

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.378/Del/2021  
Assessment Year: 2017-18

Raj Kumar, 65/1, Madhu Kunj, Laxmi Road, Dalanwala, Dehradun, Uttarakhand-248003 <b>PAN AASPK 7279 H</b>	vs.	The ACIT, Central Circle-06, New Delhi 110055
(Appellant)		(Respondent)

For Assessee :	Shri Rajat Jain, CA Shri Akshat Jain, CA
For Revenue :	Shri Om Prakash, Sr. DR

Date of Hearing :	10.05.2023
Date of Pronouncement :	24.05.2023

**ORDER**

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

This appeal has been filed against the order of CIT(A)-24, New Delhi, dated 09.02.2021 for AY 2017-18.

2. The sole and main ground of assessee in this appeal is that the Assessing Officer as well as Id. CIT(A) was not correct and justified in making and confirming the addition of Rs. 35 lakh u/s. 69A of the Act, on account of cash deposit made during demonetization period.

3. The learned counsel drawing our attention towards written submissions/reply vide dated 06.12.2019 filed on 09.12.2019 during the course of assessment proceedings paper book page no. 50 to 69) submitted that the assessee filed detail submissions wherein cash flow for FY 2011-12 to 2016-17 was submitted and details of month wise cash deposit during 01.04.2015 to 08.11.2015 and 01.04.2016 to 08.11.2016 were also submitted wherein it was clear that on 08.11.2016 the assessee was having closing cash in hand of Rs. 43,22,366/- therefore the amount of Rs. 15 lakh deposited by the assessee is much lesser than the cash in hand and therefore no addition is called for. The learned counsel also drew our attention towards wealth tax returns and computation of statement available at pages 67 to 69 of assessee paper

book and submitted that there was cash balance of Rs. 43,87,091/- as on 31.03.2011 which was brought forward on 01.04.2011 for AY 2012-13. It was also explained that in the said submissions filed on 09.12.2019 the assessee submitted cash flow pertaining to FY 2011-12 to 2016-17 and cash balance as on 08.11.2016 was Rs. 43,22,366/-. From relevant of assessment order I note that the Assessing Officer has not given any findings on said submissions, which also supports factual contention of the assessee but the Assessing Officer has not given any finding thereon and Id. CIT(A) has also dismissed the same at the threshold by pointing out small defects. The learned counsel submitted that the assessee is a farmer and having no other source of taxable income except small bank interest and exempt agricultural income therefore he was not filing return of income being below the required limit of taxation. Therefore the Assessing Officer, without controverting the submission of assessee in the said reply and bringing out any material on record to show that the assessee was having other undisclosed sources of income, is not entitle to make any addition u/s 69A of the Act.

4. Replying to the above, the learned Senior DR strongly supported the orders of authorities below and drew our attention towards para 4.2.9 of first appellate order and submitted that there was no justification was provided by the assessee why it was not deposited from 09.1.2016 to 21.12.2016 and wealth tax return is also not reliable to show cash balance as on 01.04.2011 therefore the addition may kindly be upheld.

5. On careful consideration of above submissions, at the outset, undisputedly the assessee filed written submissions on 09.12.2019 which has been reproduced by the Assessing Officer in the assessment order. But in the operative paragraphs there is no adjudication by the Assessing Officer on said submission/reply of the assessee except alleging that there is no valid justification given by the assessee for holding such huge cash in hand inspite of the assessee declaring no return in many earlier years and the return for AY 2016-17 is only to provide justification to the cash deposits.

6. The Id. CIT(A) has partly considered the submission and raising doubts about the genuineness of the wealth tax order and alleging that there is no clarification from the assessee regarding non filing of copy of wealth tax return and if also doubted the wealth tax order. The Id. CIT(A) also noted that the assessee has filed return of income for one year i.e. AY 2017-18 only. In these circumstances findings of learned CIT(A) are driven hyper technical approach as he has dismissed the documents pertaining to wealth tax returns computation and order which are public documents and available in the public domain as well as with the Assessing Officer of wealth tax.

7. Now, I proceed to consider explanation and documents filed by the assessee before the authorities below. First of all, I note that the Assessing Officer made identical addition of Rs. 35 lakh for AY 2016-17 u/s. 143(3) of the Act, by order dated

23.12.2018 which was deleted by the Id. CIT(A) by order dated 07.08.2019 by holding that the deposits of Rs. 35 lakh do not pertain to FY 2015-16 pertaining to AY 2016-17 which shows the casual approach of Assessing Officer on the issue further the wealth tax computation available at page 68 & 69 of assessee paper book along with wealth tax order clearly reveals that there was a cash balance of Rs. 43,87,091/- as on 31.03.2011 which has been taken into consideration by the assessee while preparing the cash flow from FY 2011-12 to 2016-17. These factual matrix have not been controverted by the Assessing Officer as well as Id. CIT(A) in any manner.

8. I am considered view that the assessee a farmer earning exempt agricultural income and small interest income and has no other means of income. Therefore it was duty of the Assessing Officer to bring any positive adverse material against the assessee to destroy the factual submissions of assessee filed on 09.12.2019. therefore in my humble view that assessee has submitted substantial documentary evidence before the authorities below which clearly reveals that there was a cash balance in the hands of assessee amounting to Rs. 43,22,366/- as on 08.11.2016 out of which Rs. 35 lakh were deposited to her bank account. The Senior DR has not controverted this factual finding that the assessee was allowed to deposit amount up to 31<sup>st</sup> December 2016 therefore delay in deposit cannot be a valid basis for raising any doubt against the assessee. Accordingly, sole grievance of the assessee is allowed and Assessing Officer is directed to delete the addition.

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

Order pronounced in the open court on 24.05.2023.

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 24<sup>th</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