

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 7809/DEL/2019
[Assessment Year: 2011-12]

Pawan Kumar C-65C-1, Roshan Vihar, Najafgarh, South West, Delhi. PAN- BIBPK4020L	<u>Vs</u>	Income-tax Officer, Ward-43(2), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Pawan Kumar, assessee	
Respondent by	Sh. Anil Kumar Sharma, Sr. DR	
Date of hearing	17.02.2022	
Date of pronouncement	30.03.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-15, New Delhi, dated 05.07.2019, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

“1. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in confirming the addition made by Ld AO u/s 69A of the Act, at para 4.2 (page 4 of Assessment Order) without appreciating that the amount of cash deposits in saving bank account were made by the loan/VISA Consultant Company, namely Healthy Way Immigration Consultants Private Limited using three signed blank cheques which were taken from the assessee at the time of entering into agreement.

2. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in rejecting the application and additional evidences furnished under rule 46A of the Income Tax Rules 1962 erroneously stating that there was no reason or sufficient cause which prevented the appellant from producing such evidences before the Ld AO. The action of Ld GIT A in rejecting the admission of application and other additional evidences adduced for wrong reasons being opposed to the facts of the case and law including judicial pronouncement therefore same may kindly be set aside. Reliance is placed on the following:-

- a) *ITA/140/DEL/2018 AY 2009-10 Dharampal Tyagi Vs. ITO, Meerut*
- b) *Tek Ram 262 CTR 118 (Hon'ble Supreme Court)
Mukta Metal Works, 336 ITR 555 (Hon'ble P&H High Court)*
- c) *Dwarka Prasad 63 ITD 1 (Pat) (TM)
Ganibhai Wahabbhai 232 ITR 900 MP*
- d) *Sri Shankar Khandasari Sugar Mills Vs. CIT (1992) 193 ITR 669(Karnataka HC)*

3. That on facts and circumstances of the case and in the interest of principle of natural justice appellant prays that assessment order passed u/s 144 r. w. s. 147 may be set aside and restored to the file of Ld. AO to make the de novo assessment for ascertaining the correct and real tax liability under the provisions of I.T. Act, 1961 as the appellant being student during AY 2011-2012 hired VISA/Education Loan Consultant company for higher studies abroad and out of total cash deposits of Rs 11,13,000/-, only Rs 1,14,000/- was deposited on account of past accumulated savings and cash withdrawals from saving bank account.

4. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in confirming the addition made by Ld AO in gross i) without providing proper opportunity of being heard ii) vague addition merely on basis of guesswork, conjecture and surmises iii) mere assessment is basis of additions u/s 69A of the Act iv) hypothetical addition made merely on the basis of deposits in saving bank account and without considering the relevant documents and facts and circumstances of the case and v) there is valid defense and explanation available to appellant

5. That without prejudice to the above grounds of appeal the Ld. AO as

sustained by the Ld CIT (A)-15 grossly erred in not getting plea of the assessee of reasonable cause of cash deposits in saving bank account and making addition under section 69A of the act by rejecting application submitted under Rule 46A of the Income Tax Rules.

6. That the appellant craves leave to add, to, amend, modify, rescind, supplement or alter any of the grounds stated herein above, either before or at the time of hearing of this appeal.”

2. Facts, giving rise to the present appeal, are that case of the assessee was reopened on account of cash deposits in bank account. Statutory notice u/s 148 of the Act was issued. However, no one attended the proceedings. Therefore, the Assessing Officer made addition of entire amount deposited in the bank account of Rs. 11,13,000/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who confirmed the action of the Assessing Officer and dismissed the assessee's appeal. Aggrieved, the assessee has filed the present appeal before this Tribunal.

3. Learned counsel for the assessee reiterated the submissions as made in the form of grounds of appeal, reproduced hereinabove.

4. On the contrary, learned DR opposed the submissions and relied on the orders of the authorities below.

5. I have heard rival submissions and perused the material available on record. It is seen from the record that there was no effective representation on behalf of the assessee. The additional evidence filed by the assessee before the learned CIT(Appeals), was not considered by the learned CIT(Appeals). Therefore, considering the facts and circumstances of the present case, in the interest of principles of natural justice and in order to provide a fair hearing and adequate

opportunity to represent his case, I hereby set aside the orders of the authorities below and restore the matter to the file of the Assessing to frame the assessment afresh after providing reasonable opportunity of being heard to the assessee. Grounds raised in this appeal are allowed for statistical purposes.

6. Assessee's appeal is allowed for statistical purposes.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

Dated: 30/03/2022.

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**