

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI  
BEFORE SH. N.K. SAINI, VICE PRESIDENT  
AND SMT. BEENA A. PILLAI, JUDICIAL MEMBER  
ITA No. 3287/Del/2018 : Asstt. Year : 2013-14  
ITA No. 3288/Del/2018 : Asstt. Year : 2014-15**

Sh. Mithilesh Kumar Tripathi, D-9, Oberoi Apartments, Civil Lines, Delhi-110054 PAN : ABUPT3610Q <b>(APPELLANT)</b>	Vs	ACIT Circle-35(1) New Delhi <b>(RESPONDENT)</b>
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**Assessee by : Sh. Rohit Tiwari, Adv.**

**Revenue by : Smt. Ashima Neb, Sr. DR**

Date of Hearing : 15/10/2018	Date of Pronouncement : 17/10/2018
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**ORDER**

**Per Bench:**

Present appeals has been filed by assessee against order dated 15/01/18 passed by Ld. CIT (A)-12, for assessment year 2013-14 and 2014-15, on following grounds of appeal:

**ITA No. 3287/del/2018:**

*“On the facts and circumstances of the case the learned CIT(A) has erred :-*

1. That on the facts and in the circumstances of the case and in law, the order passed by Ld. Commissioner of Income Tax (Appeals) ("CIT(A)") is bad in law.
2. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer ("Ld. AO") in making an adhoc addition of Rs. 11,00,000/- as a lump sum disallowance out of the cash sales of agricultural produce.
3. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer ("Ld. AO") in making an addition of Rs. 1,03,64,424/- under section 2(22)(e) of the Income Tax Act, 1961.
  - 3.1 The Ld. AO and the Ld. CIT(A) erred in ignoring the facts and circumstances in which such advances were made in the ordinary course of the businesses of the companies for the limited purpose of online payment of taxes on its behalf, payment of taxes had been made by the appellant and in one case the company being an NBFC.
  - 3.2 The Ld. AO as well as the Ld. CIT(A) failed to appreciate that such advances do not partake the basic characteristics of a Loan or advance as referred in section 2(22)(e) of the Income Tax Act as there is no intention to go give the money back to company.
4. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer ("Ld. AO") of making an addition of Rs. 6,36,180/- as notional ALV of certain house properties held by the appellant ignoring the fact that such properties could not be let out by the appellant during the year on account of

*the location/condition and/or the prevailing market conditions.*

5. *That on the fact and circumstances of the case and in law, Ld. CIT(A) erred in not following the judicial precedents available in this regard.”*

4. *In confirming the order of the Assessing Officer who was totally unjustified in adjusting capital gains against business losses where assessee has availed option of not adjusting business losses against capital gains and paying proper taxes on capital gains and carrying business losses ”*

### **ITA No. 3288/del/2018**

*“On the facts and circumstances of the case the learned CIT(A) has erred :-*

1. *That on the facts and in the circumstances of the case and in law, the order passed by Ld. Commissioner of Income Tax (Appeals) (‘CIT(A)’) is bad in law.*

2. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer (‘Ld. AO’) in making an addition of Rs. 1,15,51,205/- under section 2(22)(e) of the Income Tax Act, 1961.*

2.1 *The Ld. AO and the Ld. CIT(A) erred in ignoring the facts and circumstances in which such advances were made in the ordinary course of the businesses of the companies for the limited purpose of online payment of taxes on its behalf, payment of taxes had been made by the appellant and in one case the company being an NBFC.*

2.2 *The Ld. AO as well as the Ld. CIT(A) failed to appreciate that such advances do not partake the basic characteristics of a*

*Loan or advance as referred in section 2(22)(e) of the Income Tax Act as there is no intention to go give the money back to company.*

3. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer (“Ld. AO”) of making an addition of Rs. 3,97,915/- as notional ALV of certain house properties held by the appellant ignoring the fact that such properties could not be let out by the appellant during the year on account of the location/condition and/or the prevailing market conditions.*
4. *That on the fact and circumstances of the case and in law, Ld. CIT(A) erred in not following the judicial precedents available in this regard.”*

1. Ld. Counsel submitted that grounds raised in both assessment years relates to identical facts. It has been submitted that disallowance made by Ld. AO are also identical.

2. Accordingly, as assessment years under consideration has been argued by both sides, together, we are inclined to decide the common issues by way of common order.

**Brief facts of the case are as under:**

3. Assessee is an individual, deriving Income from House Property, Income from Other Sources and Agricultural Income. During years under consideration, assessee filed its return of income on 20/03/14 and 30/03/15, declaring total income of Rs.14,98,330/-and Rs.29,72,770/-, for assessment years 2013-14 and 2014-15 respectively. The case was selected for scrutiny.

4. For assessment year 2013-14 Ld. AO observed that assessee declared total agricultural income of Rs.84,45,496/-, out of which a sum of Rs. 22, 74, 800 were cash sales of other crops like orange, banana and jackfruit. Ld.AO observed that assessee was unable to produce bills in respect of cash sales and in absence of bills/vouchers, genuineness of cash sales could not be verified. Accordingly, Ld.AO proportionately made disallowance of Rs.11,00,000/- of cash sales.

5. It has been submitted that for assessment year 2014-15 there was no agricultural income declared by assessee.

6. The next issue that was for consideration by Ld.AO for both assessment years, is in respect of money received by assessee from various companies, amounting to Rs.1,03,64,424/- for assessment year 2013-14 and Rs.1,15,51,205/- for assessment year 2014-15. Ld. AO observed that assessee received loans/advances from certain companies, in which assessee had substantial shareholding. The details of money received from companies are as under:

<b>Sr. No.</b>	<b>Company</b>	<b>% Share-holding</b>	<b>Amount (AY 2013-14)</b>	<b>Amount (AY 2014-15)</b>
1.	Anupam Chem Pharma Pvt. Ltd.	79.80%	24,73,861/-	12,30,925
2.	Taxila Gurukul Pvt. Ltd.	47.50%	NIL	103,17,280
3.	Taxila Knowledge Infrastructure Pvt.	47.50%	24,000	3,000

	Ltd.			
4.	Taxila Knowledge Development Pvt. Ltd.	36.88%	13,95,927	NIL
5.	Yashita Finance Pvt. Ltd. <b>(Non Banking Finance Company)</b>	14.20%	64,71,236	NIL
			<b>1,03,64,424</b>	<b>1,15,51,205</b>

7. On issuance of show cause notice to assessee in respect of the same, it was submitted that amount was given to assessee by these companies to meet business obligation of payment or statutory dues. It was submitted that these payments were not in the nature of loans and/or advances as referred to in section 2 (22) (e) of the Act. It was also submitted that these payments were made in ordinary course of business.

8. Ld.AO however observed that assessee being a director, was not responsible for meeting out statutory liabilities of companies. He thus made addition in the hands of assessee, to the extent of amount received from these companies by him for assessment years under consideration.

Apart from above additions, Ld.AO computed ALV of properties of assessee for years under consideration.

9. Aggrieved by additions made by Ld.AO, assessee preferred appeal before Ld.CIT (A). Ld.CIT (A) confirmed the additions made by Ld.AO in absence of proper evidences to establish his claim.

10. Aggrieved by the order of Ld.CIT (A), assessee is in appeal before us.

11. At the outset, Ld. Counsel submitted that **Ground No. 4** raised in A.Y. 2013-14 and **Ground No. 3** in A.Y. 2014-15 stands not pressed.

Accordingly we dismiss these grounds for assessment years 2013-14 and 2014-15, as not pressed.

**Assessment year 2013-14**

**Ground No. 1** is general in nature and therefore do not require any adjudication.

**Ground No. 2** is in respect of the addition made by Ld.AO towards cash sales of agricultural produce.

12. Ld. Counsel submitted that, assessee maintained proper books of accounts, with respect to agricultural produce and allegation made by Ld.AO/CIT (A), regarding non-production of bills/vouchers in respect of cash sales, is untenable. He submitted that assessee provided all relevant books of accounts and sample invoices/bills placed at pages 43-55 of paper book, with respect to agricultural business before authorities below and addition made by Ld.AO is on basis of surmises and conjunctures.

13. On the contrary, Ld. Sr. DR submitted that categorical observations by Ld.CIT (A) regarding failure on behalf of assessee to produce all bills and vouchers in respect of cash sales, cannot be ignored. She submitted that assessee failed to establish

genuineness of cash sales and evidences relied upon by Ld. Counsel before this Tribunal amounts to fresh evidence.

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

15. Admittedly there is no acknowledgement that has been produced by assessee in paper book regarding submission of these documents before authorities below.

16. We direct Ld. AO to verify same. Assessee is directed to provide all necessary informations as called for by Ld.AO, in order to establish genuineness of cash sales Ld.AO shall then consider the claim of assessee as per law.

17. Accordingly this ground raised by assessee stands allowed for statistical purposes.

**Ground No. 3** is in respect of alleged advances received by assessee from companies, in which assessee had substantial interest, which is treated as deemed dividend under section 2 (22) (e) of the Act by Ld.AO.

Ld. Counsel submitted that assessee is a director in following companies:

- Anupam Chem Pharma Pvt. Ltd.,
- Taxila Gurukul Pvt. Ltd.,
- Taxila Knowledge Infrastructure Pvt. Ltd.,
- Yashita Finance Pvt. Ltd.

18. He submitted that during the year under consideration, government dues for example income tax, service tax of these companies were paid by assessee through his bank account using his personal online banking facilities. He submitted that the arrangement was done entirely for bank account of assessee, in order to keep online banking password secured. Ld. Counsel submitted that these dues that were paid by assessee were either paid in advance by these companies or later on reimbursed accordingly.

19. Ld. Counsel in respect of Yashita Finance Pvt. Ltd., submitted that this company is NBFC and therefore provisions of section 2 (22) (e) of the Act cannot be applied. He submitted that confirmation of account showing payment details of taxes along with challan numbers, bank accounts of respective companies, payment vouchers and tax payment challan has been placed in paper book at pages 64-92. Relying upon these documents, Ld. Counsel submitted that all payments stands explained as having been made on behalf of these companies by assessee.

20. On the contrary Ld. Sr. DR submitted that as per categorical observations by Ld.CIT (A) in paragraph 14.3 of his order, no evidences were filed before authorities below. And these documents now relied upon by Ld. Counsel have not been verified by Ld.AO. She submitted that at this stage these amounts to additional evidences. Placing reliance upon observations of Ld.AO Ld.Sr.DR submitted that assessee is not under any obligation to make

payments on behalf of these companies in order to keep his account password active. She further submitted that assessee and these companies are separate entities having independent identities.

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

22. Admittedly there is no acknowledgement that has been produced by assessee in paper book regarding submission of documents, placed in paper book at pages 64-92 before authorities below. We therefore direct Ld.AO to verify the same. Ld.AO shall verify each and every challan to ascertain true position. Assessee is directed to provide all necessary information/details called for by Ld.AO, in order to discharge assessee's onus of establishing payments of Government statutory dues, on behalf of these companies. Ld.AO shall then consider the claim of assessee as per law. Accordingly this ground raised by assessee stands allowed for statistical purposes.

**22. In the result appeals filed by assessee for both the assessment years i.e. 2013-14 & 2014-15 stand allowed for statistical purposes.**

Order Pronounced in the Court on 17/10/2018.

Sd/-

**(N.K. SAINI)**  
**VICE PRESIDENT**

**Dated: 17/10/2018**  
SH

Sd/-

**(BEENA A PILLAI)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

**ASSISTANT REGISTRAR**

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