

THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: SMC: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER AND

ITA No. 267/Del/2023  
Assessment Year: 2020-21

Aman Kumar Jain, NV Group 9 <sup>th</sup> & 10 <sup>th</sup> Floor, Vandana Building 11, Tolstoy Marg, New Delhi 110001 <b>PAN AADPJ 6938 R</b>	vs.	ITO, Ward 71(1), Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Nirbhay Mehta, CA
For Revenue :	Shri Sumesh Swani, Sr. DR

Date of Hearing :	05.04.2023
Date of Pronouncement :	30.06.2023

**ORDER**

**Per Chandra Mohan Garg:-**

This appeal filed by the assessee is directed against the order dated 05.12.2022 of the Ld. NFAC, New Delhi, relating to Assessment Year 2020-21.

2. The assessee has raised the following grounds of appeal:-

1. *That on the facts and circumstances of the case and in law, the order passed by CIT (A)-23, New Delhi (hereinafter referred to as CIT (A)), is bad in law.*

2. *That on the facts and circumstances of the case and in law, the CIT (A) was not justified in confirming the addition in income of the appellant of Rs.3,69,830/- made in the intimation order passed under 143(1) of the IT Act on account of deduction claimed for HRA u/s 10(13A) of the IT Act for rent paid to his wife by holding that the AO has rightly disallowed the rent paid to his wife.*

2.1 *That the CIT-A has incorrect in holding in the appellate order that as per IT of his wife there is no other income except the rental income which is contrary to the fact that the appellant wife was also having income from business and Profession of Rs.2,61,000/- and income from other sources of Rs.40,841/- apart from rental income during the year under consideration and therefore having independent source of income.*

2.2 *That on the facts and circumstances of the case and law, the CIT(A) was not justified in confirming the addition without providing the sufficient opportunity to the*

*appellant for proving the fact that the appellant's wife has sufficient income other than the rental income to purchase the rented property.*

3. At the very outset, the Id. Assessee Representative (AR) submitted that the assessee does not want to press ground no. 2.2 hence the same is dismissed as not pressed.

4. Apropos remaining grounds the Id. AR submitted that facts and circumstances of the case and in law, the CIT (A) was not justified in confirming the addition in income of the appellant of Rs.3,69,830/- made in the intimation order passed us 143(1) of the IT Act on account of deduction claimed for HRA u/s 10(13A) of the IT Act for rent paid to his wife by holding that the AO has rightly disallowed the rent paid to his wife. He further submitted that the CIT-A has incorrect in holding in the appellate order that as per IT of his wife there is no other income except the rental income which is contrary to the fact that the appellant wife was also having income from business and Profession of Rs.2,61,000/-and income from other sources of Rs.40,841/- apart from rental income during the year under consideration and therefore having independent source of income. The Id. AR further placing reliance on the order of ITAT Delhi dated 08.02.2022 in ITA No. 3385/Del/2019 for AY 2013-14 in the case of Abhay Kumar Mittal vs. DCIT submitted that the contention of the Id. CIT(A) that the husband cannot pay rent to the wife is devoid of any legal implication supporting any such contention therefore orders of the authorities below may kindly be dismissed deleting the impugned disallowance. The Id. AR also drew our attention towards paper book filed by the assessee to submit that the wife of assessee is separte individual of filing returns of income since 2004-05 till date and she obtained loans from banks to purchase property which is being repaid in the installments and the wife of assessee has also shown rental income therein and also has paid taxes etc. thereon then the factum of receipt of rent cannot be doubted or discarded hence the contention of authorities below that the husband assessee cannot pay to his wife is not sustainable being devoid on merits. Therefore he submitted that the disallowance may kindly be deleted.

5. Replying to the above, the Id. Senior DR supported the orders of the authorities below.

6. On careful consideration of above submissions, at the very outset I note that the identical issue was placed before ITAT Delhi 'A' Bench in the case of Abhay Kumar Mittal vs. DCIT (supra) and the Tribunal adjudicated the issue in favour of the assessee with following observations and findings:-

*8. We find that the assessee's wife who has low returned income but received loan from the assessee and she has repaid the loan from the redemption of mutual funds and liquidation of fixed deposits. There is no bar on the part of the assessee to extend loan from his known sources of income to his wife. Similarly, there is no bar on the assessee's wife to repay the loan from her own mutual funds and fixed deposits. The assessee has paid house rent and the recipient, the assessee's wife has declared the same under the head "income from house property" in her returns which has been accepted by the revenue. The copy of which has been placed before us. The house has been registered in the name of Smt. Shivani Bansal. The Id. CIT(A)'s observation that the assessee has got meager income hence he cannot afford to purchase a house cannot be accepted as the sources for purchase of the house in the hands of Smt. Shivani Bansal are proved rather never doubted. The Id. CIT (A)'s contention that the husband cannot pay rent to the wife is devoid of any legal implication supporting any such contention. Hence, keeping in view the entire facts of the case, we hereby allow the appeal of the assessee.*

7. In the present case, also the assessee has submitted paper book wherein copy of his ITR for AY 2020-21 shows that he has claimed deduction for HRA u/s. 10(13A) of the Act, on account of rent paid to his wife which was denied by the authorities below by holding that the Assessing Officer has rightly disallowed the rent paid by the assessee to his wife. From the first appellate order, I note that the Id. CIT(A) uphold the disallowance by observing that from the ITR of his wife there is no other income other than rental income but from the copy of return of Smt. Sangeeta Jain for AY 2020-21, I note that beside rental income she has also declared income from business and profession amounting to Rs. 2,61,000/- and income from other sources of Rs. 40,841/- therefore, I safely hold that the Id. CIT(A) dismiss the ground of assessee on the basis of incorrect and relevant facts therefore the same cannot be held as sustainable.

8. The assessee has filed copies of ITR's of his wife for AY 2004-05, 2005-06 & for the year under consideration 2020-21 which clearly shows that the wife of assessee is earning income from business and profession in addition to rental and interest income and filing returns of income paying taxes thereon. The assessee has paid rent to his wife and the recipient wife has declared rental income under the head income from house property in her return of income which has been accepted by the revenue confirming the payment of taxes etc. thereon. The rental house has been registered in the name of his wife who purchased the house by procuring loans from the banks and also paying interest and installments against the housing loans. Therefore the observations of the Id. CIT(A) are not sustainable based on incorrect appreciation of facts as the sources for purchase of house in the hands of Smt. Sangeeta Jain and earning of rental income therefrom has been proved and accepted by the revenue therefore the other side of transaction of payment of rent by the husband cannot be

doubted and thus the contention of authorities below that the rent by the husband is not allowable for claiming deduction of HRA u/s. 10(13A) of the Act is devoid on merits and thus, I dismiss the same. Accordingly, ground no. 2 & 2.1 of assessee are allowed.

9. In the result, the appeal of the assessee is partly allowed..

Order pronounced in the open court on 30.06.2023.

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 30<sup>th</sup> June, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi