

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”, NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER**

**ITA No.4656/Del/2014
Assessment Year : 2007-08**

Jasmeet Kaur, C/o Sabharwal & Partners, 4819/24, Ansari Road, Daryaganj, New Delhi.	Vs.	ITO, Ward- 26(2), New Delhi.
PAN : AHPPK4509K		
(Appellant)		(Respondent)

Assessee by : Shri V. K. Sabharwal, Adv.
Department by : Shri S. L. Anuragi, Sr. DR
Date of hearing : 17-07-2018
Date of pronouncement : 31-07-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 27.06.2014 of the CIT(A)- XVII, Delhi relating to assessment year 2007-08.

2. Facts of the case, in brief, are that the assessee is an individual and filed her return of income on 03.08.2007 declaring total income of Rs.1,40,000/-. The case was selected for scrutiny and the case was fixed for hearing on 29.07.2008 by issue of notice u/s 143(2) dated 21.07.2008. Since there was no compliance, another notice u/s 143(2) dated 06.04.2009 was issued fixing the case for hearing on 15.04.2009. In response to the same, the Authorized Representative of the assessee appeared and the case was adjourned to

11.05.2009. Thereafter, the case was fixed on various dates. Since there was no affective compliance from the side of the assessee, the Assessing Officer completed the assessment u/s 144 on the basis of material available on record. The Assessing Officer noted that the assessee has shown net profit of Rs.1,20,000/- as against the gross receipts shown at Rs.6,25,000/- and income from other sources of Rs.20,000/-. As per the AIR filed by Bank of India, the assessee has made cash deposits of Rs.10,80,500/- in her Saving Bank A/c No.604010100023217 with Vishnu Garden Branch, New Delhi during the financial year 2006-07. Despite opportunities granted by the Assessing Officer to explain the cash deposit of Rs.8,00,000/- on 16.06.2006 there was no compliance from the side of the assessee. In view of the above, the Assessing Officer made addition of Rs.10,80,500/- to the total income of the assessee being undisclosed income of the assessee on account unexplained cash deposits.

3. Before the Id. CIT(A), the assessee submitted that the total deposit in her account was Rs.10,57,000/- and not Rs.10,80,500/- as alleged by the Assessing Officer. It was submitted that an amount of Rs.8,00,000/- was through sale of jewellery and the balance deposit of Rs.2,57,000/- was out of cash withdrawn earlier. Further, the Savings Bank Account was a joint account in the name of the assessee as well as with her husband who is also an income tax assessee. It

was submitted that due to suffering of her father in law with cancer who was under treatment at Rajeev Gandhi Cancer Institute, a major operation was advised by the doctors for which money was required. The assessee, therefore, sold her jewellery for an amount of Rs.8,00,000/- which was deposited immediately in her Savings Bank Account so as to meet the required expenditure and contingency in order to cope up with this emergency. The balance of Rs.2,57,000/- was re-deposited out of cash withdrawn earlier. Certain evidences were also filed to substantiate the sale of jewellery as additional evidences under Rule 46A of the I.T. Rules, 1962.

4. The Id. CIT(A) called for a remand report from the Assessing Officer. After considering the remand report of the Assessing Officer and after considering the rejoinder to such remand report, the Id. CIT(A) sustained the addition of Rs.8,00,000/- to the total income of the assessee and deleted the balance amount by observing as under :-

“After considering all aspect, I will now consider the addition made by the AO.

9.9 In the first instance, the addition made is being only in the hands of the appellant. The AO may see that no addition on this account is made in the hands of the husband of the appellant, who the appellant has stated is the owner of the account.

9.10 Regarding the deposit of Rs.8,00,000/- from sale of jewellery, the AO was asked to verify the genuineness of the vouchers issued by M/s Haryana Gems. The AO reported that the party M/s Haryana Gems who had issued the vouchers for sale of jewellery had left its premises several years ago.

9.11 Also I noted from a perusal of vouchers that no details of jewellery are given. Normally a jeweller writes exact description of the jewellery sold or purchased. Here it is merely stated “old gold jewellery” and “ old diamond jewellery”.

9.12 *In view of the report of the AO since the vouchers could not be verified. I am treating the genuineness of the vouchers as doubtful. The amount of Rs.8,00,000/- is added to the income of the appellant as unexplained cash deposit. The addition of Rs.8,00,000/- is confirmed.*

9.13 *Regarding the addition of Rs.2,57,000/-, I would accept the contention of the appellant. The addition of Rs.2,57,000/- is therefore deleted.*

9.14 *The total amount is taken at Rs.10,57,000/- as given by the appellant instead of Rs.10,80,000/-. Therefore, the balance Rs.23,000/- is also deleted.”*

5. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal.

6. I have considered the rival arguments made by both the sides and perused the material available on record. I find, out of the addition of Rs.10,80,500/-, Id. CIT(A) sustained an amount of Rs.8,00,000/- and deleted the balance addition for which the Revenue is not in appeal. The grievance of the assessee is two-fold i.e. she has sold her jewellery to M/s Haryana Gems for a consideration of Rs.8,00,000/- and since sufficient time had passed from the date of sale till the date of letters sent by the Assessing Officer, the person might have shifted his place of business. However, the assessee has produced whatever was available with her and therefore no addition is called for. The second proposition of the Id. counsel for the assessee is that when the account is a joint bank account with her husband who is also an income tax assessee, therefore, the entire addition cannot be made in the hands of the assessee and only 50% of the addition at best could have been made. I find some force in the argument advanced by the Id.

counsel for the assessee. It is an admitted fact that the Savings Bank Account, where cash has been deposited is a joint bank account of the assessee and her husband. It is also an admitted fact that the husband of the assessee is an income tax payee. Therefore, entire addition, in my opinion, cannot be made in the hands of the assessee. The assessee is liable to explain only the deposit to the extent of Rs.4,00,000/- and the balance amount of Rs.4,00,000/- has to be explained by the husband of the assessee.

7. So far as source of Rs.4,00,000/- is concerned, it is an admitted fact that the assessee could not explain the source of deposit in the bank account to the satisfaction of the Assessing Officer. It is also an admitted fact that the assessment was completed u/s 144. Although the assessee has stated to have sold certain jewellery to M/s Haryana Gems for a sum of Rs.8,00,000/-, however, it is also a fact that assessee, during the remand proceedings, could not produce the said party for verification of the Assessing Officer for which Assessing Officer had given an adverse report in the remand report. Considering the totality of the facts of the case, I deem it proper to restore the issue to the file of the Assessing Officer to grant one more opportunity to the assessee to substantiate her case with evidence to his satisfaction regarding the source of Rs.4,00,000/-. The Assessing Officer shall decide the issue as per fact

and law after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The ground raised by the assessee is accordingly allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on this 31st July, 2018.

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 31-07-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi