

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.157/Asr/2022
Assessment Year: 2017-18**

Smt. Sandeep Kaur W/o Sh. Sukhpal Singh, Virk Khera, Tehsil, Malout. [PAN: EKSPK8078N] (Appellant)	Vs.	ITO, Ward-2(5), Muktsar. (Respondent)
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Appellant by	Sh. Sudhir Sehgal, Adv.
Respondent by	Ms. Amanpreet Kaur, Sr.DR

Date of Hearing	28.09.2022
Date of Pronouncement	12.10.2022

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax(Appeals),NFAC, Delhi, [in brevity the CIT(A)] bearing appeal No.DIN & Order No.ITBA/NFAC/S/250/2022-23/1043468320(1), date of order 17.06.2022, the order passed u/s 250 of the Income Tax Act 1961, [in

brevity the Act] for A.Y. 2017-18. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward 2(5), Muktsar, (in brevity the AO) order passed u/s 144 of the Act date of order 03.12.2019. The assessee has raised the following grounds:

“1. That the Ld.CIT(A) has erred on facts and Law in confirming the action of the Assessing Officer of assessing the income of the assessee at Rs. 10,65,000 + 3,00,000 (A.1) by the order u/s 250 dated 17.06.2022, despite the fact that the assessee had made a request for adjournment and sought time upto the 30th of June 2022, for which, the adjournment letter was filed on 30.05.2022.

2. That prior to above date, the assessee was prevented by sufficient and reasonable cause on account of COVID-19, the husband of the assessee was suffering from ‘Dengue fever’ and also on account of some technical glitches of the new e-portal and, thus, the assessee was prevented by sufficient and reasonable case in not complying with the requisite requirement on the appointed date.

3. Notwithstanding the above said fact, the Ld. Assessing Officer have failed to appreciate that the amount deposited in the bank account was out of income from agricultural land, for which, evidences in the shape of Jamabandi and Girdawari had been filed

before the CIT(A) that the land was subject to cultivation and, thus, non acceptance of that documentary evidence by the Ld. CIT(A) is against the facts and circumstances of the case.

4. *That the Ld. CIT(A) has erred in not mentioning that no evidence was filed in respect of cultivation of land as the necessary evidence in the shape of Girdavari had been submitted to the CIT(A).*

5. *That the Ld. CIT(A) has also erred in not giving the benefit of Rs. 2,50,000/- as per the notification of CBDT Instruction No. 03/2017, dated 21.02.2017 that no verification is required in the case of cash deposits by the individual during demonetization period upto Rs. 2,50,000/- .*

6. *That the Ld. CIT(A) has erred on facts and law in confirming the action of the Assessing Officer of treating the amount of Rs. 10,65,000/- as deposited in the Bank Account of assessee as deemed income u/s 69A and invoking the provisions of section 115BBE to charge the tax on the same.*

7. *That the appellant craves leave to add, amend or alter any grounds of appeal before the appeal is finally heard or disposed off.”*

2. The brief fact of the case is that the assessee deposited cash during demonetisation period, in following manners with date and amounts are reflected in the chart below:

Date	Amount
28.11.2016	Rs.,5,35,000/-
28.11.2016	Rs.3,25,000/-
28.11.2016	Rs.4,18,000/-
Total	12,78,000/-

The said cash was deposited in the bank account of the assessee. The assessee was asked for the explanation and the source was explained by the assessee before the Id. AO. The Id. AO accepted Rs.2,15,000/- as deemed deposit. So, the balance amount Rs.10,65,000/- {Rs.12,78,000/- (-) Rs.2,15,000/-} was taken as unexplained cash deposit in the bank account and added back with the total income of the assessee u/s 69A of the Act. Also, Rs.3 lac was calculated for agricultural income @ 50,000/- per acre total for 6 acre which is worked out to Rs.3 lac. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO.

3. Aggrieved assessee filed an appeal before us.
4. The Id. Counsel for the assessee, Mr. Sudhir Sehgal, vehemently argued and pointed out the para 2.3 of the appellate order which the assessee has explained the source of cash deposit. The relevant para of the order of the Id. CIT(A) is extracted as below:

“2.3 In response to this notice, assessee filed her submissions alongwith copy of her bank account and Jamabandi. Relevant extract of her submissions is reproduced hereunder:

With reference to the above, it is submitted that the assessee is an agriculturist. The assessee has 12.5 Killa of agricultural land situated at Villlage Karamgarh. The assessee main source of income is agricultural income and past savings. Copy of Jamabandi of Agricultural land is attached herewith. The assessee has taken agricultural limit from Bank of India Rs.491000/- against the agricultural land. The assessee has taken gold loan from HDFC Bank Rs.215000/- on 25/10/2016. The assessee has withdrawal Rs.421000/- on 17/07/2015 5. Rs.225000/- withdrawal 28/04/2010 from Bank of India. Copy of Bank account attached herewith.

Assessee in her submissions has claimed to have 12.5 Acres of agricultural land whereas as per Jamabandi furnished by her, she is the owner of 6 Acre agricultural land only. In addition to this, she has not furnished any evidence of selling crops to earn her agricultural income. Further, she has maintained three limit accounts simultaneously reason best known to her but from the perusal of these accounts, it is clear that after availing limits from these accounts, she has never tried to settle her limit accounts whereas normally, limit accounts are settled after every six month at the end of crop season. From this fact it is clear that she had utilised the amounts of Rs.4,91,000/- and Rs.2,25,000/- somewhere else after withdrawing the same from her saving bank account after transferring the same from her limit account to saving account. Also, just after depositing the cash during demonetization period in her limit accounts, the assessee had transferred the same to her saving bank account on the very next day and subsequently, transferred the same to some Smt. Malkeet Kaur on the same day. However, it cannot be denied that withdrawal of Rs.2,15,000/- by the assessee against Gold Loan has

been made on 25.10.2016 which is very near to the date of cash deposit i.e. 28.11.2016 and probability of having this cash in hand can also not be denied. Therefore, source of cash deposits to the extent of Rs.2,15,000/- is deemed to be explained by the assessee. In this way, source of balance Rs.10,65,000/- have remained unexplained.”

4.1 Mr. Sehgal pointed out that the said deposit of cash is duly explained before the Id. CIT(A). the source of deposit is connected with withdrawal of cash from bank & agricultural income. As per the Board Circular, **CBDT, Instruction No. 03/2007 dated 21.02.2017** the cash amount of Rs.2,15,000/- can be retained by the Indian Woman and Rs.1,50,000/- for lady agriculturist. The total of cash in hand before depositing in bank account of the assessee was amount to Rs.14,16,000/-.

4.2. Mr. Sehgal had filed written submission with a brief synopsis which are kept in the record. The relevant part of the synopsis is extracted below for clear understanding of fact:

“3. Further, it is submitted that the confirmation of addition by the Ld. CIT(A) is not in order because as per CBDT Instructions, the benefit of cash of Rs. 2.50 lakh as per Instruction placed at pages 1 to 8 of Paper Book has

to be given to the housewife and whereas the lady is having agricultural income, more benefit could be given and such instructions are binding upon on all the Officers of Govt, under the charge of CBDT. This has been affirmed as per copy of the judgment of Agra Bench of Hon'ble ITAT, placed in the paper book at pages 66 to 76 and, thus, the benefit of minimum cash of Rs.2,50,000/- needs to be given, though since the lady is having agricultural income, total benefit of four lakhs be given.

4. *Further, it has been stated in the order that a sum of Rs. 4,91,000/- have been withdrawn on 17.07.2015 as per page 3 of Paper Book and Rs. 2,25,000/- on 28.04.2016 as per page 6 of Paper Book, which benefit ought to have been given for subsequent deposits. The Ld. Assessing Officer has summarily ignored this contention, that it might have been utilized somewhere, without realizing that heavy onus is upon the revenue where the assessee claims benefit of earlier cash available as in the present case and this issue is covered by the judgment of Jurisdictional High Court and Others as under: -*

i) Copy of Judgement in the case of Shiv Charan Dass Vs CIT reported in (1980) 126 ITR 0263. Placed at pages 9-12 of PB. There was a gap of available cash to the utilization was more than two years.

- ii) *Copy of judgment in the case of Shri Ravinder Singh Negi Vs DCIT, Circle6(1), Mohali in ITA No.811 & 812/Chd/2014, dated 08.11.2016. Placed at pages 13-28 of PB. (Substantial gap was there)*
- iii) *Copy of Judgement in the case of Income Tax Officer Vs Ashok Kumar Jain reported in [2015] 45 CCH 0163 Chd. Tri., dated 03.11.2015. Placed at pages 9-12 of PB.*
- iv) *Copy of Judgement in the case of ACIT Vs Joginder Paul in ITANo.734/Chd/2014 reported in [2015] 43 CCH 0382 Chd. Trib. Dated 12.01.2015. Placed at pages 34-39 of PB. (Gap of more than two years was there.)*
- v) *Copy of Judgement in the case of Baljit Singh Vs Income Tax Officer, Ward-3(2), Ludhiana reported in [2019] 108 taxmann.com 123 (Chandigarh Trib.), dated 03.07.2019. Placed at pages 40-44 of PB.*
- vi) *Copy of judgment in the case of Gordhan Vs ITO Ward-1 (2), Gurgaon in ITANo. 811 /Del/2015 for Assessment Year 2011-12. Placed at pages 45-49 of PB.*
5. *Copies of the judgments have been placed in the 'judgement set' separately filed. Thus, in nutshell on merits and after considering the above judgments, the assessee submits as under: -*

- a) *The availability of funds as per CBDT instructions Rs. 4,00,000/- to the housewife Rs. 2.5 lakh + Rs.150 lakh as the Lady is agriculturist.*
- b) *Amount of withdrawal on 17.07.2015 as per page-3Rs. 4,91,000/- of the Paper Book.*
- c) *Amount of withdrawal on 28.06.2016, as per page-2Rs. 2,25,000/- of the Paper Book.*
- d) *Agricultural Income as assessed by the AO. Rs.3,00,000/- (Though it should be Rs. 6 lakhs)*

Total Rs. 14,16,000/-

Thus, on the basis of facts as contained in the order of Assessing Officer/CIT(A) and records of assessee, each and everything is proved and the addition as (1bonfirmed by the CIT(A) be deleted.”

5. The ld. Sr. DR vehemently argued and informed that the assessee had not filed the ITR during this assessment year. The source of deposit was not properly explained before the ld. AO. So, the ld. Sr. DR relied on the order of the revenue authorities.

6. We heard the rival submission and relied on the documents available in the records. The ld. Counsel had agitated two issues, one is source of cash deposit in

the bank and the calculation of the tax by utilising the provision u/s 115BBE which was applied on the assessee for addition u/s 69. The Id. Counsel in submission explained the deposit of cash in four stage Rs.4 lac was deposited as per the instruction of the CBDT which the assessee is eligible to retain cash for her own purpose. Related to deposit of agricultural income, the assessee in both the stages submitted the Khasra Girdawari and copy of Jamabandi of agricultural land which are annexed in the **APB in page no. 9 to 16 and 17 to 19**. Related Rs. 4,91,000/- was withdrawn on 17.07.2015 and Rs.2,25,000/- was withdrawn on 28.04.2016 from Bank of India. The copy of the bank statement also attached in **page no. 2 to 6 of APB**. The assessee had also taken the gold loan and reflected in the bank account, also annexed in **page no. 7 to 8 of APB**. So, the entire amount was duly explained at source for depositing the cash in the bank account. The Id. Sr. DR was not strongly made any objection in relation to the fact of the cases which was duly explained by the assessee. The next issue of the assessee is related to implication of tax u/s 115BBE rws section 69. The Id. Counsel has respectfully referred the order of the Coordinate Bench of ITAT, Chandigarh, in the case of **Gandhi Ram Vs. PCIT ITA No. 121/Chd/2021 date of order 04.08.2022**. the observation of the bench in relevant para 8 page 10 is extracted as below:

“8. Firstly, how the Id PCIT has arrived at a conclusive finding that the discrepancies found, confronted and accepted by the assessee during the course of survey attract the deeming provisions of section 68, 69, 69A, 69B & 69C is not apparent from the impugned order. Merely stating that excess cash is clearly covered u/s 68 or 69A, excess stock is covered u/s 69 or 69B, construction of Shed/Godown is covered u/s 69B or 69C and advances made to Sundry Parties is covered u/s 69, 69B or 69D is like an open ended hypothesis which is not supported by any specific finding that the matter shall fall under which of the specific sections and how the conditions stated therein are satisfied before the said provisions are invoked. It is like laying a general rule, which to our mind is beyond the mandate of law, that wherever there is a survey and some income is detected or surrendered by the assessee, the deeming provisions are attracted by default and by virtue of the same, provisions of section 115BBE are attracted. The Id PCIT has to record his specific findings as to the applicability of the relevant provisions and how the explanation called for and offered by

the assessee is not acceptable in the facts of the present case which is clearly absent in the instant case. Therefore, where the Id PCIT himself is not clear about the applicability of relevant provisions and in the same breath holding the Assessing officer to task by not invoking the said provisions is clearly shooting in the dark which cannot be sustained in the eyes of law and the order so passed therefore cannot be held as erroneous in the eyes of law."

On thoughtful consideration, the implication of Section 115BBE is not relevant for the assessee.

6.1 The Id. Counsel had not pressed the ground no. 2. Accordingly, ground no. 1,3,4,5& 6 are allowed. Ground No. 7 is general in nature. Therefore, the addition amount of Rs.10,65,000/- is quashed.

7. In the result, the appeal bearing **ITA No. 157/Asr/2022** is allowed.

Order pronounced in the open court on 12.10.2022

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order