

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**ITA No. 2944/Del/2018
Assessment Year: 2010-11**

Ganga Ram Sharma Shamli C/o D.K. Gupta, Advocate, 21-Gher Khatti, New Mandi, Muzaffarnagar, Uttar Pradesh. PAN No. AFNPS0463F	vs	ITO Ward 1(4) Muzaffarnagar.
APPELLANT		RESPONDENT

Assessee by	Shri Deepak Kumar Gupta, Adv.
Revenue by	Ms. Ekta Vishnoi, Sr. DR

ORDER

This appeal filed by the assessee against the impugned order dated 27.03.2018 passed by the Ld. CIT(Appeals)-Muzaffarnagar in relation to assessment year 2010-11 on the following grounds:

1. *“That the Ld. CIT(A) erred in confirming addition of Rs. 5,06,300/- as unexplained cash deposit u/s 68 of the IT Act, 1961.*
2. *That the addition as made is arbitrary, uncalled for and very excessive.*
3. *That cash deposit made in bank account is fully explainable. Assessee filed evidence of cash in hand and old balance.*

4. *That CIT(A) erred in not considering cash in hand which was received on sale of property in the previous assessment year of Rs. 5,94,000/- property sold dated 12.08.2008 Rs. 3,21,000/- and dated 19.07.2008 Rs. 2,73,000/- was not properly considered by the CIT(A), whereas copies of sale deed were filed before the ITO and CIT(A).*
5. *That as on 31.03.2009 opening balance of Rs. 2,56,000/-, Rs. 1,04,078/- was in bank and Rs. .1,51,922/- was cash in hand addition of Rs. 2,56,000/- wrongly made. This fact specially mentioned in cash flow chart.*
6. *That any other grounds of appeal shall be submitted at the time of hearing.”*

2. I have heard the both parties and perused the relevant record available with me especially the order passed by the Revenue authority along with the one small paper book filed by the assessee containing page 1 to 30 in which the assessee has attached written submission before ITAT dated 15.12.2018, written submission filed before ITO dated 30.10.2018, reply of notice u/s 142(1) filed before ITO dated 19.02.2017, photocopy of the Bank account, photocopy of Sale deed dated 19.07.2008, photocopy of sale deed dated 12.08.2008, cash deposit chart in bank and notice u/s 148 of the Income Tax Act, 1961.

3. I am of the view that on the information regarding deposit of cash was received by the Assessing Officer and Assessing Officer asked the assessee to explain the source of this investment vide query letter. Assessee has failed to furnish any satisfactory evidence and explanation regarding the same.

The AO issued a notice u/s 148 after getting the approval from the competent authority notice dated 23.03.2017 which was duly served upon the assessee. In response to the same, assessee filed his return of income for AY 2010-11 on 16.08.2017 declaring income of Rs. 59,210/-. AO also issued notice u/s 143(2) on 16.08.2017 which was duly served upon the assessee. After that AO also issued notice u/s 142(1) on 07.09.2017 in response to the same, Authorized Representative of the assessee appeared and filed required details and documents. Counsel for the assessee submitted before the AO that the assessee was a retired 89 years old person and amount deposited in his saving bank account from the sale consideration of the property on behalf of his wife and sons through power of attorney during the year under consideration. But the AO has not accepted the explanation of the assessee and made the addition of Rs. 6,79,920/- u/s 68 of the IT Act, 1961 and completed the assessment vide order dated 14.12.2017 u/s 143(3)/147 of the Act.

4. Aggrieved by the assessment order dated 14.12.2017 assessee filed an appeal before the Ld. First Appellate Authority who vide impugned order dated 27.03.2018 partly allowed the appeal of the assessee and sustained the addition of Rs. 5,06,300/- u/s 69A of the Act. Assessee aggrieved by the impugned order dated 27.03.2018 filed the present appeal before the Tribunal.

5. After hearing the both parties and perusing the relevant record available with me especially the order passed by the Revenue Authorities along with the documentary evidence filed by the assessee in the shape of the paper book in which the assessee has filed the copies of photocopy of bank account, photocopy of sale deed dated 19.07.2008 and copy of sale deed dated 12.08.2008 and cash deposit chart in bank. I have perused the all documentary evidences produced by the assessee and I am of the view that Shri Ganga Ram Sharma – assessee is now at about 90 years old and living along with his servant and has to kept cash in hand for the purpose of unavoidable old age problems and diseases. This plea of the assessee has not been accepted by the Revenue Authority below. In my view this is totally wrong and unsustainable in the facts and circumstances of the assessee being 90 years of age. I have perused the sale deed dated 19.07.2008 and 12.08.2008 and I am of the considered view that explanation of the assessee regarding addition in dispute should have been accepted by the Revenue Authority below. I accept the same and delete the addition in dispute by accepting the appeal filed by the assessee.

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

Order pronounced in the open Court.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 24/10/2019

*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	23.10.2019
Date on which the typed draft is placed before the dictating Member	24.10.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	24.10.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	24.10.2019
Date on which the fair order comes back to the Sr. PS/PS	24.10.2019
Date on which the final order is uploaded on the website of ITAT	24.10.2019
Date on which the file goes to the Bench Clerk	24.10.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

