

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 1651/Del/2015
(Assessment Year: 2011-12)

Ravinder Kumar Wadhwa, 43, Pusa Road, New Delhi PAN: AAAPW3882G (Appellant)	Vs.	ITO, Ward-33(4), New Delhi (Respondent)
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Assessee by :	Shri Ashish Goel, CA
Revenue by:	Shri Surender Pal, Sr. DR
Date of Hearing	18/12/2018
Date of pronouncement	31/01/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id Commissioner of Income Tax (Appeals)-17, New Delhi dated 16/01/2015 for assessment year 2011-12 passed ex parte, wherein, the following grounds of appeal were raised:-
 - “1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on facts.*
 2. *On the facts and circumstances of the case, the learned AO has erred, both on facts and in law, in passing the order without giving assessee an opportunity of being heard in clear violation of principle of natural justice.*
 3. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of an amount of Rs.66,72,000/- made by AO on account of deposits in bank account.*
 4. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in ignoring the fact that the amount of Rs.66,72,000/- includes an amount of Rs.20,00,000/- which was deposited in bits and pieces belonging to the mother of the assessee.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of an amount of Rs.1,75,02,000/- made by AO on account of deposits in bank account, Syndicate Bank, Punjabi Bagh, New Delhi.*
 6. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of an amount of Rs.41,733/- made by AO on account of bank interest.*
 7. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of an amount of Rs.6,72,834/- made by AO on account of bank interest.*
 8. (i) *That the above addition has been confirmed ignoring the fact that the amount of Rs.4,55,000/- is interest earned on FDR of Sh. Jatinder Wadhwa, brother of the assessee, 's such no addition can be made in assessee's hand.*
(ii) *That the above addition tantamount to double addition, as the same amount has been declared and included as income by Sh. Jatinder Wadhwa in his return of income.*
 9. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in ignoring the fact that the amount of Rs.6,72,834/- includes Rs.63,000/- being added by the assessee in his computation of income, the said addition tantamount to double addition."*
2. The brief facts of the case is that the assessee is an individual who filed his return of income on 12-12-2017 of Rs. 479985/-. In the return of income the assessee disclosed the business income, capital gain and other sources. The return of income was selected for scrutiny and it was noted that as per AIR the assessee has deposited cash in the savings bank account with Syndicate Bank of Rs. 18247000/-. The assessee explained that cash of deposit of Rs. 11575000/- was given to him by his brother who is staying in USA after withdrawing the same from his non-resident account during the course of his visit in India. The assessee submitted the confirmation and copy of the bank account of his brother. The assessee further submitted that Rs. 20 lacs was lying with his mother till her death and that money was also given to him by brother assessee. This was supported by the affidavit of the brother of the assessee. The Id AO granted the credit of the sum given by his brother

out of total cash deposit of Rs 18247000/- and made the addition of Rs. 6672000/- u/s 68 of the Act. Further addition was also made u/s 68 of the act on account of cash deposits by the assessee in another account . During the course of assessment proceedings it was noted that the assessee has another account with the Syndicate Bank in which cash deposit of Rs. 17502000/- was made. The Id AO was not replied to this query by assessee and therefore same was added u/s 68 of the Act. Therefore, Id AO has made two additions of cash deposited in two different bank accounts of the assessee with Syndicate bank of Rs. 6672000/- and Rs. 17502000/- respectively. The assessment u/s 143(3) was made on 28-02-2018 determining total income of Rs. 25368722/-. The assessee preferred an appeal before the Id CIT(A) who dismissed the appeal of the assessee on merits but ex parte. Therefore, the assessee is in appeal before us.

3. The Id AR submitted a detailed paper book. He submitted that the assessee submitted a detailed reply vide page No. 12 and 13 of the paper book with respect to the cash deposit of Rs. 18247000/-. It was submitted that sum of Rs. 11575000/- was received from Mr. Jatinder Wadhwa, Rs 20 lacs from his mother and further Rs. 8573343/- from his brother only. This explanation is neither being considered by the Id AO and by the Id CIT(A) with respect to the cash deposit of Rs. 17502000/-. the assessee has also submitted the cash deposit as per page No. 20 of its written submission but he further submitted that at page No. 25 the bank passbook of the brother of assessee is submitted wherein, it is apparent that assessee has withdrawn cash in earlier years. He further referred to the certificate of Syndicate Bank wherein it has been stated that Rs. 8573343.10 has been transferred from savings bank account of Shri Jatinder Wadhwa to the savings bank account of the assessee. He therefore, stated that all these evidences have not been considered by the lower authorities.

4. Ld DR vehemently supported the orders of the lower authorities and submitted that when the assessee has not submitted any details before the lower authorities the additions has been rightly made and confirmed.
5. Ld AR in rejoinder submitted that the Id CIT(A) has also decided the issue ex parte and without considering the submission on record. He stated that even otherwise the Id CIT(A) has decided this issue without granting proper opportunity of hearing to the assessee. He referred to para No. 4 of the order of the Id CIT(A) and stated that the appeal of the assessee has been decided stating that assessee is not interested in pursuing the appeal. Even otherwise the order of Id CIT(A) is ex parte and therefore reasonable opportunity of hearing to the assessee should have been granted.
6. We have carefully considered the rival contentions and also perused the orders of the lower authorities. The AO has made the addition on account of cash deposit in two Syndicate bank accounts of the assessee. The partly relief is given by the Id AO on account of cash deposit by brother of the assessee who is a non-resident Indian. However, with respect to the other bank accounts in which cash is deposited of Rs. 17502000/-, it was stated by the Id AO that assessee has not given any explanation. Ld AO has also decided the appeal of the assessee ex parte. Before us assessee has submitted a detailed paper book wherein the assessee has submitted the details of the cash deposited during the year in both the accounts along with explanation of deposit received from his brother . It has further submitted the copy of the passbook of the brother of assessee where earlier cash was withdrawn of substantial sum from the bank account. The Syndicate bank account of the assessee also received a credit of Rs. 8573343/- on 21-8-2017 source of which is also certified by the Sr. Manager of the Syndicate Bank as received from his brother. It is apparent that above sum is not a cash deposit but it is a transfer. The Id AO considered the same as cash deposit. Further, with respect to the sum of Rs. 20 lacs the assessee has also submitted an affidavit of his

brother who has given him Rs. 20 lacs. As this fact have not been verified by the lower authorities and in view of the ex-parte order of the Id CIT(A), we set aside the whole issue back to the file of the Id CIT(A) with a direction to the assessee to submit the complete details and the explanation before him within two months from the date of the order and then the Id CIT(A) may examine the details and explanation submitted, then decide the issue afresh after granting proper opportunity of hearing to the assessee. In view of the above facts appeal of the assessee is allowed with above direction for statistical purposes.

7. In the result the appeal of the assessee is allowed.
Order pronounced in the open court on 31/01/2019.

(AMIT SHUKLA)
JUDICIAL MEMBER

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:31/01/2019
A K Keot
Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi