

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.6514/Del/2019
Assessment Year : 2011-12**

Smt. Parveen Yadav, 228, Yadav Mohalla Rajokari, South West Delhi Delhi-110038 PAN-AFAPY5633C	Vs	ITO, Ward-33(5), Room No.1309, 13 th Floor,E-2 Block, Pratyaksh Kar Bhawan. Civic Centre, J. L. Nehru Marg, New Delhi-110002
APPELLANT		RESPONDENT
Appellant by	Sh. P.C. Yadav, Advocate	
Respondent by	Sh. R.K. Gupta, Sr. DR	
Date of Hearing	08.04.2021	
Date of Pronouncement	14.06.2021	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2011-12 is directed against the order of learned CIT(A)-11, New Delhi dated 18.06.2019. The assessee has raised following grounds of appeal:-

- 1. That the CIT(Appeals) erred on the facts and in law passing the impugned order dated 18.06.2019 thereby confirming the addition of Rs.11,33,000 made by the Assessing Officer ('AO') in respect of the alleged cash deposit in the bank account of the Appellant.*
- 2. That on the facts and circumstances of the case, the CIT(Appeals) erred in not appreciating that the order passed by the AO is illegal and bad in law inasmuch as the same has been passed merely on conjectures and surmises, without affording adequate opportunity of being heard to the Appellant and was violative of principles of natural justice.*
- 3. That the CIT(Appeals) erred on facts and in law in upholding initiation of reassessment proceedings under Section 147/148 of the Act without appreciating that (i) the reasons recorded were based on stale information and having no nexus with the purported information; (ii) there was no income escaping assessment inasmuch as the alleged cash received was exempt from tax being 'gifts' received from the relative.*

4. *That the CIT(Appeals) erred on facts and in law in upholding addition of Rs.11,33,000 without (i) pointing out the relevant provisions of the Act under which such addition was made; (ii) appreciating the documentary evidences filed by the Appellant without doubting the veracity of the same; (iii) bringing on record any documentary evidences to rebut the explanation/documents filed by the Appellant.*
2. The facts giving rise to the present appeal are that the case of the assessee was re-opened by issuing notice u/s 148 of the Income Tax Act, 1961 ("the Act"). The assessee was also supplied reasons recorded for reopening of the assessment. Thereafter, the reassessment was framed. The Assessing Officer framed the assessment and made addition of Rs.11,33,000/-.
3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who also dismissed the appeal.
4. Aggrieved against the order of Ld.CIT(A), the assessee is in further appeal before this Tribunal.
5. Ground no 2 and 3 are against the non-provide of opportunity and also illegality of the reopening of assessment.
6. Ld. Counsel for the assessee, Shri P.C. Yadav, vehemently argued that the reopening of assessment is *ex-facie* illegal and unjustified under the facts and circumstances of the case. He drew my attention to the reasons recorded which is enclosed in the paper book at pages 1 and 2. The learned counsel for the assessee pointed out that the reopening was made on the basis of the bank information of cash deposits in the assessee's account held with Syndicate Bank of Rs.25,49,500/-. However, the Assessing Officer himself records the fact that only Rs.11,33,000/- was

found to have been deposited in the bank account of the assessee. Therefore, the information so received was not correct and formation of belief was on the basis of incorrect information. He contended that the reopening is vitiated on the count that Firstly, there is no proper application of mind by the authorities in approving proposal for reassessment of the assessment. The reasons have been recorded in mechanical manner. Undisputedly, the information supplied to the Assessing Officer was incorrect. It was incumbent upon the Assessing Officer to verify the correctness of information before proceeding for reopening of the assessment. He submitted that the Assessing Officer ought to have appreciated the facts in right perspective. In support of his contention he relied on the decision of the co-ordinate Bench of the Tribunal in the case of Rajkumar Maheshwari vs ITO in ITA No.536/Jp/2019 and judgment of Hon'ble Gujarat High Court in the case of Mumtax Hazi Mohammad Menon vs ITO Special Civil Appeal No.21030 of 2017.

7. On the contrary, Ld. Sr. DR, Sh. R.K. Gupta, vehemently opposed these submissions and supported the order of the authorities below. He contended that sufficient opportunity was granted to the assessee. It is not the case where the authority granting approval has not applied the mind. He submitted that there is procedure that the Assessing Officer makes a proposal and sent all the records before the JCIT/PCIT as the case may be. The learned counsel for the assessee in rejoinder submitted that nowhere authority giving approval has stated that it has

examined the records and applied his mind. Therefore, where there is non-application of mind, reopening of such assessment cannot be sustained.

8. I have heard the rival submission and perused the material available on record. It is undisputed fact that the figure mentioned in the reasons of recording remains for escapement is materially different and contrary to the bank statement produced by the assessee. The Revenue could not rebut the error. Hence, in my view the information based upon which the reopening was made is found to be incorrect. It is settled position of law that the formation of belief for escapement of income should be based on correct and true information. However, admittedly incorrect figure transfer of cash deposit in the assessee's account was mentioned in the information on the basis of which the Assessing Officer formed his belief of escapement of income. Further, nothing is placed on record to suggest that the Ld. CIT by granting approval had examined the record and applied his mind as there is no justification regarding difference in the amount deposited in bank account and mentioned in the reason for reopening. In my view when apparently there was a higher figure mentioned in the information supplied to the Assessing Officer. No material is available suggesting that bank had supplied wrong information to the Assessing Officer as the AIR information is not placed on record. Looking to the facts of the present case I am of the considered view that the reopening of assessment and approval thereof is not accordance with settled principle of law. Hence,

the ground raised by the assessee is allowed. The reopening of the assessment is held to be bad in law on account of non-application of mind by the authorities below.

9. The ground no.4 is against sustaining the addition of Rs.11,33,000/- on facts.

10. The learned counsel for the assessee submitted that the addition was made on the basis of conjecture and surmises such addition cannot be sustained. He submitted that during the assessment proceedings the assessee had duly explained the source of cash deposited in the bank account. He submitted that it was categorically stated before the Authorities that the amount was received as gift from her father-in-law. He submitted that the assessee had duly discharged his onus regarding cash deposits. He further contended that the Assessing Officer has not brought any material record suggesting that the assessee had earned income from any other undisclosed sources of income.

11. Per contra, learned DR relied on the order of authorities below. He took me through the assessment order.

12. I have heard the parties. I find that Assessing Officer made addition by observing as under:-

“4. All the replies tiled by the assessee time to time have been perused but not found tenable for the following reasons:

(i) On perusal of bank account statement of Syndicate Bank of the assessee for the period 01.04.2010 to 31.03.2011. It is true that the assessee deposited cash to the tune of Rs. during F. Y.2010-11 in her bank account. The tabulated below:

S. No.	Date	Amount in Rs. Deposited in Cash
1	08.04.2010	500
2	22.07.2010	49000
3	23.07.2010	49500
4	24.07.2010	49000
5	31.07.2010	49000
6	03.08.2010	45000
7	05.08.2010	12000
8	19.08.2010	49000
9	04.09.2010	30000
10	19.11.2011	500000
11	20.11.2011	200000
12	25.11.2011	100000
	Total	11,33,000

The assessee in support of her claim of depositing cash in her bank account has stated in her reply as referred above that she received gift of Rs. 1,00,000/- from her father-in-law on 21.07.2010. However, on perusal of the bank account statement of the assessee for the period under consideration as tabulated above, it is more than clear that the assessee deposited cash on various dates in a piecemeal manner and not on a single day.

(ii) Further, the assessee also enclosed a copy of Donation teller written on a plain paper in Hindi which is stated to be issued by her father-in-law wherein it is stated that he is giving Rs.11,00,000/- to her daughter-in-law i.e. the assessee, out of his retirement fund and from his agricultural income on 21.07.2010. However, the same was not a registered gift deed. The assessee also enclosed death certificate of Shri Ajit Singh as per which he expired on 27.09.2012. However, no other documentary evidence i.e. bank account statement of Shri Ajit Singh, copy of ITR etc were furnished to prove the identity, genuineness and creditworthiness of her father-in-law.

(iii) The assessee in her reply dated 14.12.2018 as referred above has mentioned that her father-in-law had sold his agriculture land on 19.07.2010 and received Rs.40,00,000/- in cash. The assessee also enclosed a copy of Agreement executed on 19.07.2010 on a Stamp Paper of Rs. 10. On perusal of the impugned agreement, it is noticed that this agreement was executed between Sh. Vijay Kumar, Ajit Singh (First Party) and Premparkash, Chandraparkash Krishankumar, Lal Singh (Second Party). As per this agreement, the first party received a sum of Rs.40,00,000/- in advance from the second party for sale of 67 Kanal and 03 Marla land situated at Mauja Rajapur. Teh. & Dist. Palwal, Haryana. If it is time being assumed that Sh. Ajit Singh

would have received cash in the form of advance then it would be only Rs.20,00,000/- since 50% share was of Sh. Vijay Kumar which is apparent from the impugned agreement.

(iv) As such, the statements of the assessee are contradictory in itself. As per the Donation letter stated to have received from her father-in-law, it is mentioned that an amount of Rs.11,00,000/- is given out of retirement benefits and from agriculture income. On the other hand, the assessee vide her reply dated 14.12.2018 has stated that her father-in-law had sold his agriculture land and gifted her an amount of Rs. 11,00,000/- out of sale consideration of agriculture land. Hence, the assessee is changing her stand to justify the deposit of cash in her bank account which is only to avoid tax on her unaccounted cash.

(v) It is also pertinent to mention here that as per data retrieved from ITD System, Late. Shri Ajit Singh had not filed his return of income for A.Y. 2011-12. Further, notice u/s 133(6) was issued to the Branch Manager, Syndicate Bank, AIR Force Station, VPO Rajokari, New Delhi whereby bank account statement of Shri Ajit Singh (PAN- AFAPY2264H) was called for. The Bank provided the bank account statement of Shri Ajit Singh vide its letter dated 30.08.2018 which is in Joint Name of Mrs. Lal Kaur and Mr. Ajit Singh. On perusal, of the bank account statement of Sh. Ajit Singh, it is noticed that he deposited cash in his bank account as per detail given below;

Bank Name: Syndicate Bank, AFS Rajokari, Delhi Account No.90992030000186 Customer Name: Mrs. Lal Kaur and Mr. Ajit Singh Statement of Account from 01.04.2010 to 31.03.2011			
Date	Amount deposited in cash during F.Y. 2010-11	Date	Amount withdrawn from 01.04.2010 to 30.08.2020
22.07.2010	9,00,000	03.04.2010	8,000
23.07.2010	5,50,000	04.05.2010	1,000
07.08.2010	5,00,000	07.06.2010	7,000
09.08.2010	5,00,000	18.06.2010	13,000
Total	24,50,000	02.06.2010	3,000
		16.07.2010	2,500
		Total	34,500

On perusal of the entries of cash flow in the account of Sh. Ajit Singh during F.FY. 2010-11, it is more than clear that there was no cash in the hand of Sh. Ajit Singh to gift Rs.11,00,00/- to his daughter-in-

law. As per the replies of the assessee as well as copy of donation letter, her father-in-law donated her Rs.11,00,000/- on 21.07.2010. However, if it is time being assumed that Sh. Ajit Singh would have received cash in the form of advance then it would be only Rs.20,00,000/- which had been deposited by him in his bank account which is apparent from his saving bank account statement as referred above.”

13. From the above, it is ardent that the Assessing Officer drew his conclusion on the basis of the bank statement of the assessee and her father-in-law. It is correct that the assessee had deposited money at the different dates. This has caused suspicion, however, if the assessee had deposited in one go, the Assessing Officer would have not doubted. It is not the case where the donor was not a man of any means. Therefore, looking to totality of facts the action of the Assessing Officer cannot be upheld. Therefore, impugned addition is hereby deleted.

14. Ground No.4 is allowed.

15. Ground no.1 is general in nature needs no separate adjudication.

16. In the result, the appeal of the assessee is allowed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 14th June, 2021.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI