

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.1692/Del/2022  
Assessment Year: 2017-18

Smt. Mamta Gupta 100, Sector-19, Faridabad, Haryana 121002 <b>PAN AGYPG3143N</b>	vs.	ITO OSD-1 Faridabad
(Appellant)		(Respondent)

For Assessee :	Shri Suresh Kumar Gupta, CA
For Revenue :	Shri Om Prakash, Sr DR

Date of Hearing :	14.12.2022
Date of Pronouncement :	02.03.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

This appeal filed by the assessee is directed against the order dated 27.05.2022 of the Ld. NFAC, New Delhi, relating to Assessment Year 2017-18.

2. The grounds of appeal raised by the assessee read as under:-

1. The Ld. CIT(A) has erred both in law and in facts of the case in upholding the addition of Rs. 7,00,000/- which is not sustainable in law as the same has been made without identifying the precise section under which the above addition is covered.

2. The Ld. CIT(A) has erred both in law and in facts of the case in upholding the addition of Rs. 7,00,000/- ignoring the facts that the appellant has also duly explained the source of cash deposit during demonetization and no contrary finding has been made to evidences submitted by the appellant.

### **Ground No. 1**

3. The learned assessee representative (AR) submitted that the Ld. CIT(A) has reduce the addition made by the AO to Rs. 7 lakh u/s. 115BBE of the Act, on the ground that the cash has been deposited out of unexplained sources. The Ld. AR submitted that the section 115BBE is not a charging section but this section simply provides mechanism for levying of tax in a case there is addition made u/s. 68, 69, 69A, 69B, 69C and 69D of the Act. The Ld. AR submitted that no addition has been made either of these sections therefore the AO was not justified invoking levy of additional tax u/s. 115BBE of the Act. The Ld. AR relied on the judgement of co-ordinate Bench of Delhi in the case **Sudha Loylka**

**vs ITO, ITA No. 399/Del/2017** dated 18.07.2018 para 6 (i) at page 10 of the said order.

4. Replying to the above the Ld. Senior Departmental Representative strongly supported the orders of the authorities below and submitted that since no explanation was offered by the assessee before the authorities below therefore the AO was right in invoking provisions of section 115BBE of the Act.

5. On careful consideration of assessment order dated 04.12.2019 I observed that the AO has not mention any section under which additions have been in the hands of assessee and he merely mentioned that the cash has been deposited out of unexplained sources and same is added to the return income of assessee in terms of section 115BBE of the Act.

6. Further from the careful reading of findings recorded by the Ld. CIT(A) in para 5 it is also clear that the Ld. CIT(A) has not mentioned any section under which the addition has been confirmed. The co-ordinate Bench of ITAT Delhi in the case of

Sudha Loylka vs ITO (supra) in para 6(i) the Bench observed as follows:-

*i). It has not been mentioned either by AO or by Ld. CIT(A) as to under which section of the Income Tax Act, these closing credit balances appearing as on 31.03.2012 could be added. Therefore, non-mentioning the precise provision of law makes the impugned addition bad in law.*

## **Ground No. 2**

7. The Ld. AR submitted that there was sufficient rental income, tuition fee income and bank withdrawals totalling to Rs. 12,68,680/- in the hands of assessee. The Ld. AR further explained that out of said cash the assessee has deposited Rs. 12,10,000/- during demonetization and pre-demonetization period leaving closing balance as on 25.11.2016 of Rs. 58,680/-. The Ld. AR submitted that the opening cash was Rs. 2,74,580/- as on 01.04.2016 and after including rent and tuition fee receipt up to demonetization period and bank withdrawals up to demonetization period the assessee deposited amount of Rs. 12 lakh to her bank account out of which of Rs. 5 lakh has been allowed by the Ld. CIT(A). In addition to above facts it has also been contended by the

Ld. AR that the amount of opening cash, rent, tuition fee receipt up to demonetization period and cash withdrawals up to 25.11.2016 and copy of cash flow statement supports the aforesaid factual position and therefore no addition is called for in the hands of assessee therefore remaining addition of Rs. 7 lakh as upheld by the Ld. CIT(A) may kindly be deleted. He also relied on the judgment of Hon'ble jurisdictional High Court of Delhi in the case of **CIT vs Shri Kulwant Rai (2007) 291 ITR 36 (Del)**.

8. The Ld. Senior Departmental Representative strongly supported the orders of authorities below and submitted that the assessee could not explained the source of cash deposited to her bank account therefore the addition may kindly be confirmed.

9. On careful consideration of rival submissions, perusal of copy of computation of income, cash flow statement and copy of bank account statement clearly reveals that the assessee has shown rental income of Rs. 4,80,000/-, ULIP & tuition fee income of Rs. 1,92,000/- and has also earned interest from FDR and saving bank accounts and has declared gross total income of Rs. 6,31,510/- during A.Y. 2017-18. From the copy of cash flow statement shows

that the assessee has withdrawn cash from her bank account and has also received rental and tuition fee income. These facts have not been controverted by the AO or by the Ld. Senior Departmental Representative during argument before this bench. After considering the totality of the facts and circumstances I clearly note that undisputedly there was a opening cash of Rs. 2,74,580/- as on 01.04.2016, the assessee received rent of Rs. 3,20,000/-, tuition fee of Rs. 1,20,100/- and there were bank withdrawals of Rs. 5,54,000/- up to demonetization i.e. 25.11.2016. The said amounts comes to Rs. 12,68,680/- and the amount deposited by the assessee during pre-demonetization and during demonetization period was Rs. 12,10,000/- leaving the cash balance of Rs. 58,680/- as on 25.11.2016. These facts have not been controverted by the Ld. Senior Departmental Representative in any manner. Therefore in my consider opinion the addition of Rs. 7 lakh confirm by the Ld. CIT(A) is not sustainable under the said facts and circumstances as the assessee has successfully demonstrated the source of cash deposited by her to her bank account. Therefore the

grounds of assessee on merits are allowed and AO is directed to delete the addition.

9. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 02.03.2023.

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 02<sup>nd</sup> March, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi