

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member
AND
Shri M. Balaganesh, Accountant Member**

ITA No. 2646/Del/2018
(Assessment Year: 2009-10)

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| Inderjeet, C/o. M/s. Sanjeev Anand & Associates, 77, Navyug Market, Ghaziabad, Ghaziabad (Appellant) PAN: ABSPI6213Q | Vs. ITO, Ward-1(3), Ghaziabad (Respondent) |
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| Assessee by : | Shri Somil Agarwal, Adv |
| Revenue by: | Mohd. Gaysuddin Ansari, CIT DR |

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| Date of Hearing | 18/05/2023 |
| Date of pronouncement | 21/07/2023 |

ORDER

PER C. M. GARG, J. M.:

1. This appeal has been filed by the assessee against the order of the Id CIT(A)-2, New Delhi dated 28.03.2018 for AY 2009-10.

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

"1. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order u/s 144/147 and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.

2. That in any case and in any view of the matter, action of Ld. CIT (A) in confirming the action of Ld. AO in framing the impugned reassessment order u/s 147/144, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the addition of Rs. 2,90,00,000/- allegedly on the ground that that the cash deposits in the bank account are unexplained and that too by recording incorrect facts and findings and without observing the principles of natural justice.

4. That in any case and in any view of the matter, action of Ld. CIT (A) in confirming the addition of Rs. 2,90,00,000/- allegedly on the ground that assessee has failed to explain the cash deposit, received from his grand-father out of sale of land, cash withdrawals from own bank account and other genuine sources is bad in law and against the facts and circumstances of the case."

3. The Id counsel of the assessee submitted that the assessee does not want to press ground Nos. 1 and 2, therefore, same are dismissed as not pressed. Ground No. 5 of assessee are general in nature.

Ground No. 3 and 4 of assessee

4. The Id counsel of assessee submitted that the Id CIT(A) has erred in law and on facts in confirming the addition of Rs. 2,90,00,000/- on the ground that the assessee has failed to explain the cash deposit, received from his grandfather out of sale of land, cash withdrawals from own bank account and other genuine sources. The first appellate order is bad in law and against the facts and circumstances of the case. The Id counsel further submitted that the Id CIT(A) has erred in law and on facts in confirming the said addition on the ground that the cash deposit in the bank account are unexplained and that too by recording incorrect facts and findings and without observing the principles of natural justice, therefore, the addition made by the AO and uphold by the Id CIT(A) may kindly be set aside. In view of the order of the Hon'ble Delhi High Court Jaya Aggarwal Vs. ITO reported as 302 CTR 241 (Del) and orders of coordinate bench of the Tribunal in the case of ACIT Vs. Baldev Raj Charla reported as 121 TTJ 366 (Del), Moongipa Investment Ltd Vs. ITO 147 TTJ 378 (Del).

5. Replying to the above the Id CIT DR supported the orders of the authorities below and submitted that when the assessee failed to explain the source of cash deposited to his bank account then the AO was right in making addition in the hands of the assessee u/s 69 of the Act and Id CIT(A) was also correct in upholding the same as unexplained investment in the saving bank of the assessee.

6. On careful consideration of the above submission and on perusal of the assessee's paper book spread over 77 pages. First of all, we note that the assessee has filed the copy of bank account of his grandfather Shri Pritam Singh at pages 9 to 11 and copy of certificate issued by the Branch Manager of Andhra Bank, Navyug Market, Ghaziabad. These documents cumulatively show that on 26.08.2008 the grandfather of the assessee withdrew Rs. 2.25 crores to the bank account of the assessee with the same bank and branch. The certificate issued by Branch Manager certifies the fact that the amount of Rs. 2.25 crores has been deposited through saving bank withdrawals form and saving bank account pay in slip on the same date. These documentary evidences have not been controvert by the authorities below as well as Id CIT DR before us. Therefore, we are inclined to agree with the contention of the Id counsel of the assessee that the amount of Rs. 2.25 crores deposited to the bank account of the assessee on 26.06.2008 was not cash deposit but was transfer of amount through saving bank withdrawals from of his grandfather amounting to Rs. 9 crores out of which Rs. 2.25 crores was deposited to the bank account of assessee through saving bank account pay in slip. It is pertinent to note that copy of sale deed available at page 23 to 39 of the paper book reveals that the grandfather Shri Pritam Singh received consideration of Rs. 15,00,00,000/- out of sale of his land through banking channel which was sold to M/s. Mahgun Real Estate Pvt. Ltd through its director Shri Dheeraj Jain. Thus, source of amount to the bank account of the grandfather of the assessee Shri Pritam Singh is also very much clear and unambiguous.

7. From the copy of the saving bank statement of account of assessee with Punjab National Bank No. XXX387605 reveals that the assessee withdrew Rs. 48 lakhs on 24.02.2009 from his bank account and on the very same date his wife Smt Sarda also withdrew Rs. 25 lakh from her saving bank account with the PNB Bank A/c No. XXXX 388507. Copies of the bank statements available at page 14 to 17 and 7 to 8 cumulatively revealed that wife assessee Smt Sarda withdrew Rs. 25

lakhs on the same day. Therefore, from the documentary evidence furnished by the assessee it is vivid that the assessee and his wife withdrew Rs. 48 lakhs and Rs. 25 lakhs respectively totaling to Rs. 73 lakhs on 24.02.2009 and the impugned remaining amount of Rs. 65 lakhs was deposited to the bank account of assessee with PNB Account No. XXX185199 on 25.02.2009 i.e. on the next date of withdraw, which is lesser then the total amount of withdrawals by the assessee and his wife only one day before on 24.02.2009. Therefore, the amount of Rs. 65 lakhs deposited to the bank account of the assessee with PNB A/c No. XXX185199 cannot be alleged as unexplained as the source of such deposit is nothing but withdrawals of assessee and his wife from very respective saving bank accounts. Therefore, we further hold that the remaining of Rs. 65 lakhs cash deposit to the bank account of the assessee with PNB Account is also properly explained and no addition is called for in this regard. The Hon'ble Delhi High Court in case of Jaya Agarwal (supra) held that where the assessee withdrew an amount from bank account for purchase of a property but re-deposited a part of said sum in same bank account as purchase deal could not be fructified, additions u/s 68 of amount re-deposited was unjustified. Almost similar view has been taken by the coordinate bench of the Tribunal in case of ACIT Vs. Baldev Raj Charla (supra) and in Moongipa Investment Ltd (supra).

8. In view of the foregoing discussion we reached to a logical conclusion that the authorities below were not correct and justified in making addition in the hands of the assessee u/s 69 of the Act despite the fact that the amount of Rs. 2.25 crores was deposited to the bank account of the assessee directly from the saving bank account of his grandfather Shri Pritam Singh and for such transfer withdrawals Form of Shri Primtam Singh deposit payee slip of assessee were used and certificate issued by the Branch Manager supports that in fact there was no cash withdrawals or cash deposit to the bank account of the assessee and the transaction was undertaken by using saving bank withdrawal

form and saving bank account pay in slip on the same date on 26.06.2008. Therefore, source of cash deposit is properly explained and no addition is required to be made in the hands of the assessee. Regarding reaming Rs. 65 lakhs as we have concluded that the assessee has successfully demonstrated that the said amount was deposited on 25.02.2009 and only one day before on 24.02.2009 the assessee withdrew Rs. 48 lakhs from his saving bank account and on the very same date his wife Mrs. Sarada also withdrew Rs. 25 lakhs from her bank account totaling to Rs. 73 lakhs which is higher then the amount of the impugned amount of Rs. 65 lakhs deposited by the assessee to his bank account in cash. Accordingly, we are inclined to hold that no addition is called for in this regard and observations made by the AO as well as the Id CIT(A) are factually incorrect in view of the documentary evidence furnished by the assessee. Accordingly, ground Nos. 3 and 4 of assessee are allowed and AO is directed to delete the entire addition.

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

Order pronounced in the open court on 21/07/2023.

-Sd/-
(M. Balaganesh)
ACCOUNTANT MEMBER

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 21/07/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi