessee is aggrieved with the amount of addition as well as the addition upheld in case of two other motor cars.
11. The Id AR submitted that
 - a. assessee filed his return of income on 22/3/2005 declaring income of ₹ 650,000. This return was not picked up for the scrutiny. The due date for issue of notice u/s 143 (2) elapsed on 30/9/2006. Search took place on 12/12/2006. On the date of search, the assessment was not pending. Therefore, any addition that could have been made in the case of the assessee should have been made based on the incriminating material found during the course of search. This addition is not pertaining to any incriminating material found during the course of search but a statement recorded of the assessee by the learned assessing officer during the course of assessment proceedings. Therefore, the addition deserves to be deleted on this issue itself. He relied on the decision of the

honourable Delhi High Court in case of Commissioner of income tax versus Kabul Chawla 380 ITR 578.

- b. Maruti Zen car was purchased on 01.03.2005 has evident from the registration of the vehicle and therefore, the addition could not have been made in the hands of the assessee. Even otherwise, it was submitted that there is no incriminating material found during the course of search and therefore, addition could not have been made. The assessee relied on the decision of the Hon'ble Delhi High Court in CIT Vs. Kabul Chawla 380 ITR 553. The Id DR supported the order of the Id AO.

- 12. We have carefully considered the rival contentions and found that the addition has been made in the hands of the assessee based on statement recorded during the course of assessment proceedings. There is no reference of any incriminating material found during the course of search. Therefore, the issue is squarely covers in favour of the assessee by the decision of the Hon'ble Delhi High Court in case of CIT Vs. Kabul Chawla (supra) even otherwise the assessee has shown that the Maruti Zen Car was purchased on 01.03.2005 and therefore, could not have been added in the hands of the assessee even otherwise for Assessment Year 2004-05. Thus, respectfully following the decision of the honourable Delhi High Court that no addition can be made in the case of concluded assessment pursuant to search in absence of any incriminating material. No incriminating material is shown to us by the learned departmental representative and not referred by the learned assessing officer in the assessment order. Therefore, this addition deserves to be deleted.
- 13. Accordingly, The appeal for Assessment Year 2004-05 is allowed.

Assessment year 2005 – 06

- 14. ITA No. 840/Del/2011 is filed by the assessee for Assessment Year 2005-06 against the order of the Id CIT(A)-1, New Delhi dated 27.10.2010 where also addition of Rs. 1,85,000/- on account of purchase of one Maruti car was made.
- 15. Assessee filed his return of income on 28/2/2006 declaring a total income of ₹ 690,000. A search took place on 12.12.2016. Therefore, notice u/s

153A of the act was issued to the assessee wherein by filing the return of income the assessee maintained the same income. During the course of assessment proceedings statement on North was recorded on 11/12/2008 of the assessee and asked the assessee about the vehicles owned by him. Assessee submitted a list of vehicles and based on that it was found that assessee is unable to provide the source of investment made in purchase of Maruti 800 White DL – 3C – AW 0419 which was purchased during the financial year 2004 – 05 which has an estimated cost of ₹ 185,000. Therefore, the learned AO made an addition of the above sum by passing an order dated 29/12/2008.

16. Assessee preferred an appeal before the learned CIT – A who confirmed the above addition and therefore assessee is in appeal before us.
17. The learned authorised representative submitted that the issue squarely covered by the decision of the honourable Delhi High Court in case of CIT versus Kabul Chawla where the addition has been made in absence of any incriminating material found during the course of search. Assessee further submitted that the estimation of the cost of second and Maruti car is on a very high side and the cost is taken of a new car. It was further stated that the above car is been purchased out of the declared income of the assessee and also his wife. It was stated that assessee has offered total income of ₹ 690,000 and his wife is offered an income of ₹ 166,800, which is sufficient to meet the cost of second and car. Therefore, the claim of the assessee was that that the source of amount invested in purchase of car is duly explained.
18. The learned departmental representative vehemently supported the order of the learned lower authorities.
19. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly, for this year the assessee has filed his return of income on 28/2/2006. The search to place on 12/12/2006, the due date for issue of notice was available before the learned assessing officer till 30/9/2007 and therefore the assessment for assessment year 2005 – 06 was not a concluded assessment but abated assessment and the learned assessing officer could have made the

addition in the hands of the assessee on the basis of material found during the course of search as well as on basis of inquiries made the return of income filed by the assessee. Therefore, in the present case the learned assessing officer was having a power to make an addition based on examination of the return of income by the assessee. In the present case, the learned AO recorded the statement of the assessee on 11/12/2008 by issue of summons u/s 131 of the act. The AO was having almost seven vehicles out of which the assessee could not give the adequate evidence with respect to the purchase of Maruti 800 car. Therefore, the learned assessing officer made the addition of the above sum estimating the cost of the vehicle of ₹ 185,000. As before the lower authorities the assessee could not furnish any explanation with respect to the source of the fund available for purchasing the above car, no evidences are also furnished before us. Even out of the declared income in the return of an assessee as well as his wife, it could not be explained that the car was purchased from the declared source of income of the assessee. It was merely an argument made by the assessee, which is not supported by any documentary evidence. In view of this, we do not find any infirmity in the order of the lower authorities. Accordingly, all the grounds of appeal are dismissed.

20. Accordingly, appeal of the assessee for assessment year 2005 – 06 is dismissed.

Assessment year 2007 – 08

21. ITA number 841/Del/2011 is filed by the assessee for assessment year 2007 – 08 against the order of the Commissioner of income tax appeals – 1, New Delhi dated 27/10/10. The assessee has raised following grounds of appeal
22. the brief facts of the case shows that it was claimed by the assessee that it is his income was below the taxable limit prescribed for the relevant assessment year. The assessee filed his return of income on 28/11/2008 declaring an income of ₹ 96,000 pursuant to the issue of notice consequent to the search conducted on 12/12/2006 the case of the assessee was picked up for the scrutiny and the statement of the

assessee was recorded on 12/12/2006 wherein assessee was asked to explain how much investment he has made on construction/renovation of his flat at Dwarika , New Delhi. In response to the question, number 15 assessee answered that he has invested approximately ₹ 15 lakhs on complete renovation of the house including furniture fixtures and air-conditioners and would work et cetera loading purchase of television. The assessee was also asked to give the year -wise breakup of this investment. Assessee submitted that he would like to disclose this amount of ₹ 15 lakhs as an additional income in the current financial year i.e. 2006 – 07. A further statement on oath was recorded on 11/12/2008 wherein he answered in response to question number 11 that he stands by the surrender made and will deposit the due tax thereon. As the above sum was not disclosed in the return of income the learned assessing officer made an addition of ₹ 15 lakhs as unexplained investment u/s 69 of the income tax act. This amount is disputed in this appeal the assessee. Though there were certain other adjustment made by the learned assessing officer and confirmed by the learned CIT – A but those are not agitated before us though raised in the grounds of appeal. In addition of ₹ 68,500 was also made on account of the Singapore tour of the son of the assessee Consequently the assessment order was passed on 29/12/2008 determining the total income of the assessee at ₹ 6,320,333/-.

23. Assessee preferred an appeal before the learned CIT – A wherein the assessee was granted substantial relief however the addition to the extent of ₹ 15 lakhs which is disputed before us was confirmed. The learned CIT – A deleted ₹ 18,500 out of the total addition of ₹ 68,500 on account of foreign tour of the minor son of the assessee. Therefore assessee is in appeal before us.
24. The learned authorised representative submitted that the addition has been made without any corroborative evidence found during the course of search. Even the flat which is alleged to be renovated was not purchased in the year Under reference but was purchased during the assessment year 2003 – 04, a fact which is stated in the income tax order of the

assessee's wife Mrs Pooja Gotham assessed by the same officer. He submitted that the assessee staying in that flat since assessment year 2003 – 04. The assessing officer has not found any corroborative material and therefore the addition deserves to be deleted. He further submitted that while making the aforesaid addition of ₹ 15 lakhs regarding the acquisition of household items such as television set and air-conditioners which can be purchased with little fund for which addition of ₹ 15 lakhs could not have been made. It was further stated that the assessee got married long back and is suing regular income in his case and his wife's case and therefore no addition is called for these items. It was further stated that the statement of the assessee was recorded on oath on 12/12/2006 and further statement was also recorded on 11/12/2008 wherein the assessee has been forcefully and Under pressure admitted to accept the amount of ₹ 15 lakhs hundred and omission of the house and offered the additional income on account of unexplained investment u/s 69 of the act. It was further stated that no addition could have been made in the hands of the assessee merely based on the statement recorded alone. It was further stated that the statement of the assessee sensed and Sri attracted as assessee has not offered the above sum in the return of income. He further relied on the decision of the coordinate bench in case of Rajesh Jain versus DCIT 100 TTJ 929 and of the honourable Gujarat High Court in case of kailashben Chokshi 328 ITR 411.

25. The learned departmental representative vehemently supported the order of the lower authorities and submitted that the assessee has not at all retracted his statement but has confirmed the same during the course of assessment proceedings. Therefore, the addition deserves to be made in the hands of the assessee and there is no infirmity in the case of the orders of the lower authorities.
26. We have carefully considered the rival contention and perused the orders of the lower authorities. In this case, the assessee was issued notice on 3/11/2008 for giving the complete details. Further, during the course of search, the assessee was examined and he disclosed in a statement u/s

132 of the income tax act on 12/12/2016 that he has invested approximately ₹ 15 lakhs on complete renovation of the house including furniture and fixtures. Further, the statement was also corroborated when it was taken during the course of assessment proceedings on 11/12/2008. The assessee once again confirmed the same. There is no evidence of any retraction made by the assessee. Merely because the assessee has not offered the above income in the return of income, it cannot be stated that the assessee has retracted the above statement. No evidences produced before us that the statement given by the assessee during the course of search as well as during the course of assessment proceedings was because of any threat/coercion. Therefore it can be merely an argument for deletion of the addition which needs to be brushed aside.

27. The learned CIT – A has considered the arguments of learned authorised representative and decided the issue in paragraph number 9 of his order. He has also considered that why the addition has been deleted in the case of the wife of the assessee for the reason that assessee stated that he has financed the above expenditure.
28. There is no similarity between the facts of the case cited before us of the decision of the ordinary bench as well as of the honourable Gujarat High Court. In view of this, we do not find any infirmity in the orders of the lower authorities.
29. In view of this ground number 1 – 3 of the appeal are dismissed.
30. Ground number 4 – 5 are with respect to the addition of ₹ 68,500 on account of foreign tour of the minors and of the appellant. After careful consideration wide para number 19 of his order the learned CIT – A noted that the total income of the assessee during the year was only rupees to .13 lakhs and therefore he confirmed the addition of only ₹ 50,000 and deleted the addition of ₹ 18,500. No arguments were advanced before us. Therefore, these grounds are dismissed.
31. In the result, appeal of the assessee for assessment year 2007 – 08 is dismissed.

32. Accordingly, appeal of the assessee for assessment year 2003 – 04 and 2004 – 05 are allowed and appeal for assessment year 2005 – 06 and 2007 – 08 are dismissed.

Order pronounced in the open court on 28/09/2021.

-Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 28/09/2021.

MEHTA

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi