

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

Before Sh. T. S. Kapoor, Accountant Member

ITA No. 269/Del/2019 : Asstt. Year : 2015-16

Bishambhar Singh, Flat No. B-92, S-2, Rampuri, Sahibabad, Ghaziabad-201001	Vs	Income Tax Officer, Ward-1(5), Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. BFTPS0280P		

**Assessee by : Sh. Anoop Sharma, Adv. &
Sh. Sanjay Parashar, Adv.
Revenue by : Sh. S. L. Anuragi, Sr. DR**

Date of Hearing: 29.05.2019	Date of Pronouncement: 30.05.2019
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ORDER

This is an appeal filed by assessee against the order of Commissioner of Income Tax (Appeals), Ghaziabad dated 28.11.2018.

2. At the outset, the Authorized Representative submitted that Assessing Officer had made two additions amounting to Rs.4,37,000/- and Rs.12,45,400/- respectively. It was submitted that the first addition was made by Assessing Officer on account of difference in the stamp valuation of property which the assessee had purchased and the other addition was made by Assessing Officer on account of deposits in the savings bank account of the assessee. It was submitted that the contention of the assessee that additions were not sustainable were not accepted by the Assessing Officer. Regarding the deposits in the bank, the Assessing Officer did not accept the contention as he held

that the creditworthiness of the persons from whom the assessee had received gifts was not proved.

3. It was submitted that before Id. CIT(A) detailed submissions were filed wherein the PAN numbers of the donors alongwith detailed submission on addition and affidavits alongwith their sources of income of donors were filed and in this respect our attention was invited to paper book page 3 to 10 where copy of submissions alongwith copy of affidavit and other evidences was placed. The Id. AR submitted that though Id. CIT(A) noted that additional documents were filed but he stated that since the assessee had not made formal application under Rule 46A of the Income Tax Rules, 1962, therefore, he could not consider the same. It was prayed that the case may be remitted to Id. CIT(A) with a direction to consider the additional documents as these documents are crucial to deciding the issues involved in the appeal.

4. The Id. Departmental Representative, on the other hand, relied on the orders of authorities below.

5. I have heard the rival parties and have gone through the material placed on record. I find that the additional documents were filed before Id. CIT(A) vide written submission dated 29.05.2018 which is placed at paper book page 3 to 10. The Id. CIT(A) has not considered these documents by holding that assessee had not made any formal application under Rule 46A of the Income Tax Rules, 1962. I find that vide notice u/s 142(1) of the Act dated 04.09.2017, the assessee was asked to show cause as to why the income being the difference between stamp valuation and purchase value be not added to the income of assessee. Vide same notice, the assessee was show cause as to why the deposits in bank account be not treated as

income of the assessee. The Assessing Officer passed the order on 17.11.2017 which proves that assessee was not provided sufficient opportunity to file the evidence of deposits in bank and was not able to file submissions for other additions. Therefore, the assessee filed written submission dated 29.05.2018, a copy of which is placed at paper book page 3 to 10 in which the detailed written submission alongwith the copy of affidavit of donors alongwith their income proves were filed but Id. CIT(A) did not consider the same by holding that assessee had not filed formal application under Rule 46A of the Income Tax Rules, 1962. However, I find that Id. CIT(A) is both an adjudicator and investigator and therefore, in view of substantial justice he should have considered the additional document especially keeping in view the fact that there was little opportunity available to the assessee in explaining the same before Assessing Officer. Therefore, I remit the issue back to Id. CIT(A) who should consider the documents filed by written submission dated 29.05.2018 and re-decide the issue afresh. Needless to say that assessee will be provided sufficient opportunity of being heard.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order pronounced in the Court on 30th day of May, 2019 at New Delhi)

Sd/-
(T. S. Kapoor)
Accountant Member

Dated: 30/05/2019

Subodh
Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(Appeals)
5.DR: ITAT

ASSISTANT REGISTRAR