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आयकर अपीलीय अधिकरण "एच" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./I.T.A. No. 2771/Mum/2015

(**निर्धारण वर्ष /** Assessment Year: 2010-11)

Ms. Priyanka Chopra 705, 706 & 806, Raj Classic, B-Wing, Versova, Mumbai-400 061	**बनाम/** Vs.	Dy. CIT, Central Circle-(3), Room No. 905, Old CGO Building Annex, M. K. Road, Mumbai-20
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ACXPC 1741 R		
(Appellant)	**:**	**(Respondent)**

अपीलार्थी की ओर से / **Appellant by**	:	Shri Rahul Raman
प्रत्यर्थी की ओर से/**Respondent by**	:	Shri Naresh Kumar & Shri Yogesh Joijode

सुनवाई की तारीख / Date of Hearing	:	02.11.2017
घोषणा की तारीख / **Date of Pronouncement**	:	16.01.2018

आदेश / O R D E R

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order by the Commissioner of Income Tax (Appeals) dated 12.02.2015 and pertains to the assessment year 2009-10.

2. In this case, search and seizure action u/s. 132 of the Act was conducted on 24.01.2011. The assessee is a well known actress of Indian Film Industries.

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3. The first issue raised is that the ld. Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.27 lacs made by the Assessing Officer being unaccounted income in the form of gift of Toyota Prius Car for being brand Ambassador of NDTV Toyota Greenathon.

4. On this issue, the Assessing Officer made the addition by observing as under:

> On verification of the seized material it is seen that the assessee was given a Toyota Prius hybrid luxury sedan car for being the brand ambassador of NDTV-Toyota greenathon campaign. In this regard, the assessee vide questionnaire dated 09.08.2012 was asked to explain why the same should not be taxed as business income by application of Section 28(iv) as perquisite.
>
> In reply to the same, the assessee's representative vide letter dated 25-10-2012 has submitted as under:
>
>> "With regard to the taxability of car received to your assessee from the Toyota Company, it is submitted that such car was provided by Toyota Company solely for promotional purpose and is not as part of any remuneration or fees against assessee's services to the said company and the letter issued by Toyota Company is enclosed/or your ready reference.
>>
>> It is further submitted that the same should not be taxed a$ business income by application of section 28(iv) as perquisite. It is submitted that your assessee has entered into agreement with NDTVfor promoting the causes of environmental issues in association with Toyota, It is submitted that the remuneration against such agreement was offered to tax by your assessee in the year of receipt. Accordingly your assessee as such has not rendered any services to Toyota company, It is further submitted that your assessee has also not considered the value of such car in its books of account since it is not received in consideration of rendering any professional services. It is therefore, submitted that since your assessee has not rendered any services to the Toyota Company and services rendered to NDTV was as per the agreement terms which also

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> not referred to in such agreement and hence$_f$ the value of the car given by Toyota Company for promotional purpose, cannot be tax.ed u/s.28(v) of Income Tax Act, 1961."

The above submission of the authorized representative of the assessee has been considered carefully however the same cannot be acceptable in toto. On the one had he is accepting that the assessee has entered into an agreement with NDTV for prompting the causes of environment issues and had received remuneration against such agreement and offered the same in respective assessment years and at the same time he is contending that the car being the part of the said agreement does not form part of professional receipts, which cannot be acceptable. The car received by the assessee is a part and parcel of the agreement for the professional services rendered by her. Therefore, the same is covered u/s.28(iv) of the I T Act as perquisites. Hence the value of the car amounting to Rs.27,00,000 is treated as perquisites of the assessee and is added to the income of the assessee for the year under consideration.

5. Upon the assessee's appeal, the ld. Commissioner of Income Tax (Appeals) confirmed the addition and granted part relief by holding as under:

> 5.1 The A.O. has taken the gift of the car received by the appellant from NDTV as a perquisite and taxed it correctly u/s. 28(iv). In its written submission also the appellant has accepted the same. However, the appellant has also stated without prejudice to such acceptance, that the value of the car is Rs.22,06,544/- and so the addition should be restricted to the correct amount. Evidence in documentary form is also submitted. The contention of the appellant is found to be correct and therefore the A.O. is directed to restrict the addition to Rs.22,06,544/- and not Rs.27,00,000/-.

6. Against the above order, the assessee is in appeal before us.

7. We have heard both the counsels and perused the records. We find that it is clear from the facts brought out in this regard that the assessee has done promotional activity on being brand ambassador of NDTV Toyota Greenathon campaign and

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hence, the receipt of Toyota car in this connection has rightly been added in the hands of the assessee u/s. 28(iv). The assessee's plea that there has not been an agreement with Toyota for promotion, hence, this sum cannot be taxed u/s. 28(iv) is totally irrelevant and unsustainable. The assessee being brand Ambassador of NDTV Toyota Greenathon has clearly promoted the brand Toyota also. Hence, we affirm the order of the authorities below on this issue. Without prejudice to the above, the assessee has raised the ground that if the addition is confirmed, the assessee should be allowed the depreciation in respect of such car. We find that this ground was never raised before the authorities below and no factual detail in this regard is available regarding the actual usage of the car. Hence, we are not in a position to adjudicate this issue. Hence, we decline to accept this ground.

8. Another issue raised is that the ld. Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.6 lacs being alleged unaccounted income in respect of rent receipt in cash from Shivani Oil and Gas Exploration. On this issue, the Assessing Officer made the addition by observing as under:

> On verification of the Annexure A-1 page no. 127 of the loose papers seized from Navkaran Office on 21-03-2011, it is seen that the assessee was charging an amount of Rs.55,000/- as gross rental per month from M/s.Sivani Oil & Gas Exploration Services and as per the scribbling on the back side, it is evident that along with Rs.55,000/- in cheque on which TDS was being deducted by the payee, the assessee was also receiving Rs.60,000/- per month in cash . Thus the total monthly rent comes to Rs.1,15,000/- per month, while the assessee is offering only Rs.55,000/- per month in the books.

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Thus from combined reading of all these papers, it is very evident that assessee June, 2009 onwards has been charging Rs.60,000/- in cash from M/s.Shivani Oil & Gas Exploration Services Ltd. Thus the same amount for 18 months, till November, 2010 comes to Rs.10,80,000/- i.e., from June, 2009 to March, 2010 total rent is Ra.6,00,000/- (A.Y.2010-11) and from April, 2010 to November, 2011 total rent is Rs.4,80,000/- (A.Y.2011-12).

During the -course of assessment proceedings, the assessee was. asked to show cause why the cash rental receipts should not be added to her income. In this regard, the assessee vide her representative's letter dated 17-12-2012 has submitted as under:

"This is working of rental received in cash of Rs.60,000/- from M/s.Shivani Oil and gas Exploration services Ltd. It is submitted that your assessee i.e., Mrs.Madhu Chopra, Mr. Ashok Chopra and Ms.Priyanka Chopra has already offered such cash rental receipts in respect of rent received as undisclosed income in the return filed in response to notice u/s.l53A of Income Tax Act, 1961 in A.Y.2009-10 and 2010-11 and the details of the same is as under:

Name	A.Y.2009-10	A.Y.2010-11
Ms.Priyanka Chopra	1,90,278	1,86,667
Mrs, Madhu Chopra	1,90,278	1,86,667
Mr. Ashok. Chopra	1,90,278	1,86,667
Total	5,70,834	5,60,001

It is therefore, submitted that the above mentioned rental receipts offered as undisclosed income includes the cash rental receipts of Rs.60,000/- and tax on the same is already paid.

The above submission of the assessee has been carefully perused, however the same cannot be accepted. The above said declaration of undisclosed rent is in respect of Page 121 & 126 of Annexure A 1 of the loose paper seized from the NavKaran Office on 21/03/2011 (Rs.75000/-), Page 124 of Annexure A 1 of the loose paper seized from the NavKaran Office on 21/03/2011 of Rs 8,79,000/-). However, the assessee has merged the property of Oberoi Sky Gardents, which is quite an another property and the cash rental so found also pertains to A.Y.2010-11 fit 2011-12. The loose paper seized in respect of

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Navakaran office pertains to A.Y.2009-10 & A.Y.2010-11, which the assessee has merged her explanation with that of Oberoi Sky Garden cash rental receipts. Therefore, the explanation of the assessee is not accepted.

Therefore, the cash rental receipts to the tune of Rs.6,00,000/- is added to the income of the assessee under the head income from house property for A.Y.2010-11 and is taxed accordingly.

9. Upon the assessee's appeal, the ld. Commissioner of Income Tax (Appeals) confirmed the addition.

10. In this regard, we note that the assessee has submitted as under:

It is submitted that Ld. A.O. has made such addition on the basis of loose paper marked as Annexure A-1 page no. 127 found in premises of Mr. Chand Mishra. It is submitted that no such rent receipts have been received in cash by the appellant.

It is further submitted that neither evidences whatsoever have been found by the Income Tax Search team nor any loose papers have been found during search proceedings which indicates that you appellant has received such Rs.6,00,000/- out of books and therefore assumption and presumptions of receipt of alleged undisclosed income of Rs.6,00,000/- is unreasonable and unlawful.

Without prejudice, we would like to state that appellant follows Cash system of accounting and therefore such receipts can be taxed only on the basis of evidence of receipt of such cash. It is further submitted that no evidence regarding receipt of cash has been found by search party as well as by the Ld. A.O. hence; adding same on assumptions and presumptions is against basic of principles of law and against Natural justice. In view of the above facts, such addition should be deleted.

11. Upon careful consideration, we find that it has been clearly brought out in the assessment order that the addition is based upon the loose papers seized in which there

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was scribbling found for the cash component of the rent receipt. In the assessment proceedings, the assessee has duly accepted the same and has submitted to the Assessing Officer to telescope the same against other incomes disclosed. However, the Assessing Officer has clearly given a finding that the income against which the assessee wants them to be telescoped related to separate piece of loose papers and they have nothing to do with the seized paper with reference to which this addition has been made. Now the assessee is submitting that there has been no such rent receipt in cash. Merely making such a statement will not support the case of the assessee when incriminating material has been found. Furthermore, the assessee pleas that the assessee follows cash system of accounting. This also does not helps the case of the assessee. The assessment being based upon specifically identified loose paper which the assessee has duly agreed during the course of assessment cannot be said to be arbitrary. Hence, we do not find any infirmity in the order of the authorities below and confirm the same.

12. Another issue raised is that the ld. Commissioner of Income Tax (Appeals) erred in confirming the addition made by the Assessing Officer of Rs.14 lacs being alleged notional rent for penthouse at Flat no. 901 and 904 of Navkaran building.

13. On this issue, the assessee has further raised additional ground which reads as under:

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Additional Ground No 1:- The addition of Rs 14,00,000 made in the assessment order passed u/s 143(3) r.w.Sec 153A for the assessment year 2010-11 in the case of the appellant as income from House Property from Flat No. 901 & 904 Navkaran Appts is bad-in-law because the addition is not based on any document or valuable asset belonging to the appellant seized u/s. 132.

14. We find that identical issue was dealt by us in the assessment year 2008-09 in ITA No. 2769/Mum/2015). In this case, we had held as under:

<u>Apropos addition of Rs.14 lacs on account of notional rent</u>:

22. In this regard, the assessee has also raised additional ground which read as under:

Additional Ground No 3:- The addition of Rs 14,00,000 made in the assessment order passed u/s 143(3) r.w.Sec 153A for the assessment year 2008-09 in the case of the appellant as income from House Property from Flat No 901 & 904 Navkaran Appts is bad-in-law because the addition is not based on any document or valuable asset belonging to the appellant seized u/s 132.

It may be mentioned that these are purely legal grounds. All the facts necessary to decide the additional ground of appeal are already on record and no new evidence is required to be brought on record.

23. On this issue, the Assessing Officer made the addition by observing as under:

In the return of wealth filed, the assessee had claimed the penthouse at 9th Floor in Navkaran apartments as exempt as an office, being used for the business purpose. However, during the course of search, it was noticed that the flat No.403 was used as office rather than 901. In this regard, statement on oath of one of the assessee's employee Ms. Deepika Prakash was recorded u/s.132(4) of the I.T. Act on 24-01-2011, wherein she stated in reply to Q.5 that;

"As per my knowledge the flat was purchased by Ms. Priyanka Chopra in 2008. The flat was since then never utilized for business or residence purpose. Hence the flat is vacant since it was purchased."

On further verification it is noticed that the said penthouse is of two different units and separate agreements are made. Further, as admitted above, the penthouse was not utilized since A.Y.2009-10, however, the assessee is claiming depreciation on the same.

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In this regard, the assessee was asked to submit the details with supporting documentary evidence that the said penthouse has been used for office purpose and why annual value under the provisions of sec.23(l)(c) should not be determined treating it as income from House Property by disallowing depreciation. In reply to the same the assessee's representative orally stated that the said penthouse is used for keeping the assessee's dresses as godown, however he has not furnished any documentary evidence that it has been utilized for official use.

Further, it can be seen that the property under consideration is a penthouse which is located in the residential area. Hence, it cannot be considered as commercial property. Therefore, the annual value of the above said properties has to be determined under the provisions of sec.23(l)(c) and charged under Income from House property.

Relying on the case of Smt. Radhadevi Dalmiya Vs. CIT 125 ITR 134 the Tribunal had 'adjudged that a fair return of about 7% on the investment in properties can be taken into account for determining annual rateable value and shall be regarded as just and fair for determining the annual value of the above said properties. Therefore, the annual value of the above said properties is computed as under:

S.No	Flat No.	Investment Value (Rs.)	Annual Rent (7% of Investment)
1	Penthouse 901	1,25,00,000	8,75,000
2	Penthouse 904	75,00,000	5,25,000
	Total	2,00,00,000	14,00,000

Therefore, deemed rental Income of Rs.14,00,000 is charged on estimate basis and is taxed accordingly. Further, as the property has not been used for any official use, the depreciation claimed on Penthouse and depreciation on furniture & fixture totaling to Rs.21,88,367/- is disallowed and is added to the income of the assessee for the year under consideration.

24. The ld. Commissioner of Income Tax (Appeals) affirmed the action of the Assessing Officer.

25. Against this order, the assessee is in appeal before us.

26. In this regard, the assessee has also raised an additional ground wherein it is urged that addition is not based upon any incriminating material. On the same reasoning, as the previous ground adjudicated by us wherein we have admitted the additional ground and remitted the issue to the file of the Assessing Officer. We similarly admit this ground. The Assessing Officer is

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directed to consider the issue afresh in accordance with the ratio arising out of the order of the Hon'ble jurisdictional High Court decision in the case of *Continental Warehousing Corporation (Nhava Sheva) Ltd.* (supra).

15. Following the aforesaid precedent, we set aside this issue to the file of the Assessing Officer with the same direction.

16. Another additional ground raised by the assessee is as under:

> Additional Ground No 2: The addition of Rs 9,17,087/- u/s. 14A made by the A.O. r.w. Sec 153A for the assessment year 2010-11 and confirmed by the Hon'ble CIT(A) to the extent of Rs.1,36,564 in the case of the appellant is bad-in-law because the addition is not based on any document or valuable asset belonging to the appellant seized u/s. 132.

17. The Assessing Officer has made certain disallowance being expense in earning of exempt income. At the outset, while considering this issue, the Assessing Officer had noted as under:

> It is seen from the computation of total income filed along with return of income that the assessee has eraned certain incomes which does not form part of total income. This include of dividend of Rs.1,17,775/- exempted u/s. 10(34) of the I. T. Act.

18. Now in the additional ground, the assessee has agitated that the same is not based upon any document or valuable asset belonging to the assessee or any incriminating material found during search. It is the settled law that the Hon'ble jurisdictional High Court decision in the case of *CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd.* [2015] 58 taxmann.com 78 (Bom), order dated 21.04.2015 dehorse any seized material/incriminating material found during search, addition in the case of abated assessments u/s. 153A is not sustainable. Since all the

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facts relating to adjudication of this issue are not on record and the ld. Commissioner of Income Tax (Appeals) has observed that the addition is based upon seized material. Accordingly, we remit this issue to the file of the Assessing Officer. The Assessing Officer shall consider this issue in light of the factual records and decision of the Hon'ble jurisdictional High Court as above.

19. In the result, this appeal by the assessee stands partly allowed for statistical purpose.

Order pronounced in the open court on 16.01.2018

Sd/-	Sd/-
(Sandeep Gosain)	(Shamim Yahya)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 16.01.2018
व.नि.स./Roshani, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai