

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.25/DEL/2022
[Assessment Year: 2018-19]**

Smt. Deepa House Number-4, Krishna Garden, Ganga Nagar, Meerut-250001	Vs	DCIT, Central Circle, Ghaziabad, Uttar Pradesh
PAN-BFGPD3230K		
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	.11.2022

ORDER

This appeal by the assessee is directed against the order of the Ld. CIT(A)-Kanpur, dated 12.11.2021 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)-4, Kanpur erred in confirming the addition of Rs. 7,00,000/- made to the income of the appellant for cash deposited in bank, without considering evidence fairly. The addition made and confirmed by the Commissioner of Income Tax (Appeal) is based on surmises, conjectures and on hypothetical observations, the same is bad in law.

2. That on the facts and circumstances of the case and under law, the Commissioner of Income Tax (Appeal)-4, Kanpur erred in confirming the action of the assessing officer to make addition and consequently invoking provisions of section 115BBE to charge tax thereon and the same is unjustified, illegal, unwarranted and bad in law.

3. That the penalty initiated under section 271AAB(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. The assessee filed return of income of Rs.12,65,200/-. The assessee was deriving income from other sources only. The Assessing Officer noted that the assessee made total cash deposit of Rs.7,00,000/- lakh during the year. The Assessing Officer was of the opinion that the assessee has failed to explain the source of cash deposit and he made the addition of entire Rs.7,00,000/- lakh u/s 68 of the Act.

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

5. Before the Ld. CIT(A), the assessee submitted that she has given the necessary details. The Ld. CIT(A) noted that the assessee in the said detail, she has shown opening cash balance of Rs.10,13,587/-and withdrawal shown was Rs.84,000/- and the deposits has been explained from this figure. The Ld. CIT(A) was of the opinion that the assessee has only showing Rs.60,000/- withdrawal for the house hold expenses in FY 2017-18, therefore, he held that opening balance of FY 2018-19 cannot be accepted as source of deposits. The Ld. CIT(A) proceeded to confirm the addition.

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

7. We 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 to 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 confirmed the 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 was adequate to cover the deposits was reflected therein. The Revenue authorities have disallowed on the ground on account of inadequate withdrawal for personal purpose. The Assessing Officer did not give any credit of the balances and added entire deposit. As regards merits of the case, I note that the assessee has shown opening balance of Rs.10,13,587/-. The accumulation of the deposits was explained from earlier cash flow. Revenue is disbelieving the same only because of withdrawal of Rs.60,000/- has not been accepted insufficient and it is also be noted that in AY 2017-18, credit of Rs.2,00,000/- have been given out of Rs.10,13,587/-. I find that it is simple arithmetic that even after giving credit of Rs.2,00,000/- out of Rs.10,13,587/- sufficient amount remains for deposit of Rs.7,00,000/- in the bank account and there is further remaining amount to take care of personal expenses. Moreover, the

income returned is Rs.12,65,200/-. Hence, in my considered opinion, the addition has been made on surmises and conjectures and the same cannot be sustained. Hence, I set-aside the orders of the authorities below.

10. Since, I have decided the issue in favour of the assessee, the jurisdictional ground raised by the ld. counsel for the assessee that the assessee is not required to maintain books of account, hence, 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.

Shetkar,

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi