

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.23/DEL/2022
[Assessment Year: 2018-19]**

Smt. Shivani, House Number-4, Krishna Garden, Ganga Nagar, Meerut-250001	Vs	DCIT, Central Circle, Ghaziabad, Uttar Pradesh
PAN-DSGPS6952E		
Assessee		Revenue

Assessee by	Sh. Ajay Wadhwa, Adv. & Sh. Bharti Sharma, CA
Revenue by	Sh. Rajiv Kumar, Sr. DR

Date of Hearing	10.11.2022
Date of Pronouncement	23.11.2022

ORDER

This appeal by the assessee is directed against the order of the Ld. CIT(A)-Kanpur, dated 07.12.2021 pertaining to Assessment Year 2018-19.

2. Grounds of appeal read as under

"1. That on the facts and circumstances of the case and under the law, the Commissioner of Income Tax (Appeal) erred in confirming the amount of Rs. 8,00,000/- out of the total addition of Rs. 19,45,000/- made by the assessing officer to the income on the plea that this amount is may have been used for meeting house hold expenses. The addition is confirmed based on surmises, conjectures and on hypothetical reasonings, the same is bad in law.

2. That on the facts and in law and under the circumstances, the commissioner of Income Tax (Appeal) erred in observing that the house hold expenses are borne by the lady appellatant while the house hold expenses are withdrawn by the husband of the appellatant. The addition of Rs, 8,00,000/- is confirmed without considering fairly and judiciously the submissions made and evidence placed on record.

3. *That on the facts and circumstances of the case and in law, the commissioner of Income circumstances the Commissioner of Income Tax (Appeal) erred in confirming the action of the assessing officer to invoke the provisions of Section 115BBE on the addition of made in respect of alleged unexplained cash deposited in bank. The tax levied by invoking provisions of Section 115BBE is thus not only unreasonable but very excessive and without sufficient material and evidence on record.*

4. *That the penalty initiated under section 271 AAB(1 A) and thus interest charged under section 234A/B/C is thus illegal and bad in law.”*

3. Brief facts of the case are that there was a search and seizure operation u/s 132 of the Act was carried out on the premises of the assessee comprising of Ajay Kumar and other group of companies. In the return of income declared, income was Rs.12,68,180/-. The Assessing Officer noted that in the case of the assessee, there was certain cash deposits totalling Rs.19,45,000/- during the year under consideration. The assessee was asked to submit the details. From the details filed by the assessee, the Assessing Officer observed that during the period Financial Year 2016-17, amount of cash were withdrawn from the bank on different dates and total cash withdrawn was Rs.22,18,031/- out of which only Rs.2,03,960/- was declared as utilized during the year. Thus, total cash in hand as on 31.03.2017 was Rs.20,14,071/-. The assessee claimed that out of the amount of Rs.20,14,071/-, an amount of Rs.19,45,000/- was deposited in the Financial Year 2017-18. The Assessing Officer mentioned that this submission of the assessee is unbelievable and unrealistic and held that the deposits are unexplained. He added the same u/s 68 of the Act.

4. Against the above order, the assessee appealed before the Id. CIT(A).

5. The Ld. CIT(A) referred to the submissions and found it difficult to believe that the assessee had met day to day expenses by claiming that nominal amount. The Ld. CIT(A) on ad-hoc basis confirmed Rs.8,00,000/- and deleted Rs.11,45,000/-.

6. Against this order, the assessee is in appeal before the Tribunal.

7. I have heard both the parties and perused the record. The ld. counsel for the assessee submitted that this addition of deposits found in bank statement cannot be added u/s 68 of the Act as the assessee is not required to maintain books of account. He referred several case laws for the proposition that bank deposits discovered from bank statement, where books of account are not required to be maintained cannot be added u/s 68 of the Act. In any case, the Ld. Counsel for the assessee pleaded that the assessee has duly submitted the cash flow showing adequate cash available for deposits. He submitted that there is no basis according to which the Ld. CIT(A) arbitrarily sustained Rs.8 lakhs addition.

8. Per contra, the Ld. DR relied upon the orders of the authorities below.

9. Upon careful consideration, I find that the assessee has duly submitted the cash flow statement and cash balance adequate to cover the deposits was reflected therein. On the ground of inadequate withdrawal for personal purpose, the Assessing Officer did not give any credit and added entire deposit. However, the Ld. CIT(A) gave relief of Rs.11,45,000/- and sustained the addition of Rs.8,00,000/- on ad-hoc basis. Upon careful consideration, I find that as regards merit of the cash flow,

adequate cash flow was available for deposits in the bank account. Hence, the assessee deserves to succeed on this count that there was available cash withdrawal from earlier period which is sufficient to cover the deposit amount. The Ld. CIT(A) has been totally arbitrary in allowing Rs.11,45,000/- and sustaining Rs.8,00,000/- lakh without any basis. Hence, in my considered opinion, the assessee deserves to succeed on this count only and in my considered opinion that the cash flow statement submitted which has been duly recognised by the Ld. CIT(A) also is covering the cash deposits in the bank account. The authorities below have made part disallowance only on presumption about the personal expenses of the assessee, which is totally based on surmises and cannot be sustained. Hence, I set-aside the order of the Ld. CIT(A) and decide the issue in favour of the assessee. Hence, the balance Rs.8,00,000/- deserves to be deleted.

10. Since, I have decided the issue in favour of the assessee, the jurisdictional ground raised by the ld. counsel for the assessee that since the assessee is not required to maintain books of account, the cash deposit found in the bank statement cannot be added u/s 68 of the Act is now only of academic interest, hence, I am not engaging in the same.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 23rd November, 2022.

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Delhi: 23.11.2022.

Shekhar,

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi