

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

ITA No. 971/Del/2022 : Asstt. Year: 2017-18

Raghav Gambhir, 22B/2, Desh Bandhu Gupta Road, Karol Bagh, New Delhi-110005 (APPELLANT)	Vs	DCIT, Central Circle-9, New Delhi (RESPONDENT)
PAN No. AJTPG7299K		

Assessee by : Sh. Aman Garg, CA

Revenue by : Sh. Om Parkash, Sr. DR

Date of Hearing: 18.05.2023

Date of Pronouncement: 20.06.2023

ORDER

The present appeal has been filed by assessee against the order of Id. CIT(A)-27, New Delhi dated 29.03.2022.

2. Following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.

2. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.20,63,000/- made by the AO on account of cash deposits in the bank account invoking the provisions of section 68 read with section 115BBE of the Act.

(11) That the above said addition has been confirmed rejecting the detailed explanations and submissions along with the evidences brought on record explaining the source of cash deposits.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in

confirming the addition made by AO despite the fact that assessee is maintaining proper books of accounts which are audited as per law and nothing adverse in the books was pointed out by the AO during the course of assessment proceedings.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the quantity purchased and sold is being completely tallied, the addition made by the AO cannot be sustained.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition ignoring the contention of the assessee that the assessment order passed by the AO and consequent assessment proceedings are illegal and bad in law in the absence of valid notice under section 143(2) issued to the assessee.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition as the AO has erred in charging the tax under section 115BBE of the Act at the rate of 60% with surcharge of 25% as against the applicable rate of 30%.

7. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition as the AO has erred in applying the amendment brought by The taxation Laws under section 115BBE retrospectively from 01.04.2016 despite the fact that the Act itself was notified on 15.12.2016.”

3. The revenue determined total unaccounted cash at Rs.1,00,63,000/- that has been deposited in the bank account. The assessee submitted that this amount is out of the cash sale of jewellery. The assessee has also deposited Rs.80,00,000/- under PMGKY Scheme, 2016 out of this cash sales and the

revenue treated an amount of Rs.20,63,000/- as unexplained cash credit u/s 68 r.w.s. 115BBE of the Income Tax Act, 1961.

4. The average cash sales to total sales is 4.38% in the months of January, February and March 2016. The total sales for the month of October and November 2016 was to the tune of Rs.5,32,00,000/-. Hence, going by the thumb rule irrespective of the demonetization, the cash sales would be in the range of Rs.22 lacs to Rs.24 lacs. The cash sales in the month of October and November 2016 were to the tune of Rs.1,07,54,000/- out of which the assessee had declared Rs.80,00,000/- in the PMGKY. Thus, leaving Rs.27,54,000/- as pertaining to cash sales. The variation of Rs.3,50,000/- to Rs.4,00,000/- can be attributed to the festive sales considering a 10% rise of cash sales during that period.

5. Hence, the amount of Rs.20,63,000/- can be rightly treated as the receipt out of the cash sale of the jewellery in the regular course of business.

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

Order Pronounced in the Open Court on 20/06/2023.

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 20/06/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR