

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 121/DEL/2022
[Assessment Year: 2017-18]

Sahla Ram Gurjar, 01 Nangal Chaudhary, Vill. Bhedanty Mahendargarh, Mahendragarh, Haryana-123023 PAN- AJHPG2821P	<u>Vs</u>	Income-tax Officer, Ward-2, Narnaul.
APPELLANT		RESPONDENT
Appellant by		Sh. Rishi Gautam, Ad.
Respondent by		Sh. Om Prakash, Sr. DR
Date of hearing		23.05.2022
Date of pronouncement		23.05.2022

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-, National Faceless Appeal Centre (NFAC), Delhi, dated 01.04.2021, pertaining to the assessment year 2017-18. The assessee has raised following grounds of appeal:

“1. The AO has added the amount which was duly explained to him that the amount was received back against cancellation of sale Agreement. The amount was withdrawn from bank when paid and the statement of account was submitted before AO.

2. *As the cancelled agreement was destroyed, affidavits were submitted by both the parties, copies enclosed.*
3. The only effective ground in this appeal is against sustaining the addition of Rs. 4,90,000/-.
4. Facts giving rise to the present appeal are that case of the assessee was picked up for scrutiny assessment on the basis of limited scrutiny to examine the cash deposit during the demonetization period. It was noticed by the Assessing Officer that the assessee had deposited Rs. 13,00,000/- in the bank account no. 0883000100150329 with Punjab National Bank and Rs. 4,90,000/- in account no. 088300PD00021620 during the demonetization period. The Assessing Officer did not accept the explanation regarding cash deposit of Rs. 4,90,000/- and added the same to the returned income of the assessee. Aggrieved against it the assessee preferred appeal before the learned CIT(Appeals), who after considering submissions dismissed the assessee's appeal by upholding the order of the Assessing officer. Aggrieved, the assessee is now in appeal before this Tribunal.
5. Learned counsel for the assessee vehemently argued that the action of the Assessing Officer as well as the learned CIT(Appeals) is highly arbitrary, illegal and unjustified in view of the fact that the assessee had withdrawn the amount from the bank and this fact has been duly accepted by the authorities below.

However, both the authorities below, purely on the basis of whims and fancies sustained the addition of Rs. 4,90,000/-. Learned counsel further submitted that the Assessing Officer has not brought any adverse material to prove that the amount so withdrawn was not available with the assessee and had been used for any other purpose. In the absence of such finding, merely on the basis of guess work, no addition was called for. Therefore, he prayed that the addition may be deleted.

6. On the contrary, learned DR opposed the submissions and submitted that it was incumbent upon the assessee to prove the source of cash deposits. He placed heavy reliance on the assessment order and submitted that the finding of Assessing Officer is justified in the absence of the supporting evidence that the amount was given as advance and later on was returned to the assessee.

7. I have heard the parties, perused the material on record and gone through the orders of the authorities below. The Assessing Officer had called upon the assessee during the assessment proceedings to explain the source of deposit of Rs. 17,90,000/- during the demonetization period. Out of this amount the Assessing Officer accepted Rs. 13 lakh as explained and rest of the amount was treated as unexplained and made addition of the same. The learned CIT(Appeals) affirmed the view of the Assessing Officer. Before the authorities below there was a categorical contention on behalf of the assessee that this amount was withdrawn

from his bank account on 26.7.2016 for the purpose of purchasing the land. It was stated that an amount of Rs. 5 lakh was withdrawn from the bank loan account on 26.7.2016 and was to be used for the land transaction. In support of this the assessee has also given an affidavit stating that he had deposited funds with the bank and had withdrawn Rs. 14 lakh on 25.10.2016 for purchase of agricultural land. However, the deal did not materialize and the sum of Rs. 14 lakh was returned to the assessee. Further it was stated that the amount of Rs. 5 lakh was given as advance on 26.7.2016, which was withdrawn from the loan account of the assessee. However, the Assessing officer without conducting any inquiry in respect of the fact that whether the assessee had obtained loan and for what purpose from the bank, proceeded to make addition purely on the basis that the onus was on assessee to prove the source of cash deposits. In my considered view both the authorities below have failed to appreciate the fact in right perspective. Undisputedly, the assessee has brought on record that a sum of Rs. 5 lakh was withdrawn from the loan account. The Assessing Officer has not brought any adverse material to prove it otherwise. Therefore, in the absence of adverse material, I hereby direct the Assessing Officer to delete the addition. Ground of appeal taken by the assessee is allowed.

8. In the result, assessee's appeal is allowed.

Order was pronounced orally in open court, during the course of hearing, on 23.05.2022. However, the written order has been dated and signed on 06.06.2022.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI