

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

**BEFORE,  
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER**

**ITA No.3282/Del/2023  
(ASSESSMENT YEAR 2017-18)**

Chander Pal Saini H. No.27 Ward No.5 Garhi MOhalla Old Faridabad Haryana-121002 PAN-DGJPS9910R <b>(Appellant)</b>	Vs.	Income Tax Officer War-1(2) Faridabad      <b>(Respondent)</b>
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Assessee by	Shri D.C. Garg, CA
Respondent by	Shri Om Prakash, Sr. DR
Date of Hearing	07/05/2024
Date of Pronouncement	15/05/2024

**ORDER**

**PER S.RIFAUH RAHMAN, AM:**

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi ["Ld. CIT(A)", for short], dated 20/09/2023 for Assessment Year 2017-18.

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

*"1. That Learned National Faceless Appeal Centre (NFAC), Delhi, has grossly erred in law as well as on facts in confirming the addition of Rs. 12,00,000/- made by the Assessing Officer without appreciating the fact*

*that father of the Appellant is an agriculturist and he had deposited cash in the bank account jointly maintained with the Appellant.*

*2. That Learned National Faceless Appeal Centre (NFAC), Delhi, has grossly erred in law as well as on facts in confirming the addition of Rs. 12,00,000/- made by the Assessing Officer by ignoring the facts that the Appellant jointly with his father took a loan from the Bank which is clearly reflecting in the bank statement.*

*3. That Learned National Faceless Appeal Centre (NFAC), Delhi, has grossly erred in law as well as on facts in confirming the addition of Rs. 12,00,000/- made by the Assessing Officer merely on the ground that the cash deposited by the father in joint account instead of his individual account.*

*4. The appellant craves leave to add, amend or vary from the aforesaid grounds of appeals at or before the time of hearing.”*

**3.** At the time of hearing , Ld AR of the assessee brought to our notice the relevant facts and submitted that the assessee is individual employed with Indian Railways. He is a cricketer enrolled with the Board of Control for Cricket in India (BCCI), playing at national level. On 05-11-2015, father of the assessee Shri Dal Chand took a loan of Rs. 10,00,000/- from Sarva Haryana Gramin Bank, Faridabad, against FD opened in the joint name of the assessee and his father. Bank certificate attached at page no. 7 of the Paper Book. On 8th November, 2016, Due to demonetization of 1000 and 500 rupees currency notes, father of the assessee repaid the loan by depositing Rs.12,00,000/- (Rs.

9,00,000/- on 12-11-2026 and Rs. 3,00,000/- on 13-11-2016. (Bank Certificate attached at page no. 7 and Statement attached at page no. 4 of the Paper Book). It is claimed before the lower authorities that Father of the assessee is a farmer, derives income from agricultural activities. He also held cash with him out of sale of land and bank withdrawals. (Cash Flow Statement is attached at page no. 59-60 of the paper Book). It was submitted that the AO made addition rejecting the claim of the assessee and observed that why father deposited cash in the account of the assessee. It was submitted that father of the assessee deposited cash towards repayment of the loan taken against FD in joint name of the assessee with his father. Affidavit to this effect is also attached at page no. 61-64 of the Paper Book.

**4.** The Ld. DR submitted that, it is a fact on record that Rs.12,00,000/- was deposited in the joint bank account and it is the duty of the assessee to submit source of the cash deposited in the bank account. He further submitted that the assessee has not submitted bank deposit slip and who deposited the same. He also submitted that the affidavit filed by the assessee is in English and

father of the assessee has signed in Hindi, whether the father was informed of the contents of the affidavit in the local language. Therefore, he submitted that the affidavit filed by the assessee is not reliable. Accordingly, he relied on the findings of the lower authorities. Further, he prayed that the Bench should direct the Assessing Officer to make the addition in the hands of father of the assessee. In this regard, he relied on the following decisions:

- (i) *Shashi Garg vs. PCIT (2020) 423 ITR 150 (Delhi High Court)*
- (ii) *Chand Prakash Vij vs. CIT reported in 315 ITR 251 (P&H)*

**5.** In the rejoinder, the Ld. AR submitted that the assessee has filed an affidavit from his father and in para- 6 & 7 it was submitted that the same was deposited in the joint loan account. The issue raised by the Ld DR are not the issues raised by the lower authorities. He further brought to our notice page 59 of the Paper Book wherein Sh. Dal Chand (father of the assessee) has submitted the source of cash deposits in detail in respect of the affidavit filed by him.

**6.** Considered the rival submissions and material placed on record. We observed from the record that the assessee has taken

loan against the FD held by him in the joint account with his father. The FD also held in the joint names. During demonetization period, the loan was repaid by way of cash deposits. The case of the assessee was reopened on the basis of cash deposits. The AO has rejected the submissions made by the assessee that the same was repaid by his father out of agricultural income and savings. The AO made observation that why is that the father has deposited the cash in the son's account instead of his own account. It is submitted before us that the loan was taken in the joint name and repaid by his father. The same was also submitted a affidavit before us duly stamped. After considering the submissions, we observe that the assessee has taken loan against the FD held with his father. It is not in dispute and how they utilized the above loan is not questioned. It is brought to our notice that the father of the assessee has sufficient funds at his disposal and he makes regular bank deposits out of agricultural income and also has cash out of sale of property. Our attention was drawn that the assessee has deposited 10 lakhs on 7/12/2015 and 2 lakhs on 10/11/2016 before the current

disputed bank deposits. It was also submitted that the father has repaid the loan out of his own source of income and such deposit cannot be added in assessee's hand. After considering the affidavit and cash flow statement, we noticed that the father has sources to make the deposits and demonstrated that the father has sufficient funds on the date of deposits.

**7.** In our view, there is no dispute that the loan was taken jointly and repaid the same loan out of his father source of income. It doesn't make any difference whether the assessee settles the bank loan or his father, as long as they show the source for such deposits, it is acceptable. We observe that the assessee's father makes regular withdrawal and deposits in his account and brought on record the sale transaction during the previous year. Since he demonstrated that he has sufficient funds to withdraw and redeposit, the addition cannot be made in the hands of the assessee considering the fact that the loan was taken in the joint name and any one can settle the same. There is no bar.

**8.** In the given case, what needs to be seen is whether the party who claims to have deposited, should also demonstrate the

capacity to make such deposits. In the given case, it was demonstrated that the father of the assessee has capacity to make the deposits, if at all AO has doubt on the ability of the father, he should have made the enquiry and proceeded to make the addition in the hands of his father not in the hands of the assessee. Therefore, we are inclined to allow the grounds raised by the assessee.

**9.** In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 15<sup>th</sup> May, 2024.

Sd/-

**(S.RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated:15/05/2024

*Pk/sps*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI