

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

**ITA No. 4713/Del/2018
Assessment Year: 2010-11**

Rajiv Chandran B-45, Gulmohar Park, New Delhi. PAN No. AKDPC3523B	vs	ITO Ward 32(5) New Delhi.
APPELLANT		RESPONDENT

Assessee by	Shri R.S. Singhvi, CA Shri Satyajeet Goel, CA
Revenue by	Shri S.L. Anuragi, Sr. DR

Date of Hearing	06.12.2018
Date of Pronouncement	12.12.2018

ORDER

This appeal by assessee has been directed against the order of Ld. CIT(A)-11, New Delhi dated 18.05.2018 for AY 2010-11, challenging the addition of Rs. 12,97,300/-.

2. Ld. Counsel for assessee did not challenge reopening of the assessment. Ground no. 1 is not pressed. Same is accordingly dismissed.

3. The facts of the case are that in this case, as per AIR data available with the AO, assessee has made cash deposits of Rs. 17,11,100/- and paid credit card bills of Rs. 11,61,797/- during the assessment year under appeal. The case was reopened u/s 147 of the Act. Assessee was asked to produce the details of credit

card expenses and link of the same with bank details, details of cash deposit in bank account with source and copy of all bank account statements with narration. The assessee explained that as per total cash deposits during the year comes to Rs. 13,81,100/- and not Rs. 17,11,100/-. The assessee filed two work sheets being the date wise entries of the cash deposits and withdrawal during the relevant financial year. The assessee submitted that he has received cash gifts totaling to Rs. 5 lakhs. In support of this submission, he has submitted 3 affidavits from the family members namely Shri Shashiv Chandran (brother), Ms. Geeta Chandran (wife) and Ms. Kamla Ramachandran (mother of the assessee) along with copy of their ITR of the donors. But no source of funds out of which such gifts was submitted by assessee. The AO after examining the details noted that assessee has not submitted any documentary evidences for cash deposits. The assessee also explained that source of the cash deposit is withdrawal from the same bank account made during the financial year. Details of the same are reproduced in the assessment order. The AO, however, noted that the withdrawal pattern of the assessee's bank account shows assessee is having household expenses of almost Rs. 80,000/- per month and deposited the rest of money back to his bank account. As regards, the receipt of cash gifts amounting to Rs. 5 lakhs from the family members, the AO noted that only copy of the ITR and affidavits have been filed, therefore, assessee failed to explain the unexplained cash deposit in the bank account. The AO, however, considered the source of

cash deposits totaling to Rs. 83,800/- as made out of withdrawals and remaining amount of Rs. 12,97,300/- was considered unexplained. Addition of the same was made.

4. Addition was challenged before Ld. CIT(A). The assessee explained the same facts and submitted that copy of the ITR, bank certificates and affidavits of the donor have been filed and amounts have been withdrawal from the same bank account during the year, which have been re-deposited. The Ld. CIT(A), however, dismissed the appeal of the assessee. The Ld. CIT(A) noted that there is a possibility that cash withdrawals might have been used by the family for personal purpose.

5. Ld. Counsel for assessee reiterated the same submissions made before the authorities below and submitted that assessee lives in joint family, Rs. 5 lakhs was received as gift from the family members, which is supported by affidavits and ITR of the family members. He has filed complete chart of the bank entries in cash in the bank account to show that during the assessment year under appeal assessee has withdrawal Rs. 5,79,100/-, which have been re-deposited. He has submitted that assessee is an employee of UNO, and do not have unexplained money, therefore, addition is illegal.

5.1 On the other hand, Ld. DR relying upon orders of the authorities below.

6. I have considered the rival submission and perused the material available on record. The assessee claimed that during the assessment year under appeal assessee made cash deposits in the bank account after withdrawing the amount of Rs. 5,79,100/- out of the same bank account. The AO accepted part contention of the assessee and treated the withdrawals of Rs. 83,800/- out of the same bank account, which were re-deposited in the same bank account. However, for the rest of the amount AO did not accept the contention of the assessee. The Ld. CIT(A) noted in his findings that there is a possibility that cash withdrawals might have been used by the family for personal consumption or purchase of goods/travelling, etc. The Ld. CIT(A) also noted that assessee failed to discharge primary onus to prove that money withdrawn from the bank account of the whole family was not utilized for any other purposes but was deposited in the assessee's bank account. The Hon'ble Punjab and Haryana High Court in the case of Shiv Charan Dass 126 ITR 263 considered the issue of deposit in bank account after 4/5 years. It was held that Revenue should prove, it was the assessee who spent the amount in question. Meaning thereby burden is upon by Revenue to prove that withdrawn amount by the assessee have been spent by assessee somewhere else. The Ld.CIT(A), however, put a negative onus upon the assessee to prove that money withdrawn from the bank account of the family was not utilized. Since the explanation of assessee has been partly accepted by the AO that cash withdrawn from the same bank account in assessment year under

appeal is available to assessee to make re-deposit in the same bank account, therefore, considering the facts of the case, details of record and in the light of decision of the Hon'ble Punjab & Haryana High Court in the case of Shiv Charan Dass (supra), I am of the view that the amount withdrawn during the year from the same bank amount of Rs. 5,79,100/- is available to assessee to make re-deposit in the same bank account in assessment year under appeal. Thus, the assessee would be entitled to the benefit of Rs. 5,79,100/-.

7. The other point is that assessee claimed gifts of Rs. 5 lakhs from family member. The assessee filed affidavits and ITR of the 3 family members in which they have stated that amount of Rs. 2 lakhs, Rs.2 lakhs and Rs. 1 lakh have been gifted to the assessee, however, no evidence of their creditworthiness have been produced before the authorities below. Mere filing of affidavits and ITR is not sufficient to prove creditworthiness of the donors. No reasons or occasion of gifts have been explained. No evidence of financial capacity of the donors and their source have been filed on record. Therefore, it appears that it was the unexplained amount of the assessee which assessee tried to explain through the alleged gifts. I rely upon decision of the Delhi High Court in the case of CIT vs. Anil Kumar 292 ITR 552, decision of Hon'ble Supreme Court in the case of CIT vs. P. Mohan Kala 291 ITR 278 and decision of Hon'ble Punjab & Haryana High Court in the case of Yashpal Goel vs. CIT

310 ITR 75. Accordingly, no interference is called for in the matter. I, confirm the addition of Rs. 5 lakhs.

8. No other source of balance amounts have been explained and is not supported by any evidence. Ld. Counsel for assessee also contended that assessee is working in UNO, therefore, no addition could be made against the assessee. Since, cash amount have been deposited in the bank account, therefore, Section 69 would apply against the assessee. It is a deeming provision and addition is made on account of unaccounted income of the assessee for which source is not explained. Therefore, whether assessee is working with UNO or not would not make out any case in favour of the assessee.

9. Considering the above discussion, I set aside the orders of the authorities below partly and modify the addition by giving benefit to the assessee of a sum of Rs. 5,79,100/-. The AO shall delete the addition of Rs. 5,79,100/-. The rest of the addition is confirmed.

10. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 12.12.2018

*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	06.12.2018
Date on which the typed draft is placed before the dictating Member	12/12
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	12/12
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	12/12
Date on which the final order is uploaded on the website of ITAT	12/12
Date on which the file goes to the Bench Clerk	12/12
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	