

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-1', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 2066/Del/2016 : Asstt. Year : 2010-11

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| Sh. Ajay Kumar, H/No.-11C-192, Nehru Nagar, Ghaziabad (UP)-201001 | Vs | Income Tax Officer, Ward-1(1), Ghaziabad (UP) |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. ANTPK6951G | | |

**Assessee by : Sh. Anoop Sharma & Sanjay Prasahar, Advs.
Revenue by : Sh. F. R. Meena, Sr. DR**

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| Date of Hearing : 21.09.2016 | Date of Pronouncement : 07.10.2016 |
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ORDER

This is an appeal by the assessee against the order dated 29.01.2016 of Id. CIT(A), Ghaziabad.

2. Following grounds have been raised in this appeal:

"1. That the Ld. CIT(A) Ghaziabad erred in law, on facts and surroundings circumstances in upholding the whopping additions of Rs. 1127940/- being the entire cash credits appearing in two saving bank accounts maintained by the appellant, on illogical, and irrelevant grounds having no sanctity in law.

2. That the Ld. CIT(A), further erred in law, on facts and surrounding circumstances in ignoring altogether the non applicability of section 68 of IT. Act. vis-a-vis the findings of the jurisdictional ITAT Bench 'C', Delhi in land mark judgment in the case of Km. Mayawati vs. DCIT Central Circle-II Poll, New Delhi, heavily relied upon by the appellant, without assigning a single logical

word, knowingly well that it was of a binding nature for the jurisdictional taxation authorities.

3. That, with due apology, the Ld, CIT(A) in his zeal to sustain the impugned additions made u/s 68 of IT. Act. by the Ld. A.O. and in order to defeat the impact of the above cited judgment of jurisdictional ITAT, Delhi, invoked the plenary powers of co-terminus, vested in CIT(A), by converting the impugned additions u/s 69 of IT. Act, in a sweeping manner, leading to travesty of natural law and justice.

4. That in doing so, the Ld. CIT(A) further erred in law, on facts and surrounding circumstances in failing to provide reasonable opportunity of being heard resulting in breach of the principle of 'audi alteram partem'.

5. That the Ld. CIT(A) also erred in law on facts and surrounding circumstances in out rightly rejecting the application u/r 46A of IT. Rules, without any speaking order, in an arbitrary and fanciful manner leading to closure of the doors of justice to the appellant.

6. That keeping in view, the binding nature of the above land mark judgment coupled with various other decisions, having direct applicability on the facts and circumstances of appellant case, the impugned additions are liable to be deleted in the interest of natural law and justice.

The appellant seeks permission to add, amend or withdraw any ground(s) of appeal.”

3. From the above grounds it is gathered that the main grievance of the assessee vide Ground Nos. 4 to 6 relates to the opportunity of being heard not provided and the rejection

of the application moved by the assessee under Rule 46A of the Income Tax Rules, 1962 by the ld. CIT(A).

4. Facts of the case in brief are that the assessee filed the return of income on 28.03.2011 declaring an income of Rs.1,54,433/-. Later on, the case was selected for scrutiny. The AO framed the assessment at an income of Rs.12,90,026/- by making the addition of Rs.11,27,940/- on account unexplained cash credits in the bank account and Rs.40,653/- as income from other sources.

5. Being aggrieved the assessee carried the matter to the ld. CIT(A) and filed the application for admission of the additional evidences under Rule 46A of the Income Tax Rules, 1962. The ld. CIT(A), however, rejected the application of the assessee and did not admit the additional evidences by observing that the assessee did not produce the depositor despite specific requirement and opportunity given by the AO.

6. Now the assessee is in appeal. The ld. Counsel for the assessee submitted that his uncle late Sh. Chater Singh Yadav used to give him cash which was deposited in the bank account and returned back on demand to his wife. However, the ld. CIT(A) did not accept the additional evidence in the form of death certificate of Late Sh. Chater Singh Yadav and affidavit

of his wife Smt. Krishna Yadav, the said documents goes to the root of the matter and fully supports the claim of the assessee. It was stated that the assessee could not procure those documents earlier, therefore, this could not be furnished before the AO. He requested that the matter may be sent back to the AO because the Id. CIT(A) also changed and addition was made u/s 69 instead of 68 of the Act.

7. In his rival submissions the Id. DR strongly supported the impugned order and reiterated the observations made by the Id. CIT(A).

8. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it appears that the AO made the addition on account of cash deposits in the two saving bank accounts maintained by the assessee with the Oriental Bank of Commerce. The claim of the assessee was that the amount was received by him from his uncle Sh. Chater Singh Yadav who later on expired, however, he could not produce the wife of his uncle before the AO for recording of the statement but later on the assessee procured the affidavit of Smt. Krishna Yadav widow of Sh. Chater Singh Yadav and also obtained death certificate of Sh. Chater Singh Yadav. In my opinion, the Id. CIT(A) ought to have admitted the additional evidences furnished by the

assessee and then decided the case on merit. It is also noticed that the AO made the addition u/s 68 of the Act, however, the Id. CIT(A) changed the addition u/s 69 instead of Section 68 of the Act but it is not clear why the addition was sustained by the Id. CIT(A) under different section of the IT Act. In the present case, it appears that the assessee was prevented by reasonable cause for producing the additional evidences before the AO because the depositor Sh. Chater Singh Yadav expired. Later on, the assessee obtained death certificate of Sh. Chater Singh Yadav as well as affidavit of his widow and furnished the same before the Id. CIT(A). I, therefore, deem it appropriate to set aside this case back to the file of the AO for fresh adjudication in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

9. In the result, appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 07/10/2016)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 07/10/2016

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR