

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.6401/Del/2019
Assessment Year: 2010-11

Savita Singh, D/o Late Shri Mahipal Singh, H.No.4C/6, Anoop Palace, Avas Vikas-1, DM Road, Bulandshahr. PAN: BAPPS5577N	Vs	ITO, Ward-3(2), Bulandshahr.
--	----	------------------------------------

ITA No.7026/Del/2019
Assessment Year: 2010-11

Savita Singh, (Legal Heir of Late Shri Mahipal Singh), H.No.4C/6, Anoop Palace, Avas Vikas-1, DM Road, Bulandshahr. PAN: AVKPS1651C	Vs.	ITO, Ward-3(2), Bulandshahr.
--	-----	------------------------------------

(Appellant)	:	(Respondent)
Assessee by	:	Shri Anup Sharma & Shri Sanjay Parashar, Advocates
Revenue by	:	Shri D.S. Yadav, DR
Date of Hearing	:	04.03.2020
Date of Pronouncement	:	05.03.2020

ORDER

The above two appeals filed by the respective assesses are directed against the separate orders dated 27th February, 2019 of the CIT(A), relating to the A.Y. 2010-11.

2. For the sake of convenience, both the appeals were heard together and are being disposed of by this common order.

3. In ITA No.6401/Del/2019, although a number of grounds have been raised by the assessee, these all relate to the order of the CIT(A) in confirming the addition of Rs.11,70,000/- by the AO u/s 68 of the IT Act. Similarly, in ITA No.7026/Del/2019, the assessee has challenged the order of the CIT(A) in confirming the addition of Rs.14,75,000/- made by the AO u/s 68 of the IT Act.

4. In ITA No.6401/Del/2019, there is a delay of 64 days in filing the appeal for which the assessee has filed an application along with an affidavit explaining the reasons for such delay. After considering the contents of the condonation application filed along with the affidavit of the assessee, we condone the delay in filing the appeal and the appeal is being admitted for hearing.

5. In ITA No.6401/Del/2019, facts of the case, in brief, are that the assessee is an individual. On the basis of the information obtained through AIR and NMS that the assessee has made cash deposit of Rs.11,70,000/- in the savings bank account maintained with Citizen Co-op. Bank Ltd., Distt., Bulandshahr, the case of the assessee was reopened after recording reasons and notice u/s 148 of the Act was issued. However, there was no compliance from the side of the assessee. Therefore, the AO completed the assessment u/s 144 of the Act determining the total income of the assessee at Rs.11,70,000/- which was made by him u/s 68 of the Act. Since none appeared on behalf of the assessee, the Id.CIT(A), in the *ex*

parte order passed by him, sustained the addition so made by the AO and dismissed the appeal of the assessee.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. Similarly, in ITA No.7026/Del/2019, the case of the assessee was reopened on the basis of the information obtained from AIR that the assessee has made cash deposit of Rs.14,75,000/- in her savings bank account maintained with Punjab National Bank during F.Y. 2009-10 relevant to the impugned A.Y. 2010-11. There was no response to the notice issued u/s 148 of the Act nor any compliance to the statutory notices issued by the AO. Therefore, the AO, in the order passed u/s 144 of the IT Act, made addition of Rs.14,75,000/- to the total income of the assessee by invoking the provisions of section 68 of the Act. Since there was no compliance from the side of the assessee, the Id.CIT(A), in the *ex parte* order passed by him, sustained the addition made by the AO.

8. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

9. The Id. Counsel for the assessee submitted that Shri Mahipal Singh was an Advocate who in the mean time has expired and is now represented by his daughter Savita Singh, who is also a Lawyer. He submitted that since Shri Mahipal Singh, the assessee was not keeping well and subsequently has expired,

therefore, there was no proper compliance from the side of the assessee either before the AO or before the CIT(A). He submitted that in the interest of justice, the assessee should be given an opportunity of being heard.

10. The Id. DR, on the other hand, while opposing the arguments advanced by the Id. Counsel, submitted that despite a number of opportunities granted by the AO as well as the CIT(A), there was no compliance from the side of the assessee and, therefore, in the absence of any proper explanation regarding the source of such deposit, the addition made by the AO and sustained by the CIT(A) should be upheld.

11. I have considered the rival arguments made by both the sides and perused the record. It is an admitted fact that there was no compliance from the side of the assessee either before the AO or before the CIT(A) for which *ex parte* orders have been passed by both the lower authorities. However, considering the fact that Shri Mahipal Singh in the mean time has expired and is represented by his daughter ms Savita Singh, who is also an appellant and considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the AO with a direction to grant one final opportunity to the assessee to substantiate the cash deposits in the bank account to his satisfaction. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. The grounds raised by the assessee in both the appeals are accordingly allowed for statistical purposes.

12. In the result, both the appeals filed by the respective assesseees are allowed for statistical purposes.

The decision was pronounced in the open court on 05.03.2020.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 05th March, 2020.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi