

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-2": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 9631/Del/2019
Asstt. Year 2011-12

Sayar Devi Baid, 1/1942A, Moti Ram Road, Shahdra, New Delhi 110 032 PAN ACRPB2736P	Vs.	ITO Ward-56 (3) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri R.S. Singhvi, CA Shri Satyajeet Goel, CA
Department by :	Shri Ved Prakash Mishra, Sr. DR
Date of Hearing	26.11.2020
Date of pronouncement	27.11.2020

ORDER

PER N.K. BILLAIYA, AM

This appeal by the assessee is preferred against the order of the CIT(A)-37, New Delhi dated 30.10.2019 pertaining to

assessment year 2011-12. The grievance of assessee read as under :

“1(i) That on facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding the validity of notice u/s 148 of the act even though the reasons recorded are vague, unsubstantiated and not based on any tangible material.

(ii) That that the reasons are merely on the basis of AIR information and in absence of independent application of mind or investigation, the reopening u/s 148 is on mechanical basis and borrowed satisfaction.

(iii) That AIR information per se does not constitute tangible material and there being no other adverse material on record, the reopening u/s 147 is illegal and not sustainable for want of tangible material.

(iv) That in absence of proper approval in terms of provisions of section 151 of the Act, the notice u/s 148 is illegal and without jurisdiction.”

2(i) That on the facts and circumstances of the case, CIT(A) is also not justified in confirming addition of Rs. 10,00,000/- as unexplained money in terms of provisions of sec. 69A of the Income Tax Act, 1961 without appreciating the nature of the transactions and supporting evidences.

(ii) That the appellant having engaged in the trading of papad & snacks, the genuineness of cash deposit is duly supported from relevant documentary evidences and as such the impugned addition u/s 69A of the Act is mechanical in nature.

- 3(i) *That CIT(A) is not justified in not appreciating the documentary evidences in support of cash deposits and addition was made without allowing proper & reasonable opportunity.*
- (ii) *That these evidences are vital for adjudication of ground in respect of addition made u/s 69A.*
- (iii) *That these evidences have direct bearing to the issue in dispute and the CIT(A) should have appreciated the same in interest of justice and proper adjudication of ground.*
4. *That in any case, AO & CIT(A) having accepted the returned income on the basis of which entire cash deposit is corroborated, there is no ground or basis for further addition of Rs. 10,00,000/- which is already part of declared turnover.”*

2. The representatives of both the sides were heard at length. Case records carefully perused. At the very outset the Counsel for the assessee stated that he has not pressed ground No. 1 with all its sub grounds and accordingly ground No. 1 with its sub ground is dismissed as not pressed.

3. The other grounds relate to the addition of Rs. 10 lacs made u/s 69A of the Act.

4. Briefly stated the facts of the case that as per the information available with the AO he came to know that the assessee has deposited cash of Rs. 10 lacs in her saving bank account

maintained with Vijaya Bank, Loni Road, Delhi. In response to the notice u/s 148 of the Act the assessee electronically filed return declaring total income of Rs. 1,32,390/-. In her return the assessee showed gross turn over of Rs. 16,54,863/-.

5. During the course of the scrutiny assessment proceedings, the assessee was asked to explain the source of cash deposit of Rs.10 lacs. In her reply the assessee stated that she has been doing the business of procuring papad and snacks from the manufacturer and selling the same in retail trading. It was explained that the source of cash deposit of Rs. 10 lacs is her trading business in papad and snacks.

6. The explanation of the assessee did not find any favour with the AO who was of the firm belief that the assessee has failed to discharge the onus of explaining the source of cash deposit and accordingly made addition of Rs. 10 lacs.

7. Assessee agitated the matter before the CIT(A) but without any success.

8. Before us the Counsel for the assessee vehemently stated that the AO has accepted the return of the assessee thereby accepting the turn over from the sales of papad and snacks. It is the say that counsel for the assessee has been doing this

business since past many years and therefore had sufficient funds to explain the source of cash deposit. Per contra the DR strongly supported the findings of the lower authorities. After giving a thoughtful consideration to the orders of the authorities below we are of the considered view that once the business of the assessee has been accepted by the AO by accepting her return of income there should not be any doubt in accepting the source of cash deposit. On identical set of facts the coordinate bench in ITA No. 8197/D/2019 order dated 22.10.2020 held as under :-

“7. We have heard the rival submissions and also perused the relevant finding given in the impugned order and the material referred to before us at the time of hearing. It is an undisputed fact that the assessee had not filed the return of income for Assessment Year 2010-11 and the only return which was filed, was in response to notice u/s.148 on 27.08.2018. In the said return of income, the assessee had declared income of Rs.1,79,200/- which was shown as business income u/s.44AD based on the total cash deposits appearing in her bank account. Since issue of validity of notice u/s.148 and u/s.147 has not been argued by the Id. counsel, therefore, the same are treated to be not pressed.

8. *The assessee's plea all throughout has been that she has been carrying out petty business activities like purchase and sale of artificial jewellery, bed-sheets and other items from various places and also giving coaching to the students. The aggregate cash deposits in her account for the entire year was Rs. 13,61,300/- though no cogent material or evidence has been filed in support of business activities. However, from a bare perusal of the bank statement which was basis for the addition, it is seen that assessee has received cash from various vendors/ purchasers outside the Delhi and the narration given in the account mentions 'by cash- Jhansi- Shipri Bazar', 'by cash cashupl-Solapur', 'by cash cashupl- Jodhpur', 'by cash Ajmer', and likewise wherein cash amount has been deposited in her bank account on various dates. However, one very glaring feature from the perusal of the bank account is that the assessee has been paying VAT and such entries are appearing all throughout the year on various dates. Payment of VAT does indicate purchase and sale of some goods, items or services. All these factors thus, go to show that some kind of business activity was carried out by the assessee. If the assessee had shown income u/s.44AD which is presumptive basis for taxation and looking to the nature of bank account entries and regular cash deposits and withdrawals this shows that assessee*

was doing some kind of business activities and preponderance of probabilities for such activities is definitely goes in favour of the assessee. Moreover, the Assessing Officer has tacitly accepted the business income by accepting the return of income from the same deposits of sums aggregating to Rs.13,61,300/-. Accordingly, we direct the Assessing Officer to accept the return of income of Rs.1,79,200/- as business income.”

9. Finding parity in the facts of the case in hand with the facts of the decision of the Tribunal (supra) we hold that the assessee has successfully explained the source of cash deposit of Rs. 10 lacs. We accordingly direct the AO to delete the impugned addition. The appeal filed by the assessee is allowed.

10. In the result the appeal filed by the assessee is allowed.

Order pronounced in the open court on 27th November, 2020.

sd/-

(MS. MADHUMITA ROY)
JUDICIAL MEMBER

sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Dated: 27/11/2020

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Order dictated on 27.11.2020.

Date on which the typed draft is placed before the Dictating Member 27.11.2020..

Date on which the approved draft comes to the Sr.PS/PS

Date on which fair order sent to Member for signature

Date on which the fair order comes back after pronouncement to the Sr. PS/PS

Date of Uploading orderNot Available on net.

Date on which the file goes to the Bench Clerk

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 Despatch of the Order

