

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC', NEW DELHI
BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER

ITA No. 3093/Del/2018
Assessment Year: 2007-08

SANJEEV BATRA,
10-D, SAGAR APARTMENTS
6, TILAK MARG,
NEW DELHI - 110001
(PAN: AAFPB9937Q)

VS. DCIT, CIRCLE 52(1),
NEW DELHI

(APPELLANT)

(RESPONDENT)

Assessee by : Sh. Santosh Pathak, CA
Revenue by : Sh. SL Anuragi, Sr. DR.

ORDER

The Assessee has filed the Appeal against the Order dated 22.3.2018 of the Ld. CIT(A)-18, New Delhi pertaining to assessment year 2007-08 on the following grounds:-

- i) Action of CIT(A) in confirming the addition of cash deposit of Rs. 9,86,000/- into the bank of the appellant, as made by the DCIT, without considering the explanation

and information available on record is unjust, illegal, arbitrary and against the facts and circumstances of the case.

- ii) The assessee craves to add, amend, alter, submit and withdraw any ground before the appeal is heard.

2. The brief facts of the case are that assessee filed return of income on 21.7.2007 declaring income of Rs. 33,27,726/- which was processed u/s. 143(1) of the Income Tax Act, 1961 (in short "Act"). Subsequently, the case of the assessee was selected for scrutiny and accordingly notice u/s. 143(2) of the Act dated 24.7.2008 was issued. Thereafter, notice u/s. 142(1) of the Act was issued. The assessee is an individual and is a proprietor of M/s Batra & Co carrying professional activities of Chartered Accountants and disclosed salary income, professional income and interest income. In response to the statutory notices, the AR of the assessee attended the proceedings from time to time and filed necessary details and

documents. The AO observed that there are various cash deposits in the bank account of the assessee on various dates and total amount of these cash deposits is Rs. 9,86,000/-. The AR was asked to explain the source of these cash deposits. The assessee only filed the ledger account of the bank account of the bank statement. Hence, the observed that he was not satisfied about the source of these cash deposits, therefore, he treated the same as unexplained cash credits and has made the addition of Rs. 9,86,000/- to the total income and made various other additions by assessing the income at Rs. 44,39,690/- vide order dated 11.12.2009 passed u/s. 143(3) of the Act. Against the said assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 22.3.2018 has partly allowed the appeal of the assessee. Aggrieved with the impugned order, assessee is in appeal before the Tribunal.

3. During the hearing, Ld. counsel for the assessee has stated that Ld. CIT(A) has wrongly confirmed the addition of cash deposit of Rs.9,86,000/- into the bank of the assessee. He further submitted that the bank statement of the assessee

with both the accounts i.e. ABN Amro Bank and UCO Bank were already with the AO and from the Imprest Account it is very clear that before deosting the cash into account there is cash withdrawal immediately i.e. some day before the deposit of cash. In support of his contention he filed a paper book containing pages 1-16 in which he has attached the copy of letter to DCIT, Circle 31(1), New Delhi dated 23.11.2009 in the assessment proceedings; cash imprest book of Sh. Sanjeev Batra from 1.4.2006 to 31.3.2007 submitted before DCIT in the assessment proceedings; details of cash deposit in the ABN Amro Bank account of Sanjeev Batra submitted before DCIT in the assessment proceedings; Letter to ACIT, Circle 31(1), New Delhi during remand proceedings dated 6.1.2014; letter to ACIT, Circle 52(1), New Delhi dated 23.2.2017 during remand proceedings; letter to ACIT, Circle 52(1), New Delhi dated 27.2.2017 during remand proceedings; a document i.e. cancellation of booking of plots by assessee submitted before ACIT, Circle 52(1) during remand proceedings; letter to CIT(A)-18, New Delhi. He especially draw my attention towards page no. 16 of PB which is detail of withdrawal and deposit of cash and submitted that assessee was having sufficient cash in hand

on the date of deposit of same into the bank. In support of aforesaid contentions, he relied upon the decision of the Hon'ble Delhi High Court in the case of Jaya Aggarwal vs. ITO (2018) 92 taxmann.com 108 (Delhi).

4. On the other hand, Ld. DR relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned order, which does not need any interference.

5. I have heard both the parties and perused the records especially the impugned order as well as the Paper Book filed by the assessee. I find that it is contended that the cash deposits are out of cash withdrawals made from the banks a few days earlier. The AO was asked vide this office letter dated 27.12.2013 to examine the issue as this explanation was not provided to the AO at the time of assessment. The AO has submitted the remand report vide his letter dated 28.02.2017 in which the AO has submitted that the appellant has failed to explain the reasons for cash withdrawals from the bank and has also stated that the explanation of the assessee does not pass the test of human probabilities. It is noted that the AO has further reported that the contention of the AR that part of

the withdrawals were made for making advance payment for booking of residential plots and the same was returned subsequently on cancellation of the agreement, has not been proved by producing the persons with whom the agreement was entered into. The AR was provided with a copy of the remand report of the AO and was asked to offer his comments. The AR has reiterated that the cash deposits are made from the cash withdrawals from the banks. With respect to the deposit of Rs. 5,98,600/- during the period from 01.03.2007 to 06.03.2007, the AR has submitted that the deposits were made from the cash received the back from the person with whom agreement was cancelled. In this regard, the AR has filed a cancellation agreement entered on a plan paper, the authenticity of which is questionable and the same appears to be a self-serving document which is prepared afterwards with the intention to prove the source of cash deposits. The AO also was of the same view, since the assessee could not substantiate the veracity of these documents by independent evidence. It is also to be observed that it is highly improbable that any person would receive back the amounts in various installments in cash after cancellation of the agreement. The

AR has not been able to substantiate the nexus between the cash withdrawals and the cash deposits. In view of this, the source of cash deposits remains unexplained. The case law cited by the Ld. Counsel for the assessee is distinguished on facts. In view of above the addition made by the AO was rightly confirmed by the Ld. CIT(A), which does not need any interference on my part, hence, I uphold the action of the Ld. CIT(A) on the issue of dispute and reject the ground raised by the assessee.

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

Order pronounced on 09-04-2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 09/04/2019

SRBhatnagar

Copy forwarded to: -

1. Appellant
 2. Respondent
 3. CIT
 4. CIT(A)
 5. DR, ITAT
- By Order,

Assistant Registrar, ITAT, Delhi Benches