

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.390/Del/2022
Assessment Year: 2017-18

Sanjay Gupta, 47, Amrita Shergill Marg, New Delhi 110003 PAN AAKPG 3983 A	vs.	The ACIT, Central Circle-4, Delhi 110055
(Appellant)		(Respondent)

For Assessee :	Shri Sanjeev Jain, CA
Revenue For :	Ms. Meenakshi Dohre, Sr. DR

Date of Hearing :	29.03.2023
Date of Pronouncement :	31.05.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-23, New Delhi dated 31.01.2022 for AY 2017-18.

2. The grounds of appeal raised by assessee are as follows:-

1. That the CIT (Appeals) has erred in upholding an addition of INR 12,40,000/- out of total addition of INR 21,40,000/- made by the Assessing Officer u/s 68 of the Act read with Section 115BBE on account of cash deposited by the assessee in his bank account out of cash in hand available with him which has been arbitrarily alleged to be unexplained.

2. That the appellant has duly furnished complete and verifiable explanation regarding the cash in hand available with him and the CIT (Appeals) ought to have deleted the whole of the addition which was arbitrarily made by the Assessing Officer.

3. The CIT (Appeal) has acted in a mechanical manner and there is complete non application of mind in upholding an addition of INR 12,40,000/-.

4. The CIT (Appeal) did not consider and take into account the overwhelming evidence produced by the Appellant which manifestly proves that the said addition of IN 12,40,000/- was incorrect and ought to have been set-aside.

3. The learned counsel submitted that, That the CIT (Appeals) has erred in upholding an addition of INR 12,40,000/- out of total addition of INR 21,40,000/- made by the Assessing Officer u/s 68 of the Act read with Section 115BBE on account of cash deposited by the assessee in his bank account out of cash in hand available with him which has been arbitrarily alleged to be unexplained. He further submitted that, That the appellant has duly furnished complete and verifiable explanation regarding the cash in hand available with him and the CIT (Appeals) ought to have deleted the whole of the addition which was arbitrarily made by the Assessing Officer.

4. Further elaborately the facts of the case the Id. counsel submitted that the assessee during FY 2016-17 deposited Rs. 36,40,000/- to his bank account out of opening cash balance of Rs. 39,26,681/- as on 09.11.2016 in the hands of assessee. The Id. counsel submitted said cash balance was accrued to the assessee out of cash in hand as on 01.04.2016 of Rs. 27,62,661/- and cash withdrawal from the bank account of Rs. 38,00,000/- from 01.04.2016 to 08.11.2016 after deducting drawings of Rs. 26,35,980/-. He also submitted that the copy of balance sheet of immediately preceding FY 2015-16 clearly show that there was closing cash balance of Rs. 27,62,661/- was brought as opening balance for FY 2016-17 on 01.04.2016. The Id. counsel submitted that the Assessing Officer has allowed credit of three deposits of 25.10.2016, 28.10.2016 & 29.10.2016 totaling to Rs. 15 lakh but has not allowed credence of withdrawals on 05.04.2016 & 11.05.2016 of Rs. 5 lakh each totaling to Rs. 10 lakh without any basis. The Id. AR further drawing our attention towards para 7.8 & 8 of the first appellate order submitted that the Id. CIT(A) has considered the average withdrawal of Rs. 4.5 lac per month and has allowed credit of Rs. 9 lakh confirming the part addition of Rs. 12,40,000/- without any basis and ignoring the factum of cash in hand as on 09.11.2016 therefore entire addition may kindly be deleted.

5. Replying to the above, the Id. Senior DR supported the order of the authorities below.

6. On careful consideration of above, first of all, we note that the assessee before the authorities below has submitted following summary of cash flow for the period 01.04.2016 to 30.12.2016:-

Summarized cash flow for the period 01.04.2016 to 30.12.2016

<i>Particulars</i>	<i>Amount</i>
<i>Cash in hand as on 01.04.2016</i>	<i>27,62,661</i>
<i>Add: cash withdrawal from bank accounts</i>	<i>38,00,000</i>
<i>Less: Cash deposit in bank account</i>	<i>0</i>
<i>Less: Drawings</i>	<i>26,35,982</i>
<i>Cash in hand as on 08.11.2016</i>	<i>39,26,681</i>

<i>Particulars</i>	<i>Amount</i>
<i>Opening balance 09.11.2016</i>	<i>39,26,881</i>
<i>Add: cash withdrawal from bank accounts (after 09.11.2016)</i>	<i>4,78,000</i>
<i>Less: Cash deposit in bank account</i>	<i>36,40,000</i>
<i>Less: Drawings</i>	<i>2,46,122</i>
<i>Closing balance as on 30.12.2016</i>	<i>5,18,559</i>

Note: out of cash withdrawal of Rs. 42,47,000/- during the period 01.04.2016 to 30.12.2016, I have deposited cash of Rs. 36,40,000/- during the demonetization period i.e. 09.11.2016 to 30.12.2016

7. From pages 45 to 78 particularly from copy of balance sheet at page 73 of assessee paper book reveals that as per balance sheet as on 31.03.2016 there was closing cash balance of Rs. 27,62,661/- which was brought as opening balance as on 01.04.2016. The assessee has claimed withdrawal of Rs. 38 lakh for the period from 01.04.2016 to 09.11.2016 and has also deducted drawings of Rs. 26,35,980/- during the said period further adding amount of Rs. 2,46,122/- during the period up to 30.12.2016. We are unable to see any logic or valid basis to deny said cash flow statement which is supported by the financial and books of accounts of earlier as well as present financial period under consideration. The basis taken by the Id. CIT(A) for upholding the part addition of Rs. 12,40,000/- is not sustainable and justified as when an authority is taking care of average withdrawals of Rs. 4.5 lakh per month then the withdrawal Rs. 38 lakh gets supports as the total withdrawals during eight months and ten days comes to 37.5 lakh which is near to the claimed amount. The assessee is also found to be fair enough in showing the sufficient drawings of Rs. 26,35,980/- and Rs. 2,46,122/- during the period from the 01.04.2016 to 30.12.2016 leaving cash balance of Rs. 5,18,559/- therefore there is no scope of any addition in the hands of assessee on account of cash deposit to his bank account. Accordingly, grounds of assessee are allowed and Assessing Officer's directed to delete the entire addition.

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

Order pronounced in the open court on 31.05.2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Dated: 31st May, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi