

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

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 1076/Del/2019
Assessment Year: 2010-11

TARA CHAND,
HOUSE NO. F-163,
PRASHANT VIHAR,
ROHINI,
NEW DELHI – 85
(PAN: AAFPC5913K)
(ASSESSEE)

vs. ITO, WARD 62(4),
NEW DELHI

(RESPONDENT)

Assessee by: Sh. Ved Jain, Adv. & Sh. Akshit Goel,
CA

Revenue by: Sh. Pradeep Singh Gautam, Sr. DR.

ORDER

This appeal is filed by assessee against the Order dated 17.12.2018 passed by the Ld. CIT(A)-20, New Delhi relating to Assessment Year 2010-11 on the following grounds:-

1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.
2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite the fact that the reopening by the AO and consequent reassessment without complying with the statutory conditions prescribed under Section 147 read with Section 147 of the Act is bad in law.
3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the

action of the AO ignoring the fact that the AO has erred both on facts and in law in making reassessment under Section 147 of the Act as the reasons recorded for reopening the assessment does not meet the requirements of Section 147 of the Act.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite the fact that reopening as well as reassessment has been made by the AO without application of mind.
5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that there is no basis in the reasons recorded by the AO for drawing assumption that the cash deposited in the bank account are the undisclosed income of the assessee.
6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.10,00,000/- made by A.O. on account of cash deposits in the bank account.
7. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the assessee bringing explanation and evidences on record to prove the source of cash deposits.

(ii) That the addition has been confirmed arbitrarily rejecting the explanation of the assessee.
8. That the appellant craves leave to add, amend or alter any of the grounds of appeal.

2. The brief facts of the case are that assessee filed his return of income on 25.9.2017 declaring an income of Rs. 1,53,760/-. The assessee is an individual working as a contractor and computing its business income u/s. 44AF of the Income Tax Act, 1961 (in short "Act"). Besides this, assessee is also earning income under the head House Property and other sources. The assessment proceedings in this case was reopened under NPS cycle that the assessee has not filed his return of income for the AY 2010-11. However, as per details appeared in the AIR Report, it shows that the assessee has deposited the cash during the financial year amounting to Rs. 29 lacs in the bank account. In view of above, notice u/s. 148 of the Act dated 29.3.2017 was issued in the name of the assessee. The AO during the scrutiny found that there was cash deposit of RS. 29 lacs in the bank account of the assessee during the year. The assessee submitted that through an Ikrarnama he has received Rs. 19 lacs in cash as Bayana from a buyer on the deal of agricultural land. The AO found that no source of withdrawals of Rs. 19 lacs has been submitted by the assessee. The AO further found that there was cash deposit of Rs. 10 lacs on 15.12.2009, the assessee stated that the cash deposits were out of cash sales during the period. The AO found that all the cash from the supposed cash sales were deposited in one day in the bank and the next day paid out through cheques. The Assessee did not show any evidence of cash sales. Under these circumstances, not being satisfied with the submission of the assessee the AO treated the amount of cash deposit of Rs. 29 lacs as gathered from undisclosed sources and added the same to the total income of the assessee u/s. 68 of the Act by completing the assessment at Rs. 30,53,760/- u/s. 143(3) of the Act. Vide order dated 01.12.2017. Against the assessment order dated 01.12.2017, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 17.12.2018 has partly allowed the appeal of the assessee by confirming the addition of Rs. 10 lacs. Aggrieved with the impugned order dated 17.12.2018, assessee is in appeal before the Tribunal.

3. At the time of hearing, Ld. Counsel for the assessee stated during the year under consideration the assessee deposited Rs. 10,00,000/- in his saving bank account maintained with State Bank of India. In this regard it was submitted by the assessee that the amount deposited was on account of cash sales made during the year under consideration. In order to further clarify the same, assessee vide reply dated 23.11.2017 submitted that in order to discontinue its business in the year under consideration i.e. AY 2010-11, assessee sold its closing stock amounting to Rs. 9,07,250/- appearing in the books of assessee (maintained for his own understanding) as on 31.03.2009. Accordingly, the above cash deposits to the extent of Rs. 8,77,100/- was on account of sale of closing stock. Regarding the balance cash deposit amounting to Rs. 1,22,900/-, it was submitted by the assessee that the said amount was deposited out of the cash balance of Rs. 2,30,127/- as appearing in the balance sheet of the assessee as on 31.03.2009. It was submitted that the cash deposit amounting to Rs. 10,00,000/- was purely on account of business activity and assessee has duly discharged its onus of establishing the source of cash deposits, as required by the provisions of section 68. It was further submitted that the assessee has duly discharged its onus as specified under the provisions of section 68, by furnishing all the documentary evidences as and when called upon by the AO. On the contrary AO has himself not brought on record any evidence which may prove that the documents or the explanations furnished by the assessee are not reliable, despite of this fact AO is still contending that assessee has completely failed to discharge onus casted upon him by the law. Undoubtedly, the addition has been made merely on the basis of suspicion and doubt without bringing any evidence on record by the AO which is bad in law and liable to be deleted.

4. On the contrary, Ld. DR relied upon the orders passed by the revenue authorities and stated that Ld. CIT(A) has rightly confirmed the addition of Rs. 10 lacs, which does not need any interference. Therefore, the appeal filed by the assessee may be dismissed.

5. I have heard both the parties and perused the records, especially the orders of the revenue authorities alongwith the written submissions filed by the assessee and the Paper Book containing pages 1-88. The assessee has raised as many as 8 grounds of appeal. However, the Ground no. 1 to 4 were not pressed, hence, the same were dismissed as such. Apropos ground no.5 to 7 is concerned, the only issue in this appeal is the addition of Rs.10,00,000/- out of the addition of Rs.29,00,000/-, confirmed by the Ld. CIT(A). I note that the AO has made the addition on the basis of the crediting the bank account. However, the Ld. CIT(A) has confirmed the same on the basis that there is a contradiction in the explanation given by the assessee before the AO and the explanation given before him. I further note that it is mentioned in para 6.2.4 of the Ld. CIT(A) order that the assessee during the appeal proceedings submitted that the deposit of Rs.10,00,000/- was made out of cash of Rs.8,77,100/- paid out of the sale of closing stock and cash of Rs.1,22,900/- out of the past savings whereas before the AO the assessee has submitted that the amount was paid out of the cash sales. The Ld. CIT(A) has considered this to be a contradictory stand of the assessee. On going through the letter dated 23.11.2017 placed at paper book page 24, I note that assessee has submitted to the AO that Rs.8,77,100/- is the sale proceeds of the stock balance he was having as on 31.03.2009 and balance Rs.1,22,900/- was deposited out of the cash balance available with him. In this regard, the assessee has also filed the balance sheet with the AO which he has filed along with the return of income for preceding assessment year. I further note that as per the balance sheet as on 31.03.2009 the assessee was having closing stock of Rs.9,07,250/- and cash in hand of Rs.2,30,127/-. Thus, the explanation of the assessee regarding this deposit of cash was correct. The Ld. CIT(A) was not justified in treating this explanation as contrary to the explanation given before her. The explanation given before AO as stated in the letter dated 23.11.2017 and the explanation given to the Ld. CIT(A) in its submissions is the same. The assessee having deposited the amount out of the sale proceeds of the closing stock held by him as on 31.03.2009 and out of the

cash balance available with him as on 31.03.2009, there is no reason for sustaining this addition. Accordingly, I delete this addition of Rs. 10 lacs and allow the ground no. 5 to 7 accordingly.

6. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced on 20/12/2019.

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

Date 20/12/2019

"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