

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC-2” BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.1818/Del/2020
[Assessment Year : 2009-10]**

Virender Kumar Sharma, C-25, New Krishna Park, Dholi Plao, New Delhi-110018. PAN-AARPS3680B	vs	ITO, Ward-45(5), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Sh. Vinod Rawal, FCA, LLB	
Respondent by	Sh. Om Prakash, Sr.DR	
Date of Hearing	09.11.2021	
Date of Pronouncement	09.11.2021	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2009-10 is directed against the order of Ld. CIT(A)-15, Delhi dated 15.01.2020.

The assessee has raised following grounds of appeal:-

1. *“The order of CIT(A) is bad in law and on facts.*
2. *The Ld. Commissioner of Income Tax (Appeals) has erred in laws and in facts in confirming the addition made by the Ld. Assessing Officer on account of cash deposits in the Punjab national bank amounting to Rs.21,08,000/-.*
3. *The assessee craves leave to add, alter, modify any grounds of appeal at the time of hearing.”*

2. At the outset, Ld. Counsel for the assessee submitted that the assessee was not provided sufficient opportunity to rebut the finding of the Assessing Officer. Ld. Counsel for the assessee submitted that the

additions have been sustained on the basis of *whims & fancies*. He further submitted that the evidences were considered by the authorities below.

3. Per contra, Ld. Sr. DR supported the orders of the authorities below and the assessee was given sufficient opportunity to support his contentions.

4. I have heard the rival contentions and perused the material available on record. There is no dispute with regard to the fact that before the Assessing Officer, it was stated that the amount of Rs.22.08 lacs was paid by the Legal Heirs jointly. The Assessing Officer has duly recorded the same which is reproduced as under:-

9.(C) "Keeping In view of the time barring nature of assessment proceedings, notices u/s 133(6) of the Act dated 14.12.2016 were issued to Sh. Sandeep Gaur, Sh. Deepak Gaur and Ms. Mala Sharma asking them to submit the date wise payment of the amount totaling to Rs.22.08 lacs paid in cash to Punjab National Bank, Asset Recovery Branch, Rajendra Place, New Delhi during the relevant A.Y. 2009-10 with relevant documentary proof namely bank account statement, cash book, ledger a/c etc. and also copy of their PAN card and ITR for AY. 2009-10. However, vide their reply dated 16.12.2016 received in this office on 19.12.2016, they have submitted the combined reply (but not the individual reply) saying that they have made payments to Rs.22.08 lacs to Punjab National Bank, Asset Recovery Branch, Rajendra Place, New Delhi in the month of April 2008 on account of full and final settlement of loan account of MIs Virendra Industries and also submitted that Mr. Virender Kumar Sharma has facilitated the settlement on our behalf, whereas the payments have been made by us. All these submissions of the Legal representative of Sh. Ajay Sharma cannot be relied upon since they have not submitted the date

wise payment details, bank account statement details, ledger ale, cash book as asked for vide notices u/s 133(6) of the LT. Act dated 14.12.2016 and also as per para B. above, they have never turned up for personal deposition in response to notice issued u/s 131 of the Act and have not submitted a single evidence of source of cash like bank account statement, cash book, ledger a/c for verification. Also, Ms. Mala Sharma has submitted for the first time in response to notice u/s 133(6) and that too without any proof of payment of cash and without proper reply as asked for vide notice u/s 133(6) of the Act.”

5. From the above-mentioned finding, it is clear that other Legal Heirs of the assessee duly owned up the amount. However, the Ld.CIT(A) has decided the issue by observing as under:-

6. “Decision : *This ground relates to the addition of Rs.21.08 lakhs u/s 69C of the I.T.Act. As regards the deposit of Rs.21.08 lakhs in the Punjab national bank, the bank has clearly stated in their letter dated 05.11.2016 that the amount has been received from Shri Virender Kumar Sharma. As source of this 21.08 lakhs deposited. In the relevant financial year is not explained in any manner, I do not find it appropriate to intervene with the assessing officer’s decision. The ground of appeal no.3 is therefore rejected.”*

6. From the above, it is evident that Ld.CIT(A) did not advert to the objection of the assessee. Therefore, the impugned order is set aside and the ground of appeal is restored to file of Ld.CIT(A) to decide by way of a speaking order duly adverting to the objection of the assessee regarding the repayment of loan including the contribution of other Legal Heirs as well. Thus, grounds raised by the assessee are allowed for statistical purposes.

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

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 09th November, 2021.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI