

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

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.4684/Del/2018  
Assessment Year: 2014-15

Rajesh Kumar Gupta,  
C-1/11, Garg Niwas,  
Upper Ground Floor,  
West Enclave, Pitampura,  
New Delhi – 110 034.

Vs. ITO,  
Ward-42(4),  
New Delhi.

PAN: AEIPG1451K

(Appellant)

(Respondent)

|                       |   |                         |
|-----------------------|---|-------------------------|
| Assessee by           | : | Shri Gurjeet Singh, CA  |
| Revenue by            | : | Shri Om Prakash, Sr. DR |
| Date of Hearing       | : | 13.12.2022              |
| Date of Pronouncement | : | 07.03.2023              |

ORDER

This appeal filed by the assessee is directed against the order of the CIT(A)-14, New Delhi, relating to Assessment Year 2014-15.

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

*"1. Because the action is being challenged on facts & law, for upholding the addition of Rs. 12,98,000/- on account of cash deposit in Saving Bank Account treating the same as undisclosed income.*

*2. Because the action is being challenged on facts & law, for upholding the addition of Rs. 3,00,000/- treating gift received by assessee from his mother & utilized by him for Tour & Travelling expenses as undisclosed income.*

*3. Because the action is being challenged on facts & law, for upholding the addition of Rs. 3,15,000/- treating rent received from M/s VM Rubber Industries as undisclosed income whereas per assessee TDS thereon has been wrongly deducted by the Tenant u/s 194J instead of 194I while filing its TDS return.*

*PRAYER*

*For any consequential relief and/or legal claim arising out of this appeal and for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee."*

3. Apropos ground No.1, the Id. Counsel of the assessee submitted that the Id. AO has erred in making an addition of Rs. 12,98,000/- on account of cash deposit in Saving Bank Account treating the same as undisclosed income of the assessee. The Id. AR submitted that regarding source of cash deposit in the Oriental Bank of Commerce, it has been consistently submitted that the cash was deposited for the repayment of loans taken from banks and financial companies. The Id. AR further explained that Rs.6 lakh was withdrawn from current account of M/s Lala Flour Mills, a proprietorship concern, maintained with Bank of Baroda; Rs.50,000/- was withdrawn from the savings bank account with Oriental Bank of Commerce and balance Rs.6,48,000/- was cash drawings from cash sales of the assessee's proprietorship firm, Lala Flour Mills and rental income. The Id. AR submitted that the firm is duly audited u/s 44AB, audited report in Form No.3CB and 3CD along with audited balance sheet as on 31.03.2014 has been placed at pages 5-14 of the assessee's paper book. The Id. AR submitted that the assessee has net returned income of Rs.8,80,390/- and in addition to that the assessee has received cash profit from M/s Lala Flour Mills at Rs.6,04,636/- which was deposited to the oriental Bank of Commerce account. The Id. AR submitted that the AO has accepted the books of assessee's proprietorship firm, Lala Flour Mills, but, rejected the claim of the assessee of cash withdrawal from the said firm which is totally unjustified and unsustainable. Therefore, the addition may kindly be deleted. The Id. AR also drew our attention to page 32 of the

assessee's paper book wherein the bank statement of M/s Lala Flour Mills in respect of Bank of Baroda account has been shown wherein there are deposits and withdrawals frequently. The Id. AR also drew our attention to para 3 of the first appellate order and submitted that the assessee has submitted detailed submissions before the Id.CIT(A) which were not considered properly and in right perspective. Therefore, the addition may kindly be deleted.

4. The Id. Sr. DR supported the orders of the authorities below and submitted that the assessee should have submitted day-to-day balance in the cash book and cash flow statement substantiating that the cash withdrawn from Lala Flour Mills was deposited in the savings bank account and what not if excluded or redeposited in the same current account. The Id. Sr. DR submitted that the day-to-day cash book is important in this case to find out the date of withdrawal and date of deposit which has not been submitted. Therefore, the story of the assessee regarding cash deposit is afterthought which is not plausible. Therefore, ground No.1 of the assessee may kindly be dismissed.

5. On careful consideration of the above submissions, first of all, I note some undisputed facts as follows:-

- (i) The assessee deposited Rs.12,98,000/- to his bank account with Oriental Bank of Commerce, Pushpanjali Enclave;
- (ii) The copy of bank statement available at page 32 of the assessee's paper book show that the assessee's proprietorship firm M/s Lala Flour Mills withdrew Rs.6 lakh;

(iii)The assessee has also withdrawn Rs.50,000/- from the savings bank account with Oriental Bank of Commerce; and

(iv)The assessee has filed no return of income of Rs.8,80,390/- including cash profit of Rs.6,04,636/- from M/s Lala Flour Mills.

6. In view of the above factual position, in my considered opinion the assessee has submitted cash flow statement from 08.04.2013 to 12.02.2013 explaining the source of cash deposit to the Oriental Bank of Commerce account and the AO has not made any comment thereon. In addition to the above factual matrix, I also note that accounts of the assessee proprietorship firm M/s Lala Flour Mills are audited u/s 44AB of the Act and the assessee has filed audit report in Form No.3CB and 3CD along with audited balance sheet before the AO for verification which has never been disputed by the AO. Therefore, in view of the above, I hold that no addition is called for in the hands of the assessee on account of cash deposits to his bank account since the assessee has successfully demonstrated that the amount so deposited to his bank account is out of withdrawals from the bank account of his proprietorship firm and profit received in cash from the proprietorship firm. Therefore, ground No.1 of the assessee is allowed and the AO is directed to delete the addition.

7. Apropos ground No.2, the Id. AR submitted that mother of the assessee Smt. Angoori Devi gifted an amount of Rs.3 lakh to the assessee. The Id. Counsel also took us through the affidavit of Smt. Angoori Devi stating her PAN and the fact that during the period, i.e., AY 2014-15, she gifted an amount of Rs.5 lakh to her son Shri Rajesh Kumar Gupta, for the purpose of Europe tour and the said amount was paid out of his personal savings to the assessee. The Id. AR submitted that Smt. Angoori Devi, the

mother of the assessee, out of love and affection, gifted an amount of Rs.5 lakh in cash for the purpose of foreign travel of his son and his family including daughter-in-law and children, therefore, such kind of transaction cannot be doubted in any manner and the same may kindly be allowed.

8. Replying to the above, the Id. Sr. DR drew our attention to the relevant part of the assessment order and submitted that the assessee could not submit copy of ITR filed by Smt. Angoori Devi nor the bank statement reflecting the payment of gift and in absence of such documentary evidence, the AO was right in making addition in the hands of the assessee.

9. Placing rejoinder to the above, the Id. AR submitted that the AO has allowed Rs.1 lakh as gift and disallowed Rs.3 lakh without any justified reason and basis and the mother of the assessee is an income-tax payee. It is clearly discernible from the affidavit of Smt. Angoori Devi wherein she stated that she has PAN and gifted an amount of Rs.5 lakh in cash to the assessee. Therefore, the Id. AR submitted that the addition made by the AO and confirmed by the Id.CIT(A) may kindly be deleted.

10. On careful consideration of the above rival submissions, I am of the view that the assessee has submitted affidavit of his mother stating the clear facts that she is holding PAN, but had not filed the return of income during the period under consideration. The Id. Counsel submitted that since her income was lesser than the taxable limit, therefore, she was not filing the return of income for relevant AY 2014-15. In para 3 of the affidavit, Smt. Angoori Devi clearly stated that she had paid an amount of Rs.5 lakh to Shri Rajesh Kumar Gupta for the purpose of Europe tour during AY 2014-15 which was paid out of her total savings. As per the affidavit, Smt.

Angoori Devi is having PAN, but, had not filed the return of income as the income was less than the taxable limit. However, being an old lady, if she has gifted some amount to her son for Europe tour, then, the same cannot be disputed or disregarded on the basis of surmises and conjectures. Therefore, ground No.2 of the assessee is allowed. Consequently, the AO is directed to delete the addition.

11. Ground No.3 : The Id. Counsel of the assessee submitted that the assessee filed confirmation-cum-certificate from tenant M/s V.M. Rubber Industries Pvt. Ltd. wherein it was categorically explained that they had deducted TDS on rent for the period falling in FY 2013-14, but, their accountant wrongly submitted TDS return u/s 194J instead of section 194I due to a clerical mistake and they are tenants of the assessee. Therefore, the addition in the hands of the recipient cannot be made on account of default by the tenant in deducting TDS under the wrong provision. The Id. Counsel of the assessee, drawing our attention to computation of income placed at pages 2-5 of the assessee's paper book, submitted that the assessee has shown rental income at Rs.3,15,000/- in his return of income and had claimed deduction u/s 24 of the Act @ 30% as per the provisions of the Act which cannot be doubted merely because the tenant has deducted TDS under the wrong provision.

12. Replying to the above, the Id. DR supported the action of the AO as well as the first appellate order.

13. On careful consideration of the above rival submissions, I am of the considered opinion that the assessee is a recipient of rent from his tenant M/s V.M. Rubber Industries. From the copy of computation of income, it is clearly discernible that the

assessee has shown rental income of Rs.3,15,000/- in the computation of income and has also claimed deduction u/s 24 of the Act thereon. The main allegation of the authorities below is that the deduction of TDS is defective and deduction of TDS was under the wrong provisions by the tenant. In such a situation, the landlord, who is declaring rental income in his return of income, cannot be blamed for deduction of TDS under wrong provision by the submission of incorrect return of TDS by the tenant. Therefore, the disallowance made by the AO and sustained by the Id.CIT(A) is held as invalid, baseless and thus, unsustainable. Therefore, the ground No.3 of the assessee is also allowed and the AO is directed to delete the addition.

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 07.03.2023.

Sd/-

(C.M. GARG)  
JUDICIAL MEMBER

Dated: 07<sup>th</sup> March, 2023.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi