

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 6922/Del/2017 & 8733/Del/2019
(Assessment Year: 2013-14)**

Surendra Kumar Gupta, C/o. RRA TaxIndia, D-28, South Extention, Part-1, New Delhi (Appellant) PAN: ACFPG7737B	Vs.	DCIT, Central Circle-19, New Delhi (Respondent)
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Assessee by :	Dr. Rakesh Gupta, Adv Sh. Somil Agarwal, Adv
Revenue by:	Sh. Aashish Mohanty, CIT DR
Date of Hearing	04/12/2023
Date of pronouncement	16/01/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. These appeals in ITA No.6922/Del/2017 and 8733/Del/2019 for AY 2013-14, arises out of the order of the Commissioner of Income Tax (Appeals)-28, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 154/17-18 dated 22.09.2017 against the order of assessment passed u/s 153A/ 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.03.2016 by DCIT, Central Circle-19, New Delhi and CIT(A)-31, New Delhi against the order of penalty order passed u/s 271(1)(c) dated 28.03.2019 by the Assessing Officer, ACIT, Central Circle-19, New Delhi (hereinafter referred to as 'Id. AO').
2. The only effective issue to be decided in the quantum appeal in ITA No. 6922/Del/2017 is with regard to addition made on account of cash deposit in the sum of Rs. 41,16,000/-.
3. We have heard the rival submissions and perused the material available on record.

4. The assessee is an individual. A search and seizure operation was carried out u/s 132(1) of the Act on 15.02.2014 in M/s. Sharp Group of cases. The assessee's case was also covered during the search proceedings. Accordingly, notice u/s 153A of the Act was issued to the assessee on 13.03.2015. In response to the said notice assessee filed his return of income on 06.04.2015 declaring taxable income of Rs. 5,11,190/-. During the assessment proceedings it was observed by the Id AO that assessee had deposited cash on various dates in his bank account. The Id AO also observed that the assessee has been making cash deposit in his bank account for various years in the past and tabulated the same in the assessment order. The Id AO asked for explanation of the source of the cash deposited to the assessee. The assessee stated that the entire cash deposits were made out of cash balance available with him. The assessee also submitted that he maintained a current account vide A/c No. 02722320000359 with HDFC Bank for the business activity of M/s. Yash Impex. The assessee has deposited cash of Rs. 2,77,20,000/- from and out of cash available in the imprest account of Shri Surendra Kumar Gupta as per books of account. A chart giving the particulars of cash deposit with its source and a photocopy of imprest account of Surendra Kumar Gupta from the business of Yash Impex for the period of 01.04.2012 to 31.03.2013 was also produced before the Id AO. The assessee admitted that he is not carrying any business activity and that the cash deposits were made out of cash balance available in the imprest account. The assessee also clarified to the Id AO that actual cash deposit is only Rs. 2.77 crores and not Rs. 40 crores mentioned in the show cause notice. The Id AO however, did not heed to the aforesaid factual explanation of the assessee and proceeded to treat the cash deposit made in the bank account on the following dates as unexplained credit u/s 68 of the Act:-

03.04.2012	Rs. 31 Lakhs
04.04.2012	Rs. 10 lakhs
03.05.2012	Rs. 16,000/-
Total	Rs. 41,16,000/-

5. The assessee reiterated his stand that he had opening cash balance of Rs. 2,08,40,782/- in the imprest account as on 31.03.2012 and the sum together with withdrawals made explained the source of cash deposit made

in the bank account. The Id CIT(A) however, did not heed to the contention of the assessee and upheld the action of the Id AO. We find that assessee had furnished the copy of the imprest account of Surendra Kumar Gupta (assessee) as appeared in the books of account of Yash Impex for the period of 01.04.2012 to 31.03.2013 in pages 15 of the PB. From the same it is noticed that the assessee had indeed opening cash balance of Rs. 2,08,40,782/- as on 01.04.2012 and had made withdrawals during the year to the tune of Rs. 1,30,67716/- from HDFC Bank on the following dates :-

03.04.2012	16,50,000
07.04.2012	70,00,000
18.04.2012	10,00,000
21.04.2012	33,270
21.04.2012	34,446
03.05.2012	18,50,000
10.05.2012	15,00,000

6. Similarly, the assessee had made deposit in HDFC Bank by Rs. 2.77 crores out of cash balance available on various dates. We find from the said imprest account maintained in the books of Yash Impex, there is no negative cash balance of single date. Hence, we hold that the entire cash deposit made by the assessee in the bank account is properly explained with proper source. Further, we also find that the assessee had given date wise details of cash deposits together with the respective source before the lower authorities. The details of the same are enclosed at pages 10 to 17 of the PB. These facts are not properly appreciated by the lower authorities while adjudicating the issue in dispute. We also find from the audited balance sheet of Yash Impex as on 31.03.2012, on the asset side, a sum of Rs. 2,08,40,782/- was shown under the head current asset as Surendra Kumar Gupta imprest. All these facts collectively could prove indeed have sufficient cash balance which explained the cash deposit made in the bank account. Hence, there is absolutely no case for making any addition on account of cash deposits in the hands of the assessee. Hence, we direct the

Id AO to delete the addition made in the sum of Rs. 41,160,000/- on account of cash deposit.

7. Ground Nos. 3 and 4 raised by the assessee are allowed.

8. Ground Nos. 1 and 2 raised by the assessee are challenging the validity of assumption u/s 153A of the Act. No arguments were advanced by the Id counsel for the assessee before us. Hence, they are dismissed as not pressed.

9. Ground No. 5 is general in nature and does not require any specific adjudication.

10. In the result, the appeal of the assessee in ITA No. 6922/Del/2017 in quantum proceedings is partly allowed.

11. Since, the quantum appeal is decided in favour of the assessee on merits, concealment penalty levied u/s 271(1)(c) of the Act which is subject matter of appeal in ITA No. 8733/Del/2019 would have no legs to stand, hence, the penalty levied in the sum of Rs. 21,21,500/- is hereby directed to be deleted.

12. To sum up the appeal of the assessee in ITA No. 6922/Del/2017 is partly allowed and ITA No. 8733/Del/2019 is allowed.

Order pronounced in the open court on 16/01/2024.

-Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 16/01/2024
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)

5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi