

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No.6649/DEL/2016
[A.Y 2010-11]

Sh. Rajiv Jain
LSC No.105-107, Vardhman City
Centre, Near Shakti Nagar
Subway, Delhi-110007

Vs. ITO
Ward - 20 (1)
New Delhi

[Appellant]

[Respondent]

Date of Hearing : 12.09.2019
Date of Pronouncement : 13.09.2019

Appellant by : Sh. Gautam Jain, Advocate
Sh. Lalit Mohan, CA

Respondent by : Sh. S. L. Anuragi, SR. DR

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee has come up for hearing pursuant to the order of the Hon'ble High Court in tax appeal No.1115/2017 dated 13.11.2018 the relevant findings of the Hon'ble High Court read as under :-

“14. The primary reason to reject explanation of the appellant- assessee that the cash deposit of Rs.4,92,900/- was from the withdrawals of Rs.5,10,550/- in cash made between 12th June, 2009 and 16th October 2009 - in the first appellate order was failure of the appellant- assessee to elucidate and explain the reason why the said cash withdrawals were made. Referring to the said reasoning, counsel for the appellant- assessee has submitted that the Assessing Officer had not raised any such specific query. This was not the ground and reason given in the assessment order. On the other hand, the appellant- assessee had furnished evidence regarding cash withdrawals of Rs.5,10,550/-, which was undisputed. The Commissioner of Income Tax (Appeals) had proceeded to give a different and new reasoning, which was not confronted for explanation before the first appellate order was passed. The appellant- assessee was taken by surprise. Reasoning in the form of additional ground, it is submitted, should not have been made the basis without asking and raising a specific query. It is also highlighted, with some merit, additions made include two small deposits of Rs.3,250/- and Rs. 14,400/- made on 17th August, 2009 and 27th October, 2009. In the alternative, it was submitted that addition should be partial.

15. Keeping in view the aforesaid position, we find that the Tribunal in the impugned order has failed and not taken note of the aforesaid contentions raised in respect of the deposit of Rs.4,92,900/- The said issue has not. been examined in the light of the pleas and aspects that arise for consideration. Accordingly, we feel that the matter should be re-examined by the Tribunal Liberty is also given to the appellant- assessee to file an application for additional evidence to justify and explain the reason for substantial cash withdrawals made between 12th June, 2009 to 16th October, 2009. We clarify that we have only remanded, the matter for fresh consideration and have not finally determined or decided the aspect and issue on merits.

16. The question of law is accordingly answered, partly in favour of the appellant- assessee and against the Revenue with an order of

remand to the Tribunal. We clarify that the remand is only restricted to the extent of the deposit of Rs.4,92,900/-. We have not remanded the issue regarding sale of wearing apparel and silver utensils.”

2. Pursuant to the aforesaid directions of the Hon’ble High Court, I have considered the relevant documentary evidences brought before me. A perusal of the bank statements show that the assessee has made the following withdrawals from his bank account :-

1. 12.06.2009	-	84,450/-
2. 26.08.2009	-	1,30,000/-
3. 26.08.2009	-	24,500/-
4. 15.09.2009	-	12,000/-
5. 19.09.2009	-	86,000/-
6. 22.09.2009	-	1,70,000/-
7. 16.10.2009	-	<u>3,600/-</u>
		<u>5,10,550/-</u>

I find on 10.11.2009 the assessee has deposited Rs.10 lacs.

3. Since the withdrawals of Rs.5,10,550/- are clearly verified from the bank statements it can be safely concluded that the deposit of Rs.492900/- which is under dispute has come out from the withdrawals as mentioned here in above.

4. Since I have verified the withdrawals from the bank statements I do not find any merit in sustaining the addition of Rs.492900/-. The addition on account of unexplained cash deposit in Axis Bank is directed to be reduced by this amount.

5. Respectfully following the directions of the Hon'ble High Court and making verification thereto the appeal of the assessee is allowed.

6. In the result, the appeal filed by the assessee is allowed.

The order is pronounced in the open court on 13.09.2019.

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 13 September, 2019

Neha

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi

Date of dictation	12.09.2019
Date on which the typed draft is placed before the dictating Member	13.09.2019
Date on which the typed draft is placed before the Other member	13.09.2019
Date on which the approved draft comes to the Sr.PS/PS	13.09.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	13.09.2019
Date on which the fair order comes back to the Sr. PS/ PS	13.09.2019
Date on which the final order is uploaded on the website of ITAT	13.09.2019
Date on which the file goes to the Bench Clerk	16.09.2019
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	