

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

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.1252/Del./2022
(ASSESSMENT YEAR : 2017-18)**

Shashi Garg, Shakti Nagar, Near Luxmi Cinema, Narwana – 126 116 (Haryana). (PAN : AFFPG4898E) (APPELLANT)	vs.	ITO, Ward 1, Jind. (RESPONDENT)
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ASSESSEE BY : None
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 07.11.2022
Date of Order : 15.11.2022

ORDER

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre (NFAC) dated 31.03.2022 for the assessment year 2017-18.

2. The grounds of appeal read as under :-

“1. That the order of learned CIT (A) is bad in law, against facts of the case and equity.

2. That on the facts and in the circumstances of the case and in law, learned CIT (A) erred in dismissing the appeal of appellant without providing adequate opportunity and against the law of natural justice.

3. That on the facts and in the circumstances of the case and in law, learned CIT (A) erred in dismissing the appeal of appellant by passing best judgement order in complete disregard to the information and documents available in his record.

4. That on the facts and in the circumstances of the case and in law, Id CIT(A) erred in sustaining the action of AO in making addition of Rs.75000/- without appreciating that the assessment was made on the basis of unrealistic assumptions, conjectures and surmises and without considering the genuine source of funds as explained by the appellant.”

3. In this case, Assessing Officer made addition of Rs.75,000/- on account of cash deposited in the bank. Assessee in his explanation submitted that assessee has withdrawn cash on 05.11.2016. During the course of assessment proceedings, AO asked the assessee to explain the following :-

“You have stated that following case was withdrawn from the bank on 05.11.2016 :-

1000 x 200 = 200000/-
500 x 2500 = 1250000/-
100 x 500 = 50000/-

You have stated that same cash was redeposited in the bank account on 10.11.2016 whereas you have made cash deposit of Rs.15,00,000/- as per details given below :-

1000 x 110 = 1100000/-
500 x 800 = 400000/-

Please explain the position.”

4. AO noted that no compliance was done to the above. AO proceeded to compute the unexplained cash deposit of Rs.75,000/- as unexplained by holding as under :-

“5. From all these facts, it is clear that the assessee has failed to prove the fact that the same cash was redeposited in the bank account on 10.11.2016. On 05.11.2016 the assessee has made

cash withdrawals of Rs.50,000/- in 100 rupee notes, which has also been shown as redeposited in old currency. Thus, the assessee has deposited Rs.50,000/- from undisclosed sources in old currency. The source of income of the assessee is only rental income and interest from saving bank and interest from parties. The assessee has also shown cash deposited of Rs.25,000/- during years. In view of the nature of source of income, the assessee was not having cash-in-hand after meeting out the household expenses. Thus, the unexplained cash deposit comes to Rs.75,000/- (50000+25000). The assessee has failed to furnish any explanation with supporting documentary evidence regarding the source of deposits made. Thus, the assessee has failed to discharge his onus. Silence on the part of the assessee goes to suggest and establish that the assessee has admitted the facts of depositing cash from undisclosed sources.

6. Therefore, in view of all the facts and circumstances of the case and non-cooperative attitude of the assessee, and being time limitation proceedings, I have left with no alternative or option but to treat the amount of Rs.75,000/- as income from undisclosed sources, which was deposited in the bank account and the same is treated as unexplained cash deposit u/s 69A of the Income-tax Act, 1961. The tax will be charged on the assessed income as per provision of section 115BBE of the Income-tax Act, 1961. Thus, being satisfy that the assessee has deposited unaccounted cash as well as one money u/s 69A of the Act, to the tune of Rs.75.000/-, therefore, penalty proceedings u/s 271AAC(1) of the Income-tax Act, 1961, are being initiated separately alongwith penalty notice u/s 274 read with section 271AAC(1) of the Income-tax Act, 1961.”

5. Upon assessee’s appeal, ld. CIT (A) noted the AO’s order and thereafter he held that he has given several opportunities but assessee has not tuned up. That he has given careful consideration and sufficient opportunities to the assessee and the sum of Rs.75,000/- remained unexplained wherein ld. CIT (A) took great emphasis that assessee has not appeared before him and sustained the order of AO.

6. Against this order, assessee filed an appeal before us. We have heard ld. DR for the Revenue and perused the records. None appeared on behalf of the assessee despite several notices which have been returned unserved.

7. Upon careful consideration, we note that assessee has duly explained before the AO that amount withdrawn from the bank was redeposited after a lapse of very few days in the same bank. In my considered opinion, authorities below are not justified in disallowing the small sum of Rs.75,000/-. Ld. CIT (A) in fact has not applied any mind and he has only harped upon that the assessee had not appeared before him. The assessee had sufficient income and has duly withdrawn the amount from the bank and the same was redeposited. Hence, in my considered opinion, orders of the authorities below are not sustainable and accordingly, the same are set aside and the issue is decided in favour of the assessee.

8. In the result, the assessee's appeal stands allowed.

Order pronounced in the open court on this 15th day of November, 2022.

**SD/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 15TH day of November, 2022
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.