

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

**BEFORE
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.201/Del/2020
Asstt. Year : 2010-11

Parasmani (Trust) WZ, A/88, Krishna Park Extn. New Delhi – 110 018 PAN AAATP9800F (Appellant)	Vs.	ITO(E), Ward 2(4) New Delhi. (Respondent)
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Assessee by:	Shri K.P. Ganguli, Advocate
Department by :	Shri Om Prakash, Sr. DR
Date of Hearing	23.08.2022
Date of pronouncement	14.11.2022

ORDER

This is an appeal by the assessee against order dated 15.11.2019 of learned Commissioner of Income Tax (Appeals)-40, Delhi, for the assessment year 2010-11.

2. The dispute in the present appeal is confined to addition of Rs. 9,00,000/- representing cash deposits made in the bank account. Of course, the assessee has also raised grounds challenging the validity of reopening of assessment under section 147 of the Act.

3. Briefly, the facts are the assessee is a trust having the status of Association of Person (AOP). For the assessment year under dispute, the assessee did not file any return of income under section 139(1) of the Act. However, based on information received indicating that in the year under consideration, the assessee had deposited cash in its bank account, the Assessing Officer reopened the assessment under section 147 of the Act. As alleged by the Assessing Officer, neither in response to notice issued under section 48 nor 142(1) of the Act, the assessee made any response. Therefore, Assessing Officer proceeded to complete the assessment to the best of his judgment by invoking the provision of section 144 of the Act. While doing so, he treated the cash deposits of Rs. 9,00,000/- in the bank account as unexplained cash credit under section 68 of the Act and added back to the income of the assessee. Further, by invoking the provisions of section 115BBE, he taxed the income @30%, Though, the assessee challenged the assessment order by filing an appeal before learned Commissioner (Appeals), however, the appeal was dismissed.

4. Before me, learned Counsel appearing for the assessee, on instruction, submitted that he does not want to press the legal

issues concerning the validity of reopening of assessment under section 147 of the Act and wants to contest the addition on merit. In view of the aforesaid submission of learned Counsel for the assessee, the grounds raised challenging the validity of reopening of assessment under section 147 of the Act are dismissed as not pressed.

5. As regards the merits of the issue, learned Counsel submitted that the Assessing Officer treated the cash deposits in the bank account as unexplained cash credit under section 68 of the Act. However, learned Commissioner (Appeals) while deciding the appeal has unilaterally changed the provision to section 69A of the Act while confirming the addition. He submitted, the first appellate authority has no such power to make the addition under a provision other than the provision under which the Assessing Officer has made the addition. In support of such contention, learned Counsel relied upon the following decisions:-

- i) Toffee Agricultural Farms Pvt. Ltd. vs. ITO(2022) 95 ITR (Trib) 74 (Delhi)
- ii) CIT vs Aar Pee Apartments (P.) Ltd. 319 ITR 276

6. Ld. Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

7. I have considered rival submissions and perused the material available on record. Undoubtedly, the addition in dispute represents the cash deposit made in the bank account. On perusal of the impugned assessment order, it is very much clear that while making the addition of the cash deposit, the Assessing Officer has treated it as unexplained cash credit under section 68 of the Act. Whereas, while deciding assessee's appeal learned Commissioner (Appeals), though, has accepted assessee's contention that the addition can not be made under section 68 of the Act, however, he made the addition under section 69A of the Act. On a reading of section 68 as well as 69A of the Act, it becomes very much clear, while section 68 speaks of any sum found credited in the books of assessee in a particular year the source of which cannot be explained can be treated as unexplained cash credit, section 69A speaks of a situation where the assessee is found to be the owner of any money, bullion, jewellery or other valuable article which is not recorded in the books of accounts maintained for any source of income and the

assessee offers no explanation regarding the nature and source of such money, bullion etc. then it shall be deemed to be the income of the assessee. Thus, the conditions and situations for applicability of section 68 and section 69A of the Act are different. Therefore, unless the conditions of the specific provision are fulfilled, no addition can be made. In the facts of the present appeal, the first appellate authority has accepted that conditions of section 68 of the Act are not fulfilled. That being the position, he should have deleted the addition. Instead of doing so, he has confirmed the addition under section 69A of the Act without providing an opportunity to the assessee to explain whether the conditions of section 69A are attracted or not. Further, as per the decision of the Hon'ble Jurisdictional High Court in CIT vs. Aar Pee Apartments (P.) Ltd., when the scope and ambit of the two separate provisions are altogether different, the addition cannot be changed to another provision. Following the aforesaid decision of the Hon'ble Jurisdictional High Court, the coordinate bench in the case of Toffee Agricultural farms Pvt. Ltd. vs. ITO (supra) had expressed the view that the first appellate authority unilaterally has no power to change the section under which the Assessing Officer has assessed an item of income. Thus, respectfully

following the ratio laid down in these decisions, I hold that the addition made confirmed under section 69A of the Act deserves to be deleted. Accordingly I do so.

8. In the result the appeal of the assessee is allowed.

**Order pronounced in the open court on 14th
November, 2022.**

**sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 14/11/2022

Veena

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	