

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'C', NEW DELHI**

Before Sh. A. D. Jain, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2407/Del/2018 : Asstt. Year : 2001-02
ITA No. 2408/Del/2018 : Asstt. Year : 2002-03
ITA No. 2409/Del/2018 : Asstt. Year : 2003-04
ITA No. 2410/Del/2018 : Asstt. Year : 2004-05
ITA No. 2411/Del/2018 : Asstt. Year : 2005-06
ITA No. 8283/Del/2019 : Asstt. Year : 2006-07
ITA No. 8284/Del/2019 : Asstt. Year : 2008-09

K. Narsimha, 33/34, Rajpur Road, New Delhi-110054	Vs	ACIT, Central Circle-3, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. ADZPK3188M		

Assessee by: Sh. P. Roychaudhuri, Adv.
Revenue by: Sh. Manvendra Goyal, CIT DR &
Sh. Raval J. Pradip Gupta, Sr. DR

Date of Hearing: 12.04.2022	Date of Pronouncement: 04.05.2022
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ORDER

Per Bench:

The present appeals have been filed by the assessee against the orders of Id. CIT(A)-42, New Delhi dated 15.01.2018 and 26.08.2019.

ITA No. 2407 to 2411/Del/2018 & ITA No. 8283/Del/2019:

2. A search and seizure operation was carried out on the assessee on 20.10.2006, 22.10.2006 and 23.10.2006. Subsequently, the Assessments were completed as per the provisions of Section 153A of the Income Tax Act, 1961.

3. Subsequently, the AO observed that the orders passed by his predecessor were prejudicial to the interest of the revenue

and the cases were recommended for action under provisions of Section 263 of the Act. The Id. CIT convinced by the report of the AO proceeded to pass an order under the provisions of Section 263 of the Act on 24.12.2010 directing the AO to frame the assessment afresh by examining the following issues (page no. 1 of the AO):

- a. Agriculture income
- b. Cash deposits
- c. Investment in immovable property

4. Following the directions of the Id. CIT, the AO examined the three items as specified by the Id. CIT in the order u/s 263 of the Act.

a. Agriculture income

5. Before the AO, the assessee explained that a statement u/s 131 of the Act has been recorded by the Income Tax Department on 15.11.2006 of the father of the assessee, during post search investigations wherein the father of the assessee while answering question No. 5 has submitted that he had agricultural income on the ancestral land and an amount of Rs.88,185/- has been given to the son (the assessee) as a share in the agricultural income. The assessee has disclosed the same as agricultural income in the return of income.

6. The AO made addition of Rs.88,185/- on account of disallowance of the receipt as agricultural income on the grounds that the assessee himself is not owning any agricultural land and the assessee himself is not the cultivator.

b. Cash deposits

7. With regard to the directions issued by the Id. CIT in the order u/s 263, the AO categorically held that, there were no cash deposits in the bank statement and hence no addition was made.

8. For the sake brevity, the relevant order of the Assessing Officer is reproduced as under:

"As regards, the issue of cash deposited in the accounts held with the bank etc. the assessee vide questionnaire dated 17.06.2011, was asked to provide details of all the bank accounts maintained in his name as well as in the name of dependents giving complete explanation for source of deposits exceeding Rs.10,000/-. While going through the copy of bank statements and bank books, it is observed that no cash deposits are made during the period 01.04.2000 to 31.03.2001 relevant to A.Y. 2001-02. Therefore, no interference is required to be made on this issue."

C. Investment in immovable property

9. The Id. CIT held in the order u/s 263 of the Act that the AO has completed the assessment without examining the issue of immovable property without inquiring into the source of the investment and on incorrect assumption of facts and without application of mind. The AO after examination found that during the period under consideration no new property was either acquired or purchased by the assessee and held that the issue of payment of Rs.1,60,000/- contribute by the assessee for his Noida plot has already been dealt in the regular assessment framed in the A.Y. 2007-08 and hence no addition has been made by the AO in the instant order.

10. The instant Assessment Order has been passed by the AO u/s 263/143(3) of the Act on 19.12.2011.

11. In this background, the issues flagged are as under:

1. Whether the order u/s 263 passed by the Id. CIT is with proper examination of record and due application of mind.

➤ From the examination of record before us, it could be found that the Id. CIT has revised the order on account of cash deposits and also on account of investment in immovable property. The AO has categorically mentioned that they were no cash deposits at all in the bank statement in the instant year. Thus, it can be said that the revisionary order passed by the Id. CIT is without due application of mind and due appreciation of the facts on record. Further, the revisionary order has also held that the Id. PCIT has directed to examine the details of immovable property which has been duly examined by the AO and the addition has also been made in the A.Y. 2007-08. To this extent, the revisionary order is clearly erroneous. Since the issue is no more *res integra*, no adjudication is required on this issue.

2. Whether the order passed by the Id. CIT(A) is erroneous owing to failure to observe principles of natural justice.

➤ The ground No. 3 raised by the assessee in the appeal before us is as under:

"3. The Id. CIT(A) has grossly erred on facts as well as in law in passing the order on 15.01.2018 which was received on 21.02.2018 while the hearing was fixed on 18.01.2018 vide email dated 11.01.2018 on which date the Id. CIT(A) was on leave and next date of hearing was fixed on 22.02.2018 on

request of the counsel vide letter dated 23.01.2018 and at that time also it was not informed that order is already passed."

With regard to the above ground, we have examined the para 6.16 & 6.17 of the order of the Id. CIT(A). For the sake of ready reference, clarity and brevity, the order of the Id. CIT(A) is reproduced in toto:

"6.16 The appellant was asked vide e-mail dated 11.01.2018 to submit details of date-wise withdrawals or availability of cash on particular date to explain the source of investment of Rs.1,80,000/- in the month of December, 2000. The e-mail sent in this regard is reproduced as under:

"During the search, a handwritten paper about construction of a house has been seized from the residence of father of the assessee. The seized paper contained details of funds received amounting to Rs.6,39,000/-. The details as depicted on the seized paper are as under:-

<i>i. Margdarshee chit amount</i>	<i>Rs.424000/-</i>
<i>ii. From yourself (assessee)</i>	<i>Rs. 150000/-</i>
<i>iii. Old house sale</i>	<i>Rs.35000/-</i>
<i>iv. From yourself</i>	<i>Rs. 30000/-</i>
	<i>Rs. 639000/-</i>

As per your submission, a sum of Rs.4,24,590/- was withdrawn from the Margadarsi Chit Fund Ltd. vide cheque dated 07.12.2000 which explains the first item on the source of funds side. This corroboration of seized material with the withdrawal from the Margadarsi Chit Fund Account does confirm that the seized paper pertains to December, 2000 i.e. AY 2001-02. Further, as shown above through two entries of "From Yourself" in the sourcing of funds, a sum of Rs.1,80,000/- has been invested by the assessee in AY 2001-02.

Further, as per your submission, the sum of Rs.1,80,000/- has been invested out of the cash available with the assessee and the balance sheet as on 31.03.2000 and 31.03.2001 have been

*submitted to support the contention. The balance sheet gives the picture as on a particular date. However, no evidence has been submitted to showcase the availability of the cash based on withdrawals, if any, from time to time to explain the source of cash handed over by the assessee in respect of the property as mentioned on the seized record. Please explain why the addition of Rs.1,80,000/- should not be made in the hands of the assessee for unexplained investment in the property. **Your reply in this regard must this office by 18.01.2018.**"*

6.17 As regards, the source of the same, the appellant stated vide e-mail dated 11.01.2018 that it is the withdrawal from the capital account amounting to Rs.3,00,988/- as evidenced by the balance sheet of the appellant as on 31.03.2001. The appellant pointed out that out of withdrawal of Rs. 3,00,988/-, Rs. 1,80,000/- were given to the father and balance of Rs. 1,20,988/- were used for household expenses. The appellant justified the sum of Rs.1,20,988/- as household withdrawals by comparing it with the amount of withdrawal made during last year i.e. of Rs. 1,17,946/-. However, even after giving an opportunity, the assessee has not submitted any evidence to showcase the availability of the-cash based on withdrawals, if any, from time to time to explain the source of cash handed over by the assessee in respect of the property as mentioned on the seized record on a particular date. Accordingly, the AO is directed to make an addition of Rs.1,80,000/- on account of unexplained investment."

From the order of the Id. CIT(A) itself and from the record, it can be found that the e-mail requiring to explain the source of investment of Rs.1,80,000/- has been issued on January 11, 2018 at 4:38 P.M. requiring the assessee to reply by 18.01.2018. At para 6.17, the Id. CIT(A) observes that "*however even after given an opportunity, the assessee has not submitted any evidence to showcase the availability of the case based on withdrawals.....*"

and the **said order of the Id. CIT(A) has been passed on 15.01.2018** even before the expiry of the date given by the Id. CIT(A). Hence, it can be held that the Id. CIT(A) has passed the order without duly following the principles of natural justice in passing of the order even before the due date given by the Id. CIT(A) himself which makes the order vitiated.

Further, we also find that the enhancement by the Id. CIT(A) is without any reference to the seized material and as per Section 251(2), the alleged income is a new source of income which has not at all been dealt by the AO in the Assessment Order.

3. Whether the order passed by the Id. CIT(A) is erroneous owing to absence of any incriminating material found and seized

Ans.: The addition made on account of agricultural income is without reference to any incriminating material found and seized during the search as can be deciphered from the Assessment Order. Page nos. 10, 11 & 12 of the Assessment Order do not reveal any seizure of incriminating material which led to the addition. The search was conducted on 20.10.2006 and hence the A.Y. 2001-02 cannot be treated as abated assessments. On this issue, reliance is placed on the following case laws:

- CIT v. Kabul Chawla (2016] 380 ITR 573
- Pr. CIT vs. Meeta Gutgutia (2017) 395 ITR 526
- All Cargo Global Logistics Limited Vs. DCIT 18 ITR 106
- ACIT, Central Circle-16, New Delhi vs. Vinita Chaurasia, ITA No. 5957/DEL/2015 dated 05.10.2018,
- ACIT, Central Circle-4, New Delhi vs. M/s. Moolchand Steels Pvt. Ltd. in ITA No. 2544/DEL/2015 dated 10.10.2018 etc.

12. The Hon'ble Delhi High Court in the case of CIT Vs Kabul Chawla (supra) held as under:

"vii. Completed assessments can be interfered with by the A.O. while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment"

13. The Hon'ble Delhi High Court in its recent decision in the case of Pr. CIT vs. Meeta Gutgutia (2017) 395 ITR 526 in paras 69 to 72 has held as under:

"69. What weighed with the Court in the above decision was the "habitual concealing of income and indulging in clandestine operations" and that a person indulging in such activities "can hardly be expected to maintain meticulous books or records for long." These factors are absent in the present case. There was no justification at all for the AO to proceed on surmises and estimates without there being any incriminating material qua the AY for which he sought to make additions of franchisee commission.

70. The above distinguishing factors in Dayawanti Gupta (supra), therefore, do not detract from the settled legal position in Kabul Chawla (supra) which has been followed not only by this Court in its subsequent decisions but also by several other High Courts.

71. For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of Section 153A by the Revenue for the AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs.

Conclusion

72. To conclude:

(i) Question (i) is answered in the negative i.e., in favour of the Assessee and against the Revenue. It is held that in the facts and circumstances, the Revenue was not justified in invoking Section 153A. of the Act against the Assessee in relation to AYs 2000-01 to AYs 2003-04."

14. The above Judgment is confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department. Therefore, on this reason also no addition could be made of any unexplained bank deposits or interest earned thereon in any of the assessment years. In view of the above, we set aside the Orders of the authorities below and delete the entire additions.

15. Hence, keeping in view, the entire factum of the case, we hold that the addition made vide the assessment u/s 153A in the absence of any incriminating material is not sustainable.

Additional Grounds:

4. Whether in the absence of any approval u/s 153D, the impugned Assessment Order is invalid or not?

16. The assessee has also raised admission of additional grounds of appeal which are as under:

"a) That on the facts and circumstances of the case and in law, the Impugned Order dated 19.12.2011 is bad in law and is a nullity since the Assessment was framed under a wrong section i.e. section 263/143(3) whereas it should have been passed u/s 153A/263 r.w.s. 143(3) of the IT Act.

b) That on the facts and circumstances of the case and in law, the Impugned Order dated 19.12.2011 passed by the Assessing Officer u/s 263/143(3) of the IT Act in consequence to the Order passed u/s 263 of the IT Act is bad in law and is non-est since the Assessing Officer did not take the necessary approval from his superior officer (JCIT/Addl. CIT) in accordance with the provisions of section 153D of the IT Act. Since no approval u/s 153D was taken before passing the impugned assessment order it was not mentioned in the body of assessment order."

17. Admission of the additional grounds has been opposed in principle by the Id. DR. Keeping in view, the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383, the additional grounds filed by the assessee are accepted. The relevant portion of the judgment is as under:

"5. Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the

assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

6. In the case of Jute Corporation of India Ltd. v. C.I.T. . this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal [vide, e.g., C.I.T, v. Anand Prasad (Delhi), C.I.T. v. KaramchandPremchand P. Ltd. and C.I.T. v. Cellulose Products of India Ltd. . Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

8. The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits."

18. Respectfully following the above judgment of the Hon'ble Apex Court, the additional grounds taken up by the assessee are hereby admitted.

19. Having admitted, we have gone through the order of the Id. CIT(A) on this issue. Reference is invited to the order of the Id. CIT(A)-42 dated 26.08.2019 for the A.Y. 2006-07. For the sake of brevity, the relevant portion of the Id. CIT(A) on this issue is reproduced as under:

"8.1 The appellant has raised additional ground of appeal which is legal in nature. As per the appellant, the Impugned order dated 26.11.2010 passed by the Assessing Officer U/s 263/143(3) of the I.T. Act in consequence to the order passed U/s 263 of the I.T. Act is bad in law and is non-est because the Assessing Officer did not take the necessary approval from his superior office (JCIT/Addl.

CIT) in accordance with the provision of section 153D of the I.T. Act. The appellant made reference to the assessment order and pointed out that the fact of approval U/s 153D has not mentioned in the body of assessment order.

8.2 In this regard, the information in respect of the fact of approval of JCIT/Addl. in accordance with the provision of section 153D of I.T. Act, was called for from office of ACIT, Central Circle-13, New Delhi vide letter dated 19/09/2018 & reminder vide letter dated 29/11/2018. However, it has been informed by ACIT, Central Circle-13, Delhi vide letter dated 19/12/2018, that all relevant documents in this regards were sent to office of Pr. CIT, Central -02, New Delhi vide letter No.139 dated 03.05.2013.

8.3 The matter was also referred to the office of Principal Commissioner of Income Tax, Central-II, New Delhi in this regard vide letter dated 02.07.2019 & 06.08.2019. However, no response has been received till date. Since the appeal is pending in this case for more than 3 years, therefore, as per CBDT directive, it is to be decided on priority.

8.4 As regards the relevance of approval of JCIT under section 153D of the act is med. I find that the facts of the present case are distinguishable with reference to the normal case of search assessment where prior approval under section 153D is required. It is because in this case, the assessment order under section 153A/143(3) was passed on 31.12.2008. The same order was passed after taking necessary approval as per the provision of section 153D of the act. Thereafter, Ld. CIT(Central-II), Delhi passed order under section 263 of the act on 24.12.2010 where the AO was asked to frame the assessment afresh based on the issues flagged in the order u/s 263 of the act. Therefore, it is a case where the AO has followed the instructions of Ld. CIT (Central - II) as per order under section 263 of the act. In such a case, the prior approval of the assessment of JCIT/Addl. CIT is implicit and not separately required because it is second round of assessment based purely on

instructions of authority higher than JCIT/Addl. CIT. Accordingly, the additional ground of appeal is dismissed."

20. From the record, it can be found that the Id. CIT(A) has called for the record from the office of the ACIT, Central Circle-13 vide letter and reminders dated 19.09.2018 and 29.11.2018. Even the letters written to the Id. PCIT, Central-II did not evoke any response. Having not received the response from the office of the ACIT and the Id. PCIT, the Id. CIT(A) unsuccessfully tried to salvage the situation holding that the orders passed by the AO are inconsequence to the order passed by the Id. PCIT u/s 263 and in such case the prior approval of the assessment by the JCIT/Addl. CIT is implicit and not separately required. The order of the Id. CIT(A) is contradictory in the sense that while the Id. CIT(A) holds that the prior approval of the assessments by the Addl. CIT is "implicit" and at the same time it was held that the approval is "not separately required" as it is second round of assessment based purely on instructions of authority higher than JCIT/Addl. CIT.

21. The facts are as under:

- The search was conducted on 20.10.2006
- Assessments u/s 153A have been completed in the regular course.
- Order of the Id. CIT u/s 263 was dated 24.12.2010
- The order u/s 263 set aside the order of the AO passed u/s 153A with directions to examine the issues.
- The issues raised by the Id. CIT like cash deposits and investment in property for A.Y. 2001-02 to A.Y. 2004-05 are found to be without any reference to cash deposits and even in the absence of any cash deposits in the bank account.

- Once, the order u/s 153A is modified, revised or set aside, the Assessment Order u/s 153A still continues to hold its original character of assessment u/s 153A.
- Hence, the order passed in consequence to the order u/s 263 by the Id. CIT/PCIT would partake and continue to be the order u/s 153A.
- Being the order passed u/s 153A, the rigors of the provisions u/s 153D follows.
- The Section 153D reads as under:

"Prior approval necessary for assessment in cases of search or requisition.

153D. No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of sub-section (1) of section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner:

Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner under sub-section (12) of section 144BA."

- Hence, it is mandatory to obtain the approval of the JCIT/Addl. CIT for passing the order u/s 153A even in the case of orders passed in consequence to the order u/s 263.
- It is borne from the order of the Id. CIT that all the efforts have been made by the Id. CIT(A) to obtain

evidences with regard to the documents approving the Assessment Order passed by the Assessing Officer who is below the rank of Joint Commissioner could not yield any result. No evidences could be brought even before us. Hence, owing to the provisions of Section 153D, we have no hesitation to hold that the Assessment Orders passed by the Assessing Officer are legally invalid and liable to be quashed.

22. Since, similar issues are involved for the A.Y. 2001-02 to A.Y. 2006-07, the above said ratio is applicable to all the years.

23. In the result, owing to absence of incriminating material found and seized and absence of statutory approval u/s 153D, the appeals of the assessee are hereby allowed.

ITA No. 8284/Del/2019: A.Y. 2008-09:

24. Following grounds have been raised by the assessee:

"1. The Ld. CIT (A) has grossly erred on facts as well as in law in confirming the assessment order passed by the Ld. AO u/s 263/143(3) which is ex-facie illegal, arbitrary and without jurisdiction.

2. The Ld. CIT (A) has grossly erred on facts as well as in law in ignoring the fact that the Impugned Order is bad in law and is a nullity since the Assessment was framed under a wrong section i.e. section 263/143(3) whereas it should have been passed u/s 153A/263 r.w.s. 143(3) of the IT Act.

3. The Ld. CIT (A) has grossly erred on facts as well as in law in ignoring the fact that the Order passed by the Assessing Officer u/s 263/143(3) of the IT Act in consequence to the Order passed u/s 263 of the IT Act is bad in law and is non-est since the Assessing Officer did not take the necessary approval

from his superior officer (JCIT/Addl. CIT) in accordance with the provisions of section 153D of the IT Act. Since no approval u/s 153D was taken before passing the impugned assessment order it was not mentioned in the body of assessment order.

4. The Ld. CIT (A) in the facts and circumstances of the present case had erred in holding that prior approval u/s 153D of the assessment of JCIT/Addl. CIT is implicit and not separately required because it is second round of assessment based purely on instructions of authority higher than JCIT/Addl. CIT.

5. The CIT (A) had grossly erred in confirming the Order of Ld. AO who has assessed the taxable income at Rs.7,66,972/- as against the returned income of Rs. 1,57,972/-.

6. The CIT (A) had grossly erred in law as well as in facts in upholding the Order of Assessing Officer who had added Rs.6,09,000/- u/s 68 on account of alleged unexplained cash credit.

7. That the Ld. CIT(A) has grossly erred in facts as well as in law in holding that the Ld. AO has rightly made addition to the return income u/s 153A in spite of the fact that no incriminating material was found during the course of search."

25. The search & seizure action conducted on 20.10.2006 in the case of the assessee hence the ground nos. 1 to 4 & 7 are not applicable to the instant case.

26. Ground No. 5 is general in nature.

27. Ground No. 6 deals with Section 68 of the Income Tax Act, 1961. The assessee has deposited cash of Rs.1,10,000/- on 14.06.2007 and Rs.4,98,000/- on 18.06.2007 respectively in his bank account with SBI, Secunderabad which the AO taxed u/s 68 of the Act. The details of cash deposits and withdrawal are as under:

Opening balance as on 01.04.2007 -	Rs.1,72,275/-
Cash withdrawal on 07.05.2007 -	Rs.3,00,000/-
Cash withdrawal on 15.05.2007 -	Rs.2,00,000/-
Total Cash in hand as on 16.05.2007 -	Rs.6,72,275/-
Cash deposit on 14.06.2007 -	Rs.1,11,000/-
Cash deposit on 18.06.2007 -	Rs.4,98,000/-
Total cash deposits as on	Rs.6,09,000/-

28. Before the Id. CIT(A), it was submitted that the amounts have been withdrawn for the purpose of investment in property and since the deal could not be finalized, the amount has been re-deposited in the bank account. The Id. CIT(A) held that the assessee has not given any purpose of cash withdrawal was mentioned by the AO and also that the net salary received by the assessee after investment in PF and LIC during the whole financial year was Rs.1,42,634/-.

29. We find that the revenue has not disputed the cash withdrawal from the same bank account of SBI Secunderabad Branch. The revenue could not bring on record any acquisition of asset with the withdrawal made in the month of May 2007 to the tune of Rs.5,00,000/-. The opening balance as per the statement of affairs has not been disputed by the revenue. Once, the withdrawals and opening balance have been accepted and no fresh investments during the period of May 2007 to June 2007 or earlier or before for which the amounts have been utilized could be found out by the revenue, invocation of the provisions of Section 68 with regard to the deposits in the bank in the presence of the available cash as explained above, such addition cannot be legally held to be valid in accordance with the provisions of Section 68 of the Income Tax Act, 1961 that are in force at the instant.

30. In the result, the appeal in ITA No. 8284/Del/2019 is allowed.

Order Pronounced in the Open Court on 04/05/2022.

Sd/-

(A. D. Jain)
Vice President

Dated: 04/05/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR