

**.IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-1 : NEW DELHI**

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.9901/Del/2019
Assessment Year: 2011-12

Virender Kumar,
CA MR Sahu & Associates,
H.No.651, FF, Sector 10A,
Gurgaon.

Vs ITO,
Ward-3,
Rewari.

PAN: AZMPK5773B

(Appellant)

(Respondent)

Assessee by	:	Shri M.R. Sahu, CA
Revenue by	:	Ms Renu Mukherjee, Sr. DR
Date of Hearing	:	17.03.2021
Date of Pronouncement	:	24.03.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 21.11.2019 of the CIT(A), Rohtak, relating to assessment year 2011-12.

2. The assessee, in the various grounds of appeal has challenged the validity of the reassessment proceedings as well as addition of Rs.3,62,000/- sustained by the CIT(A) out of addition of Rs.8,57,200/- made by the AO u/s 68 of the Act.

3. Facts of the case, in brief, are that the assessee is an individual and derives income from wholesale business. On the basis of the information obtained that the assessee has deposited cash of Rs.12,07,200/- in savings bank account maintained with ICICI Bank Ltd., during the F.Y. 2010-11, the AO issued a query letter dated 18th January, 2018 to the assessee regarding source of above cash deposit. Since there was no reply filed by the assessee, the AO, after recording reasons, issued notice u/s 148 of the Act to the assessee on 27th March, 2018. In response to the said notice u/s 148, the assessee furnished his return of income on 16th October, 2018 declaring the total income at Rs.1,57,440/-. The AO, thereafter, issued statutory notice u/s 143(2) and 142(1) of the Act along with the questionnaire asking the assessee to explain the source of deposit. He observed that cash from different places like Delhi, Jaipur and Narnaul were deposited in the bank account. He, therefore, asked the assessee to explain the source of such deposits. In absence of any satisfactory explanation filed by the assessee, the AO held that the assessee has no valid and genuine explanation with regard to the cash deposit of Rs.8,57,200/- after giving benefit of Rs.3,50,000/-.

4. Before the CIT(A), the assessee explained that full details were given before the AO stating that most of the cash deposit was from sale receipts and an amount of Rs.3,50,000/- was taken from his brother . The complete break-up- of the cash deposit in the bank account was filed before the AO and, therefore, the addition made by the AO was not justified.

5. However, the Id. CIT(A) was not satisfied with the explanation given by the assessee. She obtained a remand report from the AO on the basis of various details field before her by the assessee. After considering the remand report of the AO and the rejoinder of the assessee to such remand report, the Id. CIT(A) sustained an addition of Rs.3,62,000/- being cash deposit of Rs.3,16,000/- at Jaipur, Rs.15,000/- at Jamnagar and Rs.36,000/- at Delhi, holding the same to be not out of regular sale.

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

7. The Id. Counsel for the assessee, at the time of hearing, did not press the legal ground challenging the validity of reassessment proceedings for which the Id. DR has no objection. Accordingly, the ground challenging the validity of reassessment proceedings is dismissed as not pressed.

8. So far as the merit of the case is concerned, the Id. counsel for the assessee, at the outset, drew the attention of the Bench to page 2 of the paper book which is the computation of total income and submitted that the assessee has declared gross receipt of Rs.19,25,140/- and has offered income u/s 44AD by applying the net profit rate of 8.16%. Therefore, once the gross receipts are accepted and not disputed and such gross receipt is much more than the total deposits in the bank

accounts, no addition is called for merely stating that the deposits are not out of sale proceeds. He accordingly submitted that the addition sustained by the CIT(A) should be deleted.

9. The ld. DR, on the other hand, heavily relied on the order of the CIT(A). She drew the attention of the Bench to para 5.4 of the order of the CIT(A) and submitted that the ld.CIT(A), after considering the various details furnished by the assessee has given substantial relief to the assessee and has held that the assessee could not explain the addition of Rs.3,67,000/-. Therefore, the order of the CIT(A) should be upheld and the ground raised by the assessee on this issue should be dismissed.

10. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find, the AO, on the basis of the information received that the assessee has made cash deposit of Rs.12,07,200/- in his savings bank account maintained with ICICI Bank, reopened the assessment by issuing notice u/s 148 of the Act. In the order passed u/s 147/143(3), the AO accepted an amount of Rs.3,50,000/- received by the assessee as gift from his brother Shri Surender and made addition of Rs.8,57,200/- on the ground that the assessee could not successfully discharge his onus by providing evidence in support of cash deposits. I find, in appeal, the ld.CIT(A), after obtaining a remand report from the AO and rejoinder of the assessee to such

remand report, deleted the addition to the extent of Rs.4,90,200/- and sustained the addition of Rs.3,67,000/- (wrongly typed as Rs.3,62,000/-). It is the submission of the Id. Counsel that the gross receipt of the assessee shown at Rs.19,25,140/- and profit declared u/s 44AD, by applying net profit rate of 8.16%, of Rs.1,57,177/- has been accepted by the AO. It is his submission that once the total gross receipt is more than the total cash deposit in the bank account, no addition on account of unexplained cash deposit in the bank account should be made.

11. I find force in the above submission of the Id. Counsel. As mentioned earlier, out of the total cash deposit of Rs.12,07,200/- , the AO has already accepted an amount of Rs.3,50,000/- being gift received from his brother. So far as the remaining amount of Rs.8,57,200/-, the Id.CIT(A) has already given relief to the extent of Rs.4,90,200/- and the Revenue is not in appeal before the Tribunal. I find, the Id.CIT(A) sustained the addition of Rs.3,67,000/- on the ground that the assessee could not substantiate with evidence of sales and cash deposits made at Jam Nagar, Delhi and Jaipur and, therefore, cash deposits of Rs.3,16,000/- at Jaipur and Rs.15,000/- at Jam Nagar and Rs.36,000/- at Delhi were sustained by the CIT(A). A perusal of the order of the CIT(A) shows that the assessee, before the AO, while explaining cash deposit at Jam Nagar, had submitted that an amount of Rs.10,000/- dated 03.09.2010 and Rs.5,000/- dated 20.01.2011 were deposited by a customer directly in the account of the assessee which relates to sale. It was explained that the father of the person to whom sales were made was doing his

business at Jam Nagar and he had deposited the cash against the sale of goods. Similarly, while explaining the cash deposit of Rs.3,16,000/- at Jaipur is concerned, it was submitted that the parents of the assessee were staying at Jaipur and the assessee was regularly visiting his parents at Jaipur and every time he used to carry some cash collected from sales to hand over to his father to deposit the same according to the requirement of the retail business and MCX dealing of the assessee. So far as the deposit of Rs.36,000/- at Delhi the same was explained to be out of sales. I further find that the total gross receipt of the assessee was shown at Rs.19,25,140/- whereas the total addition by the AO was Rs.8,57,200/- which has been partially deleted. In my considered opinion, once the total turnover of the assessee is much more than the total cash deposit in the bank account (in this case sales is 227% of the cash deposit), no addition is called for on account of unexplained cash deposit in the bank account. The explanation of the assessee appears to be reasonable. Under these circumstances, I hold that the Id.CIT(A) is not justified in sustaining the addition of Rs.3,67,000/-. I, therefore, set aside the order of the CIT(A) and direct the AO to delete the addition. The grounds raised by the assessee on this issue is accordingly allowed.

12. In the result, the appeal filed by the assessee is partly allowed.

The decision was pronounced in the open court on 24.03.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 24th March, 2021.

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi