

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.1807/Del/2016

निर्धारणवर्ष/Assessment Year: 2009-10

Saroj Gupta W/o late Bimal Kumar Gupta, R/o F-104-10, Laxmi Nagar, Delhi.	बनाम Vs.	ITO Ward 69(1) New Delhi.
PAN No. AAEPG1897M		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Shashank Jain, CA
राजस्वकीओरसे /Revenue by	Shri Om Prakash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	19.10.2022
उद्घोषणाकीतारीख/Pronouncement on	16.01.2023

**आदेश /O R D E R**

This appeal is filed by the assessee against the order of Id. Commissioner of Income Tax (Appeals)-21, New Delhi dated 21.01.2016 for the assessment year 2009-10. Assessee has raised the following grounds: -

1. *"That in view of submissions/documents/explanation submitted by the assessee during the assessment proceedings not considered by the Assessing Officer and consequently assessment so framed and sustained by the order of Id CIT (Appeals) is not tenable on facts and bad in law.*
2. *That in view of no show cause notice issued by the assessing Officer before making the additions to returned income, consequently assessment so framed and sustained the order of Id CIT (Appeals) is not tenable on facts and bad in law.*
3. *That in view of contradictions in the assessment so framed the assessment order so framed mechanically and without*

*application of mind on the basis of invalid assumptions/ prejudices is bad in law and consequently order of Id. CIT (Appeals) as sustained in not tenable on facts and in law.*

4. *That the unlawful additions, of Rs.13,79,600- being cash deposit and cash payments which is truly supported by Income and cash book submitted , made by the assessing Officer and sustained by Id CIT (Appeals) in his assessment order is unjust, unwarranted and unsustainable on facts and law.”*

2. The Ld. Counsel at the outset submits that the Assessing Officer in the course of assessment proceedings did not examine the evidences furnished before him. The Ld. Counsel submits that the Ld.CIT(A) also overlooked the documents furnished by the assessee. In the written arguments the assessee submitted as under:

*“Ground-1 That in view of submissions/documents/explanations submitted by the assessee during the assessment proceedings not considered by the Assessing Officer and consequently assessment so framed and sustained by the order of Id CIT (Appeals) is not tenable on facts and bad in law.*

*Our Reply:*

*1.1 During the course of assessment proceedings the assessee has submitted her submissions/documents/explanations through 4 letters as under:*

1. *Dt. 10/10/2011 (paper book page no. 5-31)*
2. *Dt. 24/11/2011 (paper book page no. 32-47)*
3. *Dt. 12/12/2011 (paper book page no. 48-50)*
4. *Dt. 26/12/2011 (paper book page no. 68-69)*

*1.2 The assessee had submitted the following submissions/documents/explanations besides the routine documents:*

1. *Explanation letter for Cash Deposit into Bank ( paper book page no. 46)*

2. *Credit Card statements (paper book page no. 35-45) and summary of credit card payment (paper book page no. 47)*
3. *Revised Computation of income (paper book page no. 8)*
4. *Details of Money received from Members/relatives/friends (Gift u/s 56(1)(vii) (paper book page no. 53)*
5. *Other documentary evidence of the expenses claimed. (paper book page no. 54- 63)*
6. *Affidavit duly notarized ( paper book page no. 64-66)*
7. *Death Certificate of Husband of the assessee Late Bimal Kumar Gupta (paper book page no. 67)*
8. *Cash Book showing the peak balance. (paper book page no. 70-86)*
9. *Confirmation Recd from friends and relatives regarding gift (paper book page no.87-105)*

*1.3 While framing the assessment order the Ld AO has erred in considering the submissions/documents/explanations submitted by the assessee during the assessment proceedings.*

*1.3.1 In the assessment order the Ld AO has mentioned only regarding the reply dated 12/12/2011 (erroneously mentioned as 12/12/2010) in the assessment order). There is no mention of other letters and submissions/documents/explanations filed therewith. Even in respect of letter dated 12/12/2011 as mentioned supra the Ld AO has erred in examining in details the submissions/documents/explanations submitted by the assessee.*

*1.3.2 In respect of Details of Money received from Members/relatives/friends (Gift exempt u/s 56(l)(vi)/(vii) ( paper book page no. 53) the assessee has submitted the name /address / relation of the donar with assessee and the amount received which was not examined by the Ld AO along with the circumstances of the gift received as mentioned by the assessee.*

*1.3.3 Similarly in respect of cash received of Rs. 3,85,000/- from the belongings of the Husband of the assessee Late Bimal Kumar Gupta on his unfortunate death in Road accident in Goa*

*the Ld AO has erred in appreciating the circumstances under which the assessee has received the cash are exempt u/s 56(l)(vi)/(vii).*

*1.3.4 Vide letter dated 26-12-2011 (paper book page no. 68-89) the assessee had submitted :*

- 1. Cash Book showing the peak balance. (paper book page no. 70-86)*
- 2. Confirmation Reed from friends and relatives regarding gift (paper book page no. 87-105).*

*The Ld. AO has erred in examining the above submissions/documents/explanations. It is pertinent to note that the assessee has submitted the cash book containing date wise all the details of cash receipts and payments but the Ld AO had erred in considering the cash book when the case is on account of cash deposit into bank.*

*In respect of confirmation Reed from friends and relatives regarding gift, the Ld. AO has erred in considering the submission which contains the name, address and PAN nos. (where available), relation with assessee and the amount given. AO has erred in appreciating the circumstances under which the assessee has received the cash.*

*Therefore in view of submissions/documents/explanations submitted by the assessee during the assessment proceedings not considered by the Assessing Officer and consequently assessment so framed and sustained by the order of Id CIT (Appeals) is not tenable on facts and bad in law and facts of the case. It is prayed that assessment Order so framed to be set aside."*

3. The Ld. Counsel submits that none of these documents were considered by the Assessing Officer while framing the assessment and, therefore, submitted that an opportunity may be given to the assessee to provide these documents before the Assessing Officer for his consideration.

4. The Ld. DR has no serious objection in remitting the assessment back to the file of the Assessing Officer for *denovo* assessment.

5. Considering the submissions of the assessee and the evidences placed on record the appeal is set aside to the file of the Assessing Officer and Assessing Officer is directed to frame fresh *denovo* assessment in accordance with law after providing adequate opportunity of being heard to the assessee. The assessee is at liberty to file the evidences in support of his contentions before the Ld. Assessing Officer.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16/01/2023

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Dated: 16.01.2023

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi