

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

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

ITA No. 2438/DEL/2023: Asstt. Year: 2012-13

Neelu Maheshwari, Q-194, Palavpuram, Phase-2, Modipuram, Meerut, U.P.-250110	Vs	Income Tax Officer, Ward-2(4), Badaun, U.P.-243601
(APPELLANT)		(RESPONDENT)
PAN No. AJRPM8406G		

Assessee by : Sh. Mayank Patwari, CA

Revenue by : Sh. Atiq Ahmed, Sr. DR

Date of Hearing: 16.11.2023

Date of Pronouncement: 12.02.2024

ORDER

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 17.08.2023.

2. Following grounds have been raised by the assessee:

"1. The Ld. CIT(A) has erred in law and against the facts & circumstances of the case for confirming the addition of Rs. 1176000/- made by the Ld. AO in his order dated 13/12/2019.

2. That the Ld. CIT (A) has erred in law and against the facts of the case, on both, for denying the objection of the assessee that the notices, further issued after giving affidavit by her was not served on proper email as well as physically to the assessee by alleging that I have carefully considered the submission of the appellant. Sufficient opportunity was allowed during assessment proceedings and reply was filed by the assessee which was duly considered. Adjournment was sought, which was also allowed. Hence to say that she was not aware of further notices doesn't seem to be true state of affairs. The AO has already considered the affidavits during

assessment proceedings without considering the fact that how the assessee may now about the deficiency in the affidavits furnished until the notices regarding the deficiency is not received actually by her.

3. That the Ld. CIT (A) has erred in law and against the facts and circumstances of the case while confirming the addition of Rs. 1176000.00, made by the Ld. AO by alleging that The AO has already considered the affidavits during assessment proceedings. Even the sources of income and the dates of giving the cash to the appellant are not mentioned in the affidavit. The appellant furnished incomplete facts/details and the source of cash deposits in bank was not explained. Hence, the addition of Rs.11,76,000/- made by the A.O. is confirmed without appreciating the facts that the other co-owners have confirmed the payment of cash to the assessee for purchase of the house under consideration by giving properly notarized affidavits so only a minor deficiency, of not mentioning the date of payment of cash, may not be the cause for rejecting the same.

4. That the Ld. CIT (A) has erred in law and against the facts and circumstances of the case for making allegation that the appellant furnished incomplete facts/details and the source of cash deposits in bank was not explained by going out of purview that in the case of the assessee how any AO may asked the source of funds invested by the third party for purchase of their shares.

5. That the Ld. CIT (A) has erred in law and against the facts and circumstances of the case for not allowing the relief for cash deposited/ expenses by the assessee for purchase of the house under consideration for her own share without saying anything as well as without asking any document/ explanation regarding and without giving any opportunity to the assessee to prove the source of funds of investment in house property made by her own share."

3. Brief facts of the case are that the assessee had deposited cash in her bank account. The Assessing Officer recorded reasons u/s 148 of the Income Tax Act 1961. The assessee filed return of income on 15.04.2019 declaring gross total income of

Rs.1,82,450/- after claiming deduction under Chapter-VI-A of Rs.3,600/-.

4. The assessee made explanation in respect of cash deposit of Rs.11,76,000/- and submitted the affidavit of persons from whom she received cash for purchasing the property in partnership in equal ratio. The Assessing Officer has passed the Assessment Order making addition of Rs.11,76,000/- to her income. The assessee filed affidavit of Smt. Shankulta Devi, mother-in-law of the assessee and Smt. Aparna Devi, Sister-in-law of the assessee who have given an amounts. The Assessing Officer and the Id. CIT(A) has summarily rejected the affidavits filed by the parties without assigning any reason. No enquiries have been conducted nor any evidence has been brought to rebut the averments in the affidavits either by the Assessing Officer or by the Id. CIT(A). It is settled proposition of law that averments made in the affidavits are *prima facie* true unless proved otherwise. Hence, the action of the Id. CIT(A) cannot be supported in confirming the addition inspite of the affidavits and evidences submitted by the assessee.

5. In the result, the appeal of the assessee is allowed.
Order pronounced in the open court on 12/02/2024.

Sd/-
(Dr. B. R. R. KUMAR)
ACCOUNTANT MEMBER

Dated: 12/02/2024

Subodh Kumar, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR