

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

**Before Sh. A. D. Jain, Vice-President**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 3385/Del/2019 : Asstt. Year : 2013-14**

|  |    |                                     |
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| Abhay Kumar Mittal,<br>Flat No. A-42, Himalayan<br>Residency, Plot No. 10, Sector-<br>22, Dwarka, New Delhi-110077 | Vs | DCIT,<br>Circle-72(1),<br>New Delhi |
| (APPELLANT)  |    | (RESPONDENT)                        |
| <b>PAN No. AAJPM3747K</b>  |    |                                     |

**Assessee by : Sh. Rajesh Mahana, Adv.  
Revenue by : Sh. Sanjay Kumar, Sr. DR**

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| <b>Date of Hearing: 07.12.2021</b> | <b>Date of Pronouncement: 08.02.2022</b> |
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of Id. CIT(A)-21, New Delhi dated 21.01.2019.

2. Following grounds have been raised by the assessee:

*"1. The CIT(A) has erred in law and on facts in confirming the addition made by the Ld. Dy. Commissioner of Income Tax Circle 72(1), on account of Rental Income amounting Rs.3,73,800/- earned by the Spouse of the Assessee, in the hands of the Assessee, U/s 64 of the Income Tax Act, 1961.*

*2. The Ld. CIT(A), misconstrued the fact and law and confirming the imposition of provisions of clubbing and disallowing the rent paid to spouse by the Assessee, as his investment/funding towards the purchase of the Property and further, clubbing Rental Income earned from that Property with the Income of the Assessee U/s 64 of the I. T. Act, 1961.*

3. *The Ld. CIT (A) has, further failed to appreciate facts that the Part of Financial Loan assistance stands returned by the Spouse to the Assessee on 02.08.2013 Rs.7,50,000/- and 19.07.2015 Rs.50,00,000/-. That the case was selected for scrutiny through CASS and Notice U/s 142(1) of the Income Tax Act, 1961 was issued on 12.10.2015.*

4. *That the CIT(A) has erred in law and on facts that the Rental Income cannot be taxed twice, both in hands of the Assessee as well as the Spouse, since the Spouse had declared the Rental Income and accordingly filed her Income Tax Returns.*

5. *That the CIT (A) has erred in law in making observations that the property has been transferred for inadequate consideration. Such observation has no reference w.r.t. Section 27 of the Income Tax Act, 1961.*

6. *That the CIT (A), further misconceived the provisions of the Act, to state that accommodation can't be shared if one claims that he or she is paying rent. There must be complete house or a part of house with clear demarcated portion in which the one is staying in rent. A tenant can't share living spaces in a house with the landlord in a rented accommodation. Thus, it establishes that if one is staying, along with his/her spouse in the same accommodation, HRA deduction cannot be claimed.*

7. *That the CIT(A) also erred to not to consider other income i.e. tax free income of the spouse of the assessee as a source of income from where the Spouse accumulated funds to purchase the property. Further, the CIT(A) erred in law and facts of the case to consider that the Spouse of the Assessee only declared Income from Profession in 2 years i.e. 2001-02 and 2003-04 and held that the Spouse of the Assessee did not had the substantial taxable income to justify her source of income from purchase of the property.*

8. *That the CIT(A) also erred in law to consider and observe that the Assessee is the second holder in various investments made in name of the Spouse and thereby deemed to consider that the investments where made by the Assessee."*

3. The assessment in this case has been completed u/s 143(3) of the Act on 03.03.2016 at taxable income of Rs.66,88,240/- inter alia making an addition of Rs.3,73,800/-. On perusal of assessment order, it is observed that assessee claimed to have paid rent to his wife Mrs. Shivani Mittal during the period September 2012 to March 2013 totaling to a sum of Rs.5,34,000/-. During assessment proceedings, Assessing Officer required the assessee to explain the capacity of assessee's wife to purchase the property giving details of source/sources of funds for the same. It was explained by the assessee that property worth Rs.1.15.Crore was claimed to be purchased by assessee's wife for which amount of Rs.87.50 lacs were funded by the assessee himself and remaining amount was claimed to have been invested out of her own sources i.e. maturity of FD amounting to Rs.33.25 lacs. However it was noticed by the Assessing Officer that assessee's wife, in fact, had no independent source of income to make the investment in the FDR's and the major share of Rs. 87.50 lacs was also funded by the assessee. In these circumstances, it was held by the Assessing Officer that the rental income earned by Mrs. Shivani Mittal, the W/o the assessee is **liable to be clubbed in the hands of the assessee** since it is proved that the investment to have purchased the property was in fact was made without having any independent source of income. Accordingly Assessing Officer clubbed the rental income of Rs.5,34,000/- after allowing deduction u/s 24A @ 30% (Rs. 1,60,200/-) in the hands of the assessee and addition of Rs. 3,73,800/- was made in the hands of the assessee.

4. The Id. CIT(A) confirmed the addition holding that the claim of the appellant that the investment has been made in the house property by his wife from her own independent

resources, is also not found to be acceptable. While confirming, the Id. CIT(A) relied on the income summary statement of Smt. Shivani Mittal, for the assessment year 2001-02 and 2003-04 wherein she has shown income from profession of Rs.57,400/- and Rs.1,48,900/- respectively. The Id. CIT(A) further relied on the total taxable income shown in the ITR filed from the assessment year 2001-02 till A.Y 2012-13 which is as under:-

| <u>Assessment Year</u> | <u>Income Returned (In Rs.)</u> |
|------------------------|---------------------------------|
| 2001-02                | 86,946/-                        |
| 2002-03                | 1,05,950/-                      |
| 2003-04                | 1,48,900/-                      |
| 2004-05                | Nil                             |
| 2005-06                | 1,44,855/-                      |
| 2006-07                | 3,36,580/-                      |
| 2007-08                | 1,72,663/-                      |
| 2008-09                | 2,16,961/-                      |
| 2009-10                | 1,68,547/-                      |
| 2010-11                | 2,90,000/-                      |
| 2011-12                | 1,52,356/-                      |
| 2012-13                | 3,27,315/-                      |
| 2013-14                | 3,73,800/-                      |

5. The Id. CIT(A) held that it is evident that there is no substantial taxable income shown by appellant's wife during the above assessment years, on the basis of the same, it can easily be inferred that she had no substantial source of income through which she can make investment in her own capacity either in the property or in the mutual funds etc. The Id. CIT(A) also observed that in most of the cases, appellant is the second holder in various investments made in the name of Shivani Mittal.

6. Before us, it was submitted that Income Tax Act does not prohibit claiming HRA exemption on the rent paid to one's spouse, that her wife is qualified medical practitioner and she

has returned the loan extended to her by the assessee from liquidation of mutual funds and fixed deposits.

7. Heard the arguments of both the parties and perused the material available on record.

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.

9. In the result, the appeal of the assessee is allowed.  
Order Pronounced in the Open Court on 08/02/2022.

Sd/-

**(A. D. Jain)**  
**Vice President**

**Dated: 08/02/2022**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**