

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

SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.281/Del/2022
Assessment Year: 2012-13

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|---|------------|------------------------------|
| Naresh Batra, House No. 199/28, 2 nd Floor, Gali No.4, Jyoti Park, Near Ashirvad Marriage Lown, Gurgaon, Hr. PIN:122001 | Vs. | ITO, Ward-3(1), New Delhi |
| PAN :AOZPB9050Q | | |
| (Appellant) | | (Respondent) |

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| Appellant by | Ms. Sonia, CA |
| Respondent by | Shri Om Prakash, Sr. DR |

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| Date of hearing | 20.06.2022 |
| Date of pronouncement | .08.2022 |

ORDER

This is an appeal by the assessee against order dated 01.10.2021 passed by National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2012-13.

2. The grounds raised by assessee pertain to the issue of addition of Rs.11,91,000 as unexplained cash credit under Section 68 of the Income-Tax Act, 1961.

3. Briefly, the facts are that assessee is a resident individual. Upon receiving information that in the year under consideration, assessee had made cash deposits amounting to Rs.11,91,000 in a savings bank account maintained with Oriental Bank of Commerce, the assessing officer reopened the assessment under Section 147 of the Act. As observed by the assessing officer, though, in course of proceedings, notices were issued under Section 148 and 142(1) of the Act, however, there was no response from the assessee. Therefore, the assessing officer proceeded to complete the assessment ex parte, to the best of his judgment, by invoking the provisions of section 144 of the Act. While doing so, the assessing officer added back the amount of Rs.11,91,000 by treating it as unexplained cash credit under Section 68 of the Act.

4. Against the assessment order so passed, assessee preferred an appeal before learned Commissioner (Appeals). However, by the impugned order, the appeal was dismissed.

5. Before me, learned counsel appearing for the assessee submitted, no addition under Section 68 of the Act can be made on the basis of bank passbook/statement. He submitted, a credit entry appearing in the

books maintained by assessee, if remains unexplained, can be added under Section 68 of the Act. He submitted, since, bank passbook is not maintained by the assessee, it cannot be considered as assessee's books of account to invoke the provisions of section 68 of the Act. In support of such contention, he relied upon the following decisions:

- CIT vs. Ms. Mayawati [2011] 338 ITR 563 (Delhi High Court);
- Baladin ram vs. CIT [1969] 71 ITR 427 (Supreme Court);
- CIT vs. Bhaichand N. Gandhi [1983] 141 ITR 67 (Bombay High Court);
- Sh. Om Prakash vs. ITO, ITA No.1325/Del/2011, Date of decision: 11.08.2016 (Delhi – Trib.);
- Amitabh Bansal vs. ITO [2019] 175 ITD 401 (Delhi – Trib.); &
- Dr. Vishan Swqaroop Gupta, vs. ITO, ITA No. 13/JP/2020, Date of decision: 28.01.2021.

6. Without prejudice, he submitted, assessee is running a cyber cafe. He submitted, assessee was sanctioned loan of Rs.12,00,000, which was disbursed to assessee during the financial year 2010-11. He submitted, since, assessee could not utilize the loan for the purpose for which it was availed, assessee deposited in the bank account and periodically made cash withdrawals. He submitted, ultimately the entire loan was repaid along with interest on 19.11.2011. Thus, he

submitted, the source of cash deposit in the bank account stands fully explained. Thus, he submitted, the addition made should be deleted.

7. Learned Departmental Representative strongly relied upon the observations of learned Commissioner (Appeals).

8. I have considered rival submissions and perused the material available on record. On a perusal of material on record, particularly, the loan account statement as well as saving bank account statement, it is observed that the source of cash deposits in the bank account is out of the phase wise disbursement of housing loan availed by the assessee. This is clearly discernible from the bank statement, as, disbursement of loan amount corresponds to the deposits appearing in the bank statement. It is also a fact on record that the assessee has repaid the loan amount. In fact, the observations of learned Commissioner (Appeals) in paragraph 7.2 of the impugned order would make it clear that he has not disputed the aforesaid factual position. The only doubt/suspicion raised by learned Commissioner (Appeals) is with regard to the purpose of cash withdrawals from the bank account. This, in my view, is totally irrelevant. When purpose of reopening of assessment is deposits made in bank account, then, what

is required to be examined is, whether the source of cash deposits is properly explained by assessee or not. In the facts of the present case, undisputedly, the source of cash deposits in the bank account stands clearly explained. Therefore, there cannot be any addition of the cash deposits made in the bank account. The regular cash withdrawal made by the assessee from the bank account is of no relevance when the deposits in the bank account stands explained. Accordingly, I delete the addition of Rs.11,91,000. Grounds are allowed.

9. In the result, the appeal is allowed.

Order pronounced in the open court on August, 2022.

**(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: August, 2022.
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

| Sl. No. | Particulars | Date |
|----------------|--|-------------|
| 1. | Date of dictation (Order drafted through Dragon software): | 18.08.2022 |
| 2. | Date on which the draft of order is placed before the Dictating Member: | 22.08.2022 |
| 3. | Date on which the draft of order is placed before the other Member: | |
| 4. | Date on which the approved draft of order comes to the Sr. PS/PS: | 25.08.2022 |
| 5. | Date of which the fair order is placed before the Dictating Member for pronouncement: | 25.08.2022 |
| 6. | Date on which the final order received after having been signed/pronounced by the Members: | 26.08.2022 |
| 7. | Date on which the final order is uploaded on the website of ITAT: | 29.08.2022 |
| 8. | Date on which the file goes to the Bench Clerk | 29.08.2022 |
| 9. | Date on which files goes to the Head Clerk: | |
| 10. | Date on which file goes to the Assistant Registrar for signature on the order: | |
| 11. | Date of dispatch of order: | |