

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-2', NEW DELHI**

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

**ITA No. 2553/Del/2015
AY: 2010-11**

Sharad Mohan Krishna
S/o Shri Man Mohan Krishna
R/o B 6, 1st floor, Ashiana Appts
Gali no.12, Kapashera
New Delhi 110 037

vs. ITO
Ward 70(2)
New Delhi

PAN: AAGPK 6670 P

(Appellant)

(Respondent)

Appellant by : Shri Gautam Jain, Adv.
Respondent by : Sh. MK Jain, Sr.D.R.

ORDER

This is an appeal filed by the Assessee/Revenue directed against the order of Ld.CIT(A)-21, , New Delhi pertaining to the A.Y. 2010-11, on the following grounds.

1. *That on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals)-21, New Delhi has erred in partly allowing the assessment order dated 31.03.2013 of the learned Assessing Officer passed u/s 143(3) of the Income-tax Act, 1961, making an addition of Rs. 10,43,330/- under various grounds of the Income Tax Act, 1961. The learned CIT(A)-21 has disallowed to the extent of Rs.3,05,866/-, out of which an amount of Rs.2,99,000/- is being appealed for.*

2. *That on the facts and in the circumstances of the case, the impugned order of the learned Commissioner of Income Tax (Appeals)-XXX, New Delhi is unsustainable in law particularly as it has been passed without affording adequate opportunity of hearing to the appellant as also not taking cognizance of the sufficiently valid reasons being put forth by the appellant for the amount of Rs.2,99,000/- which has been disallowed by the learned CIT(A)-21.*

3. *That, without prejudice to the above and on the facts and in the circumstances of the case, the impugned order of the learned Commissioner of*

Income Tax (Appeals)-XXX, New Delhi is unsustainable in law because he, failed to appreciate that the addition of Rs.2,99,0001- made in the assessment order for cash deposits by the appellant during the said Assessment Year were out of the cash amount available with him at the beginning of the said Assessment Year. -

4. *That the appellant craves leave to add, amend, alter, substitute, delete or withdraw any of the grounds of appeal on or before the date of disposal of the appeal.*

2. After hearing rival contentions I find that the addition in this case, has been made u/s 68 of the Act, for the sole reason that, the assessee could not explain the gap of more than 2 years between the source of funds and the date of deposit in the bank. The assessee has contended that he and his other family members withdrew cash from their respective accounts and that the cash was available with them, out of which an amount of Rs.2.99 lakhs was deposited. I find that the total withdrawals from the bank was to the tune of Rs.20 lakhs. The explanation of the assessee is extracted by the Ld.CIT at para 4.3.1 which I reproduce for ready reference.

"4.3.1 Further, during the course of appellate proceedings, the appellant mentioned in his written submission dated 19/2/2015, inter alia, "Sir, I had already explained to the AO, Mr.Sharma that the said cash was part of the cash contributed by all my family members for a number of matters in our house, including purchase of a small dwelling in my father's name (my father had passed away on 19th January,2006) as also for my younger sister's wedding. Unfortunately, the house purchase got embroiled in a dispute and my sister's wedding also delayed, owing to which the money remained unutilized and once these matters got resolved, I deposited the money back into my account. I am enclosing copies of the bank statements of all the three contributors (my self, my brother - Dheeraj Mohan Krishna; my mother - Nirmal Srivastava) for the first quarter of 2007 (AY 2007-08), when these were withdrawn."

2.1. In my view this explanation is bonafide and I find no reason as to why it should not be believed. Addition cannot be made just because there is a time gap between date of withdrawals and the date of deposits, specially when the assessee explained gap by submitting that the issue of house purchase got embroiled in a dispute and that his sister's wedding also is delayed resulting in the money being unutilised for a long time. When the source is not disputed in my view, the addition cannot be made. Hence I delete the addition in question and allow the appeal of the assessee.

3. In the result the appeal of the assessee is allowed.

Order pronounced in the Open Court on 06th November,2015.

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 06th Nov., 2015

**manga*

Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar