

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.6303/Del/2019
Assessment Year: 2010-11

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| Sh. Brijesh Kumar Goswami, A-305, Majlis Park, Adarsh Nagar, New Delhi | Vs. | Income Tax Officer, Ward-36(2), New Delhi |
| PAN :ADAPG2435L | | |
| (Appellant) | | (Respondent) |

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| Appellant by | Sh. A.T. Panda, Advocate |
| Respondent by | Sh. Om Prakash, Sr. DR |

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| Date of hearing | 01.08.2022 |
| Date of pronouncement | 11.08.2022 |

ORDER

This is an appeal by the assessee against order dated 22.05.2019 of learned Commissioner of Income Tax (Appeals)-12, New Delhi, for the assessment year 2010-11.

2. The dispute in the present appeal is confined to disallowances/additions made aggregating to Rs.16,13,500/-. Briefly the facts are, the assessee filed his return of income on 31.03.2013 declaring income of Rs.3,44,500/-. As observed by the Assessing Officer, since, the return of income was filed beyond the prescribed time limit, it could not be selected for scrutiny.

Subsequently, the Assessing Officer received information indicating that the assessee, during the year under consideration, has made cash deposits of Rs.15,12,500/- in his bank account. Based on such information, the Assessing Officer reopened the assessment under section 147 of the Act. In course of reassessment proceeding, the Assessing Officer raised a query on a number of issues, including, the cash deposited in bank account amounting to Rs.15,12,500/-. In response to the query raised, though, the assessee furnished its reply with supporting evidence, however, the Assessing Officer was not convinced. Therefore, he added back an amount of Rs.16,13,500/- to the income of the assessee under section 69A of the Act. Though, the assessee contested the aforesaid addition before learned Commissioner (Appeals), however, he was unsuccessful.

3. I have considered rival submissions and perused the materials on record. On perusal of record, it is evident, while explaining the source of cash deposit in the bank account, the assessee has explained that the cash deposits were made out of gifts received from close relatives, sale proceeds of old car and agricultural income. Before the first appellate authority, the assessee had furnished further documentary evidence by way of

additional evidence. It is observed, the additional evidences furnished by the assessee were forwarded to the Assessing Officer for necessary verification and comment. In fact, from the observations made by learned Commissioner (Appeals) in paragraph 8.2 of the impugned order, it is evident, on repeated insistence of learned Commissioner (Appeals), the Assessing Officer ultimately furnished remand report on 02.04.2019 giving his observation on merits on the evidences submitted. The observations of the Assessing Officer in the remand report as regards the merits of the addition made are as under:

“In this regard, it is submitted that after perusal of the additional evidences, following observations have been made by the Assessing Officer: -

1. With regard to the cash gifts received from relatives, the assessee filed the gift deeds on plain paper earlier i.e. during the assessment proceedings. Presently, the assessee filed Affidavits wherein it has been mentioned that on different occasions and out of natural love and affection how these gifts in the form of cash were made by relatives to the assessee i.e. Sh. Brijesh Kumar Goswami. In addition to this, in the affidavit PAN numbers and Xerox copy of the I- D card have been furnished by whom gifts were made to the assessee. Therefore, after perusal of the same, it seems to be a genuine transactions aggregating to Rs.7,14,000/-.

2. With regard to the sale of car, during the assessment proceedings, the assessee merely filed the confirmation of the buyer named Sh. Mukesh Aggarwal, R/o B-410, Majlis Park, Delhi on plain paper. Presently, the assessee filed the copy of the Registration certificate of the car sold to Mr. Mukesh Aggarwal wherein it has been mentioned that the assessee sold the car sold to Mr. Mukesh on 29.10.2009. In addition to this, the assessee filed the Aadhar card copy of the Mr. Mukesh Aggarwal. From the perusal of the same, it appears to be a genuine transaction aggregating to Rs.3,00,000/-.

3. *With regard to the Agricultural income, during the assessment proceedings, the assessee could not file any documentary evidence with respect to the agricultural income to the tune of Rs.4,68,500/-. Presently, the assessee filed the invoice copy of sale proceeds of the agricultural products wherein it has been mentioned that the assessee i.e. Sh. Brijesh Kumar Goswami made transactions in the agricultural products and paid agricultural fees upon it.*

Keeping in view the above facts and in reference to the captioned subject, a requisite report is being submitted to your good self. This is for your kind information and necessary action at your end.”

4. A perusal of the remand report furnished by the Assessing Officer would reveal that, more or less, he has accepted the genuineness of the gift transaction, consideration received from sale of car as well as agricultural income. Surprisingly, while deciding the issue, learned Commissioner (Appeals) has not only refused to admit the additional evidences but also ignored the remand report of the Assessing Officer. I fail to understand the aforesaid approach of learned Commissioner (Appeals). On one hand, learned Commissioner (Appeals) has forwarded the additional evidences for examination by the Assessing Officer and has insisted upon him to furnish a report on merits. When the Assessing Officer furnished his reports on merits, only because it was favourable to the assessee, learned Commissioner (Appeals), as it appears, has ignored the report. This, in my view, is wholly unjustified. Once, the evidences were forwarded to the Assessing

Officer for examination and report was called for, learned Commissioner (Appeals) should not have declined to consider the evidences under Rule 46A. Thus, I am unable to uphold the decision of learned Commissioner (Appeals) on the issue. As observed earlier, in the remand report the Assessing Officer has accepted the source of cash deposits. Therefore, in my considered opinion, there is no reason to sustain the addition. Accordingly, I direct the Assessing Officer to delete the addition of Rs.16,13,500/-

5. In the result, the appeal is allowed.

Order pronounced in the open court on 11th August, 2022

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated:.11th August, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi