

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

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 67/Del/2019
Assessment Year: 2010-11

ARUN KUMAR YADAV, C/O SARASWATI LEGAL PROFESSIONALS PVT. LTD. S-48, C-BLOCK, BEHIND ANDHRA BANK, SHALIMAR GARDEN EXTENSION-II, SAHIBABAD, GHAZIBAD UTTAR PRADESH - 201005 (PAN: ABQPY1994G) (ASSESSEE)	vs.	ITO, WARD 1(1), GHAZIABAD (RESPONDENT)
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Assessee by: None
Revenue by: Ms. Ekta Vishnoi, Sr. DR.

ORDER

This appeal is filed by assessee against the Order dated 16.8.2018 passed by the Ld. CIT(A), Ghaziabad relating to Assessment Year 2010-11 on the following grounds:-

1. That after having regard to the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts was not deleting the addition of Rs. 10,48,000/-.
2. That in any view of the matter and in any case, the action of Ld. CIT(A) in not reversing the action of AO in making impugned addition of Rs. 10,48,000/- is bad in law and against the facts and circumstances of the case.
3. That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO was not providing proper opportunity to the assessee at the time of

hearing against the provision of Income Tax Act, 1961.

4. That the applicant craves the leave to add amend, modify, delete any of the grounds of appeal before or at the times of hearing and all the above grounds are without prejudice to each other.

2. Facts narrated by the revenue authorities are not disputed by the Ld. DR, hence, the same are not repeated here for the sake of brevity.

3. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor his authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, I am of the view that no useful purpose would be served to issue notice again and again to the assessee, therefore, I am deciding the present appeal *ex parte* qua assessee, after hearing the Ld. DR and perusing the records.

4. Ld. DR relied upon the orders of the authorities below.

5. I have heard the Ld. DR and perused the records, especially the orders of the revenue authorities. I find that AO has observed that the cash deposited to the savings bank account maintained with Union Bank of India was treated as the cash deposited from the past savings and previous withdrawals and the cash deposit of Rs. 10,48,000/- out of Rs. 13,77,000/- to the savings bank account maintained with Kotak Mahindra Bank was as unexplained investment in the hands of the assessee, which was added to his income under the provision of section 69 of the Act. However, it is noted that during the course of appellate proceedings it has been submitted that Rs. 9,48,000/- has been deposited by taking gift from mother of the assessee who in turn sold the property for cash consideration and assessee filed the copy of an affidavit dated 15.12.2017

in support of the same contention. Ld. CIT(A) also noted that affidavit has been made in 2017 whereas the cash has been deposited in FY 2009-10 and no date of payment of Rs. 6,40,000/- and Rs. 3,08,000/- has been given in the affidavit to verify the genuineness of the assessee's claim and no ITR has been filed by the assessee's mother, hence, Ld. CIT(A) upheld the action of the AO. After perusing the aforesaid findings of the lower authorities, I find that there is contradiction between the findings of the lower authorities, therefore, in my considered opinion, the issue needs to be thoroughly examined afresh at the level of the AO to verify the genuineness of the assessee's claim and other related evidences/documents. Accordingly, I set aside the issue in dispute to the file of the AO with the directions to decide the issue in dispute afresh, after giving adequate opportunity of being heard to the assessee. Assessee is directed to file any other evidences with the AO at the time of proceedings to substantiate his case and did not take any unnecessary adjournment and fully cooperate with him.

6. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced on 11/10/2019.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 11/10/2019

"SRB"

Copy forwarded to: -

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

By Order,

Assistant Registrar, ITAT, Delhi Benches