

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : B : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.3325/Del/2023
Assessment Year: 2017-18

ITO,
Ward 43(6),
New Delhi.

Vs Gunjan Aggarwal,
42, Sharda Niketan,
Pitampura,
New Delhi. – 110 034.

PAN: AKXPB3657P

(Appellant)

(Respondent)

Assessee by : Shri Sandeep Goel, Advocate
Revenue by : Shri Vivek Kumar Upadhyaya, Sr.DR

Date of Hearing : 22.05.2024
Date of Pronouncement : 30.05.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Revenue against the order dated 26.09.2023 of the Commissioner of Income Tax (Appeals), NFAC, Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.CIT(A), Delhi-15/10618/2019-20 arising out of the appeal before it against the order dated 18.12.2019 passed u/s 143(3) of the Income Tax Act,

1961 (hereinafter referred as ‘the Act’), by the ITO, Ward 43(8), Delhi (hereinafter referred to as the Ld. AO).

2. The return of the assessee was selected under CASS for the reason, “cash deposit during the year.” The AO observed that in IDBI Bank and Karnataka Bank accounts of the assessee a sum of Rs.89,50,000/- and Rs.89,000/- respectively, totaling to Rs.90,39,000/- was deposited during the year. The assessee was asked to furnish the source of deposit and primarily, the plea of the assessee was that the cash withdrawals from time to time from the same bank accounts or another bank account in the same financial year itself were involved and balances from the preceding financial year as well was used for deposits. However, the AO was not satisfied and addition was made of Rs.79,60,000/- which has been deleted by the CIT(A) with the following relevant findings in para **6.1 and 6.2:-**

“6.1 I have carefully considered the submission of the appellant and perused the findings recorded in the assessment order. The fact on record show that in the instant case, the AO has issued notice to the appellant to explain the nature and source of deposits of cash into the bank accounts amounting to Rs.90,39,000/- during the financial year (FY) 2016-17. During the year under consideration, i.e. AY 2017-18, the appellant has disclosed a total income of Rs.10,15,900/- which comprises income from House property and Other sources. During the course of assessment proceeding, the AO has required the appellant to , explain the source of the cash of Rs.90,39,000/ deposit in to the bank account in response the appellant has explained that the allegation of Cash deposit of Rs. 90,39,000 is incorrect and stated that cash Rs. 79,60,000/ was deposited in the Bank account and also explain that cash was deposited out of cash withdrawal from the Banks. The AO has found the explanation of the appellant not satisfactory only on the ground of Human probability and therefore, the AO has held the cash of Rs.79,60,000/ deposits, as the unexplained money, deemed income, u/s 69A of the Act.

6.2 In course of the present appellate proceedings, the appellant has reiterated the same arguments and submissions as were made before the AO earlier. After careful examination of the details, it is observed that the cash of Rs.79,60,000/- was deposited in bank Accounts was out of cash withdrawal from Bank accounts in the year under consideration and preceding years as well which is evident from the bank statements and Cash flow submitted by the appellant. It also appears that the AO has disbelieved this averment of the appellant on the basis of suspicion that the assessee must, have spent the amount for some other purpose and without appreciating the fact and without bringing any material on record to substantiate that the amount withdrawn by the assessee was utilized elsewhere other than in making the deposit in the bank accounts of the assessee. The AO nowhere in his order has brought out any material on record to show that the assessee is having any additional sources of income other than that disclosed in the return nor assessing officer could spell out in his order that cash flow statement submitted by the appellant is defective. Documentary furnished by the appellant clearly clarifies that on occasion at the time of deposit in his bank accounts, assessee had sufficient availability of cash (Cash Statement submitted by the assessee) which is also not disputed by the AO. Entire transactions of withdrawals and deposits are duly reflected in the bank accounts of the assessee and are verifiable from relevant records. In the circumstances, I find sufficient force in the submission of the appellant in this behalf. Thus, the nature and source of the cash of Rs.79,60,000/- can be taken to be reasonably explained and this sum would not attract the provisions of section 69A of the Act. The AO has failed to appreciate this fact. The AO is, therefore, directed not to treat the cash of Rs.79,60,000/- as unexplained money u/s 69A. The addition of Rs.79,60,000/- u/s 69A, thus, stands deleted.”

3. The Revenue is in appeal raising the following grounds:-

“1. Ld. CIT(A) has erred in law and facts by observing that the AO has disbelieved the averment of the assessee on the basis of suspicion.

2. Ld. CIT(A) has erred in law and facts by deleting the addition of Rs.79,60,000/- u/s 69A of the Act despite the fact that the assessee could not bring anything on record to establish that this cash deposit was from known source of income.

3. Ld. CIT(A) has erred in law and facts by accepting the same reasons of cash deposit which were rejected by the Assessing Officer in absence of documentary evidence.

4. Ld. CIT(A) has erred in law and facts by observing that this cash deposit was out of preceding and current year withdrawal despite the fact assessee could not produce any substantial evidence of cash deposit.

5. Ld. CIT(A) has relied upon the decision pronounced by Hon'ble High Court of Delhi in the case of Shri Kulwant Rai vs. CIT. The facts of the present case are quite different from the facts of the case decided by the Hon'ble High Court of Delhi on the following points: a. The assessee referred in decision of High Courts of Delhi was covered under search operation whereas in present case the assessee is not covered in the search and it is a cash of cash deposit in bank account. b. The cash in the case of the assessee referred in decision of High Courts of Delhi was found from his bed whereas in the present case cash was deposited by the assessee in his bank account and remained unexplained. c. In the case of assessee referred in the decision of High Courts or Delhi the cash found was in excess of withdrawal shown by the assessee whereas in the present case the assessee could not prove that he had withdrawn cash with documentary evidence.”

4. Heard and perused the record. The ld. DR has supported the findings of the AO and submitted that CIT(A) has fallen in error in accepting the bald assertions without examining the circumstances giving rise to suspicion that the same money as withdrawn could not have been deposited with such a frequency.

5. After taking into consideration the contention of the ld. DR and the material before us, it comes up that details of cash withdrawals for FY 2015-16 from both the bank accounts was provided to the AO which have been appreciated by the CIT(A) to make the deletion. The AO has disbelieved this information on the suspicion that the assessee must have spent the amount for some other purpose without making any substantive inquiries on that aspect or by bringing on record any circumstantial evidences even. We are of the

considered view that there is no error in the conclusion drawn by the Id.CIT(A) on the basis of appreciation of facts and the grounds, thus, have no substance.

6. In the result, the appeal is dismissed.

Order pronounced in the open court on 30.05.2024.

Sd/-

Sd/-

(G.S. PANNU)
VICE PRESIDENT

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 30th May, 2024.

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Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi