

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

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1731/Del/2021 : Asstt. Year : 2017-18

Vinod Gupta, C-1/4, Ganga Triveni Apartment, Sector-9, Rohini, Delhi-110085	Vs.	Income Tax Officer, Ward-36(8), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAJPG1395B		

Assessee by : Sh. Mahesh Kasera, Adv.

Sh. Nikhil Goel, Adv.

Revenue by : Sh. Om Prakash, Sr. DR

Date of Hearing: 15.04.2024

Date of Pronouncement: 19.04.2024
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre, Delhi dated 24.09.2021.

2. Following grounds have been raised by the assessee:

"1. That the appellant reiterates all the facts and grounds of appeal raised before the Ld. CIT (A) herein. The CIT(A) has blindly confirmed the Assessment order passed by AO. The CIT(A) erred in upholding the addition made by AO in respect of cash deposit into the Bank Account.

2. The Assessment order passed by the AO is bad in law and fact under the fact and circumstances of the appeal. The order passed by the CIT(A) is against the law and facts on the file as he was not justified to arbitrary uphold the action of AO.

3. That the CIT(A) noted in Para 4.1 of the appeal order that the assessment framed is not bad in law while the assessee has challenged the assessment proceeding not assessment notice.

4. That the CIT(A) noted in Para 4.2 of the appeal order that the appellant has not furnish the source and justification of cash deposited into bank while appellant has in his written submission before CIT(A) reiterated all his reply to notice on dated 27-08-2018 about cash deposit and sources thereof along with the copy of ITR AY 2017-18.

5. That the AO has erred in law in treating the income of cash deposit of Rs. 27,47,000/- under section 69A of Income Tax Act 1961. The appellant has furnished all the relevant information in cash statement regarding cash deposits during and pre demonetization period. The appellant hereby declares that the cash deposits was made totally out of the funds withdrawal made from the banks as this was already submitted in cash statement in reply dated 09-11-2019, and same is reproduced as below mentioned:

Cash withdrawn from bank account by the assessee during F.Y 2015- 16 & 16-17 is tabulated below:

Bank Account	Date	Amount
42280200000029	16-10-2015	6,20,000.00
42280200000029	17-02-2016	8,00,000.00
42280200000029	22-06-2016	12,00,000.00
42280200000029	01-11-2016	5,00,000.00
42280200000029	22-12-2016	10,000.00
42280200000029	27-12-2016	10,000.00
42280200000029	30-12-2016	10,000.00
42280200000029	07-01-2017	50,000.00
42280200000029	12-01-2017	50,000.00
42280200000029	19-01-2017	1,00,000.00
42280200000029	27-01-2017	1,00,000.00

6. That the AO has nowhere pointed that the cash withdrawn has been used. Now it is unjustified and bad in law that cash kept for emergency use could not be deposited into bank, if deposited, same will be construed as income.

7. That the appellant hereby requests to allow him an opportunity before taking an adverse view in any of the issues."

3. The Assessing Officer made addition of Rs.27,47,000/- on account of the cash deposits in his two bank accounts in Bank of Baroda. The Assessing Officer at page no. 4 of the Assessment Order held "that the assessee has deliberately committed a mischief to cheat the department". The Id. CIT(A) affirmed the

addition made by the Assessing Officer on the grounds that the assessee has not furnished the proof that the cash deposits is rotation of funds. The Id. CIT(A) has further held that the assessee's case cannot be considered u/s 44AD of the Income Tax Act, 1961 and also that the assessee has not furnished the proof of receipt of cash. The Id. CIT(A) held that the assessee has failed to explain the genuineness of the transactions and to establish that the credit in the bank accounts is from the bank account.

4. Before us, the assessee submitted cash flow statement and argued that owing to the cash flow, the addition be deleted. The Id. DR argued that the primary work of examination of the cash flow has to be verified by the Assessing Officer.

5. Having gone through the details, we deem it to be a fit case to remand the matter to the jurisdictional Assessing Officer with directions to given benefits of cash withdrawals to the cash deposits and re-compute the taxable income.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 19/04/2024.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 19/04/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR