

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC', KOLKATA**

[Before Shri Sonjoy Sarma, Judicial Member &  
Shri Girish Agrawal, Accountant Member]

**I.T.A. No. 1164/Kol/2023**  
**Assessment Year : 2016-17**

Devisetti Surya Jyothi PAN: ACTPJ 8910 D Appellant	vs	ITO, Ward-52(1), Kolkata Respondent
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Date of Hearing	02.01.2024
Date of Pronouncement	30.01.2024
For the Assessee	Shri Anil Kochar, Advocate
For the Revenue	Shri Anindya Kumar Bandopadhyay, Addl. CIT

**ORDER**

**Per Sonjoy Sarma, JM:**

This appeal of the assessee for the assessment year 2016-17 is directed against the order dated 10.10.2023 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the 'ld. CIT(A)']. The assessee has raised the following grounds of appeal:

*"1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.*

*2. For that on facts and in the circumstances of the case and in law, the Ld.CIT (A) erred in sustaining the order passed by the A.O. u/s 143(3) of the Act on alleged grounds.*

*3. For that the Ld. CIT (A) erred in not properly appreciating the facts of the case and consequently in holding that the provisions of Sec.50C and Sec.56(2)(vii) (b) of the Act are mandatory in nature and consequently the A.O. is bound to accept the value of the sale consideration as determined by the Stamp Valuation Authority on alleged grounds.*

4. For that the appellant having disputed the Stamp Duty Value and also requested for referring the matter to the DVO the Ld. CIT (A) ought to have accepted the same.

5. For that reference ought to have been made to the DVO in view of the judicial pronouncement of the jurisdictional High Court in the case of *Sunil Kumar Agarwal vs. CIT (2016) 372 ITR 83 (CAL)*.

6. For that the Ld. CIT (A) erred in treating the Bank deposits as unexplained investment in the Bank A/cs. u/s 69 of the Act on alleged grounds.

7. For that the appellant having not maintained any books of accounts the addition so confirmed towards unexplained investments u/s 69 of the Act is bad-in-law.

8. For that the Ld. CIT (A) erred in not properly appreciating the facts on record in relation to appellant's income of the preceding years and consequently in confirming the addition so made u/s 69 of the Act by the A.O.

9. For that the addition of Rs. 13,41,500/- made by the A.O. u/s 56(2)(vii)(b) proceeds on non-consideration of the factual aspect of the case of the appellant and accordingly the addition made is wrong and uncalled for.

10. For that, without prejudice, the addition made u/s 69 of the Act amounting to Rs.22,85,433/- is otherwise high and/or excessive.

11. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

2. Brief facts of the case are that the assessee filed her return of income on 18.11.2016 declaring income of Rs. 9,37,770/-. The case of the assessee was selected for scrutiny through CASS with the reason stated that cash deposits in Savings Bank Account and transferred one or more properties during the assessment year under consideration. Accordingly, notices u/s 143(2) and

142(1) of the Act were issued upon the assessee. The ld. AO after considering the various submissions made by the AR of the assessee has passed the assessment order u/s 143(3) of the Act determining the income of the assessee at Rs. 45,64,700/- by making the following addition:

*“i. Addition of Rs. 13,41,500/- u/s 56(2)(vii)(b) of the Act on account of difference in value of property purchased by the assessee.*

*ii. Addition of Rs. 22,85,433/- u/s 69 on account of unexplained bank deposits made by the assessee.”*

3. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Feeling aggrieved by the above order, assessee is in appeal before this Tribunal. At the time of hearing, the ld. AR of the assessee submitted before the bench that the alleged addition made by the AO u/s 50C and section 56(2)(vii)(b) of the Act and by sustaining the order of A.O. the ld. CIT(A) is not proper. Since the assessee has disputed the alleged stamp duty value of property as calculated by the ld. AO while framing the assessment and also requested before the ld. CIT(A) for referring the matter to the DVO. However, the ld. CIT(A) did not consider the prayer made by the assessee and simply rejected the ground taken by the assessee. Therefore, it is necessary to remand back the matter to the file of AO with the direction to determine the correct value of property with the assistance of departmental valuation officer in order to arrive at the correct income of the assessee.

5. We after hearing the rival submission of the parties find that the instant issue relating to valuation of property and reference ought to have been made to DVO in order to determine the correct valuation of property. Accordingly, we remand back the issue to the file to ld. AO to determine the correct value of the property after considering the valuation report furnished by the DVO in accordance with law. Therefore, the issue no. 1 to 5 & 9 are set aside to the file of AO for de novo adjudication.

6. Similarly, on the issue of addition made by the AO on cash deposits made during the year of Rs. 22,85,433/- by the assessee, the ld. AR of the assessee furnished before us a copy of the cash book from page no. 10 to 13 respectively showing the income statement of the assessee for the last 10 years to prove the fact that assessee has sufficient funds to deposit in her bank account and alleged cash has deposited from her past accumulated savings and various cash receipts received from her parents.

7. On the other hand, ld. DR opposed to such prayer made by the AR of the assessee and contended that the instant issue also needs to be set aside to the file of AO in order to examine the document furnished by the assessee before the bench.

8. We after hearing the rival submission of the parties and examine the documents produced before us found that assessee was serving as government servant for past 42 years and retired

in the year may, 2021. Accordingly, she could have save money out of her income year by year which she has deposited in her bank account during the assessment year under consideration. Therefore, the alleged sum of Rs. 22,85,433/- addition made by the AO is not correct and accordingly we direct the AO to delete the alleged addition made in the hands of assessee. Therefore, we allow ground no. 6, 7, 8 & 10 of the appeal and ground no. 11 is general in nature need not required to be adjudicated. In terms of the above, appeal of the assessee is partly allowed.

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

Order pronounced in the open court on 30.01.2024.

Sd/-

Sd/-

(Girish Agrawal)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 30.01.2024

*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant- Devisetti Surya Jyothi, 9-4-295/1, Jogavani Palem High School Road, Gajuwaka, Gujarat-380003.
2. Respondent – ITO, Ward-52(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata