

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'G' NEW DELHI]****BEFORE SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER****AND****SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER****I.T.A. No. 1425/DEL/2017 (A.Y. 2009-10)**

Shri Sunil Kumar Bagga, 104, Sainik Vihar, Pitampura, New Delhi – 110 034. PAN No. AHWPB9538M (APPELLANT)	Vs.	Income Tax Officer, Ward : 25 (2), New Delhi. (RESPONDENT)
--	-----	--

**Assessee by : Ms. Hasmeeta Matta, C. A.; &
Ms. Tanya, Advocate;****Department by : Shri Rajesh Kumar Dhanesta,
Sr. D. R.;**

Date of Hearing	20.02.2023
Date of Pronouncement	14.03.2023

ORDER**PER YOGESH KUMAR U.S., JM**

This appeal is filed by the assessee against the order dated 03.01.2017 of the ld. Commissioner of Income Tax (Appeals)-14 [(hereinafter referred to CIT (Appeals)] New Delhi, for assessment year 2009-10.

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

"1. That the Ld. CIT (A) has erred on facts and in law in confirming the action of the Assessing Officer (hereinafter referred to as 'the AO') in making an addition of Rs.21,14,710/- in terms of section 68 of the Income Tax Act, 1961 ('the Act') alleging that the said amount represents unexplained cash in the hands of the appellant.

2. That the Ld. CIT (A) erred in not taking cognizance of the details submitted in the course of appellate proceedings while holding as above.

2.2 That the Ld. CIT (A)/AO failed to appreciate that the aforesaid amount represents amounts given to the appellant by relatives out of their past savings with a view to enable the appellant to resurrect his business."

3. Brief facts of the case are that, the Department received information on AIR that the assessee had deposited cash of Rs. 21,14,710/- on his savings account during the period 01/04/2008 to 31/03/2009 and the assessee was called upon to explain the source of the same. The assessee filed no reply, the notice u/s 148 of the Act was issued through registered post and the notice issued by the A.O. could not be served as the assessee was not residing in the said address, therefore. The notice was issued by way of affixture and an order u/s 143 (3)/147/144 of the Act has been passed on 31/10/2014 by making

an addition of Rs. 21,14,710/- on account of unexplained cash credit u/s 68 of the Act.

4. Aggrieved by the assessment order dated 31/10/2014, the assessee has preferred an appeal before the CIT(A) and the CIT(A) while dismissing the appeal held as under:-

“I have considered the findings & Remand Report of the Ld. AO, the submissions & comments on the Remand Report given by the Ld. AR. On perusal of records and submissions it is noticed that with regard to the addition of Rs. 21,14,710/- made by the Ld. AO u/s 68 of the Act it is submitted that the appellant did not get any opportunity to explain the said sum alleged to have been deposited in cash of Rs. 21,14,710/- in his bank A/c. It is submitted by the Ld. AR that the appellant took some loans from his relatives & friends for improving its business conditions which are going down but failed to do so and the appellant had to close the business activities. But now the Ld. AR has submitted the undated confirmation letters from the above mentioned persons and has claimed that the amount of Rs. 21,14,710/- was received in cash by the appellant from these persons as gift out of love and affection from their past savings. On perusal of these confirmation letters it is noticed that there is no income tax particulars i.e. proof of filing of returns, PAN etc. & the sources of these gifts. The Ld. AR of the appellant firstly claimed the receipt of cash of Rs. 21,14,710/- as loan from his relatives & friends for improving its business conditions and secondly claimed the said transactions as gifts but no documentary evidences in respect of the gifts made by the said persons has been filed. During the course of assessment as well as appellate proceedings the

appellant has completely failed to explain the genuineness of the transaction and creditworthiness of the persons mentioned above.

In view of the above discussion I am of the opinion that the Ld. AO is justified in making addition of Rs. 21,14,710/- made u/s 68 of the Act and the same is confirmed. Hence the ground of appeal is dismissed.

In the result, the appeal is dismissed.”

5. The Ld. Counsel for the assessee submitted before us that, the CIT(A) has not taken cognizance of the details submitted by the assessee during the course of the appellate proceedings and the CIT(A) had failed to appreciate that the amount given to the assessee by his relatives out of their past savings with a view to enable the assessee to resurrect his business. Therefore submitted that the addition made by the A.O. which was sustained by the CIT(A) is deserves to be deleted.

6. On the other hand, the Ld. DR submitted that the assessee has not appear before the A.O. and has not produced any document in support of the contentions of the assessee, therefore submitted that the impugned order requires no interference and the appeal of the assessee deserves to be dismissed.

7. We have heard the parties and perused the material available on record. It is found from the record that the assessee has not appeared before the A.O. and the order has been passed by exercising the power conferred u/s 144 of

the Act. Since it is the specific case of the assessee that the amount received by the assessee from his relatives out of their past savings for the purpose of the business of the assessee, it is for the assessee to establish the said fact before the Revenue Authorities. Therefore, we deem it fit to remand the matter to the file of A.O. with a direction to the assessee to prove the contentions that the amount given to the assessee by his relatives are out of past savings and also to provide documents in support of the said contention of the assessee and the A.O. is directed to decide the matter afresh in accordance with law. Ordered accordingly.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on : **14/03/2023**.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated : 14/03/2023
MEHTA/R.N Sr. PS
**Kavita, Sr. PS*

Copy forwarded to :-

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

ASSISTANT REGISTRAR
ITAT NEW DELHI