

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-1 : NEW DELHI
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.7723/Del/2019
Assessment Year: 2011-12

Anil Kumar Sharma,
E-549, 2nd Floor, GK-II,
New Delhi.

Vs. ACIT,
Circle-14(1),
New Delhi.

PAN: ABNPS4195C

(Appellant)

(Respondent)

Assessee by	:	Shri Satyendra Kumar Chaturvedi, CA
Revenue by	:	Shri Om Prakash, Sr.DR
Date of Hearing	:	09.11.2021
Date of Pronouncement	:	17.11.2021

ORDER

This appeal filed by the assessee is directed against the order dated 27th June, 2019 of the CIT(A)-5, New Delhi, relating to Assessment Year 2011-12.

2. Facts of the case, in brief, are that the assessee is an individual. The case of the assessee was reopened u/s 147 of the Act after recording reason and after obtaining approval of the PCIT, New Delhi and notice u/s 148 was issued on 28th March, 2018. The assessee submitted that the income-tax return already filed u/s 139(1) declaring income at Rs.1,59,870/- may be considered as the return filed in

response to notice u/s 148 of the IT Act. During the course of assessment proceedings, the AO observed that the assessee has made cash deposit of Rs.7 lakhs in his bank account and made expenses of Rs.4,09,508/- towards credit card payment. However, the income-tax return for the year under consideration was not filed by the assessee. He noted that during the course of assessment proceedings, the assessee filed copy of income-tax return of AY 2011-12 filed on 28th December, 2012. However, the assessee did not file any evidence of source of cash deposited as well as expenses incurred on credit card payments. He noted that the assessee, in his return of income, has shown gross salary of Rs.2,01,600/- , income from other sources amounting to Rs.3,270/- and after claiming deduction of Rs.45,000/- has declared income at Rs.1,59,870/-. He, therefore, held that the cash deposited of Rs.7 lakh and credit card expenses of Rs.4,09,508/- remained unexplained. The AO, therefore, made addition of both the amounts to the total income of the assessee and determined the income at Rs.12,69,380/- as against the returned income of Rs. 1,59,870/-.

3. Before the CIT(A), the assessee filed certain additional evidences and the Id.CIT(A) called for a remand report from the AO. After considering the remand report of the AO, he deleted the addition of Rs.4,09,508/- on account of credit card expenses. So far as the cash deposit of Rs.7 lakh is concerned, the Id.CIT(A) sustained the disallowance of Rs.2 lakh and deleted the amount of Rs.3 lakh by observing as under:-

7.3 I have gone through the contentions of the appellant in this regard. The appellant has also provided working of the deposit and withdrawals and the bank statement of Standard Chartered Bank. It is observed from the submission of the appellant that he remained silent on the reason of the withdrawal of cash, which is frequently withdrawn and deposited. It is not explained that even though appellant has sufficient funds, what is the need for withdrawal and part cash deposit. The appellant has only argued that no law prevents to withdraw or deposit cash in the bank. It is true that there has been no prevention but the reasoning for withdrawal and deposit has not been explained.

7.4 Further, it is the responsibility of the appellant to justify the source of cash, which is not submitted before AO, during assessment proceedings, but before undersigned during appellate proceedings. The reason as above is also not provided.

7.5 It is further seen from the submission given by the appellant regarding detail of cash withdrawal and deposit that the appellant has mechanically worked out the withdrawal and cash deposit on the different dates. No opening balance of cash has been mentioned in the working. On 05.04.2010 Rs. 2 lakhs has been withdrawn, out of which 70,000/- was deposited on 10.04.2010 and a further cash of Rs. 4,70,000/- has been withdrawn on 30.04.2010, followed by 60,000/- withdrawn on the same date, having balance of Rs. 6,60,000/-. The appellant has not shown any expenditure incurred out of this, though stated to have been spending estimated Rs. 25,000/- per month. No other expenditure has been shown out of this cash balance. Therefore, this working is just made to show the balances and cannot be considered as true and correct. No cash book appears to have been maintained by the appellant or any detail for personal user or any bills/voucher produced. Further, the estimated expenses of Rs. 25,000/- per month is also not beyond doubt, looking to the status and position of appellant, living at GK-2, New Delhi and having 4 credit cards and a decent lifestyle.

7.6 Therefore, it is clear that appellant could not justify the said deposits in the bank account in full. However, looking to the withdrawals made for cash on different dates, I consider it appropriate to sustain the disallowance to the extent of 4 lakhs as not justified and spent towards household and other expenses. The appellant gets a relief of Rs.3 lakhs.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

1. That Id. CIT(A)-5, New Delhi, has erred by confirming the addition of Rs.4,00,000/- out of Rs.7,00,000/- made by Assessing Officer for cash deposited into the bank out of cash in hand without considering the submissions and evidences.

2. The appellant craves leave to add, delete, modify any ground of appeal with the leave of Honøble Bench.ö

5. The Id. Counsel for the assessee strongly challenged the order of the CIT(A) in sustaining the addition of Rs.4 lakh out of Rs.7 lakh added by the AO. The Id. Counsel, referring to copy of the bank account placed at pages 15 and 16 of the paper book, submitted that the assessee has withdrawn an amount of Rs.15,80,000/- from the bank account on various dates out of which an amount of Rs.8,70,000/- was deposited in the bank. He submitted that there is no substantial delay between the cash withdrawal and cash deposit. Further, there is no evidence before the income-tax Department that there is any other expenditure made by the assessee out of such withdrawals from the bank account. Referring to various decisions filed in the case law compilation, he submitted that where money has been withdrawn from the bank and there is no substantial delay between the withdrawal and subsequent deposit and when there is no evidence with the Revenue authorities that such money has been utilized otherwise, no addition on account of cash deposit in the bank account can be made. He accordingly submitted that the order of the CIT(A) sustaining the addition of rs.4 lakh on presumption basis should be deleted. He also relied on the following decisions:-

- (i) CIT vs. Kulwant Rai, 291 ITR 36 (Del);
- (ii) ITO vs. Deepali Sehgal, ITA No.5660/Del/2012;
- (iii) Rajinder Singh vs. ACIT, ITA No.1439/Del/2017; and
- (iv) DCIT vs. Smt. Veena Awasthi, ITA No.215/LKW/16.

6. The Id. DR, on the other hand, heavily relied on the order of the CIT(A).

7. I have considered the rival arguments made by both the sides and 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, in the instant case, made addition of Rs.11,09,508/- being unexplained cash deposit of Rs.7 lakh in the bank account and Rs.4,09,508/- on account of credit card expenses. I find, the Id.CIT(A) deleted the addition of Rs.4,09,508/- on account of credit card expenses. So far as the addition of Rs.7 lakh is concerned, the Id.CIT(A) deleted an amount of Rs.3 lakh and sustained an amount of Rs.4 lakh the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Id. Counsel that the assessee, during the impugned assessment year, had withdrawn an amount of Rs.15,80,000/- from the bank account out of which an amount of Rs.8,70,000/- was deposited in his bank account and there is no substantial delay between the withdrawal and the subsequent deposit. It is also his submission that there is no other evidence before the Revenue authorities that the assessee has utilized the money otherwise than for business purpose. I find some force in the above argument of the Id.

Counsel. A perusal of the bank statement shows that the assessee has withdrawn an amount of Rs.2 lakh on 6th April, 2010 and has made cash deposit of Rs.70,000/- on 10th April, 2010. Similarly, the assessee has withdrawn cash of Rs.4,70,000/- on 30th April, 2020 and another Rs.50,000/- on same day and deposited Rs.2 lakh on 6th May. Similarly, the assessee has withdrawn cash of Rs.2 lakh on 31st May and Rs.50,000/- on 3rd June and Rs.1 lakh on 29th June. Further, he has withdrawn an amount of Rs.2 lakh on 22nd July and another Rs.2 lakh on 23rd July and has deposited cash of Rs.1 lakh on 27th July and Rs.2 lakh on 27th July. Similar is the case with various other deposits and withdrawals. Thus, a perusal of the bank statement shows that the assessee was regularly withdrawing cash from the bank and depositing it thereafter with a gap of a few days or weeks, but, there is no substantial delay. I, therefore, find merit in the submission of the Id. Counsel that when the total cash withdrawal from the bank is to the tune of Rs.15,80,000/- out of which an amount of Rs.8,70,000/- has been deposited, the source of such deposit has been explained. In my opinion, the order of the CIT(A) sustaining an addition of Rs.4 lakh out of cash deposit of Rs.7 lakh made by the AO is merely on the basis of presumptions and surmises especially in the absence of any other information with the Income-tax Department that the assessee has otherwise spent the money for purchase of any asset or incurring lavish expenditure or for incurring expenses of marriage, etc. The various decisions cited by the assessee also support his case to the proposition that when there is substantial cash deposit in the bank account and

there is substantial cash withdrawals and there is small time gap between withdrawal and the subsequent deposits in the bank account and in the absence of any information with the Department that the assessee has utilized the money for some other purpose, no such disallowance can be made and the explanation of the assessee can be considered as plausible. In this view of the matter, I set aside the order of the CIT(A) in the instant case and direct the AO to delete the addition of Rs.4 lakhs sustained by the CIT(A). The grounds raised by the assessee are accordingly allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 17.11.2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 17th November, 2021.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi