

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC-1" : DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.6248/Del./2019
Assessment Year 2011-2012

Shri Pramod Kumar, House No.1074, Street No.8, Krishna Colony, Gurugram – 122 001. PAN AICPK6872A	vs.	The Income Tax Officer, Ward – 3 (2), HSIIDC Building, Vanijya Nikunj, Udyog Vihar Phase-V, Gurugram.
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri Om Parkash, Sr. DR

Date of Hearing :	18.11.2021
Date of Pronouncement :	24 .11.2021

ORDER

This appeal filed by the Assessee is directed against the Order dated 20.02.2019 of the Ld. CIT(A)-1, Gurgaon, relating to the A.Y. 2011-2012.

2. None appeared on behalf of the assessee at the time of hearing. A perusal of the record shows that the assessee was issued number of notices through RPAD and all the letters were returned by the Postal Authorities with the remarks "Not Known". The assessee has also not taken any steps to intimate the changed address, if any. Therefore, I deem it proper to decide the appeal on the basis of material available on record and after hearing the Ld. D.R.

3. Facts of the case in brief are that the assessee is an individual. On the basis of AIR information that the assessee has deposited Rs.10 lakhs cash in his savings bank A/c and assessee did not reply to the various notices issued as per the compliance window created on e-filing portal, the A.O. reopened the assessment after recording reasons and notice under section 148 of the I.T. Act was issued after obtaining prior approval from the PCIT. Subsequently, the A.O. issued notice under section 142(1) of the I.T. Act, 1961. In response to the said notice, the assessee filed return of income declaring total income of Rs.3,73,180/- under the Head "Salary". The A.O. issued

notice under section 142(1) along with a questionnaire and in response to the same, the assessee filed requisite details.

3.1. During the course of assessment proceedings, the A.O. asked the assessee to substantiate the source of cash deposit of Rs.10 lakhs in his S.B. A/c. It was explained by the assessee that he was looking for purchase of a house and for this reason has collected cash from his brother and others which was deposited in lump sum on 19.05.2010. The assessee also submitted that he has received cash gift of Rs.4,80,000/- from brother and Rs.2,90,000/- cash gift from his mother. However, the A.O. was not satisfied with the explanation given by the assessee regarding the source of such cash deposit and made addition of RS.10 lakhs to the total income of the assessee.

3.2. In appeal, the Ld. CIT(A) granted part relief to the assessee by deleting the addition of Rs.3,10,000/- and sustained the addition of Rs.6,90,000/- by observing as under :

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3.4 I have carefully considered the facts of the case, submission of the appellant and the documents filed by the appellant. The appellant has claimed following sources for cash deposit in the bank account:-

- I. Cash received from brother of Rs. 4,80,000/- as gift
- II. Cash received from mother of Rs. 2,90,000/- as gift
- III. Personal savings of Rs 2,10,000/-

4.5 Each of sources is discussed as under:-

Cash received from brother of Rs. 4, 80,000/- as gift:-

The appellant has shown cash receipt of Rs 4,80,000/- as gift received from his brother Rajiv kumar. The appellant has also furnished the copy of bank account of his brother Rajiv kumar and affidavit from him in support of his claim. From the perusal of the statement, it is noticed that Sh. Rajiv kumar has withdrawn Rs 2,10,000/- from his Haryana Gramin Bank Account on 17.10.2010. Hence the source of Rs 2,70,000/- still remained unexplained, against which the assessee failed to furnish any explanation. Therefore, the gift claimed by the appellant is accepted to the extent of Rs 2,10,000/- only and the balance amount of Rs 2,70,000/- is treated as unexplained deposit of the appellant.

Cash received from mother of Rs. 2,90,000/- as gift:-

As regards cash gift of Rs. 2.90 lacs claimed to have been received from, the appellant's mother, no proof was given to substantiate his creditworthiness. As per the documents filed by the appellant the appellant's mother is not even an Income Tax Assessee and does not have a Permanent Account Number. This source of cash deposit is accordingly held to be not genuine.

Personal savings of Rs 2,30,000/-

Regarding the source of cash of Rs 2.30 lacs the appellant contended that the same was his past savings. Although no evidence of the personal savings has been furnished by the appellant. Some amount of savings of the appellant cannot be ruled out. In the given facts and circumstances I deem it fair and reasonable to estimate the personal savings at Rs 1,00,000/- only and the balance amount of Rs 1,30,000/- is treated as unexplained deposit of the appellant.

4.6 The appellant thus gets a relief of Rs. 2,10,000/- + 1,00,000/-. The balance amount of addition i.e Rs 6,90,0000/- is confirmed. The grounds of appeal are partly allowed.

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

1. That having regard to the fact and circumstances of the case, assumption of the jurisdiction by the Ld. A.O. to issue notice 148 of the Income Tax Act, 1961 (the Act) and to frame assessment u/s 147 of the Act without observing the statutory conditions as mentioned in the Sections 147 to 151 of the Act is bad in law and against the facts and circumstances of the case and more-so when the Assessing Officer did not have proper territorial and legal jurisdiction over the case.
2. That having regard to the fact and circumstances of the case, framing of assessment u/s 143(3)/147 of the Act is bad in law and against the facts and circumstances of the case when no valid notice u/s 148 was issued to or served on the assessee.
3. That in view of the matter and in any case, recording of the reasons, reopening of the assessment, the issue of notice u/s 148 and the proceedings in the case are bad in law and against the facts and circumstances of the case and the assessment order thus passed is also void, and more so when the proceedings were in any case barred by limitation.
4. That having regard to facts and circumstances of the case, framing of assessment u/s 143(3) of the Act is bad in law and against the facts and circumstances of the case when no valid notice u/s 143(2) was issued to or served on the assessee.
5. That having regard to facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in upholding the validity of the assessment proceedings and of the assessment framed in the case even though the

assessment order was passed without following principles of natural justice and without appreciation of the facts on records.

6. That having regard to facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the addition of Rs. 6,90,000/- on account of cash deposit in bank as alleged unexplained investment.
7. That having regard to facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in not disposing of the grounds raised in the appeal.
8. That the appellant craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other.

5. I have heard the Ld. D.R. and perused the record. I find the A.O. in the instant case made an addition of Rs.10 lakhs being the cash deposited by the assessee in his Bank A/c on the ground that the assessee has failed to prove the creditworthiness of the lenders/donors and genuineness of the transaction in respect of the gifts received from mother, wife and brother of the assessee. Despite granting sufficient opportunities, the assessee also could not submit Form-J and Girdavari of the relevant year to justify the source of cash in the hands of his brother and mother which is said to be out of their agricultural income. I find the Ld. CIT(A) after considering the submissions made by the assessee

from time to time gave relief of Rs.3,10,000/- and sustained the addition of Rs.6,90,000/- the reasons of which have already been reproduced in the preceding paragraphs. I do not find any infirmity in the order of the Ld. CIT(A) in sustaining the addition of Rs.6,90,000/- in absence of any contrary material brought to my notice. Since the order of the Ld. CIT(A) is a very reasoned one, therefore, I do not find any infirmity in his order. Accordingly, the same is upheld and the grounds raised by the assessee are dismissed.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 24.11.2021.

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

Delhi, Dated 24th November, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-1' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.