

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.273/Del/2020
Assessment Year: 2011-12

Sh. Deepak Gupta, C/o- Dinesh Mohan Sinha, Advocate, Office No.108, Plot no. 20, Parmesh Business Centre, Community Centre, Karkardooma, Delhi	Vs.	Income Tax Officer, Ward-58(2), Delhi
PAN :ALCPG7555R		
(Appellant)		(Respondent)

AND

ITA No.274/Del/2020
Assessment Year: 2012-13

Smt. Dipti Gupta, C/o- Dinesh Mohan Sinha, Advocate, Office No.108, Plot no. 20, Parmesh Business Centre, Community Centre, Karkardooma, Delhi	Vs.	Income Tax Officer, Ward-58(2), Delhi
PAN :AINPG3153B		
(Appellant)		(Respondent)

Appellant by	Sh. D.M. Sinha, Advocate
Respondent by	Sh. Om Parkash, Sr. DR

Date of hearing	26.07.2022
Date of pronouncement	21.10.2022

ORDER

Captioned appeals are by two different assessees against two separate orders of learned Commissioner of Income Tax (Appeals)-35, New Delhi. ITA No. 273/Del/2020 filed by Sh. Deepak Gupta relates to assessment year 2011-12, whereas, ITA No. 274/Del/2020 filed by Smt. Dipti Gupta relates to assessment year 2012-13.

2. Since, the facts and issues involved in both the appeals are identical, they are taken up together for disposal.

3. Briefly the facts are, the assessees are resident individuals. For the relevant assessment years, neither of the assessees filed return of income under section 139(1) of the Income-tax Act, 1961 (for short 'the Act'). Basis AIR/NMS information available on record, the Assessing Officer found that in the previous year corresponding to the assessment years under dispute, both the assessees have deposited cash in their bank accounts. Based on such information, the Assessing Officer reopened assessments under section 147 of the Act in respect of both the assessees. In response to notice issued under section 148 of the Act, the concerned assessees filed their respective returns of income. In

course of assessment proceedings, the Assessing Officer called upon the assessee to explain the source of cash deposits. In response to the query raised by the Assessing Officer, both the assessee submitted that the cash deposits were made out of cash withdrawal, opening cash in hand and business receipts. However, the Assessing Officer was not impressed with the submissions of the assessee. Nevertheless, noticing that there are continuous cash deposits and withdrawals in the bank accounts, the Assessing Officer observed that the entire cash deposits cannot be added but addition has to be made on peak basis. Accordingly, he added an amount of Rs.3,09,358/- in case of Sh. Deepak Gupta and an amount of Rs.3,00,111/- in case of Smt. Dipti Gupta. Though, appeals were filed contesting the aforesaid additions, however, learned first appellate authority upheld the additions.

4. I have considered rival submissions and perused the materials on record. Undisputedly, the disputed additions have been made by treating a part of the cash deposits made in the bank accounts as unexplained. However, perusal of material on record reveals that both the assessee have offered income from business on presumptive basis under section 44AD of the Act. It

is noticeable, while Sh. Deepak Gupta has a turnover of Rs.14,03,500/- from business, Smt. Dipti Gupta had a turnover of more than Rs.15 lakhs. The fact that both the assesseees were carrying on business have not been doubted by the departmental authorities. Further, assesseees are also involved in share transaction. In fact, the Assessing Officer himself has observed that there are continuous withdrawals and deposits in the bank accounts. The aforesaid observation of the Assessing Officer is suggestive of the fact that the receipts from business activity and share transaction are being rolled over for this specific purpose. Therefore, assesseees' claim that the deposits in the bank accounts were out of business activities cannot be ruled out. In fact, the Assessing Officer himself has partly accepted the claim and has made additions on peak basis. In my view, considering the business turnover of both the assesseees, the source of cash deposits in the bank accounts stand explained. Therefore, the additions made even on peak basis cannot survive. Accordingly, I delete the additions made in case of both the assesseees, referred to hereinbefore.

5. In view of my decision on merits, as above, the legal grounds raised by the assessee having become academic are not required to be adjudicated.

6. In the result, appeals are partly allowed, as indicated above.

Order pronounced in the open court on 21st October, 2022

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 21st October, 2022.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi