

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' NEW DLEHI**

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

**ITA No. 6130/Del/2019
Assessment Year: 2013-14**

Mukesh Kumar Sharma, vs. Income-tax Officer,
301, Plot 38, The Eligible CGHS, Ward 71(3), New Delhi.
Sector-10, Dwarka, New Delhi.
PAN : APYPS1381M
(Appellant) (Respondent)

Appellant by : None
Respondent by: Sh. Om Prakash, Sr. DR

Date of hearing: 04.05.2022
Date of order : 10.05.2022

ORDER

This appeal filed by the assessee is directed against the order dated 10.05.2019 passed by Id. CIT(A)-21, New Delhi for the assessment year 2013-14 on the following grounds :

"1. That on the facts in the circumstance of the case , the order of the AO which was upheld by CIT (Appeals) on dated 10/05/2019 for the assessment year 2013 -14, is bad in law and against the facts of the case . Hence it is not maintainable in law and liable to be set aside.

2. That the appellant denies his liability to be assessed at Total Income of Rs.28,04,181/- as against returned income of Rs. 10,39,196/- and accordingly denies his

liability to pay tax, cess , interest and penalty demanded thereon if any.

3. That having regard to the facts and circumstances of the case, A.O. has wrongly made an addition of Rs. 5,00,000/- u/s 68 of the income tax act for cash deposited into the saving bank account of the assessee which is bad in law and against the facts and circumstances of the case and the learned CIT (A) had wrongly upheld and appreciated that the above cited deposit was unexplained deposit as per provision of section 68 of the act, without appreciating the nature of transaction of the appellant assessee and fact of the case , the authority levied the tax is against the law hence it is liable to be deleted.

4. That on the facts in the circumstance of the case , the learned CIT (A), failed to appreciate that the provision of section 68 relied by the assessment authority which are distinguishable from the fact of the appellant case . Thus the order to levy of the tax by the assessing authority is not correct and liable to be set aside.

5. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in charging interest u/s 234A/B/C/D & penalty if any of the Income Tax Act, 1961.

6. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other and it is prayed that kindly may allow the appeal in the interest of justice and equity.

2. A notice through speed post acknowledgement due was sent to the appellant on 07.02.2022 to the assessee on the address 301,

Plot 38, The Eligible CGHS, Sector-10, Dwarka, New Delhi 110075 and the same address has been mentioned in the assessment as well as in Form 36 by the assessee in the column of 'complete address for sending notices'. As per judgment of Hon'ble Supreme Court in the case of PCIT vs. M/s. I Ven Interactive Ltd. dated 18.10.2019 in Civil Appeal No. 8132 of 2019, in absence of any specific information to the Assessing Officer with respect to change of address and/or change of the name of assessee, Assessing Officer would be justified in sending the notices at the available address mentioned in the PAN database of the assessee. Respectfully following the same, we hold that when the assessee has filed return mentioning a particular address as per his PAN database, which has also been noted by the Assessing Officer as well as by the assessee himself in Form No. 36 as complete address for sending the notices and the assessee is not found available on the same address and no information about change of address to the Assessing Officer by the assessee, then we safely presume that all possible efforts have been made regarding service of notice on the assessee on the address given in PAN data and by assessee and assessee is not available, then we have no alternate but to proceed ex parte qua assessee to decide this appeal after hearing the submissions of Id. Sr. Departmental Representative (DR).

3. In this appeal, the sole grievance of the assessee is that the Id. CIT(A) was not correct and justified in confirming the addition of Rs. 5,00,000/- u/s. 68 of the Income-tax Act, 1961 ("the Act" for

short) on account of cash deposit into saving bank account of the assessee. Ld. Sr. DR strongly submitted that the action of the Assessing Officer as well as first appellate authority is quite justified. It is submitted that the Id. CIT(A) granted ample relief to the assessee and out of six additions, only addition of Rs.5,00,000/- has been confirmed by the Id. CIT(A), deleting all other five additions. He also submitted that before the Assessing Officer, despite there was specific query, the assessee neither filed any documentary evidence with regard to the cash deposits of Rs.5,00,000/- nor any satisfactory reply with regard thereto. Drawing our attention to para 6.3.8 of the first appellate order, Id. DR submitted that when the assessee failed to substantiate its claim with regard to cash deposits and failed to discharge its onus as per requirement of section 68 of the Act, then the addition made by the Assessing Officer and confirmed by the Id. CIT(A) should be upheld.

4. On careful consideration of the above submissions of the Id. DR and perusal of assessment as well as first appellate order, I observe that the assessee has not filed any explanation before the Assessing Officer and the Assessing Officer made addition u/s. 68 of the Act. From the first appellate order, I also observe that it was submitted that the assessee is a civil contractor during the year with total turnover of Rs.18,40,000/- and cash was required in the normal course of business of assessee and deposits have been made from the cash withdrawals made during the year under

consideration, but the Id. CIT(A) confirmed the addition by holding that the assessee has failed to furnish any documentary evidence in the form of bank statement etc. explaining the source of deposits made to the above bank account. The Id. CIT(A) in para 6.3.3 considered the material available before him and held that the deposits made do not co-relate or reconciled with the amounts of withdrawal and claim of opening balance of Rs.2,05,300/- and thereafter considering the relevant case laws, rightly held that the assessee has failed to discharge the onus to explain the source of cash deposits. Therefore, in view of above, I am compelled to hold that there is no ambiguity or any other valid reason to interfere with the reasons and findings arrived by the Id. CIT(A) and he was right in confirming the addition made by the Assessing Officer amounting to Rs.5,00,000/- u/s. 68 of the Act.

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

Order pronounced in the open court on 10/05/2022.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: /05/2022
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