

Sec. 69 additions couldn't be made in respect of investments made in earlier years: Delhi ITAT

Summary – The Delhi ITAT in a recent case of Km. Preeti Singh., (the Assessee) held that No addition under section 69 could be made in year under consideration in respect of investment in immovable property made in earlier year(s)

Facts

- The case of the assessee was selected for scrutiny, through Computer Assisted Scrutiny Selection (CASS) to examine the source of investment made in immovable property. The Assessing Officer made the addition of Rs. 55.39 lakhs, being the entire amount of investment in immovable property in the assessment order. The aforesaid amount of Rs. 55.39 lakhs consisted of cost of property of Rs. 51.86 lakhs and stamp duty of Rs. 3.53 lakhs.
- On appeal, the Commissioner (Appeals), out of the aforesaid addition of Rs. 55.39 lakhs made by the Assessing Officer upheld the addition of Rs. 38.58 lakhs.
- In instant appeal the assessee contended that the investment made by the assessee during the year under consideration was only Rs. 12.58 lakhs. The remaining amount of investment was made in the earlier year(s) for which no addition could be made in the year under consideration. He also submitted that the aforesaid investment of Rs. 12.58 lakhs during this year included Rs. 6.05 lakhs through cheque payment out of the assessee's bank account and payment of Rs. 6.53 lakhs was made in cash. The assessee provided copies of the assessee's account from the books of the builder from whom the property was purchased. He also provided the copies of account statements of the assessee's banks accounts. The assessee showed that there were sufficient deposits in the bank accounts of the assessee, carried forward from earlier year, to explain the source of aforesaid cheques. The brought forward opening balance at the beginning of this year in the bank accounts of the assessee had accumulated over a period of time in past few years. However, he contended that the deposits made in the bank accounts of the assessee in earlier years could not be the subject matter of addition in the year under consideration.

Held

- Firstly, it is not disputed that the total investment made by the assessee in this year was Rs. 12.58 lakhs and the remaining investment was made in earlier years. It is also not disputed that out of the aforesaid investment of Rs. 12.58 lakhs, the total payment amounting to Rs. 6.05 lakhs was made by cheque and the remaining balance of Rs. 6.53 lakhs was made by cash. It is also not disputed that the assessee had sufficient deposits in her bank account due to brought forward deposits of earlier year at the beginning of the year under consideration to explain the source of aforesaid transactions by cheque totalling Rs. 6.05 lakhs. It is further not disputed that the deposits in the bank accounts of the assessee at the beginning of the year had accumulated in the past, across several years. It is also

not disputed that the assessee had made significant amounts of withdrawals in cash, out of her bank account in an earlier year.

- On perusal of section 4(1), it is obvious that in the year under consideration, no addition can be made in respect of investments in property made by the assessee in earlier years or in respect of deposits in bank accounts of the assessee made in earlier year which brought forward to this year for making cheque payments of the aforesaid total amount of Rs. 6.05 lakhs. Moreover, in any case, when certain amounts were invested by the assessee and also, certain other amounts were deposited in the bank account of the assessee, in previous years relevant to earlier assessment years; such investments or deposits could not possibly have been out of the income of the previous year under consideration (relevant to assessment year 2009-10). It is well settled that each year is separate and self-contained period. The Income-tax is annual in its structure and organization. Each 'previous year' is a distinct unit of time for the purposes of assessment and further, that the profits made and the liabilities of losses made before or after the relevant previous year are immaterial in assessing income of a particular year; unless in accordance with proviso to section 4(1), there is statutory provision to the contrary, authorizing income of a period other than the previous year under consideration to be charged to income-tax (such as section 71B and section 72 which allow losses to be carried forward. Even if certain income has escaped tax in the relevant assessment year, because of a device adopted by the assessee or otherwise, it does not entitle revenue to assess the same as the income of any subsequent year when the mistake becomes apparent.
- In view of the aforesaid undisputed facts, and the legal position this appeal is disposed off with the following directions. Firstly, in computation of assessee's total income for the year under consideration, the Assessing Officer is directed to delete the additions in respect of those amounts which were invested by the assessee in earlier years *i.e.* before previous year 2008-09 relevant for assessment year 2009-10. The Assessing Officer is directed to quantify this amount while giving effect to this order. Secondly, the Assessing Officer is directed to delete the addition amounting to Rs. 6.05 lakhs which was made by the assessee during the year under consideration through cheque transactions from her bank account because, as stated earlier, it is not disputed that the assessee had sufficient deposits in her bank account at the beginning of the year to explain the source of aforesaid transactions by cheque. Thirdly, as far as investment totalling aforesaid amount of Rs. 6.53 lakhs in cash is concerned, the matter is restored to the file of the Assessing Officer with the direction to pass a fresh order on merits on this limited issue after considering the explanation of the assessee. At this stage no opinion is expressed on merits of the explanation tendered by the assessee. The Assessing Officer will decide the issue on this limited point in accordance with law and facts of the case.