IN THE INCOME TAX APPELLATE TRIBUNAL DELHI 'G' BENCH
BEFORE HON'BLE VICE PRESIDENT SHRI G.C. GUPTA AND
HON'BLE ACCOUNTANT MEMBER SHRI A.N. PAHUJA

ITA no.1560/Del./2012 Assessment year: 2005-06

Shroff Eye Centre, A-9, Kailash Colony, New Delhi-48	Vs.	Assistant CIT, Circle-37(1), Room no. 401,4th floor, N Block, Vikas Bhawan, New Delhi
[PAN AABFS 6789 D]		
(Appellant)		(Respondent)

Assessee by	S/Shri P.C. Yadav & S.C. Malhotra,ARs
Revenue by	Smt. Veena Joshi,DR

Date of hearing	06-06-2012
Date of pronouncement	03-08-2012

ORDER

A.N. PAHUJA :- This appeal filed on 03.04.2012 by the assessee against an order dated 01.03.2012 of the CIT(A)-XXVIII, New Delhi, raises the following grounds:-

1) *"That the order of the learned CIT(A) is against facts and law.*
2) *That the learned CIT(A) is not justified in confirming the disallowance of ₹3 lacs being charge on receipts.*
3) *That the learned CIT(A) is not justified in confirming the disallowance of ₹75,971/- out of General Repairs & maintenance expenses.*
4) *That the learned CIT(A) is not justified in upholding the action of Assessing Officer for re-opening the assessment u/s 147/148 of the Income-tax Act, 1961.*
5) *That the further grounds shall be submitted at the time of hearing."*

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2. Adverting first to ground no.2 in the appeal, facts, in brief, as per relevant orders are that return declaring income of `₹1,19,38,802/- filed on 28.10.2005 by the assessee, a partnership firm carrying on the profession of Ophthalmology surgeons, was processed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the Act). During the course of assessment proceedings for the AY 2007-08, the Assessing Officer[AO in short] noticed that Mrs. Mehru Minoo Shroff w/o Late Dr. M.S. Shroff , deceased partner of the firm, continued to receive 2% of the gross receipts subject to a maximum of `₹3 lacs in terms of deed of partnership dated 1.4.2003. According to the AO, this was merely an arrangement to reduce the tax liability of the firm and therefore, the amount of ₹`3 lacs paid to Ms. Mehru Minoo Shroff was disallowed in the AY 2007-08. In the light of his findings in the AY 2007-08, the AO reopened the assessment for the year under consideration u/s 147 of the Act, after recording reasons in writing, with the service of a notice u/s 148 of the Act issued on 30.03.2010. In response, the assessee submitted that return filed on 28th October, 2005 may be treated as return in response to notice u/s 148 of the Act. During the course of reassessment proceedings, the AO referred to clause 13 of partnership deed dated 01.04.2003, stipulating that in the event of death of the partner wife of the partner or his legal heirs in the event wife is not surviving, shall be entitled to receive 2% of the gross receipts every year for a period of 10 years from the date of death subject to a maximum of ₹3 lacs in case of first partner viz. Dr. M.S Shroff and ₹6 lacs in the case of remaining two partners.. Dr. M.S. Shroff died on 15.03.2004. Consequently, partnership was reconstituted in terms of partnership deed executed on 15.3.2004 . The clause 13 was also modified. To a query by the AO during the course of reassessment proceedings, the assessee replied that amount payable to Mrs. Mehru Minoo Shroff was a first charge on the receipts of the firm, being diversion of income by an overriding title. However, the AO did not accept the submissions of the assessee and disallowed an amount of ₹`3 lacs.

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3. On appeal, the assessee contended that in terms of clause 13 of partnership Deed dated 01.04.2003, wife of late Dr. M.S. Shroff became entitled to an amount of ₹3 lacs in the year under consideration and ₹12,500/- in the AY 2004-05. In the AY2004-05 ,amount claimed was allowed as such. In the AY 2006-07 also, their claim was also allowed in order dated 28th November, 2008 u/s 143(3) of the Act. Relying upon the decisions in CIT Vs. Sitaladas Tirathdas, (1961) 41 ITR 367, 374-5 (SC); Moto Lal Chhadami Lal Jain Vs. CIT (1991) 190 ITR 1, 10-11 (SC); CIT Vs. Crawford Bayley & Co., 106 ITR 884 (Bom.); CIT Vs. L. Bansi Dhar , 67 ITR 374(del.); L. Hans Raj Gupta and another Vs. CIT, 73 ITR 765 (Delhi); RSM & Co. Vs. Addl. CIT (2010) 125 ITD 243 (Mum.); the assessee contended that amount payable to Mrs. Mehru Minoo Shroff was a charge on the receipts of the firm and was thus, allowable . However, the ld. CIT(A) did not accept the submissions of the assessee and relying on decision in K.C. Bose & Company Vs. CIT, 156 ITR 701 (Cal.)(1985), upheld the findings of the AO, in the following terms:-

"I have gone through the assessment order and written submission of the appellant. The Assessing Officer has contended that the partnership deed dated 15th March. 2004 clause 13 mentions that Mrs. Mehru Minoo Shroff wife of Late Dr. M.S. Shroff ex-partner of the firm will continue to receive 2% of the gross receipts subject to a maximum of Rs.300000/- in terms of deed of partnership dated 01.04.2003. Dr. M.S. Shroff died on 15.03.2004. Vide order sheet entry dated 19.10.2010, assessee was asked to show cause why charge on receipts not be disallowed being payment made to wife of ex-partner of the firm who has no reason to be paid since the said charge has been debited to the P & L a/c of the firm.

Vide submission dated 20.11.2009; assessee submitted that the amount payable to Mrs. Mehru Minoo Shroff was a charge on the income of the firm. It was diversion of income by an overriding title which was created vide valid agreement. It is seen that the partnership firm was a family partnership comprising of Late Dr. M.S. Shroff.

The claim of the appellant would be rejected on the following grounds: -

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(i) The said claim is not 'expenditure' in true sense.

(ii) The wife of the deceased partner has no claim on the firm's name. The goodwill i.e., the name of the partnership firm was not the property of anyone individual. Even if it is considered that the firm has earned a name J goodwill over a period of year, the sustain ability of the firm's name would largely depend on the work done by the present partners. Any new work, in the absence of the main partner, Late Dr. Shroff, will come to the firm not based on goodwill but based on the performance of the firm which matters in the long run.

(iii) Even if it is hypothetically assumed for the sake of discussion that the payment on account of goodwill is to be made as per the partnership deed, than the basis for arriving at a figure per month/annum from the firm for her lifetime is not provided in the deed. Even otherwise, the amount earmarked is very unreasonable. Allowing such claim distorts the true picture of net profit of the firm and such claims are not provided in the statutes either.

(iv) Reliance is placed on the following case law of KC Bose & Co. Vs CIT 156 ITR 701 (Cal.) (1985)

"Diversion of income by overriding title" --- Meaning of.

In determining whether there has been diversion of income by overriding title, it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to apply out of this income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by an obligation, income is diverted before it reached the assessee, it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable."

"Section 4 of the IT Act, 1961 - Income - Diversion of at source by overriding title - Assessment years 1966-67 to 1969-70 - In terms of partnership deed, on death of partner 'K' his share of good-will would

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automatically devolve on remaining two partners, in consideration whereof widow of deceased partner would be credited with a fixed sum payable in monthly installments - On death of 'K' surviving partners while continuing partnership under fresh deed, voluntarily provided for payment of said amount to widow - Accordingly, charge was created on all assets of assessee-firm - whether said provision for payment of fixed amount in monthly installment was a disposition of property after death in nature of a conditional bequest and could not be held to be a transaction of sale simpliciter - Held, yes - whether merely because surviving partners agreed to apply a part of income of partnership for purpose of limited obligation, in could not be held that income of subsequent partnership did not accrue fully in hands of partnership or any part thereof was diverted by an overriding title or that said partnership had become only a collector of said amounts for widow - Held yes - Whether, therefore, said amounts were not allowable as deduction from total income of assessee - Held, yes."

In view of the reasoning [(i to iii) supra], the claim of Rs.300000 j - as (Annuity)" is disallowed.

I have perused the case laws cited by the appellant. The facts of the present case are different and distinguishable from the case laws relied upon by the appellant.

I have duly considered the contention of the Assessing Officer and also perused the case law i.e. KC Bose & Co. Vs CIT 156 ITR 701 (Cal.) (1985). The Assessing Officer has rightly disallowed the claim of ₹.300000/- paid to Mrs. Shroff. The order of the Assessing Officer is sustained. Appeal on this ground is dismissed."

4. The assessee is now in appeal before us against the aforesaid findings of the Id. CIT(A).The Id. AR on behalf of the assessee while carrying us through clause 13 in the partnership deed dated 1.4.2003 & 15th March, 2004 mentioned that amount payable to Mrs. Mehru Minoo Shroff wife of Late Dr. M.S. Shroff was charge on the receipts of the firm. While referring to assessment order for the AYs 2004-05 and 2006-07, the Id. AR contended that their claim was allowable, following the principle of consistency. Since the amount payable to Mrs. Mehru Minoo Shroff was a charge on the receipts of the firm, the Id. AR while referring to decisions in CIT Vs. Sitaladas Tirathdas, (1961) 41 ITR 367, 374-5 (SC); CIT vs. Subramaniam Brothers,236 ITR 148(Mad.);CIT vs. Sunil J Kinariwala,259 ITR

10(SC) and RSM & Co. Vs. Addl. CIT (2010) 125 ITD 243 (Mum.) vehmently argued that their claim was admissible. On the other hand, the ld. DR supported the findings of the ld. CIT(A).

5. We have heard both the parties and gone through the facts of the case as also the aforesaid decisions relied upon by the ld. AR. The issue before us is as to whether the amount paid by the assessee to Mrs. Mehru Minoo Shroff wife of Late Dr. M.S. Shroff ,is first charge on receipts of the firm in terms of clause 13 of the partnership deed executed on 1.4.2003. Here we may have a look at the relevant clause 13 of Partnership deed executed on 1.4.2003,which reads as under:-

> *"13. That in event of the death of a Partner, his wife, if surviving, or his legal heirs if his wife is not surviving will be entitled to receive 2% of the gross receipts every year for a period of 10 years from the date of death subject to a maximum of Rs.3,00,000 j - per year in the case of party of the First Part and Rs.6,00,000/- per annum in the case of the parties of the Second & Third Parts respectively, from the continuing Firm or from the Partner/s who carries on the profession under the name and style of SHROFF EYE CENTRE. This amount will be first charge on the receipts of the continuing Firm/Partner."*

5.1 The partnership was reconstituted on 15th March, 2004 on the demise of Dr. M.S. Shroff and the clause 13 in the said partnership deed read as under:-

> *"13. That in the event of the death of a Partner, his wife, if surviving, or his legal heirs if his wife is not surviving will be entitled to receive 2% of the gross receipts every year for a period of 10 years from the date of death subject to a maximum of Rs.9,00,000/- per annum from the continuing Firm or from the Partner who carries on the profession under the name and style of SHROFF EYE CENTRE. This amount will be first charge on the receipts of the continuing Firm/Partner."*

5.2 The plea of the assessee is that the amount payable to Mrs. Mehru Minoo Shroff was a first charge on the receipts of the firm in terms of aforesaid

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clause 13 of the partnership deed dated 1.4.2003 and was, thus diversion of income by an overriding title, which was created under a valid agreement. The ld. AR relied upon the number of decisions in this connection .In Sitaladas Tirathdas (supra) ,Hon'ble Apex court while referring to decisions in Raja Bejoy Singh Dudhuria's case [1933] 1 ITR 135 (PC) and in P.C. Mullick's case [1938] 6 ITR 206 (PC) laid down a test to determine as to whether or not income is diverted before it reaches the assessee and observed as under:-

> *"In our opinion, the true test is whether the amount sought to be deducted, in truth, never reached the assessee as his income. Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by the obligation income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable."*

5.3 Following the aforesaid decision, Hon'ble Bombay High Court in the case of Crawford Bayley & Co. (supra), concluded as under:-

> *"9. "The first two contentions of Mr. Joshi can be discussed together, because they are different phases of the same question. In respect of this matter the material question to be considered is, is there diversion of income by an overriding title or whether there is an application of income after it accrued to the assessee-firm. The true test in determining this question is laid down in Sitaldas Tirathdas's case (supra). The true test for the application of the rule of diversion of income by an overriding charge, is whether the amount sought to be deducted, in truth, never reached the assessee as his income. Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged*

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to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by the obligation income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied.

If regard be had to the relevant provisions of the partnership deeds, Annexs. 'A', 'B' and 'C', it is quite apparent that this is not a case of application of income after it accrued due to the assessee, but it is clearly a case of diversion of income by an overriding title in respect of payment. Under these partnership deeds the assessee-firm is to continue for an indefinite period and it is not going to be dissolved by mere death or retirement of any partner. There is a clear and explicit provision in all the partnership deeds that upon an active partner becoming a sleeping partner or upon the death or retirement of any active partner, the surviving or continuing active partner or partners shall succeed to the share of the outgoing active partner in the partnership business and the property and goodwill thereof. The surviving or continuing active partners are also to undertake all the debts, liabilities and obligations of the partnership. Thus, it is quite clear having regard to these provisions that even though a partner may cease to be a partner by reason of his death, his legal representative will not be entitled to any share in the goodwill of the firm or compensation in lieu thereof. The payment to the widow of a deceased partner under these partnership deeds is not dependent upon the assessee-firm incurring any profits or losses. It is an absolute obligation and even though there may be no profits in a particular year made by the assessee-firm the obligation to pay to the widow under cl. 33 of the partnership deed, Annex. 'A', and cls. 8 and 34 of the partnership deed, Annex. 'B', is absolute. When the obligation to pay such amount to the widow of a deceased partner is absolute, there can be no question of application of income by the assessee-firm after it accrued to it. In fact, such payment is to be made even though no profits whatsoever may have been made. This provision shows that it is an obligation in the nature of trust. Ordinarily, it is true that a person who is not a party to the contract cannot enforce it, but there are several well recognized exceptions to this rule. One of the well recognized exceptions is a cestui que trust. In a cestui que trust even though a person may not be a party to a contract he can enforce his right under contract by adopting

appropriate legal proceedings. Such is the case so far as the rights of a widow of a deceased partner under these partnership deeds are concerned. Such payments have to be made by reason of an overriding title and there is no question of income being applied by the assessee-firm after it accrued to it. Further it should be noted that no question of allowing an expenditure under s. 10(2)(xv) of the Indian IT Act, 1922, or the corresponding provisions of the IT Act, 1961, arise in the present case, because deduction is claimed not as an expenditure under the exception but it is claimed by way of payment made in respect of items which are obligations in the nature of trust and such payments are required to be made before the income even accrued to the assessee...."

5.4 In K. C. Bose and Co.'s case(supra) ,followed by the ld. CIT(A), a personal obligation was imposed on the surviving partners and only in discharge of the personal obligation of the surviving partners, certain payments were made. The relevant clause in the partnership deed in this decision read as under:

" In the event of the death of the party of the first part or the party of the third part during the continuance of the partnership, their shares in the goodwill of the firm would automatically pass on to the continuing partners and as a consideration therefor, in the case of the party of the first part, his widow will be credited with a sum of Rs. 50,000 and in the case of the party of the third part, his widow will be credited with sum of by Rs. 16,000 debiting the amounts to the goodwill account. These sums of Rs. 50,000 and Rs. 16,000 will be repayable at the rate of Rupees three hundred only per month to the widow of the party of the first part or to her nominee in case of her demise prior to the full repayment of Rs. 50,000 and at the rate of Rupees one hundred only per month to the widow of the party of the third part or her nominee in case of her demise before the full payment of Rs. 16,000. These monthly instalments of Rs. 300 and Rs. 100 will be payable on the last working day of the month for which the instalments are due. For the due payment of these amounts all assets including outstanding fees, cash and bank balances would remain charged. This would, however, not affect the settlement of account of any retiring or deceased partner in terms of clauses 17 or 20 hereof."

5.41 The Tribunal in the aforesaid case,found that the assessee had purchased the share of late K.C. Bose in the goodwill of the firm on the death of the latter at a definite price of ₹50,000 and thereby acquired a capital asset. It was held that the amount represented a capital expenditure even though it was to be paid in instalments over a period. The Tribunal held further that though the assets of the assessee including fees remained charged for the payment of the said amount, it would not make any difference in the nature of the expenditure and, as such, the

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assessee was not entitled to claim deduction of the said amounts on the ground that the same was being paid under an overriding title in favour of the widow. On appeal by the assessee,Hon'ble High Court found that the aforesaid provision in partnership deed was a disposition of property after death in the nature of a conditional bequest and could not be held to be, transaction of sale simpliciter. By operation of the aforesaid provision, on the death of K. C. Bose, the share of K. C. Bose in the goodwill of the firm devolved on the continuing partners, D. Banerjee and T. G. Menon, with an obligation on their part to pay a lump sum to the widow of K. C. Bose. This obligation, in our view, was a personal obligation of the surviving partners. In order to discharge the said obligation, the surviving partners, while continuing the partnership under a fresh deed, voluntarily provided for payment of the said lump sum amount to the widow. Accordingly, the Hon'ble High Court held that the charge created under the subsequent deed of partnership created voluntarily for a limited purpose, namely, fulfilling a personal obligation of the partners. Had the condition not been fulfilled, the surviving partners would not have been entitled to acquire the share of the deceased partner in the goodwill of the firm. It was further held that the charge created in the subsequent partnership deed cannot be held to have created an overriding charge nor could it be held that as a result of such a charge the income of the subsequent partnership has been diverted within the meaning of the principles laid down in Raja Bejoy Singh Dudhuria [1933] **1 ITR 135** (PC).The payments to be made to the widows were not dependent upon the profit or loss of the firm but was an absolute obligation in the nature of a trust which the widows could enforce, Hon'ble High Court concluded. But such are not the facts and circumstances in the appeal before us. In the instant case, in terms of clause 13 of the partnership deed dated 1.4.2003, absolute obligation is cast on the continuing Firm or the Partner/s who carry on the profession under the name and style of SHROFF EYE CENTRE. In Subramaniam Brothers.(supra) the deed of partnership imposed an absolute obligation on the surviving partners to realise the commission that accrued up to the date of retirement and pay the same to the retired partners. This obligation has to be discharged irrespective of the fact

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whether the assessee-firm had made a profit or not and, equally the retired partners had an enforceable right to receive the said commission. The obligation, on the part of the assessee to pay to the retired partners arose upon the receipt of the commission and the commission was earned for the work done prior to their retirement. The substance of the entire transaction was that the assessee-firm was collecting money as a trustee for and on behalf of the retired partners. The assessee, as soon as the amount was collected, had to hand over the money without anything further to be done to the retired partners. Accordingly, Hon'ble High Court held that there was an absolute obligation imposed on the continuing partners to hand over the commission to the retired partners and the income was diverted by overriding title. In a similar situation, in V. N. V. Devarajulu Chetty and Co. v. CIT [1950] 18 ITR 357, Hon'ble Madras High Court held that that where a new firm which merely collected the money on behalf of the old firm and bank the same to the new firm (sic), the new firm could not be assessed.

5.5 In CIT v. Sunil J. Kinariwala [2003] 259 ITR 10, Hon'ble Apex court, after referring to the decisions of the Privy Council in the cases of Raja Bejoy Singh Dudhuria v. CIT [1933] 1 ITR 135 and P.C Mullick v. CIT [1938] 6 ITR 206 and of the apex court in the cases of CIT v. Sitaldas Tirathdas [1961] 41 ITR 367; K.A. Ramachar v. CIT [1961] 42 ITR 25; Moti Lal Chhadami Lal Jain v. CIT [1991] 190 ITR 1; CIT v. Bagyalakshmi and Co. [1965] 55 ITR 660 (SC) and Murlidhar Himatsingka v. CIT [1966] 62 ITR 323 has held that if a third person becomes entitled to receive an amount under an obligation of an assessee even before he could lay claim to receive it as his income, there would be a diversion of income by overriding title but when after receipt of the income by the assessee, the same is passed on to a third person in discharge of the obligation of the assessee, it will be a case of application of income by the assessee and not of diversion of income by overriding title.

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5.6 In RSM & Co(supra) , it was the contractual obligation on the assessee-firm to pay the retirement benefits for the period of five years and he retired partner had nothing to do with the profit earned or losses suffered by the assessee-firm, but the quantum of the retirement benefit had been fixed. In pursuance of partnership deed, a co-ordinate Bench concluded that there was a charge on the profits of the assessee-firm and, hence, there was a diversion of income to the extent of the retirement benefits paid by the assessee-firm to the retired partner.

5.7 In U. P. Bhumi Sudhar Nigam Vs. Commissioner of Income-tax, 280ITR 197(All), Hon'ble High Court observed that the principles relating to diversion of income by overriding title are (i) if a third person becomes entitled to receive an amount under an obligation of an assessee even before he could claim to receive it as his income, there would be a diversion of income by overriding title but when after receipt of the income by the assessee, the same is passed on to a third person in discharge of the obligation of the assessee, it will be a case of application of income by the assessee and not of diversion of income by overriding title ;

6. In the light of view taken in the aforesaid decisions, there being an absolute contractual obligation imposed on the continuing firm/partners in terms of clause 13 of the partnership deed executed on 1.4.2003, the assessee firm is required to pay the amount @ 2% of the gross receipts subject to maximum of 3 lacs pa to Mrs. Mehru Menoo Shroof and this amount being the first charge on receipts of the continuing firm/partners ,apparently, there would be a diversion of income by overriding title. Indisputably, a similar claim has already been accepted by the AO in the AY 2004-05 & 2006-07. In view of the foregoing, we have no alternative but to allow ground no.2 in the appeal .

7. Ground no.3 in the appeal relates to disallowance on account of repairs. During the course of assessment proceedings , the assessee submitted details of expenses exceeding ₹20,000/- each, amounting to ₹12,05,946/- on

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account of repairs & maintenance.The AO disallowed an amount of `₹75,971/- out of general repairs and maintenance expenses of ₹35,46,971/- on the ground that the expenses to that extent were unvouched.

8. On appeal, the ld. CIT(A) upheld the findings of the AO, finding no reason to interfere with the assessment order.

9. The assessee is now in appeal before us against the aforesaid findings of the ld. CIT(A).The ld. AR on behalf of the assessee while relying decision dated 9.4.2010 in ACIT Vs. Talbros Engineering Ltd. in ITA no. 4166/Del./09 for the AY 2004-05 and Shanker Trading Co.(P) Ltd. Vs. ACIT, 152 Taxman 49(Delhi) contended that adhoc disallowance could not be made. On the other hand, the ld. DR supported the order of the ld. CIT(A).

10. We have heard both the parties and gone through the facts of the case. Indisputably, an amount of ₹75,971/- was disallowed only on the ground that the expenses were unvouched. To a query by the Bench, the ld. AR or DR did not adduce the basis for working out the amount of ₹`75,971/-. On perusal of details at page 60 to 62 of the paper book, we find that the assessee has merely submitted a copy of ledger account in respect of expenditure exceeding above `₹20,000/- each amounting to ₹`12,05,946/- while the details of expenditure below `₹20,000/- are not available . Neither the learned AR nor the ld. DR could explain the basis for disallowing the amount of ₹`75,971/- nor the impugned order is speaking one. Even the nature of repairs is not brought out in the impugned order nor it is stated that these repairs were current or otherwise. The ld. AR appearing before us did not throw any light on the nature of repairs.A mere glance at the impugned order reveals that the order passed by the ld. CIT(A) is cryptic and grossly violative of one of the facets of the rules of natural justice, namely, that every judicial/quasi-judicial body/authority must pass a reasoned order, which should reflect

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application of mind by the concerned authority to the issues/points raised before it. The application of mind to the material facts and the arguments should manifest itself in the order. Section 250(6) of the Act mandates that the order of the CIT(A) while disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. The requirement of recording of reasons and communication thereof by the quasi-judicial authorities has been read as an integral part of the concept of fair procedure and is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimizes arbitrariness in the decision-making process. Hon'ble jurisdictional High Court in their decision in Vodafone Essar Ltd. Vs. DRP,196 Taxman423(Delhi) held that when a *quasi judicial* authority deals with a lis, it is obligatory on its part to ascribe cogent and germane reasons as the same is the heart and soul of the matter and further, the same also facilitates appreciation when the order is called in question before the superior forum. We may point out that a 'decision' does not merely mean the 'conclusion'. It embraces within its fold the reasons forming basis for the conclusion.[Mukhtiar Singh Vs. State of Punjab,(1995)1SCC 760(SC)].As already observed, the impugned order suffers from lack of reasoning and is not a speaking order on the disallowance out of repairs and maintenance. In view of the foregoing, especially when the ld. CIT(A) have not passed a speaking order , we consider it fair and appropriate to set aside the order of the ld. CIT(A) and restore the matter to his file for deciding the aforesaid issue, afresh in accordance with law, after allowing sufficient opportunity to both the parties. Needless to say that while redeciding the appeal, the ld. CIT(A) shall pass a speaking order, keeping in mind, inter alia, the mandate of provisions of sec. 250(6) of the Act,bringing out clearly the nature of repairs ,whether current

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or otherwise. With these observations, ground no. 3 in the appeal is disposed of. As a corollary, ground no. 2 in the appeal does not survive for our adjudication at this stage

11 Ground no.4 relating to reopening of assessment was not pressed before us by the ld.AR on behalf of the assessee and is, therefore, dismissed.

12. Ground no.1 in the appeal being general in nature does not require any separate adjudication while no additional ground having been raised before us in terms of residuary ground no.5 in the appeal, accordingly, both these grounds are dismissed.

13.. In result, appeal is allowed but partly for statistical purposes.

Order pronounced in open Court

Sd/-	Sd/-
(G.C. GUPTA)	(A.N. PAHUJA)
VICE PRESIDENT	ACCOUNTANT MEMBER

NS

<u>Copy of the Order forwarded to</u>:-

1. Assessee
2. Assistant CIT, Circle-37(1), Room no. 401,4th floor, N Block, Vikas Bhawan,New Delhi
3. CIT(A) concerned
4. CIT(A)-XXVIII, New Delhi
5. DR, ITAT,'G' Bench, New Delhi
6. Guard File.

By Order,

Deputy/Asstt.Registrar
ITAT, Delhi

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