

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.N.CHARY, JUDICIAL MEMBER

ITA No. 524/Del/2017
(Assessment Year: 2010-11)

Neeta Breja, C/o. Raj Kumar & Associates, CAs, New Delhi PAN: AHMPB3154D	Vs.	ITO, Ward-22(4), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Raj Kumar, CA Shri Sumit Goel, CA
Revenue by:	Ms. Rinku Singh, Sr. DR
Date of Hearing	28/08/2019
Date of pronouncement	25/11/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT (A)-10, New Delhi dated 11.06.2013 for the Assessment Year 2010-11.
2. The assessee has raised the following grounds of appeal:-
"1. That under the facts and circumstances, the addition of Rs. 26,75,100/- u/s 69 for cash deposited in Yes Bank on various dates is absolutely un-justified and un-sustainable in law as well as merits."
3. Brief facts of the case shows that assessee is an individual who filed her return of income on 31/3/2012 declaring income of INR 87,000/-. There was AIR information and therefore the case of the assessee was selected for scrutiny. The assessee is a partner with M/s Prince plastics and has derived income from partnership firm and other sources and also loss from house property.
4. The assessment u/s 143 (3) of the act was passed on 21/3/2013 by the Learned Income Tax Officer Ward 22 (4), New Delhi determining the total income of the assessee at INR 6861203/-. The assessee preferred an appeal before The Commissioner Of Income Tax Appeals – 10, New Delhi raising only one addition of INR 2 675100/- made by the assessing officer. The

learned CIT – A confirmed the addition and therefore the assessee is in appeal before us.

5. As per Para number 11 of the assessment order according to the AR information assessee has deposited cash amounting to INR 2675100/- in to Yes bank account number 390100002292. The assessee was asked to explain the source of the above cash. The assessee furnish the details of cash deposit vide letter dated 13/12/2012 in form of summary of cash withdrawals and deposits on different dates. Assessee also submitted cash flow summary, bank account ledger, bank statement with narrations. On examination of such summary the learned AO found that there is a Long gap between the withdrawals and deposits of different amount of cash deposits, hence explanation furnished by the assessee was rejected and addition of INR 2 675100/- was made under section 69 of The Income Tax Act.
6. On appeal before the learned CIT – A the above additions were confirmed rejecting the explanation of the assessee that withdrawals made earlier were redeposit in the above bank account cannot be accepted as source of cash deposit subsequently.
7. The learned authorized representative submitted that the learned assessing officer has made the addition u/s 69 of the income tax act on account of unexplained cash deposits in bank accounts. He submitted that the cash deposited bank accounts are not investment and therefore there cannot be in addition u/s 69 of the income tax act.
8. On the merits of the issue he submitted that the source of cash deposit is out of cash in hand available with the assessee which was withdrawn from the same bank. The cash withdrawn from bank remained unutilized and was deposited in the bank again. The AO has not brought on record any material to show the utilization of cash withdrawn other than the amount deposited in the bank account. He submitted that there was a special reason to keep the cash in hand because the assessee has given post dated cheques to various parties however to ensure that these parties deposit the cheques only as per the instruction of the assessee, therefore assessee was withdrawing the cash and was redeposit in the bank account according to the deposit of the several cheques. He further submitted the cash flow

statement and the day-to-day cash book of the assessee to show the flow of the cash. He also submitted the Ledger account of the yes bank with narration of each and every entry reconciled with the complete bank statement. He further referred to the explanation of the assessee submitted before the lower authorities. He further referred to the decision of the honourable Delhi High Court in case of CIT vs Kulwant rai 291 ITR 36 (Delhi) wherein it has been held that that the orders of the assessing officer as well as the Commissioner of income tax are completely silent as to for what purposes the earlier withdrawals would have been spent and therefore he submitted that is no material has been relied upon by the AO on the Commissioner of income tax appeal to support the view that the entire cash withdrawals may have not been spent by the assessee submitting that the reasons given by the assessing officer is vague and illogical. He further relied upon the decision of the coordinate bench in case of DCIT vs Veena Awasthi In ITA number 215/LKW/2016 dated 30/11/2018 support its contention.

9. Without prejudice to the above submission he submitted that even if cash deposited in the bank as unexplained in that cash only the peak of the cash can be added and not the entire cash deposit in the bank account. For this proposition he relied upon the decision of the honourable Bombay High Court in Kamal Kumar Bholia 5781/2010 .
10. The learned departmental representative vehemently supported the orders of the lower authorities and submitted that assessee has shown the source of cash deposit in the bank account being the withdrawal of cash from the same bank account in earlier period. It was submitted that there is no justification given by the assessee for keeping such cash in hand. It was further stated that it is not the responsibility of the revenue to show that whether the above cash has been utilized for some other purposes or not.
11. We have carefully considered the rival contention and perused the orders of the lower authorities. In the present case it is not disputed that the amount of cash was explained as available with the assessee in the hands to deposit in the bank. Assessee has substantiated the availability of the cash by producing the cash flow statement, day-to-day cash book, Ledger account of the Bank with narration and the complete bank statement.

Same were disbelieved by the learned assessing officer for the only reason that there is an inordinate delay in deposit of the cash in the bank account. Identical issue arose before the honourable Delhi High Court in case of CIT vs Kulwant rai in 291 ITR 36 wherein the honourable Delhi High Court has held as under:-

16. This cash flow statement furnished by the assessee was rejected by the AO which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of AO as well as CIT(A) are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum of Rs. 10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs. 2 lacs on 4th Dec., 2000 and there was no material with the Department that this money was not available with the assessee. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the AO or CIT(A) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not sustainable under s. 158BC of the Act and the same was rightly ordered to be deleted. ""

12. In the present case also the learned assessing officer or the learned CIT A did not show that above cash was not available in the hands of the assessee or have been spent on any other purposes. Further the coordinate bench in ACIT vs Baldev Raj Charla 121 TTJ 366 (Delhi) also held that merely because there was a time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account of cash deposit could not be made particularly when there was no finding recorded by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts. In view of above facts, the ground number 1 of the appeal of the assessee is allowed and orders of lower authorities are reversed.
13. In the result appeal of the assessee is allowed.
Order pronounced in the open court on 25/11/2019.

-Sd/-
(K.N.CHARY)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 25/11/2019
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi