

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.1910/Del/2020  
Assessment Year: 2011-12

Dinesh Kumar, H.No. 60, Ward No. 10, Mohalla Chowk, VPO- Alik, Near Atta Chaki, Palwal, Haryana 121102 <b>PAN BSJPK 8040 E</b>	vs.	ITO, Ward-1(2) Faridabad, Haryana 122001
(Appellant)		(Respondent)

For Assessee :	Shri Gurjeet Singh, CA Shri Shaantanu Jain, Adv. Shri Sharad Agarwal, Adv. Ms. Monika Ghai, Adv.
For Revenue :	Shri Om Prakash, Sr. DR

Date of Hearing :	23.03.2023
Date of Pronouncement :	22.05.2023

**ORDER**

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

This appeal has been filed against the order of CIT(A) Faridabad dated 21.01.2020 for AY 2011-12.

2. Delay of 237 days in filing appeal before the tribunal. I have heard arguments of both the sides on the prayer of appellant seeking condonation of delay of 237 days in filing appeal before the tribunal as per learned counsel of assessee, the copy of order of Id. CIT(A) dated 21.01.2020 was received belatedly and the appeal should have been filed latest by 27.03.2020 but the lockdown due to pandemic of Covid-19 was started from 23.03.2020 and appeals could have been filed only on 27.11.2020 by the delay of 237 days therefore in view of order of Hon'ble Supreme Court dated 27.04.2021 bearing miscellaneous application no. 665/2021 in suo moto Writ Petition, SMW(C) No. 3/2020, the Hon'ble Supreme Court of India has again restore the order dated 23.03.2020 and in continuation of the order dated 08.03.2021 direct that the period of limitation as prescribed under any general or special law in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further order. In view

of above it is concluded that the delay in filing appeal before the Tribunal is covered by the extended period as per judgment of Hon'ble Supreme Court (supra). Accordingly, appeals are admitted of consideration and adjudication as having filed within prescribed extended time limit.

3. The learned counsel of the assessee submitted that the assessee does not press legal grounds no. 1 to 2 hence the same are dismissed has not pressed. Remaining grounds no. 3 to 4 are as follows:-

*3. That the Id. CIT(A) has grossly erred in making observation in the appellate order that "there were apparently as evident from the bank narrations no such cash withdrawals from the bank account of the appellant".*

*4. That the Id.CIT(A) has erred in confirming the addition of Rs. 48,00,000/- made applying the provisions of Section 69A of the Act, whereas the source of cash deposit has been duly explained by way of cash withdrawal from the bank and advance against sale of land by the mother of appellant.*

4. The learned counsel of assessee submitted that the learned CIT(A) has in making a factually incorrect observation in the appellate order that there were apparently as evident from the bank narrations no such cash withdrawals from the bank account of assessee. The learned counsel drawing our attention towards statement of cash deposit and withdrawal prepared on the basis of copy of bank statement of assessee available at pages 16 & 17 of his paper book and details of bank statement and narration of entries submitted that there were total cash deposit was Rs. 48,10,499/- and withdrawals of Rs. 44,39,976/- and assessee also received a cash gift of Rs. 4 lakh from his mother Smt Ratni Devi which was also to be included in the total withdrawals and therefore total withdrawals amounts come to Rs. 48,39,976/- which is more than the amount of cash deposit by the assessee therefore no addition could be made in the hands of assessee either u/s 69A or any other provision of the Act. Therefore he submitted that entire addition may kindly be deleted for AY 2011-12.

5. Replying to the above the learned Senior DR supported the orders of the authorities below and submitted that the amount of gift is not substantiated by way of any document confirmation or gift deed therefore such kind of fabulous explanation should not be made and accepted. The learned Senior DR prayed that addition may kindly be upheld.

6. Placing rejoinder to the above the learned counsel submitted that the amount deposited on 20.10.2010 was amount of advance received by her mother as security/advance which was to be returned at the time of completion of sale of land transaction and after receiving entire consideration through cheque which was received on 08/09.02.2011 through cheque of Rs. 1,24,00,000/- which was deposited to the

bank account of her mother jointly with his father. The learned counsel also submitted that this amount was returned to the purchaser by her mother as the assessee was away from home at the time of returned of cash therefore the total Rs. 40 lakh were withdrawan and returned to the purchaser as agreed at the time of land sale agreement. The learned counsel also submitted that the assessee has deposited Rs. 28 lakh out of withdrawals of Rs. 25,30,000/- as per bank statement of assessee and if the amount of gift of Rs. 4 lakh is taken into consideration then the amount of withdrawals are higher than the amount of cash deposit therefore the entire addition may kindly be deleted.

7. On careful consideration of above it is noted that in view my findings in the case of Ram Kishan vs. ITO in ITA no. 1909/Del/2020 for AY 2011-12, I have accepted the explanation of the assessee, Shri Ram Kishan who is also father of present assessee Shri Dinesh, that the amount of cash of Rs. 40 lakh was received as cash security or advance and Rs. 20 lakh each was deposited to the joint bank account of Shri Ram Kishan with his wife Smt Ratni Devi and present assessee Shri Dinesh and as agreed between the seller i.e. wife of assessee Smt Ratni Devi joint co-owner Smt. Sona and purchaser of land that the cash security/advance will be returned back after completion of sale of land transaction and receipt of consideration through cheque. Since at the time of returning cash to the purchaser present assessee Shri Dinesh was away from home therefore entire amount of Rs. 40 lakh was returned to the purchaser from withdrawals made Smt Ratni Devi from joint bank account with Shri Ram Kishan. Therefore the factum and source of Rs. 20 lakh deposited by the present assessee to bank account on 20.10.2010 is also explained and no addition can be made on this account.

8. So far as remaining deposit of Rs. 28 lakh is concerned the assessee has deposited cash of Rs. 5 lakh on 09.12.2010 Rs. 21 lakh on 25.02.2011 and Rs. 2 lakh on 28.03.2011. So far as withdrawals are concerned from 26.10.2010 to 12.11.2010 total withdrawals were Rs. 17,80,000/- out of which Rs. 5 lakh was deposited on 09.12.2010 leaving balance of Rs. 12,80,000/- thereafter the assessee withdrew Rs. 8,50,000/- increasing the cash balance to Rs. 21,30,000/- and Rs. 21 lakh was deposited on 25.02.2011 which is less than cash balance available with the assessee. Further the assessee withdrew Rs. 10 lakh between 05.03.2011 to 15.03.2011 and also received cash gift from his father Shri Ram Kishan, who was jointly operating a bank account with this wife and mother of assessee Smt Ratni Devi amounting of Rs. 4 lakh even if the gift of Rs. 4 lakh is kept aside than also withdrawals of Rs. 10 lakh in three parts and deposit of Rs. 2 lakh on 28.03.2011 is sufficient to explain source of deposit of Rs. 2 lakh. These facts are also telling with the copy of the bank account of Shri Dinesh available at pages 16 & 17 of assessee paper book have not been controverted

by the learned Senior DR. It is pertinent to mention that the Id. CIT(A) in para 19 incorrectly noted that no withdrawals have been made in cash from the said bank account as claimed by the assessee in view of above factual findings based on the copy of the bank statement of Shri Dinesh Kumar assessee. Therefore I am satisfied that the assessee has successfully substantiated the source of cash deposit of Rs. 28 lakh to his bank account during AY 2011-12 and therefore no addition is called for either section 69A or any provision of the Act. Accordingly, ground no. 3 & 4 are allowed and AO directed to delete the addition.

9. In the result, the appeal of the assessee is partly allowed on merits.

Order pronounced in the open court on 22.05.2023.

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 22<sup>nd</sup> May, 2023.

NV/-

Copy forwarded to:

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

// By Order //

Asstt. Registrar, ITAT, New Delhi