

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.318/Del/2020

[Assessment Year : 2011-12]

Arvind Tyagi, H.No.157, AIR Force Road, Dabua Colony, Faridabad, Haryana-121005. PAN-AFPPT9292M	vs	ITO, Ward-1(4), Faridabad.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Sanjiv Mahajan, Sr.DR	
Date of Hearing	28.02.2022	
Date of Pronouncement	15.03.2022	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2011-12 is directed against the order of Ld. CIT(A), Faridabad dated 19.11.2019. The assessee has raised following concise grounds of appeal:-

1. *“That the CIT(Appeal) has not considered the fact that no proper notice has been served upon the assessee.*
2. *That the CIT (Appeals) has ignored that the Ld AO has erred in making the addition of Rs.11,40,300/- arbitrarily without considering the facts and records available to him for their verification, which is bad in law.*
3. *That Hon CIT Appeal is erred by partially allowing the appeal without verifying the submissions of the AR of the assessee which is bad in law. The honorable CIT (A) have allowed Rs. 4,72,000/- out of the total addition of Rs. 11,40,000/- on the same ground which is unjustified and bad in law.*

4. *That the CIT has not considered that the Ld AO has not followed the genuineness of the facts and documents submitted rather he relied on his imagination, which is against law.*

5. *That the appellant craves leave to add/amend any/all the grounds of appeal before or during the course of hearing of the appeal.”*

2. None appeared on behalf of the assessee at the time of hearing. The notice sent through speed post was returned with remark “Door Locked”. The assessee has not provided any new address to the Registry. Therefore, the appeal was taken up for hearing in the absence of assessee.

FACTS OF THE CASE

3. Brief facts of the case are that the Assessing Officer received information that the assessee had deposited an amount of Rs.11,40,300/- in cash in his saving bank account held with Kotak Mahindra bank Ltd. Subsequently, the Assessing Officer [“AO”] re-opened the assessment by issuing requisite notices u/s 148 of the Income Tax Act, 1961 [“the Act”]. The reopened assessment proceedings were attended by the Authorized representative of the assessee on two occasions but the evidences as called for are not furnished to the Assessing Officer. Therefore, the AO made addition of the entire bank deposit of Rs.11,40,.300/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, partly allowed the appeal. Thereby, Ld.CIT(A) confirmed the addition of Rs.4,72,000/- and rest of the addition was deleted.

5. Now, the assessee is in appeal before this Tribunal.

6. The only effective ground in this appeal is against the sustaining of addition of Rs.6,68,300/-.

7. Ld. Sr. DR supported the orders of the authorities below and submitted that the assessee was given relief by Ld.CIT(A).

8. I have heard Ld. Sr. DR and perused the material available on records and gone through the orders of the authorities below. Ld.CIT(A) has decided the issue in paras 13 & 14 of his order by observing as under:-

13. *“The facts of the case along with the submission of the Learned AR have gone through. It is noted that the appellant has explained the source of deposits in his bank account with respect to withdrawals made from his bank account on various dates and various other sources. The merit of the submission of the appellant in this regard is discussed and decided as under:*

Sl.No.	Date	Amount of cash deposits	Remarks
1.	06.04.2010 28.05.2010 01.06.2010 05.06.2010 09.06.2010 13.11.2010 10.12.2010 13.12.2010 07.01.2011 12.01.2011 14.01.2011	20,000 10,000 6,000 7,000 60,000 49,900 3,542 1,00,000 29,000 49,900 5,500	<i>These deposits have been explained with reference to withdrawals in cash made from the bank account by the appellant or his father in various small amounts such as Rs.3,000/-, Rs.7,000/-, Rs.4,000/-, Rs.9,000/-, Rs.5,000/-, Rs.2,000/-, Rs.10,000/- etc. on various dates. It is beyond pre-ponderance of human probability that the appellant/his father would be withdrawing small amounts in cash from their bank accounts frequently on various dates and would be accumulating the same with them to make the cash deposit back in the bank account of the appellant. Further, there is no tangible evidences for the past savings, as claimed. Accordingly, the explanation of the appellant regarding source of cash</i>

			<i>deposits in his bank account to the extent of Rs.3,40,842/- has not been found satisfactory.</i>
2.	16.07.2010	2,92,000	<i>The source of such cash deposit has been explained with reference to sale of car belonging to the appellant. For this purpose, the AO has verified the explanation of the appellant. In view of the documentary evidence furnished by the appellant, source of cash deposit of Rs.2,92,000/- has been found as explained.</i>
3.	26.08.2010	5,01,000	<i>These deposits have been explained with reference to withdrawals in cash made from the bank account by the appellant or his father in various small amounts such as Rs.3,000/-, Rs.7,000/-, Rs.4,000/-, Rs.9,000/-, Rs.5,000/-, Rs.2,000/-, Rs.10,000/- etc. on various dates. Further, the amount of Rs.70,000/- has been explained as received from sale of buffaloes, Rs.1,80,000/- from sale of car by Shri Vinay Tyagi, father of the appellant. It is beyond preponderance of human probability that the appellant/his father would be withdrawing small amounts in cash from their bank accounts frequently on various dates and would be accumulating the same with them to make the cash deposit back in the bank account of the appellant. The appellant could not submit any authentic evidences regarding the sale of buffaloes for Rs.70,000/-. However, the appellant had furnished documentary evidence in respect of sale of car from Shri Vinay Tyagi for Rs.1,80,000/- on 20.08.2010. Accordingly, the explanation of the appellant regarding source of cash deposits in his bank account to the extent of Rs.1,80,000/- has been found satisfactory. Keeping in view these facts the source and nature of the remaining cash deposits has been found as unexplained.</i>

14. *Keeping in view the above facts and discussion, it is found that the appellant could not explain the source and nature of cash deposits to the extent of Rs.6,68,300/-. Thus, the appellant has failed to explain source and nature of remaining cash deposits. The onus was on the appellant to explain the same. The appellant could not discharge such onus satisfactorily. In the circumstances, the addition made by the AO to the extent of Rs.6,68,300/- is confirmed and remaining addition is hereby deleted. Thus, Grounds No.1 to 4 of the appeal are partly allowed.”*

9. From the above, it is evident that the Ld.CIT(A) had noted the fact that there were withdrawals from the bank account of the assessee and his father. However, he did not accept the contention of the assessee that this amount was subsequently deposited in the bank account. It is not clear from the finding of the Ld.CIT(A) whether the assessee had used this amount for household expenditure in addition to withdrawal claimed to be have not re-deposited. Therefore, the issue is hereby restored to the Assessing Officer for limited purpose for verifying whether the amount so withdrawn was utilized for household expenses or any other purposes. If it is found that the amount was not utilized for house hold expenses on any other purpose in that event would be presumed that the amount so deposited was out of the bank withdrawals.

9.1. Thus, grounds raised by the assessee are allowed for statistical purposes in the terms indicated in preceding paras.

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

Order pronounced in the open Court on 15th March, 2022.

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