

IN THE INCOME TAX APPELLATE TRIBUNAL “B(SMC)” BENCH, KOLKATA
[Before Shri A. T. Varkey, JM]

I.T.A. No. 505/Kol/2021
Assessment Year: 2017-18

Priya Ranjan Saha (PAN: ARVPS 6929 C)	Vs.	ITO, Ward-2(4), Durgapur
Appellant		Respondent

Date of Hearing (virtual)	10.02.2022
Date of Pronouncement	18.02.2022
For the Appellant	Shri K.M. Roy , CA
For the Respondent	Smt. Archana Gupta, Sr. D.R.

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-National Faceless Appeal Centre (NFAC), Delhi dated 24.09.2021 for AY 2017-18.

2. The assessee’s main grievance is against the action of the Ld. CIT(A) in confirming the addition made by the AO u/s 69A of the Income Tax Act, 1961 (hereinafter referred to as the Act) of Rs. 2.40 Lacs.

3. Brief facts of the case as discerned from the records are that the assessee is an individual business man who runs his business in the name and style of Maa Tara Agency. The assessee’s case was selected for scrutiny on the issue of large cash deposit on the bank account during the year. The assessee who is a business man maintained a current account as well as a savings bank account which transaction have been accepted by the AO. The assessee has also joint account with his wife Smt. Archana Saha as well as his mother Ajoya Saha who is aged 70 years. According to AO, there was deposit of Rs. 2.40 Lacs on 13.11.2016 (*in the bank account during the period of demonetization*) as a single deposit in assessee’s account. When confronted by the AO on this issue and asked to explain the nature and source of the cash deposit, the assessee brought to the notice of the AO that this account is that of his mother and she is the first account holder [Mrs. Ajoya

Saha] and that assessee is only the second account holder, and the said account is in their joint name as stated. Thus according to assessee, this particular account where there was deposit of Rs. 2.40 Lacs on 13.11.2016 was maintained by his mother as the first account holder. Further according to assessee, on 13.08.2016 her husband (assessee's father) expired and she had in her possession certain saving of sums of money which was kept by her for her personal as well as for the welfare her children and grand children According to the assessee, since demonetization was ordered on 8.11.2016 (up to 30.12.2016) his mother Mrs. Ajoya Saha being first account holder, had deposited Rs. 2.40 lacs in her account. According to the assessee (son of Mrs. Ajoya Saha), he was only a joint second account holder and has helped her mother in depositing/withdrawal of the money as per the direction of his mother. Further it was brought to the notice of the AO that the Hon'ble Prime Minister/Finance Minister in the Parliament has given assurance that during the demonetization period, that if a housewife deposits up to an amount of Rs. 2.50 Lacs, then the same should not be scrutinized [*and that this limit of Rs. 2.50 Lacs, has been raised to 5 lacs in the case of senior citizens who have crossed the age of 70 years*]. Based on the aforesaid assurance of the Hon'ble Prime Minister, according to Ld. A.R., the CBDT has come out the instruction no. 03/2017 dated 21.12.2017 in exercise of power u/s 119 of the Income Tax Act, 1961 (hereinafter referred to as the Act) wherein it was clearly held as under:

"1. Cash out of earlier income or savings 1.1 In case of an individual (other than minors) not having any business income, no further verification is required to be made if total cash deposit is up to 2.5 Lacs. In case of taxpayers above 70 years of age, the limit is Rs. 5.0 Lacs per person. The source of such amount can be either household savings/savings from past income or amounts claimed to have been received from any of the sources mentioned in Paras 2 to 6 below. Amounts above this cut-off may require verification to ascertain whether the same is explained or not. The basis for verification can be income earned during past years and its source, filing of ROI and income shown therein, cash withdrawals made from accounts etc."

Therefore according to Ld. A.R. Shri K.M. Roy, it is a trite law that the CBDT Instruction are binding on the income tax authorities. Therefore according to the Ld. A.R., the AO erred in making an addition of Rs. 2.40 Lacs, in the hands of the assessee when the said sum of money belonged to his mother and should not have been brought to tax as per the CBDT Circular. However, the AO did not agree, he made an addition of Rs. 2.40 Lacs.

4. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who was pleased to dismiss the appeal of the assessee and thus confirming the addition by the AO.
5. Aggrieved by the aforesaid action of the Ld. CIT(A) the assessee is before us.
6. The Ld. D.R. Smt. Archana Gupta, Sr. D.R. while opposing the plea of the assessee drew our attention to para 4.2 of the Ld. CIT(A)'s order and submitted that the assessee failed to bring evidences/material to support his contention that the assessee's mother was the first-holder of the bank account where deposit of Rs. 2.4 Lakhs was found and therefore according to the Ld. CIT(A), the assessee was maintaining the account, so the addition was confirmed. Therefore according to Ld. Sr. D.R. the action of the Ld. CIT(A) should not be disturbed.
7. I have heard both the parties and perused the records. At the outset, the Ld. A.R. of the assessee Mr. K.M . Roy submitted that the issue before me is no longer res integra. According to him, the Co-ordinate Bench of this Tribunal (Agra) in the case of Smt. Uma Agrawal vs. ITO by order dated 18.06.2021 (ITA No. 35/Agr/2021 for AY 2017-18) has held that as per of the CBDT Circular (supra) and the assurance given by the Hon'ble PM in the floor of the Parliament which has been discussed at para 12 of this decision (Smt. Uma Agrawal supra) has held that if a house wife deposited up to Rs. 2.50 lacs in her bank account (and in case of senior citizens aged above 70 years the upper limit of Rs. 5 lacs) during demonetization period then the same should not be scrutinized and has to be accepted. Therefore taking note of the CBDT Circular (supra) as well as the decision of the co-ordinate Bench in Smt. Uma Agrawal (supra) and considering the facts and circumstances discussed (supra) I am inclined to allow the appeal of the assessee.
8. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 18th February, 2022.

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated: 18.02.2022
SB, Sr. PS

Copy of the order forwarded to:

1. Assessee – Priya Ranjan Saha, Budbud, Burdwan, West Bengal-713403
2. Revenue – ITO, Ward-2(4), Durgapur
3. CIT(A)-National Faceless Appeal Centre
4. CIT, Kolkata.
5. DR, ITAT, Kolkata, (sent through e-mail)..

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata