

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.3004/Del/2016
Assessment Year: 2009-10

Rohit Goel,
1940, Malka Ganj,
New Delhi.

Vs. ITO,
Ward-20(1),
New Delhi.

PAN: ADFPG3516M

(Appellant)

(Respondent)

Assessee by	:	Shri Paras Chaudhary & Shri Rohit Goel, Advocates
Revenue by	:	Shri S.L. Anuragi, Sr. DR
Date of Hearing	:	18.02.2019
Date of Pronouncement	:	21.02.2019

ORDER

This appeal by the assessee is directed against the order dated 15th March, 2016 of the CIT(A)-12, New Delhi, relating to Assessment Year 2009-10.

2. The addition of Rs.15,73,500/- made by the Assessing Officer u/s 68 of the IT Act which has been upheld by the CIT(A) is the only issue raised by the assessee in the various grounds of appeal.

3. This appeal was earlier dismissed by the Tribunal for non-prosecution. Subsequently, the Tribunal, vide MA No.205/Del/2017, order dated 28th July, 2017, recalled its earlier order. Hence, this is a recalled matter.

4. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 31st March, 2010 declaring the total income at Rs.1,96,260/-. The Assessing Officer, during the course of assessment proceedings observed that there were cash deposit of Rs.15,73,500/- in the bank account of the assessee maintained with State Bank of India. On being questioned by the Assessing Officer, it was submitted that the assessee has sold his Wagon-R car for Rs.2,55,000/-. Further, he has received a gift of Rs.3,50,000/- and also received an amount of Rs.1,99,400/- on account of sale of its Bombay Dyeing show room. It was further argued that he had received professional receipt of Rs.3,56,000/- and has also received an amount of Rs.3,75,000/- in cash from a builder on account of a collaboration agreement for construction of the ground floor. The assessee has also stated that he has received gifts from nearest relatives and parents. The details of receipt of Rs.15,74,400/- was given to the Assessing Officer. The Assessing Officer did not accept such explanation as satisfactory and made addition of Rs.15,73,500/-. In appeal, the Id.CIT(A) sustained the addition of Rs.14,24,400/- and deleted Rs.1,50,000/-. Aggrieved by such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The Id. counsel for the assessee, at the outset, drew the attention of the Bench to para 9.3 of the order of CIT(A) and submitted that the Id.CIT(A) rejected the claim of receipt of Rs.2,55,000/- on sale of Wagon-R on the ground that no details on the back of the stamp paper for vehicle sale agreement was available. He accordingly held that the date of purchase of stamp paper is not authenticated and the registration number of

the car is neither mentioned in the agreement nor in the letter of consent. Further, the buyer has to pay Rs.55,000/- immediately and the balance amount of Rs.2 lakhs in five equal installments. Therefore, the total value of the sale comes to Rs.3,05,000/- whereas the agreement shows sale at Rs.2,55,000/-. He submitted that the Id.CIT(A) has not gone through the details properly. Similarly, he has also rejected the gifts received from the close relations on flimsy grounds by holding that the claim of gift is an afterthought. According to the Id.CIT(A), the affidavits have been made after the Assessing Officer asked about the source of cash deposit in the bank account and, therefore, are self serving documents. He submitted that when the Assessing Officer asked for the affidavits of the persons, the assessee produced the same and it cannot precede the date of such notice. In any case, he submitted that the Id.CIT(A) has not properly appreciated the facts and, therefore, in the interest of justice, this matter may be set aside to the file of the Assessing Officer for proper examination.

6. The Id. DR, on the other hand, strongly opposed the arguments advanced by the Id. counsel for the assessee and submitted that the assessee has not discharged the onus cast on him by substantiating the source of the cash deposit into the bank account. The various documents/details filed by the assessee are self serving documents without having any authenticity. Referring to the order of the CIT(A), he submitted that he has given proper reasoning while sustaining the addition made by the Assessing Officer. Since the order of the CIT(A) is a reasoned one, therefore, the

order of the CIT(A) should be upheld and the grounds raised by the assessee should be dismissed.

7. I have considered the rival submissions made by both the sides and perused the relevant material on record. I find the Assessing Officer in the instant case made addition of Rs.15,73,500/- u/s 68 of the Act on the ground that the assessee could not explain the source of the cash deposits into the bank account. I find the Id.CIT(A) deleted an amount of Rs.1,50,000/- and sustained the balance amount of Rs.14,24,400/- for which the assessee is in appeal before the Tribunal. I find the Id.CIT(A) while sustaining the addition to the tune of Rs.14,24,400/- has given a finding that the assessee is taking different stands before the Assessing Officer and before him regarding the cash deposits made in the bank account. It is the submission of the Id. counsel for the assessee that the various documents furnished before the Assessing Officer and the CIT(A) were not properly appreciated. It is also his argument that given an opportunity, he is in a position to substantiate the source of such deposits to the satisfaction of the Assessing Officer. Considering the totality of the facts and circumstances of the case and in the interest of justice, I deem it proper to restore the issue to the file of the Assessing Officer with a direction to give one final opportunity to the assessee to substantiate his case. The Assessing Officer, if considers necessary, may ask the assessee to produce the donors for his verification and also the person to whom the motor car has been sold. 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 grounds raised by the assessee are accordingly allowed for statistical purposes.

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

The decision was pronounced in the open court on 21.02.2019.

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

Dated: 21st February, 2019

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

Asstt. Registrar, ITAT, New Delhi