

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.1615/Del./2018  
Assessment Year 2014-2015

Shri Abhinav Garg, S/o. Udai Shankar, G-1403, Prateek Laurel, Sector-120, Noida PIN-201301.PANAJLPG5301J	vs.	The Income Tax Officer, Ward – 1 (1), Gurgaon.
(Appellant)		(Respondent)

For Assessee :	Shri Naveen Kumar And Shri Ashvini Kumar, Advocates
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	04.12.2018
Date of Pronouncement :	10.12.2018

**ORDER**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-2, Gurgaon, Dated 20.11.2017, for the A.Y. 2014-2015.

2. Briefly the facts of the case are that return of income declaring an income of Rs.2,66,410/- was filed by the assessee. The case was selected for scrutiny with the reason of purchase of motor vehicle by cash. The assessee

filed requisite information and documents. The A.O. noticed that assessee has purchased a motor car Make Duster RXL Black for Rs.10,73,646/-, out of which, a sum of Rs.5,73,646/- was paid by cash. The assessee explained the source of the cash so paid above as under :

1. Rs 50,646/- out of own cash in hand.
2. Rs.1,50,000/- was paid by wife Mrs Babita Pandey, which was with her as cash in hand.
3. Rs.,37,0000/-was paid by his mother Mrs. Pushpa Garg.

2.1. Mrs. Pushpa Garg was born in 1949 and was in service for more than 30 years. She had taken voluntary retirement in 2000, post which she worked as freelance/teaching. During the period, her income was always less than the taxable limit. She has accumulated cash, out of which she had given Rs.3,70,000/- to the assessee for purchase of car. The A.O. however, noted that no documentary evidence to substantiate the creditworthiness of the above persons who have advanced the cash to the assessee have been furnished. The assessee filed copy of the affidavit confirming the payment of cash in purchase of car

along with copy of the bank statement of the wife. The assessee has no evidence to prove the creditworthiness of the above persons for giving cash to the assessee. The bank account of the assessee as well his wife shows that payment from the banks accounts are online payments of the purchases made and petty cash withdrawals to meet out the day-to-day expenses. The Counsel for the Assessee submitted before the A.O. that no documentary evidence of cash provided to the assessee by the family member of the assessee are available. In the absence of any evidence of source of cash amount given to the assessee, the A.O. found that assessee failed to prove creditworthiness of these persons as well as genuineness of the transaction in the matter. The A.O. relied upon decision in the case of Blowell Auto (P) Ltd., vs. ACIT 11 DTR 91 ( P&H) in which it was held that *“mere filing of the affidavit in which the creditors have confirmed the loan transactions but did not disclose their source of income, creditworthiness and genuineness of the transaction not established, addition under section 68 justified.”* He also noted that no evidence was furnished by

assessee to prove availability of the cash in hand with him.

A.O. accordingly, made addition of Rs.5,73,646/- on account of unexplained cash.

2.2. The assessee challenged the addition before Ld. CIT(A). The Ld. CIT(A) allowed relief to the assessee regarding his own cash of Rs.50,646/-, however, confirmed the remaining addition of Rs.5,20,000/- (wrongly noted as Rs.5,23,000/-). The Ld. CIT(A) found that assessee failed to prove creditworthiness of the above persons and genuineness of the transaction in the matter.

3. The assessee in the present appeal, challenged the addition of Rs.5,20,000/-. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to the confirmation of Mrs. Babita Pandey, wife of the assessee and Mrs. Pushpa Garg, mother of the assessee, which were filed before the authorities below. He has submitted that both the ladies have 'Stree Dhan' with them and accumulated funds available with them/assessee. He has also relied upon the following decisions :

1. CIT vs. Suresh Kumar Kakar (2010) 324 ITR 231 (Del.) (HC)
2. Order of ITAT, Mumbai Bench in the case of Anandasayanam P. Pillai vs. CIT, Thane-1 (2017) 88 taxmann.com 730 (Mum. Tribu.)
3. Ashok Chaddha vs. ITO (2011) 14 taxmann.com 57 (Del.) (HC)
4. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

5. I have considered the rival submissions and do not find any merit in the appeal of assessee. In this case, assessee purchased car after making cash payment for which assessee has no source to explain. Whatever source was explained, it was on account of Rs.1,50,000/- received from his wife Mrs. Babita Pandey and Rs.3,70,000/- received from his mother Mrs. Pushpa Garg. The assessee claimed that he has filed confirmations of both the ladies before A.O. However, no evidence of their creditworthiness and genuineness of the transaction have been filed. The assessee merely claimed that the ladies were having accumulated amounts with them out of their old/accumulated source of income and that they have

amounts available out of ladies kitty and received on festivals. These are general assertions without any evidence and would not support the case of the assessee. The bank account of the assessee and his wife reveals that there were petty transactions carried-out. These facts clearly show that mere filing of the affidavits/confirmations of both the ladies are not sufficient to discharge burden upon the assessee to prove their creditworthiness and genuineness of the transaction. The decisions relied upon by the Learned Counsel for the Assessee are relating to gift and possession of jewellery as per CBDT circular. These decisions would not support the case of the assessee. Both the ladies in their confirmations did not explain as to what was their source of giving cash amount to the assessee. It is merely stated that the amounts have been given out of love and affection. The Hon'ble Calcutta High Court in the case of Bharati Pvt. Ltd., 111 ITR 951 and United Commercial and Industrial Company Pvt. Ltd., 187 ITR 596 held that *"mere filing of confirmations is not sufficient to prove creditworthiness and genuineness of the transaction."* Considering the totality of

the facts and circumstances of the case, it is clear that it was unaccounted cash of the assessee which assessee tried to explain receiving through his wife and mother, which assessee failed to substantiate through any relevant and cogent evidence. It is well settled law that burden is upon assessee under section 68 of the I.T. Act to prove identity of the persons who have given amounts to the assessee, their creditworthiness and genuineness of the transaction. However, assessee has failed to produce any documentary evidence to prove the creditworthiness of these ladies and genuineness of the transaction in the matter. I, therefore, confirm the addition of Rs.5,20,000/- and dismiss the appeal of assessee.

6. In the result, appeal of Assessee is dismissed.

Order pronounced in the open Court.

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 10<sup>th</sup> December, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.