

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 1105/DEL/2015 (A.Y 2005-06)

Sharuk Passi (Prop. M/s. Pascos) 1/23B, Asaf Ali Road New Delhi AAGPP7030F (APPELLANT)	Vs	DCIT Central Circle-20 New Delhi (RESPONDENT)
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ITA No. 4292/DEL/2016 (A.Y 2012-13)

ACIT Central Circle-8, Room No. 333, ARA Centre, Jhandewalan, Extn. New Delhi (APPELLANT)	Vs	Sharuk Passi 15, Sunder Nagar New Delhi AAGPP7030F (RESPONDENT)
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Appellant by	Sh. Salil Agrawal, Adv
Respondent by	Sh.H. K. Choudhary, CIT(DR)

Date of Hearing	17.02.2020
Date of Pronouncement	19.03.2020

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee and the Revenue against the order dated 16/1/2015 & 5/5/2016 passed by CIT(A)-24, New Delhi for Assessment Years 2005-06 & 2012-13 respectively.

2. The grounds of appeal are as under:-

(ITA No. 1105/Del/2015 A.Y. 2005-06)

"1.1. The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

1.2 *The learned Commissioner of Income Tax (A) has erred in not considering the fact that the assessment was reopened u/s 148 of the Income Tax Act, 1961, on the basis of general allegation without any incriminating material against the assessee and was reopened after the expiry of the time limit prescribed under the Income Tax Act, 1961 and as such the assessment order so framed is bad in law*

1.3 *The learned Commissioner of Income Tax (A) has not considered the fact that the Assessing officer has erred in not passing the speaking order on the objection filed by the assessee against the reason recorded for reopening of the cases before making the additions and has completed the assessment in haste without appreciating the facts, material and submission placed on record.*

1.4 *The learned Commissioner of Income Tax (A) has erred in passing the order without providing the copy of the incrementing document on the basis of which the case have been reopened u/s 148 of the Income Tax Act, 1961*

1.5 *The learned Commissioner of Income Tax (A) has erred in making the disallowance of rebate and discount given by the assessee to the customer amounting to Rs. 87,17,271/- ignoring the facts, practice prevalent in the trade, documentary evidence and the provisions of Income Tax Act.*

1.6 *The learned Commissioner of Income Tax (A) has erred in sustaining the addition on the basis of assumption and presumption and has also erred in mentioning that the fresh argument have been taken by the assessee which is clearly against the facts on record*

1.7 *That the appellant craves leave to add, appeal before or at the time of hearing.”*

(ITA No. 4292/Del/2016 A.Y. 2012-13)

1. *The order of Ld. CIT(A) is not correct in law and facts.*
2. *On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition for bogus claim of rebate/incentive/discount amounting*

to Rs.98,12,000/-

3. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition for inflated claim of transportation expense amounting to Rs.28,57,378/-.

4. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition regarding bogus/inflated claim of new vehicle expense amounting to Rs.41,69,303/-.

5. On the facts and circumstances of the case, the CIT(A) has erred in deleting the disallowance of travelling expenses amounting to Rs.48,19,079/-.

6. On the facts and circumstances of the case, the CIT(A) has erred in holding that the regular books of account seized during search do not form 'incriminating document' even if its entries are found false on investigation.

7. On the facts and circumstances of the case, the CIT(A) has erred in deleting the disallowance of personal expenses amounting to Rs.10,00,000/-.

8. On the facts and circumstances of the case, the CIT(A) has erred in relying on the order of Hon'ble High Court Delhi in case of Kabul Chawla, when the addition was based on investigation of seized documents.

9. On the facts and circumstances of the case, the CIT(A) has erred in holding that the regular books of account seized during search do not form 'incriminating document.'

10. On the facts and circumstances of the case, the CIT(A) has erred in deleting the disallowance u/s 14A amounting to Rs.9,77,686/-.

On the facts and circumstances of the case, the CIT(A) has erred in not appreciating the fact that giving the opportunity to the assessee before disallowance tantamount to recording satisfaction.

11. On the facts and circumstances of the case, the CIT(A) has erred in relying on the order of Hon'ble High Court Delhi in case of Kabul Chawla."

4. We are taking up the Assessment Year 2005-06 first. The brief facts are

that the return of income for Assessment Year 2005-06 was filed on 26/10/2005 showing income of Rs. 18,30,19,501/- which was assessed at Rs. 18,35,27,104/- u/s 143(3) of the Income Tax Act, 1961. Thereafter, the case was reopened u/s 148 of the Income Tax Act, 1961 on the basis that the assessee made false claim of discount passed on the customers through self-made vouchers and bearer cheques which was against the facts on record. Subsequently, the Assessing Officer made addition of Rs. 87,17,271/- on this account to the return of income.

5. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. The Ld. AR submitted that in this case a search and seizure action u/s 132(1) of the Act took place in February, 2012. The assessee's case was reopened u/s 148 on the pretext that the assessee was making false claim of discounts passed of the customers through self-made vouchers and bearer cheques. On examination of the bank statement in respect of Bank Account No. 012700210006722, PNB, New Delhi for Financial Year 2004-05 & 2005-06 belonging to PASCOS, Proprietor through Sharuk Passi, it was noticed by the Assessing Officer that there are number of withdrawals in cash from this account. Summons u/s 131 of the Act was issued to the assessee to explain the nature of business and also the entries for withdrawals in the above bank account. In assessee's statement recorded on 16/3/2012, the assessee explained that these withdrawal entries are in respect of rebate/discount given to buyers of vehicles through banker cheques. The Ld. AR submitted that the assessment in the case was completed u/s 143(3) at income of Rs.18,35,27,104/-. During the course of original assessment all the details relating to rebate and discount was filed. There was specific query raised by the Assessing Officer in respect of these transactions. Further, the details of bank account from which payment was made, was also filed during the course of original assessment. In the original assessment, the Assessing Officer was

satisfied about the genuineness of the rebate and discount and completed the assessment without any adverse inference. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of Maruti Suzuki India Ltd. Vs. DCIT 356 ITR 209. The Ld. AR submitted that the assessee is engaged in the trading of Tata Vehicles as such the assessee offers rebate and discount to the customers for sales promotions. Documentary evidence in respect of the transaction being sample copy of invoice, delivery order, transfer voucher was filed during the original assessment proceedings as well as Sec. 148 proceedings by the assessee. The Ld. AR further submitted that the observation at the time of re-opening relating to cheques in cash by few persons are not tenable as these persons were neither the employee of the assessee nor related to the assessee. The Assessing Officer did not make any adverse inference regarding the fact that expenses are neither in the nature of personal expense nor in the nature of capital expenditure. Thus, the Ld. AR submitted that the additions sustained by the CIT (A) is not correct and may be quashed.

7. The Ld. DR submitted that the reasons had categorically mentioned that the assessee did not disclose the amount of income earned by way of claim of genuine discount and failed to disclose fully and truly all material fact in that respect. The Ld. DR further submitted that there is no change of opinion as the original assessment lacks proper adjudication of the material available on record. The Ld. DR relied upon the decision of the Hon'ble Supreme Court in case of Honda Seil Power Products Ltd. vs. DCIT 340 ITR 64 (SC) and the decision of the Hon'ble Delhi High Court in case of NDTV vs. DCIT (2017) 84 Taxman.com 136.

8. We have heard both the parties and perused the material available on record. It is pertinent to note that Section 143 assessment was completed in respect of discount and rebate which was categorically inquired by the Assessing Officer during the original assessment. All the details were before

the Assessing Officer and after verification only the Assessing Officer passed original assessment without giving any adverse finding to that effect. It is pertinent to mention that the bank statement called for and the information given by the bank to the Assessing Officer itself reveals that the transaction and the payments were the genuine payments in respect of discount and rebate. There is no doubt or suspicious arise from the perusal of these documents. Merely creating a doubt of the transaction does not suffice the Assessing Officer to reopen the case u/s 148 of the Act. The Assessing Officer has to give proper reasons in case those documents are not at all produced in the original assessment itself. The reasons recorded by the Assessing Officer u/s 148 are not complete reasons and lack in the context of invocation of Section 148 itself. Therefore, the reopening itself is bad and hence the assessment is bad in law. The appeal of the assessee is allowed.

9. In result, appeal being ITA No. 1105/Del/2015 filed by the assessee is allowed.

10. As regards ITA No. 4292/Del/2016 for A.Y. 2012-13, the brief facts are that the search and seizure action u/s 132 of the Act was conducted on PASCO Group of cases on 17/2/2012. In response to return filed u/s 153A of the Act, the detail questionnaire was issued calling for the various information and explanation by the Assessing Officer. The Assessing Officer while passing the order disallowed the expenses of Rs. 98,12,000/- under the head rebate and discount, also disallowed Rs. 28,57,378/- under the head transportation expense, Rs. 41,69,303/- under the head new vehicle expenses, Rs.48,19,079/- under the head travelling expenses, Rs. 10 lakhs under the head personal expenses and Rs. 9,77,686/- u/s 14A of the Income Tax Act, as well as addition of Rs. 4,21,665/- was also made in respect of interest income.

11. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

12. The Ld. DR relied upon the assessment order as well as the order of the CIT(A). The Ld. DR further submitted that the CIT(A) erred in deleting the addition for bogus claim of rebate/incentive/discount amount to Rs. 98,12,000/-. The details were not given by the assessee during the assessment proceedings and from the perusal of the evidence called for from the banks, as it is found that the discount and rebate has not been properly proved by the assessee during the assessment proceedings. Thus, the Ld. DR submitted that reliance of Hon'ble High Court in case of Kabul Chawla is not correct on part of the CIT(A). Therefore, the Ld. DR submitted that the Revenue's appeal may be allowed and the addition may be sustained.

13. The Ld. AR submitted that since this is a regular assessment and the search year which took place on 17/2/2012, it is relevant to mention that there is no incriminating document found by the Assessing Officer during the search and the additions in all that respect does not sustain.

14. We have heard both the parties and perused the material available on record. It is pertinent to note that there is no incriminating material shown by the Assessing Officer upon which the addition was made. In fact, the seized ledger accounts pertains to A.Y. 2011-12 only and therefore the said material cannot be held against the assessee for A.Y. 2012-13 and also cannot be termed as incriminating material. While making the additions on these documents, the Assessing Officer has not specifically pointed out that these expense but has disallowed all these expenses only on ad-hoc basis which is not permissible under the Income Tax Act. Therefore, the additions made itself does not have any foundation as such. Thus, the appeal of the Revenue does not sustain. In result, appeal being ITA No. 4292/Del/2016 filed by the Revenue is dismissed.

15. In result, appeal of the assessee is allowed and appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 18 March, 2020.

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 18/03/2020
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	17.02.2020
Date on which the typed draft is placed before the dictating Member	18.02.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	19.03.2020
Date on which the final order is uploaded on the website of ITAT	19.03.2020
Date on which the file goes to the Bench Clerk	19.03.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	