

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5365/Del/2011
(Assessment Year: 2007-08)

ITO,
Ward-47 (1), Room NO. 425, 4th
Floor, Mayur Bhawan, New Delhi Vs.

(Appellant)

Punit Seth,
W-7, Rojouri Garden,
New Delhi
PAN:AOJPS4547L
(Respondent)

Assessee by :	Sh. FR Meena, Sr. DR
Revenue by:	Sh. MS Sahni, Adv
Date of Hearing	19/12/2016
Date of pronouncement	13/02/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is appeal filed by the revenue against the order of the Id CIT(A)-XXX, New Delhi dated 06.09.2011 for the Assessment Year 2007-08.
2. The revenue has raised the following grounds of appeal:-
 - I) *Deleting the addition of Rs. 4823850/- made on account of unexplained cash deposit in the bank account.*
 - II) *The Id CIT(A) has ignored the finding given by the AO regarding the redeposit of cash withdrawn theory of the assessee. The pattern of deposit and withdrawal/ utilization of cash does not support the contention of the assessee. The reason for withdrawal on a particular date and redeposit after some gap has not been explained.*
 - iii) *As regards gift from mother, the capacity of the donor has not been established. The pattern of giving cash on 13 occasions in a year in different amounts does not appear to be a valid and acceptable explanation."*
3. All the grounds of appeal are related to a single issue involved in this appeal. Therefore, they are decided together.
4. The Assessee is an individual, who filed his return of income on 31/03/2008 declaring total income of Rs. 110465/-. Based on the Annual information Report, the Ld. assessing officer noted that assessee has deposited Rs. 5213850/- in cash during the year in his bank account with

State Bank of Indore, New Delhi., Therefore, assessee was asked to explain the source of such cash deposit. Before the Ld. assessing officer, it was submitted by the assessee that he has deposited Rs. 5213850/- cash in his bank account and withdrawn a sum of Rs. 2998000/- in cash. Hence, there is an introduction or excess cash deposit of Rs. 2215850/-. For this sum he submitted that he received gift from his mother of Rs. 1720000/- and friendly loan of Rs. 390000/-. Source of the fund in the hands of mother of the assessee was explained as sale of old jewelry, which was acquired by her throughout her life, He submitted the copy of gift deed, and affidavit of the mother as well as for holding of gold affidavit of the father of the assessee. Regarding maintenance of the cash on hand by the mother of the assessee, he submitted that she was ill and it was maintained for the purpose of hospitalization and treatment. It was further submitted that the assessee, the only son of his parent therefore her mother started selling her old jewellery from time to time and gifted the sum to assessee. The Ld. assessing officer rejected the contention of the assessee with respect to linkage of cash deposit and cash withdrawal of Rs 2998,000/- , Rs. 1720000/- of cash gift from his mother and friendly loan of Rs. 390000/- . Therefore he made an addition of Rs. 5213850/- to the total income of the assessee vide assessment order dated 30.12.2009 at Rs. 5324594/-. Assessee being aggrieved with the order of the Ld. assessing officer preferred an appeal before the Ld. CIT(A) who deleted the addition except a sum of Rs. 390000/-. Therefore revenue has filed this appeal before us challenging the order of the Ld. CIT(A) against deletion of an addition of Rs. 4823850/- made on account of unexplained cash deposit in the bank account.

5. Ld. departmental representative submitted before us that from 21/04/2006 to 27/11/2006 the assessee has shown gift of Rs. 17,20,000/- from his mother in cash of various amounts on 13 occasions, precisely each month. He further referred to para No. 4 of the assessment order and contended that assessee has merely filed the copy of the affidavit and gift deed in support of the contention of the assessee. However, there was no justification as well as proof regarding the capacity of the lender as well as genuineness of the transaction. He further submitted that the circumstances also do not show for keeping huge cash in hand by her mother when assessee is depositing sums in cash in his bank account. With

regard to the other sum of Rs. 2998000/- deposited by the assessee in his bank account he submitted that no proof has been given by the assessee before the assessing officer whether the amount was deposited in cash, purposes of such withdrawal and deposit, and source of such cash. In absence of such detail, the Ld. CIT(A) erred in law in deleting the addition. He further submitted that it is also not known whether the assessee who claims to have received a sum of Rs. 17 lakhs as gift from his mother whether she was assessed to tax or not and the source of the jewellery owned by her was not established. Ld CIT (A) has merely believed the affidavit of the father of the assessee. Sale of jewelry was also said to be private persons but who are those persons is also not established. In view of this, he submitted that Ld. CIT(A) has erred in believing the statement of the assessee about the confirmation of the sale of jewellery and cash deposits without carrying out any examination. He also submitted the copy of the bank statement of the assessee to show about the cash deposit made by him in his bank account with State Bank of Indore. He therefore submitted that the order of the Ld. assessing officer might be upheld.

6. The Ld. authorised representative submitted a paper book and referred to the copy of the gift deed dated 10/04/2007 and copy of the affidavit dated 10/04/2007 of the mother of the assessee. He further explained that the mother of the assessee was ill and therefore the money was kept by her at home received on sale of jewellery. He further submitted death certificate of mother who passed away on 28/11/2008.. He further referred to the affidavit of the father of the assessee about the source of the jewellery stating that she was having sufficient gold or diamonds from her parents and in-laws at the time of her marriage. He further drew our attention to the affidavit that out of the 300 Gms gold about 250 Gms were sold for Rs. 1720,000/- in the financial year 2006 -2007. Regarding the capital gain on sale of jewellery, it was stated that such sale resulted into capital loss and therefore no tax was paid by her mother. He further relied upon the **plethora of case laws before us**. In the end, he submitted that the order of the Ld. CIT appeal may be upheld.
7. We have carefully considered the rival contentions as well as perused the orders of the lower authorities. Undeniably, assessee has deposited sum of Rs. 5213850/- in cash during the previous year in his bank account with

state bank of Indore, New Delhi. The source of funds deposited was explained to be a sum of Rs 2215850/- withdrawn from the bank account in cash, Rs. 1720000/- as gift from mother and Rs 390000/- as friendly loan. Ld CIT (A) confirmed addition of Rs 3,90,000/- which is not contested by assessee. Therefore, issue before us is whether the Ld. CIT(A) is right in granting the assessee credit of Rs 2215850/- which was allegedly deposited in cash out of past withdrawal in cash from the bank and deposit of Rs. 1720000/- as gift from his mother. The Ld. CIT(A) has deleted the addition of cash deposit out of past withdrawal on the base of the bank ledger from the books of assessee and gift from mother based on affidavit and gift deed dated 10/07/2007 by the mother of the assessee, affidavit of father for the holding of jewelry. Hence, he held that the assessee has discharged his onus. Further, he was also of the opinion that as the Ld. assessing officer has not brought on record any fact contrary to the affidavit filed by the assessee, therefore facts of the affidavit cannot be denied. He further believed that the affidavit of the father of the assessee who has confirmed that the mother of the assessee was in possession of 300 gms of gold, out of which she sold 250 gms to private persons, and received the proceeds in cash and therefore her mother was having source of funds. It is important to note that assessee's only source of income is salary from M/s Laxmi Sales Corporation of Rs. 105600/- and small interest income. His total income for the year is Rs. 110465/- and has paid a tax of Rs.1163/-. In the paper book produced before us assessee has submitted a ledger of savings bank account from the books of the assessee of state bank of Indore where the entries of cash deposit and cash withdrawal were mentioned, however it did not produce cash book to show that on the date of deposit of sum he was having adequate cash on hand. On perusal of the bank account it is noted that assessee has deposited sum of Rs. 5213850 during the year and has also withdrawn a sum of Rs. 2998000 during the year, leaving thereby closing that cash deposit balance of Rs. 2215850/-. Appellant has not submitted cashbook before the Ld. assessing officer or before the Ld. CIT(A). In absence of verification of cashbook, it is not possible to know whether on the date of deposit of such sum the assessee was having cash on hand or not. Furthermore, assessee has received a gift of Rs. 1720000/- from her mother, who unfortunately passed away and the source of such money in

her hand was stated to be cash received sale of gold ornaments received from various private parties. On looking at the gift received from the mother of the assessee, it is correctly pointed out that she gifted 13 times in seven months sum of money ranging from Rs. 25,000 to Rs. 225000/-to the assessee. Notably from 21/4/2006 to 27/11/2000, she has bestowed sum upon her son every month. Therefore, it is apparent that she was selling gold every month, which is highly improbable. Furthermore, with respect to the generation of cash in the hands of the mother, assessee has not produced any bills of sale of gold and stated that gold has been sold to private persons. Assessee did not name the persons to whom it sold , with quantity, description and rate applied , neither Ld. assessing officer nor Ld. CIT appeal examined this issue. The CIT (A) has deleted the addition merely based on affidavits, without examining any evidences in support of those affidavits. We donot subscribe the view of the LD CIT (A) that assessee has discharged his onus. It is the duty of the assessee to prove the identity, creditworthiness of the lender and genuineness of the transaction when he receives sums. In the present case there is no doubt about the identity of the person who has given a gift of Rs. 1720000/- to the assessee but the creditworthiness of the mother of the assessee and genuineness of the transaction is not established by the assessee. Furthermore, as per the statement of the assessee. Thus, total sale price of the jewellery allegedly sold by his mother for assessment year 2007 – 08 is Rs. 17,20,000/- then neither the Ld. CIT appeal nor the assessing officer has examined the wealth tax aspect in the hands of the mother of the assessee. This is also required to be examined specifically with respect to the fact that assessee is a salaried employee and drawing a meager salary of Rs. 110000/-and has entered into a transaction of depositing and withdrawal in cash from his bank account and receiving used gift from his mother. Moreover with respect to deposit of cash in the bank account out of withdrawal in cash in past, in absence of verification of cash book along with reasons of withdrawal and holding cash on hand in the hands of salaried person, these facts are required to be brought on record. In view of the peculiar facts of the case, none of the case law cited by the assessee and his authorized representative before us applies to the facts of this case and therefore the reliance on this case law is misplaced. In view of above facts and in the

interest of justice we set aside the order of the Ld. CIT appeal and restore the matter back to the file of the Ld. assessing officer to examine the cash deposited by the assessee by withdrawing in cash with the cash book with reasons for such huge withdrawal and deposits and also the fact of sale of gold by the mother of the assessee to the private parties by examining those private parties with respect to the date of sale, quantity of gold sold, rates at which it is sold as well as the fact of cash payment made by them. The assessee may be granted proper opportunity of hearing and adducing further evidences, if any, before deciding the issue on merit. In the result, the grounds of appeal of the revenue are allowed with above direction accordingly.

8. In the result appeal of the revenue is allowed for statistical purposes
9. Order pronounced in the open court on 13/02/2017.

-Sd/-

(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 13/02/2017
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi