

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.5868/Del/2018

[Assessment Year : 2010-11]

Jitender Kumar, 805, Swarn Jayanti Society, Sector-54, Gurgaon -122002. PAN-AINPK6720E	vs	ITO, Ward-2(2), Gurgaon.
APPELLANT		RESPONDENT
Appellant by	Shri Dileep Phoolakot, Adv. & Shri Dinesh Kumar, CA	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	20.02.2023	
Date of Pronouncement	23.02.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2010-11 is directed against the order of Ld. CIT(A)-1, Gurgaon dated 29.06.2018.

2. The assessee has raised following grounds of appeal:-

1. *"That the Ld. CIT(A) has erred in confirming the additions of Rs.2,40,846/- estimating the expenses at 15% of the agriculture income, that was made on an ad hoc basis by the Ld. AO and the CIT(A) has not considered the explanation made on behalf of the assessee therefore the same is against the law so is liable to be deleted.*
2. *The Ld. CIT(A) has erred in confirming the additions of Rs.2,52,000/- on account of gift from appellant's wife, without appreciating the facts submitted before him the ignoring of the submission without repudiating them as such the addition so confirmed by him is illegal and so liable to be deleted.*
3. *The Ld. CIT(A) has erred in confirming the additions of Rs.2,20,000/- on account of gift from appellant's brother-in-law without appreciating the*

facts submitted before him the ignoring of the submission without repudiating them as such the addition so confirmed by him is illegal and so liable to be deleted.

4. *The Ld. CIT(A) has erred in confirming the additions of Rs.1,93,992/- on account of unexplained cash deposits without appreciating the facts submitted before him the ignoring of the submission without repudiating them as such the addition so confirmed by him is illegal and so liable to be deleted.*

5. *The appellant craves leave for addition, modification, alteration, amendment of any of the grounds of appeal.”*

3. Facts giving rise to the present appeal are that the Assessing Officer (“AO”) was having information regarding cash deposited by the assessee amounting to Rs.89,65,000/- in his saving bank account maintained with DCB Bank during the Financial Year 2009-10. The assessee had not filed any return of income. Therefore, the case of the assessee was re-opened u/s 147 of the Income Tax Act, 1961 (“the Act”). In response to notice issued u/s 148 of the Act, Ld. Authorized Representative (“AR”) of the assessee attended the proceedings and filed copy of return of income declaring income of Rs.1,33,932/- alongwith agricultural income of Rs.16,05,644/-. The AO during the course of assessment, called upon the assessee to explain the source of cash deposit. Further, during the course of assessment proceedings, the assessee claimed agricultural income. However, the AO accepted the earning of agricultural income but disallowed the expenditure @ 15% of the gross agricultural income amounting to Rs.2,40,846/-. Further, the AO made addition out of the gift claimed to have been received from the wife of the assessee, Smt. Sarita Devi i.e. Rs.2.52.000/-. He also made addition out of gift from brother-in-law, Shri Jagbir Singh amounting to Rs.2,21,000/-. Further, the AO made addition by disallowing claim of the assessee that the income of

Rs.3,70,000/- to be treated as source of cash deposits. The AO made addition of Rs.1,93,992/- being the unexplained cash deposits. Thus, he assessed total income at Rs.14,11,770/-.

4. Aggrieved against the order of AO, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee. Thereby, he deleted the addition of Rs.3,70,000/- and sustained the rest of the additions.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before the Tribunal.

6. Apropos to grounds of appeal, Ld. Counsel for the assessee submitted that the assessee had filed relevant evidences related to earning of agricultural income, receipt of gift and capability of the donor but the authorities below failed to consider the evidences. He submitted that no effective opportunity was given to the assessee. Ld. Counsel for the assessee took me through the Lease Deed, Gift Deed and cash flow statement. He contended that authorities below considered these evidences, there would not be any need to make addition.

7. On the other hand, Ld. Sr. DR relied upon the orders of the authorities below and supported the assessment order. He submitted that sufficient opportunity was given to the assessee.

8. I have heard Ld. Authorized Representatives of the parties and perused the material available on record. I find that apropos to impugned additions, the assessee has filed various evidences in the form of Lease Deed, Gift Deed, cash flow statement regarding cash withdrawals by the assessee and his wife.

Therefore, considering the totality of the facts, it would sub-serve the substantial interest of justice, if the matter is restored to the file of AO to verify the correctness of the claim of the assessee regarding capability of the donors in respect of the gifts and sale of agricultural products in cash. Hence, the order of the authorities below is set aside and the issues are restored to the file of AO to decide afresh after verifying the correctness of the claim of the assessee regarding expenditure related to earning of agricultural income and the capability of the donors to give gifts to the assessee. Thus, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 23rd February, 2023.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI