

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.2333/DEL/2023
[Assessment Year: 2007-08]**

Shiv Kumar Nayyar, 2B/12 East Punjabi Bagh, West Delhi Delhi-110026	Vs	DCIT, Central Circle-20, Delhi-110055
PAN-ALXPN4900G		
Assessee		Revenue

Assessee by	Sh. Anil Jain, CA
Revenue by	Sh. Om Prakash, Sr. DR

Date of Hearing	08.01.2024
Date of Pronouncement	16.01.2024

ORDER

This appeal by the assessee is directed against the order of Learned Commissioner of Income Tax (Appeals)-27, New Delhi, dated 27.07.2023 pertaining to Assessment Year 2007-08.

2. The issue raised is the sustaining of addition of Rs.6,91,875/- on account of investment in cash in AEZ group project in Indrapuram Habitat centre, Ghaziabad as income from undisclosed sources.

3. Brief facts of the case are that in this case information was received by the AO from the ADIT (Inv.), Unit-III(3), Delhi that the assessee has made investment in immovable property bearing no. Ground Floor, Commercial Space measuring 750 Sq. Yards situated at Indrapuram Habitat Centre, Ghaziabad jointly with Sh. Neetu Nayyar for total amount of Rs. 23,06,220/-, out of which Rs. 13,83,750/- was paid

in cash. Thereafter, after recording reasons, proceedings u/s 147 of the Act were initiated and notice u/s 148 of the Act was issued on 08.06.2012. Subsequently, assessment was completed vide order u/s 147 r.w.s. 143(3) dated 12.03.2013 at an assessed income of Rs. 18,39,120/- after making following additions:

- i. Addition of Rs. 6,91,875/- on account of investment made in cash in immovable property.
- ii. Addition of Rs. 8,25,505/- on account of addition to capital account from undisclosed sources of income.

3.1. Aggrieved with assessment order, the assessee filed first appeal before CIT(A). The Id. CIT(A)-14, Delhi vide order dated 06.01.2015 in Appeal No. 29/13-14 confirmed the above both additions made by AO.

3.2. Subsequently, the appeal filed second appeal before the ITAT. The ITAT, Delhi vide order dated 05.05.2020 in ITA No. 1636/DEL/2015 remanded back the matter to the file of the AO to decide the matter a fresh.

3.3. In compliance to directions issued by the ITAT, the Id. AO framed fresh assessment vide order u/s 254/147/143(3) of the Act dated 21.03.2022 at an assessed income of Rs. 10,38,370/- after making following additions:

- i. Addition of Rs. 6,91,875/- on account of investment made in cash in immovable property.
- ii. Addition of Rs. 74,750/- on account of addition to capital account from undisclosed sources of income.

3.4. From the grounds of appeal raised by the assessee, it is noted that the assessee has only contested addition of Rs. 6,91,875/- on account of investment made in cash in immovable property.

4. Upon assessee's appeal, the CIT(A) sustained the addition.

5. Against the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

6. I have heard both the parties and perused the records. I find that the assessee mentioned the following in support of plea of the deletion of addition:-

“With regard to source of opening cash in hand of Rs. 5,54,340 as on 01.04.2005 and Rs.7,05,840 as 01.04.2006, vide letter dated 14.02.2022 | have already clarified that my father was suffering from the heart problem and I was also suffering from sugar and blood pressure. Accordingly I along with my brother Sh. Neetu Nayyar used to keep Rs. 8,00,000/- approximately to meet out any emergencies. However ultimately my father expired on 13.01.2005. And the cash which I and my brother Sh. Neetu Nayyar used to keep with him was used by me and my brother for the purpose of our regular needs. So this was the source of the opening cash in hand of the Rs. 5,54,340/- as on 01.04.2005 which was increased to 7,05,840/- as on 01.04.2006. Further it is submitted that I and my brother Sh. Neetu Nayyar were living in the same house along with my father. There was one common kitchen and the wife of both the brothers are real sisters. A copy of the death certificate of my father Late Sh. Ramnath Nayyar and an affidavit of me with regard to the above said facts pertaining to opening cash in hand have already been filed before the Ld. AO (please see the page no. to 15 of the paper book).

Further it is submitted that during the F.Y. 2004-05 and 2005-06 also I received rent of Rs. 156,000/- and Rs. 180,000/- respectively. In addition my wife was also having rental income of Rs.162,000/- in F.Y. 2004-5 and 2005-06

and my HUF M/s Shiv Kumar and Sons was also having rental income of Rs. 1,80,000/- in F.Y. 2004-05 and 2005-06. Thus during F.Y. 2004-05 my family comprising of the above said 3 persons were having total cash income of Rs. 4,98,000/- and in F.Y. 2005-06 the gross income was of Rs. 522,000/-. And after considering the withdrawals of Rs. 180,000/- for household expenses and the education expenses of my 2 children, there was sufficient cash balance was outstanding. In addition my father Late Sh. Ramnath Nayyar retired from Indian Railways as Superintendent and was also receiving the pension of Rs. 20,000/- approximately per month which was also used for the purpose of household expenses till 14.01.2005. Copies of the IT Returns and computation of income of myself, wife and my HUF Shiv Kumar & Sons (HUF) for A.Y. 2005-06 and 2006-07 have already been filed with the Ld. AO (please see the page no. 29 to 35 of the paperbook).

With regard to household expenses and the expenses incurred on the education of the 2 minor children it is submitted that these expenses have been met from the income of my wife Smt. Honey Nayyar, my HUF Shiv Kumar & Sons from rental income of Rs. 180,000/- and rental income of my HUF of Rs. 180,000/-. These can be evidenced from the copy of the IT Return of my wife and my HUF Shiv Kumar & Sons which has already been filed with the Ld. AO (please see the page no. 20 to 23 of the paperbook).

Without prejudice to the above it is submitted that a person is entitled to keep cash in hand of Rs. 2,50,000 as per CBDT Circular no. 3/2017 and in the current case, I along with my wife Smt Honey Nayyar is entitled to keep cash of Rs. 5,00,000/- and my father being more than 70 year old during the period under consideration as per detail mentioned above was entitled to keep cash up to Rs. 5 lakhs at his house.

So, on the above said basis also, cash flow chart prepared by the assessee is genuine and thus addition made of Rs. 691875 on account of cash investment in AEZ group project in Indirapuram Habitat center Ghaziabad, is not justified and thus requires to be deleted.”

7. Upon carefully consideration, I find that the assessee has made these pleas before the lower authorities also. But this has been summarily

rejected. In my considered opinion, submission of the assessee has considerable cogency. Moreover, on earlier remand by the Tribunal, the authorities below have again passed the very same order without proper application of mind, in such circumstances, I set-aside the order of the authorities below and delete the addition.

8. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 16th January, 2024.

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Delhi; 16.01.2023.

Shekhar,

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi