

**INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "SMC": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 8844/Del/2019
(Assessment Year: 2011-12)

Smt. Beena Devi, V & P.O. Garhi Harsaru, Gurgaon – 122 505 [Haryana] PAN: BBHPD3892C	Vs.	ITO, Ward : 1 (3) Gurgaon.
(Appellant)		(Respondent)

Assessee by :	Shri Anil Kumar Jain, Advocate;
Revenue by:	Shri R. K. Gupta, Sr. D. R.;
Date of Hearing :	10/08/2021
Date of pronouncement :	10/08/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-1, Gurgaon, dated 5.08.2019, for assessment year 2011-12, raising the following grounds of appeal:-

“ 1. The Id. CIT (A) has erred in partly confirming the order of the A.O in assessing the income at Rs. 14,70,580 as against the returned income of Rs. 1,85,580.

2. The Id. CIT (A) has erred in not allowing the explanation for the cash deposit to the extent of Rs 10,85,000 out of addition of Rs. 12,85,000 made by the AO. Even after submission of documents related to that cash deposit.

3. The order of the CIT (A) is against law and facts of case.

4. The appellant craves the right to add, amend or withdraw any grounds of appeal at the time of hearing. “

2. The brief facts of the case shows that the assessee is an individual where proceedings under Section 147 of the income Tax Act, 1961 (the Act) were initiated by issue of notice dated 23.03.2018. In response to that assessee filed her return of income on 14.08.2018 declaring a net income of Rs.1,85,580/-. During the course of assessment proceedings the Id. Assessing Officer found that assessee has deposited Rs.17,50,000/- in her bank account maintained with Gurgaon Gramin bank and, therefore, she was asked to explain the source of the above cash deposit. The assessee furnished a cash-flow statement stating that source of cash deposits are from withdrawals made by her from her own bank account, from sale of milk and gift received from her father-in-law. The assessee was asked to produce the details of sale of milk. In response to this assessee produced a register and some hand-made slips. The assessee has shown Rs. 4,85,000/- as income from sale of milk. However, the Assessing Officer rejected the claim of the assessee on production of hand-made register and hand-made slips, as according to him it does not prove that source of cash deposited is from sale of milk. The assessee further stated that she has shown deposits on different dates sources of which is gift of Rs. 8,00,000/- received from her father-in-law. To prove the source of the gift she has furnished copies of two registered deeds wherein on 29.06.2011 and 2.09.2011 a sum of Rs. 6,05,000/- and Rs. 5,29,375/- was received by father-in-law. The Assessing Officer rejected the above explanation as assessee has shown in her cash-flow statement gift on 19.01.2011. However, the date of sale relates to June and September, 2011. Therefore, he made the addition of the above amount. Accordingly he made an addition of Rs. 12,85,000/- to the total income of the assessee after granting benefit of deposit of cash from her earlier withdrawals from the bank. The total assessed income was determined at Rs. 14,70,580/- as per order under Section 143(3) read with Section 147 of the Act on 6.12.2018.
3. On appeal before the Id. CIT (Appeals), he accepted the contention of the assessee on sale of milk. However, he reduced the addition by Rs. 2,00,000/- and confirmed the addition of Rs. 2,85,000/- from sale of milk. With respect to the gift received from father-in-law, he confirmed the

addition of Rs. 8,00,000/-. However, the assessee produced before him agreement to sale dated 29.12.2010 and 4.01.2011 wherein her father-in-law received the above sum. Therefore, assessee contested that source of gift is proved. The Id. CIT (Appeals) confirmed the above addition stating that photocopy of the agreement to sale is not admissible evidence and, therefore, the source of cash deposited was rejected upholding the order of the Assessing Officer.

4. The Id. AR submitted that receipt of Rs. 4,85,000/- from sale of milk is supported by copies of purchase bills of Kiryana items and register of sale of milk. Ld. CIT (Appeals) has accepted that the assessee is carrying on the business of sale of milk. Merely because the assessee is carrying on the above business from residential property and when part of evidence are accepted, there is no reason that part of the evidence are rejected without any basis. Thus, he submitted that the CIT (Appeals) should have accepted the total sum of Rs.4,85,000/- arising from sale of milk. With respect to the gift received from her father-in-law, it was submitted that the agreement to sale of the property was submitted before the CIT (Appeals) merely because of the fact that such agreements were not submitted in original but as photo-copy cannot result into addition in the hands of the assessee. He submitted that original sale of agreement is always with the buyer and not with the assessee and, therefore, original sale agreement could not have been produced. He submitted that, however, the source of cash deposit is the gift from father-in-law, who sold his agricultural land and assessee received the money as gift from him . He thus submitted that the addition deserves to be deleted.
5. The Id. DR relied upon the orders of the lower authorities.
6. We have carefully considered the rival contentions and perused the orders of the lower authorities. It is an accepted fact that the Id. CIT (Appeals) on the basis of the evidence produced before him in the form of purchase bills of Kiryana and register of sale of milk has accepted that assessee could have derived income of Rs. 2,00,000/-. However, he did not believe that assessee could have earned a sum of Rs. 4,85,000/- from this business. Merely because the assessee is carrying on business of sale of milk from her

residence could not have in fact a matter to decide about the quantum of amount of income that she earned from sale of milk. If part of the evidence is accepted by the Id. CIT (Appeals), he merely estimated such income at Rs. 2,00,000/-. For the purpose of estimation the Id. CIT (Appeals) did not show any evidence either positive or negative to confirm the balance addition. In view of this, we set aside the whole issue to the file of the Id. Assessing Officer with direction to the assessee to produce the purchase bills of Kiryana and register of sale of milk based on which the Id. Assessing Officer is directed to determine the quantum of the income and decide the issue afresh after giving assessee a proper opportunity of hearing.

7. With respect to the second addition assessee has produced the copies of the agreement to sale by which the father-in-law of the assessee has received consideration on sale of land. The Id. CIT (Appeals) has not controverted the content of the agreement of sale, but has rejected merely for the reason that assessee did not produce the original agreement of sale. The contention of the assessee that original agreement of sale is always with the buyer and assessee can have only photocopy of that agreement. This contention is found to be correct. However, for determination of the amount of gift from father-in-law, the content of the agreement is important. As per the agreement of sale assessee's father-in-law has received consideration prior to the date of gift made to the assessee. Therefore, now it is important to verify the content of agreement of sale. The Id. CIT (Appeals) has not at all dealt with the content of the agreement of sale and merely rejected the claim of the assessee on technical grounds. In view of this, it is imperative to verify the content of the agreement to sale produced by the assessee and to ascertain about the cash available with the father-in-law of the assessee before making gift to the assessee. In view of this, we also set aside this ground of appeal back to the file of the Id. Assessing Officer with direction to the assessee to produce the photo-copy of the agreement to sale and also to corroborate that father-in-law of the assessee was having enough cash in hand to make a gift of Rs.8,00,000/- to the assessee. The Id. Assessing officer shall verify the submission of the assessee and decide the issue afresh. Accordingly, the solitary ground of appeal is set aside to the file of the Assessing Officer, as directed above.

8. In the result, appeal of the assessee is allowed, for statistical purposes.

Order pronounced in the open court on : 10/08/2021.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : 10/08/2021.

MEHTA

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1. Appellant;
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	10.08.2021
Date on which the typed draft is placed before the dictating member	10.08.2021
Date on which the typed draft is placed before the other member	10.08.2021
Date on which the approved draft comes to the Sr. PS/ PS	10.08.2021
Date on which the fair order is placed before the dictating member for pronouncement	10.08.2021
Date on which the fair order comes back to the Sr. PS/ PS	10.08.2021
Date on which the final order is uploaded on the website of ITAT	10.08.2021
date on which the file goes to the Bench Clerk	10.08.2021
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 dispatch of the order	