

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 3442/Del/2023
(Assessment Year: 2017-18)

Partap Singh, Vs. ITO,
H. No. 53, Village Ward-2(1),
Jharsa, Gurgaon Faridabad

PAN: BIRPS8393E

Assessee by : Shri Shantanu Jain, Adv
Revenue by: Ms. Kirti Sankrtyayan, Sr. DR

Date of Hearing 04/01/2024
Date of pronouncement 09/01/2024

ORDER

1. The appeal in ITA No.3442/Del/2023 for AY 2017-18 arises out of the order of National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/NFAC/S/250/2023-14/1056728886(1) dated 03.10.2023 against the order of assessment passed u/s 144 of the Income-tax Act, 1961 dated 20.12.209 (hereinafter referred to as 'the Act') by ITO, Ward-2(1), Faridabad (hereinafter referred to as 'Id. AO').

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

"1. That under the fact & circumstance, Ld. A.O. as well as Ld. CIT(A) erred in law in passing and sustaining order U/s. 144 of the I.T. Act 1961.

2. That under the fact & circumstance, Ld. CIT(A) erred in law in not quashing the Asstt. Order since reasonable opportunity of being heard not provided by Ld. A.O. and passed ex-parte Asstt. order.

3. That under the fact & circumstance, Ld. A.O. as well as Ld. CIT(A) erred in law in making and sustaining addition of Rs. 11,89,500 being cash deposited in bank during demonetization period from 09.11.16 to 30.12.16.

4. That under the fact & circumstance, Ld. A.O. as well as Ld. CIT(A) erred in law in making and sustaining addition of Rs. 11,89,500 being cash deposited in bank by ignoring the fact that the said bank A/c is belonging to assessee but relates to some other person."

3. Ground Nos. 1 and 2 raised by the assessee are general in nature and does not require any specific adjudication.

4. Ground Nos. 3 and 4 raised by the assessee are challenging the confirmation of addition made by Id CIT(A) in respect of cash deposit of Rs. 11,89,500/- in the bank account during the demonetization period in specified bank notes.

5. I have heard the rival submissions and perused the material available on record. The assessee is an individual and had filed return of income for AY 2017-18 declaring gross income of Rs. 20,76,409/- after set off of loss from house property of Rs. 2 lakh and after claiming deduction under Chapter VI-A of the Act of Rs. 1,66,353/-, the taxable income was declared at Rs. 17,10,060/-. The case of the assessee was selected for limited scrutiny under Computer Assisted Selection of Cases for Scrutiny (CASS) to examine the cash deposit made in the bank account during the demonetization period. The Id AO observed that the assessee has made deposit of Rs. 11,89,500/- in cash in A/c No. 600300301000323 during the demonetization period and since no satisfactory reply was furnished by explaining the source for the same, the same was proceeded to be added as unexplained income of the assessee in the assessment. In fact the assessment was completed u/s 144 of the Act by the Id AO on 20.12.2019 due to continuous non-compliance by the assessee. Before the Id. CIT(A), the assessee filed written submissions stating that there is no bank account maintained by him in Account A/c. 600300301000323 and his PAN has been misused by somebody for opening bank account. Further, it was also pointed out before the Id CIT(A) that the information available with the Id AO only says that cash has been deposited during the demonetization period by Sunrise Enterprises proprietor Pradeep Singh with Chandigarh Main branch, but by mentioning PAN of the assessee. The assessee herein is Partap Singh and had got absolutely no communication with Sunrise Enterprises proprietor Pradeep Singh. Accordingly, it was categorically denied by the assessee of having the subject mentioned bank account and cash deposit in the same. The assessee also stated that First Information Report (FIR) has been filed before SHO,

Sector-14, Gurgaon about misuse of his PAN for opening certain bank account. The Id CIT(A) did not heed to the contentions of the assessee and proceeded to uphold the action of the Id AO by confirming the addition.

6. In my considered opinion, the assessee could be asked to explain the source of cash deposit made in his bank account by the revenue. When the assessee has categorically denied having any such bank account as stated by the revenue, then the assessee cannot be accepted to prove the source of cash deposit made in the bank account which is not even belonging to him which is only expecting the assessee to prove the impossibility and prove the negative. This is classic case of application of legal maxim *Lex non cogit ad impossibilia* which means that the law cannot compel one person to perform an act which he could not possibly perform. When the information available in the records of the Id AO that bank account is in the name of Sunrise Enterprises proprietor Pradeep Singh with Chandigarh Main branch, then the Id CIT(A) should have resorted to make minimum enquiries with the said bank by calling for Know Your Customer (KYC) norms and its connected documents in the form such as –

- (a) The name of the person who introduced the account holder;
- (b) name of the account holder;
- (c) PAN of the Account holder;
- (d) whether the name mentioned in the PAN matches with the names of the account holder etc.

These preliminary enquiries could have proved the fact beyond doubt. The assessee from its side had categorically denied having such subject mentioned bank account. Further, the assessee has also filed FIR before SHO to prove his bona fide stand. I am of considered opinion that this fact should have been taken into account by the lower authorities while deciding the issue before drawing any adverse inference against the assessee. This was admittedly not done by the lower authorities.

7. In view of the aforesaid observations, I have no hesitation to delete the impugned addition made in the hands of the assessee by holding that the said cash deposit made in the sum of Rs. 11,89,500/- in the bank account does not belong to the assessee. Accordingly, grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 09/01/2024.

-Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 09/01/2024
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi