

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'SMC': NEW DELHI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.3111/DEL/2023
[Assessment Year: 2017-18]**

Jatin Khanna, 10/202, Block-10, Geeta Colony, Delhi-110031	Vs	Asst. Commissioner of Income Tax, Circle-58(1), New Delhi-110002
PAN-BGPK9919G		
Assessee		Revenue

Assessee by	Shri Pratap Gupta, CA & Shri Sarthak Gupta, CA
Revenue by	Sh. Om Prakash, Sr. DR

Date of Hearing	08.02.2024
Date of Pronouncement	13.02.2024

ORDER

This appeal by the assessee is against the order of National Faceless Appeal Centre/learned Commissioner of Income Tax (Appeals), Delhi, dated 06.09.2023, pertains to Assessment Year 2017-18.

2. The grounds of appeal reads as under:-

1. *That Id CIT(A)(NFAC) without appreciating the correct facts of the case is not justified in law and facts and circumstances of the case in not admitting the additional evidence filed under rule 46A during the course of appellant proceedings which was very vital evidence to decide the appeal on the merits of the case.*

2. *That Id CIT(A)(NFAC) without appreciating the correct facts of the case and without considering the documents filed during the course of appellate proceedings, even otherwise is not justified in law and facts and circumstances of the case in confirming the addition of Rs. 1527780/- made by Id assessing officer under section 69A of the I.T. Act only on the basis of finding given in the assessment order."*

3. Brief facts of the case are that the assessee is an individual was employee of the company M/s KC Garments Private Limited and has received commission income from various parties on sales. He earned only salary income and commission income for the year under consideration. The Assessing Officer, on perusal of the bank account statement for the FY 2016-17 in S/B A/c No. 166010100209786 maintained with Axis Bank, Krishna Nagar Branch, Delhi, found that the assessee had deposited cash of Rs. 2,26,75,000/- during the financial year 2016-17 out of which cash of Rs. 1,58,75,000/- deposited during the demonetization period from 08.11.2016 to 30.12.2016 and cash of Rs. 68,00,000/- deposited other than demonetization period. The Assessing Officer called upon the assessee to explain the source of cash deposit. The assessee submitted from Form No.4 for Certificate of Declaration under section 183 of the Finance Act, 2016 in respect of the Income Declaration Scheme, 2016 that the assessee declared total cash of Rs.2,45,22,220/- pertaining to A.Y. 2013-14 in Income Declaration Scheme 2016. On this undisclosed income, he paid total tax of Rs.1,35,00,000/- wherein Rs.33,75,000/- & Rs. 67,50,000/- were paid through banking channel on 27.03.2017 and 26.09.2017 respectively and Rs. 33,75,000/- was paid through cash mode on 25.11.2016. So the total cash position of the assessee during the year becomes Rs. 2,60,50,000/-, which is as shown below:-

S. No.	Cash Position	Amount (in Rs.)
1.	Cash deposited during demonetization period	Rs.68,00,000/-
2.	Cash deposited other than Demonetization period	Rs.1,58,75,000/-
3.	Tax paid in cash mode on account of IDS,2016 in respect of undisclosed income Rs.2,45,22,220	Rs.33,75,000/-
	Total	Rs.2,60,50,000/-

4. However, the Assessing Officer found that there is difference of cash of Rs.15,27,780/- (i.e. difference between total cash position during year Rs.2,60,50,000/- and amount declared in IDS 2016 Rs.2,45,22,220/- during the year under consideration. Therefore, the Assessing Officer issued show cause notice to the assessee. The assessee submitted that the assessee has taken gift from his father Mr. Vishan Dass of Rs.14,00,000/- in cash. It was submitted that cash declared under IDS-2016 and gift received, the assessee has deposited cash in his bank account of Rs.2,26,75,000/-and also paid income tax of IDS in cash of Rs.33,75,000/-. Remaining cash of Rs.1,27,780/- was held by the assessee from beginning of the year. He submitted copy of gift deed executed by Mr. Vishan Dass and cash ledger for financial year 2016-17 as supporting documents. The Assessing Officer doubted the authenticity of the gift deed and hence, he disallowed the amount of Rs.15,27,780/-.

5. Upon assessee's appeal, the Ld. CIT(A) confirmed the action of the Assessing Officer by holding as under:-

“Ground Nos. 1 and 2 are regarding addition of Rs. 15,27,780/- made u/s 69A. There was a cash deposit of Rs.2,26,75,000/- during the year of which Rs. 1,58,75,000/- was deposited during demonetization period and Rs.68,00,000/- in the other part of the years. The appellant justified the source of this deposits to be out of Rs.2,45,22,220/- pertaining to A.Y.2013-14 declared in Income Declaration Scheme (IDS) 2016 on which tax of Rs. 1,35,00,000/- was paid including tax paid of Rs.33,75,000/- in cash mode on 25.11.2016. Thus, there was a difference of cash of Rs. 15,27,780/-. During assessment proceedings, the appellant in response to show cause, filed reconciliation that he had taken gift from his father Mr. Vishan Dass of Rs. 14,00,000/- in cash and remaining cash of Rs. 1,27,780/- was held by the appellant. The AO found that this was not declared for A. Y. 2017-18 on record either in ITR or in computation. The appellant furnished only the gift deed in response to show cause. The appellant was specifically asked to furnish details for verification but the appellant did not furnish details when asked for and now is contending that additional evidence in the form of cash book be admitted when initially it was not declared in computation, it clearly shows to be an afterthought to reconcile the difference to the AO and thus, the appellant was not prevented by any sufficient or reasonable cause to not be able to produce the relevant supporting documents. Even the AO in remand report has stated that several opportunities were provided to the appellant during the assessment. Further, these documents are duly discussed and rejected in the assessment order. The appellant could not explain the source of cash alleged to be from his father with cogent documentary evidences, other than gift deed.”

6. Against the above order, the assessee is in appeal before the Tribunal.

7. I have heard both the parties and perused the material available on record. I find that the addition has arisen because of the non-acceptance by the authorities below of the gift deed, whereby, the assessee has claimed to have received of Rs.14,00,000/-. The ld. Counsel for the assessee submitted that the assessee has also

submitted his father's disclosure of income scheme and has also submitted a cash book, which has not been admitted by the Ld. CIT(A). He prayed that the additional evidence be accepted and for this purpose, he prayed that the issue may be remitted back to the file of the Assessing Officer.

8. Upon careful consideration, I note that in this case, the assessee has declared income under IDS-2016. There was a short fall of Rs.15,27,780/- between the cash deposit as computed by the Assessing Officer on cash available from IDS-2016. For explanation of this, the assessee has submitted gift deed from his father and cash book ledger account. This was not admitted by the ld. CIT(A). In our considered opinion, interest of justice will be served, if the issue is remitted back to the file of the Assessing Officer. The Assessing Officer is directed to consider the issue afresh in light of the additional evidences and submission of the assessee.

9. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 13th February, 2024.

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Delhi/Dated 13.02.2023.

Shekhar,

Copy forwarded to:

1. Assessee

2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi