

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 201/Asr/2023**  
Assessment Year: 2018-19

Sh. Rajesh Kumar,  
M/s Sonia Jewellers,  
Sadar Bazar, Kapurthala,  
144 601, Punjab

[PAN: ABEPK7660B]  
**(Appellant)**

**Vs.** Dy. Commissioner of Income  
Tax, Central Circle-1, Jalandhar

**(Respondent)**

Appellant by : None

Respondent by: Smt. Ratinder Kaur, Sr. DR

Date of Hearing: 28.08.2023

Date of Pronouncement: 31.08.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

The captioned appeal is filed by the assessee against the order of the  
Id. Commissioner of Income Tax (Appeals)-5, Ludhiana dated 06.03.2023  
in respect of Assessment Year: 2018-19.

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

- “1. That the order passed by the Hon'ble CIT(A) dated 06.03.2023 is against the law and facts of the case.
2. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 143(3) of the Act and without complying with the mandatory conditions u/s 143 as envisaged under the Income Tax Act, 1961.
3. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making an addition of Rs.7,35,000/- u/s 68 of the Act, without considering the facts of the case and without observing the principles of natural justice.
4. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making an addition u/s 68 of the Act and charging tax as per section 115BBE of the Act, without considering the facts of the case.
5. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds of appeal are without prejudice to each other.”

3. Non attended for the assessee. However, the appellant has filed a written submission with the request to decide the appeal on merits of the case after considering the return submission which reads as under:

*“During the course of assessment proceedings, assessee was asked to file the evidence of capital introduced in capital account amounting to Rs. 12,35,000/-, in response to which assessee stated that he received Rs. 11,00,000/- from his real brother, Rajinder Kumar S/o Sh. Mangat Ram R/o Mohalla Shergarh, Kapurthala. He has gifted this amount to the assessee to held*

*in the business out of his natural love and affection by making withdrawal out of his saving bank account no. 0258000100761875.*

*Sir, in support of above, assessee also filed the confirmation of his brother, wherein he confirmed the above mentioned facts that he received gratuity and other funds and after making withdrawal from his bank account, he paid this amount to assessee for his help in his business.*

*But the Ld. Assessing Officer while making addition in the hand of assessee allowed benefit of Rs. 5,00,000/- and remaining amount of Rs. 7,35,000/- was added to the income of assessee by treating the same as unexplained credit u/s 68 of the Act.*

*Sir, it is stated that the lower authorities have erred in law in making/ confirming addition of Rs. 7,35,000/- in the hands of assessee merely because of his wrong assumptions, that the amount withdrawn by the brother of assessee might have used some amount for his personal purposes and there is gap between withdrawal and deposit in bank. In this regard, it is stated that the funds of Rs. 11,00,000/- were received from brother earlier and were kept by assessee with him and later he introduced the same in his business as and when funds were required by the assessee in his business. Thus there is no gap as regards to withdrawal and subsequent introduction of the same in the business of assessee.*

*Sir, there is no evidence on record that assessee utilized these funds for personal use. Moreover, the identity, genuineness and creditworthiness of the transaction is explained and is justified. The Ld. AO is merely assuming that funds might have been utilized for personal use. The addition is merely made on surmises, conjectures and assumptions and there is no evidence against the assessee.*

*Sir, is stated that this is the case of survey and in the present case assumptions and presumptions have no place. The addition can be made or deleted/quashed purely on the basis of document/information /evidences. In the present case, assessee filed his submission along with evidence but the Ld. Assessing Officer without any basis, without any evidence on record made addition of Rs. 7,35,000/- in the hand of assessee merely on his assumption.*

*Sir, in order to justify the claim, assessee needs to prove the identity, genuineness and creditworthiness of the transaction and in the present case assessee has proved the three limbs:*

**Identity-** Funds received from Sh. Raiinder Kumar s/o Mangat Ram Real brother of assessee

**Genuineness-** Confirmation has been already filed from Sh. Raiinder Kumar confirming the fact that he made gift to his real brother of Rs.1 lac out of love and affection.

**Creditworthiness-** Sh. Raiinder Kumar received gratuity and FDR maturity receipts and he made withdrawal from his bank account no.0258000100761875 maintained with PNB. The bank statement is already on record during the assessment proceedings. Thus the source of source is also explained."

4. Per Contra, the learned DR stands by the impugned order, however he failed to controvert the contention raised by the appellant in the written submissions filed as above.

5. After hearing the learned DR, perusal of the impugned order and considering the return submissions filed by the appellant, we find that the Ld. CIT (A) has facts confirmed the action of Ld. AO in making an addition of Rs.7,35,000/- u/s 68 of the Act, without appreciating the merits by considering the facts of the case. It is seen that the appellant assessee has explained before the authorities below that he had introduced a sum of Rs. 12.35 lacs as capital on various dates during the said assessment year, as being claimed to have received Rs. 11 lacs from his brother Sh. Rajinder Kumar. In order to justify the said

receipts of Rs. 11 lacs from his brother, the assessee has furnished the bank account of his brother wherein the said withdrawals are duly recorded apart from other documentary evidence and the fact has also been confirmed by the Banking Authorities during enquiry conducted by the AO who had allowed a benefit to the assessee of Rs. 5 lacs only without any valid reason on account of these withdrawals made by the brother of the assessee.

6. It is noted that Ld. CIT(A) has ignored the submission of the appellant that he has received Rs. 11,00,000/- from his real brother, Rajinder Kumar S/o Sh. Mangat Ram R/o Mohalla Shergarh, Kapurthala by way of gift out of his natural love and affection by making withdrawal out of his saving bank account no. 0258000100761875. In support, the assessee has filed the confirmation of his brother, wherein he confirmed the above-mentioned facts that he received gratuity and other funds and after making withdrawal from his bank account, he paid this amount to assessee to help in his business. It is seen that CIT (A) has confirmed the addition of Rs. 7,35,000/- in the hands of assessee merely based on wrong assumptions, that the amount withdrawn by the brother of assessee might have been

used same amount for his personal purposes and there is gap between withdrawal and deposit in bank. The authorities below cannot sit on the chair of the assessee to decide when to borrow and to deposit in the bank account. In our view, CIT(A) is not justified in taking an adverse view against the assessee unless he disproves the claim of the appellant with supporting corroborative material evidence on record. Since, there was no evidence on record that assessee utilized these funds for personal use and the appellant has proved the identity, genuineness and creditworthiness of the transaction and hence, source of the same stands explained. Accordingly, such an addition made by the AO and confirmed by the Ld. CIT(A), merely based on assumptions, presumptions, surmises, and conjectures cannot be sustained.

7. Our view get supports from ITAT Chennai Bench in the case of Abdul Razaak vs. Income-tax Officer, (International Taxation)in ITA No. 131 (CHNY.) OF 2023[ASSESSMENT YEAR 2017-18] JUNE 16, 2023 where it was observed that the assessee had Rs. 42.38 lakhs cash before demonetization and he had deposited Rs. 15.08 lakh during demonetization period, considering even entire withdrawal of family and also giving weightage to family expenses, demonetized cash deposit of Rs.

15 lakhs was to be treated as explained, and thus, addition made towards deposit of demonetized notes was to be deleted.

8. In view of the above discussion, we hold that the cash deposit of Rs. 12 lakhs stand explained and accordingly, we delete the balance addition of Rs. 7.0 lakhs confirmed by the CIT(A).

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

*Order pronounced in the open court on 31.08.2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy  
By Order