

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 2210/Del/2014
Assessment Year: 2008-09

Sh. Vikas Lohia, F-351, Gali Shiv Mandir Bandh Rd., Aya Nagar, New Delhi	Vs.	Income Tax Officer, Ward-24(3), New Delhi
PAN : ACJPL3468N		
(Appellant)		(Respondent)

Appellant by	S/sh. Rakesh Kumar & T.C. Sachdeva, Advocates
Respondent by	Sh. F.R. Meena, Sr.DR

Date of hearing	20.07.2016
Date of pronouncement	19.08.2016

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against order dated 11/02/2014 of learned Commissioner of Income-tax (Appeals)-XI, New Delhi, for assessment year 2008-09, raising the following grounds:

- i. That on the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs. 600000/- in respect of cash deposited in the bank by the appellant inspite of furnishing of full details/explanation and cash flow account etc. without appreciating the full facts of the case.*

- ii. That the appellant craves, the right to add or to amend or to delete any grounds of appeal, if any at the time of hearing or before the hearing of the case.*

2. The facts in brief are that in the assessment completed under section 144 of the Income-tax Act, 1961 (in short 'the Act'), the Assessing Officer made addition of Rs. 15 lakhs as unexplained cash deposits in bank accounts, which consisted of Rs. 6 lakhs, deposited on 19/11/2007 and Rs. 9 lakhs on 13/02/2008. On appeal to the learned Commissioner of Income-tax (Appeals), the cash deposit of Rs. 9 lakh on 13/02/2008 was found explained by him, however, the addition of Rs. 6 lacs was sustained by him. Aggrieved with the addition of Rs. 6 Lacs sustained, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. The ground No. 1 is in respect of sustainence of the additional Rs. 6 lakhs against cash deposits.

4. Before us, the learned counsel of the assessee filed a brief written submission and argued that source of cash deposit of Rs. 6 lacs in bank account on 19/11/2007 was duly explained by the withdrawals of Rs. 6.5 lakhs made by the assessee from 16/04/2007 to 27/10/2007 from the bank accounts. He further submitted that the findings of the learned Commissioner of Income-tax (Appeals) that the several withdrawals made by the assessee from its bank account from 16.04.2007 to 27.10.2007 for nothing but the withdrawals made for making investment in the house property and the assessee was left with no money available

so as to deposit Rs. 6 lakh cash in bank accounts on 19/11/2007, is not based on correct appreciation of the fact because the assessee has already made investment of Rs. 12 lakhs in house property through bank account. The learned counsel explained the investment of Rs. 5.53 lacs in cash and Rs. 12 lakhs through bank, in the house property with the help of cash flow statement in bank account summary submitted in written statement before us. In view of above submissions, learned counsel requested to delete the addition of Rs. 6 Lacs.

5. On the other hand, learned Senior Departmental Representative, relying on the orders of the authorities below submitted that the assessee has failed to explain the source of deposit of Rs. 6 lakh and, therefore, the addition has been rightly sustained by the learned Commissioner of Income-tax (Appeals).

6. We have heard the rival submissions and perused the material on record including the cash flow statement and bank summary for the period from 01/04/2007 to 31/03/2008 submitted by assessee in written submission. The learned Commissioner of Income-tax (Appeals) has decided the issue as under:

"11.3. Now coming to the cash deposit of Rs. 6 lac on 19.11.2007, it is noticed that although the withdrawals made by the appellant from 16.04,2007 to 27.10.2007 were at Rs. 6,50,000/-, the appellant's bank account itself shows that the appellant was in need of money during this period for making investment in the construction of his house. So much so, the appellant has taken a loan from relatives for Rs. 2 lac on 25.10.2007. It is further noticed

that although the appellant's has shown investment of Rs. 5,53,000/- as investment in the house property during the year, the valuation report submitted by the appellant in respect of such construction showed that the estimated investment was for Rs. 19 lac on such property during the year 2007 and up to June 2008. If Rs. 5,53,000 were only was invested during the year as per the appellant's version, the remaining amount of Rs. 13,74,000/- must have been from 1st April, 2008 to June 2008. However, the facts are not so and the appellant's investment of ?5,53,000/- during the entire year is not believable as the appellant himself has admitted the investment of ? 12,00,000/- during the year itself. Without commenting upon the correctness of the investment shown by the appellant in the investment of house property, it is very clear to me that several withdrawals made by the appellant from his bank account from 16.04.2007 to 27.10.2007 were nothing but the withdrawals made for making investment in the house property and the appellant was left with no money available so as to deposit Rs. 6 lac cash in his bank account on 19.11.2007. Therefore, the appellant's claim that the cash deposit of Rs. 6 lac was explainable from the withdrawals made by the appellant from his bank account is not believable and hence rejected. The addition to the extent of Rs. 6 lacs is therefore, sustained as the appellant failed to explain the source of such cash deposit."

7. We find that according to the learned Commissioner of Income-tax (Appeals), the assessee explained investment of Rs. 5.53 Lacs only in construction of house property during the year, against the estimated investment in construction of Rs. 19 lakhs based on valuation report. According to him, the remaining amount of Rs. 13.74 lacs investment in construction of the house property was not explained, thus, he held that the assessee must have invested Rs. 6.5 lakh withdrawn from bank for the period from 16/04/2007 to

27/10/2007 in the construction of house and, therefore, the assessee was left with no money available to deposit Rs. 6 lakh cash in his bank account on 19/11/2007.

8. Before us, the learned counsel submitted the details of self withdrawal from his bank account from 01/04/2007 to 27/10/2007 as under:

<u>Date</u>	<u>Amount withdrawn</u>
16.04.2007	Rs. 250000/-
18.04.2007	Rs. 150000/-
19.04.2007	Rs. 80000/-
19.04.2007	Rs. 70000/-
04.07.2007	Rs. 100000/-
Total	<u>Rs. 650000/-</u>

9. The learned counsel also submitted cash flow statement and bank account summary for the period of 01/04/2007 to 31/03/2008 as under:

CASH FLOW STATEMENT FOR THE PERIOD 01-04-2007 TO 31-03-2008:

<u>Particulars</u>	<u>Amount</u>	<u>Particulars</u>	<u>Amount</u>
To Op Bal. 1/4/07	53210	By Cash dep in bank	1500000
To Self Withdrawls	860000	By Cash Drawings	120000
To Sale Proceeds Agr prop.	950000	By Invest, in H/Property	553000
To Agriculture Income	50000	By Clg. Bal.31/3/08	47210
To Rental Income	307000		
	<hr/>		<hr/>
Total	2202210	Total	2202210

BANK ACCOUNT SUMMARY FOR THE PERIOD 01-04-2007 TO 31-03-2008:

Particulars	Amount	Particulars	Amount
To Op. Balance	565089	By Self Withdrawal	860000
To Cash dep. In bank	1500000	By Drawings	258845
To Bank Interest	5984	By Investment in H/Prop.	1200000
To Sales proceeds against property	450000	By Closing Balance	462228
To Loans from relative	260000		
Total	2781073	Total	2781073

10. We find that the learned Commissioner of Income-tax (Appeals) has already accepted cash investment of Rs. 5.53 lakh in construction of house property with the help of the cash flow statement. With the help of the bank summary reproduced above, the learned counsel has explained that in addition to cash investment of Rs. 5.53 Lacs, the assessee has invested Rs. 12 lakhs in construction of house through bank. The assessee has also explained that Rs. 1.47 lakh have been spent in financial year 2008-09 making the total investment in the construction of property at Rs. 19 lakh. The learned counsel submitted that both cash flow statement and bank summary were filed before the learned Commissioner of Income Tax (Appeals), who forwarded the same to the Assessing Officer for comments. The learned Senior

Departmental Representative has not disputed this statement submitted by the learned counsel. In view of above submission of the learned counsel, the investment of Rs. 19 lacs in construction of house property stand explained and the withdrawal of Rs. 6.5 lakh from 16/04/2007 to 27/10/2007 are available with the assessee to explain the cash deposit of Rs. 6 lakh in bank account on 19/11/2007. Thus, in our view, no addition for unexplained investment of Rs. 6 lakh is required in the case of the assessee, accordingly the addition is deleted. The ground of the appeal is allowed.

11. The ground No. 2 being general in nature, not required to be adjudicated upon by us.

12. In the result, the appeal of the assessee is allowed.

The decision is pronounced in the open court on 19th August, 2016.

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

Dated: 19th August, 2016.

Laptop/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi