

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एस एम सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.2803 & 2804/दिल्ली/2024 (नि.व. 2011-12 और 2012-13)
ITA Nos.2803 & 2804/DEL/2024 (A.Y.2011-12 & 2012-13)

Jalandhar Singh,
C/o CA M.R Sahu, House No. 651,
1st Floor, Sector 10A, Nr. G.D Goenka Public School,
Gurgaon, Haryana 122011

PAN: BXAPS-8449-F

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer, Ward-2(2),
Vanijya Nikunj, Udyog Vihar, Phase-V,
Gurgaon, Haryana 122016

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri M.R Sahu, Chartered Accountant
प्रतिवादीद्वारा/ Respondent by : Ms. Shivani Bansal , Sr. DR
सुनवाई की तिथि/ Date of hearing : 11/09/2024
घोषणा की तिथि/ Date of pronouncement: : 28/11/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the assessee for assessment year 2011-12 and 2012-13, respectively are taken up together as identical facts are involved in both these appeals. The facts are narrated from appeal in ITA No. 2803/Del/2024, therefore, the said appeal is taken up as a lead case.

ITA No. 2803/Del/2024 (AY 2011-12)

2. The appeal is time barred by 110 days. The assessee has filed an affidavit giving reasons for delay in filing of appeal. After perusal of the same, I am satisfied that the delay in filing of appeal is caused due to the reasons stated in the affidavit, the same appears to be bonafide. Hence, the delay in filing of appeal is condoned and the appeal is admitted to be heard on merits.

3. Shri M.R Sahu, appearing on behalf of the assessee submits that the assessee is an agriculturist. The assessment u/s. 147 of the Act has been made by the Assessing Officer (AO) on the basis of information available in ITS that the assessee has deposited cash amounting to Rs.55,00,000/- in the bank account maintained with Oriental Bank of Commerce (OBC) during Financial Year 2010-11. While passing the assessment orders, the AO made addition of Rs.25,00,000/- on account of cash deposits on a single day on 17.09.2010 in HDFC Bank, instead of alleged cash deposit of Rs.55,00,000/- in account with OBC. Against the said addition, the assessee filed an appeal before the CIT(A). The assessee explained before the CIT(A) that the assessee has no bank account with HDFC Bank and had bank account with Oriental Bank of Commerce (OBC) and State Bank of India (SBI). The assessee furnished bank statements of aforesaid accounts with the CIT(A). It was explained that the father of the assessee had sold agricultural land in Financial Year 2018-19. The assessee's father gave Rs.50,00,000/- to the assessee in February 2009 and the same was advanced by the assessee to one Balraj for purchase of agricultural land in March 2009. The assessee entered into an agreement for purchase of land with Balraj. In January 2010, the assessee received Rs.30,00,000/- as gift from his father. The said amount was also given by

the assessee to Balraj towards part payment for purchase of agricultural land. Subsequently, the agreement for purchase of land was cancelled in January 2010 and out of the money received back from Balraj Rs.30,00,000/- was deposited in SBI account on 01.06.2010 and Rs.25,00,000/- were deposited in OBC on 17.09.2010. However, the CIT(A) disbelieved submissions of the assessee which were substantiated with bank statements.

3.1. The Id Counsel for the assessee submitted that the assessee has raised an additional ground of appeal raising a legal issue which goes to the root of validity of reopening of assessment. He submitted that the AO has recorded reasons for reopening in a mechanical manner, without proper application of mind and without verification of facts. He submitted that as per reasons recorded by the AO, there was cash deposits of Rs.55,00,000/- on various dates in the bank account of the assessee with Oriental Bank of Commerce. Whereas in the Assessment Order addition has been made by the AO on account of cash deposits of Rs.25,00,000/- with HDFC Bank account. The Id. Counsel made a statement at Bar that the assessee is not having any bank account with HDFC Bank. The Id. Counsel asserted that since no addition has been made by the AO on the reasons recorded for reopening, therefore, no other addition can be made.

4. Au contraire, Ms. Shivani Bansal representing the department vehemently supporting the impugned order prayed for dismissing appeal of the assessee. She further objected to additional ground raised by the assessee. Supporting the impugned order, the Id. DR submits that the assessee did not provide bank statement of HDFC Bank and the source of deposit of cash in HDFC Bank account was also not given by the assessee.

5. Both Sides heard, orders of the authorities below examined. The Counsel for assessee has made two fold submissions, one on the legal issue and the other on merits.

6. The legal issue raised by the assessee by way of additional ground is with regard to reasons recorded for reopening. The additional grounds raised by assessee is purely legal and no fresh evidence is required to be adduced for its adjudication. Hence, the same is admitted.

7. A perusal of reasons for reopening of assessment u/s. 147 of the Act dated 28.02.2018 (at page 12 and 13 of the paper book) would show that as per the information available in ITS, the assessee has deposited cash of Rs.55,00,000/- on various dates in his bank account maintained with OBC during Financial Year 2010-11 relevant to assessment year 2011-12. Whereas while passing Assessment Order addition has been made by the AO in respect of cash deposits amounting to Rs.25,00,000/- in HDFC Bank account. No addition has been made in respect of cash deposits on multiple dates in OBC. In fact the AO himself records in the assessment order (para 14) that addition is made with respect to deposit of cash Rs.25,00,000/- on single date instead of cash deposits of Rs.55,00,000/- as per available information. The Id. Counsel for the assessee has made statement at Bar that the assessee is not having any account with HDFC Bank. The said statement made on behalf of the assessee is in line with the statement made before the CIT(A). As per the contention of the assessee, the assessee had made cash deposits of Rs.30,00,000/-in SBI on 01.06.2010 and Rs.25,00,000/- in OBC on 17.09.2010. No addition has been made by the AO in respect of aforesaid cash deposits. The AO and the CIT(A) have consistently questioned about cash deposit

in HDFC Bank. A perusal of the reasons recorded for reopening shows that assessment for AY 2011-12 was reopened solely on account of cash deposits with OBC. Once, no addition has been made by the AO in respect of reasons recorded for reopening, no other addition could have been made by the AO. The assessee succeeds on this legal issue.

8. In so far as merits of the addition are concerned, the addition has been made on account of addition of Rs.25,00,000/- in saving bank account maintained with HDFC Bank Ltd. The assessee has furnished bank statements of his accounts maintained with SBI and OBC, wherein Rs.30,00,000/- and Rs.25,00,000/- respectively were deposited in cash during the period relevant to assessment year under appeal. The Id. Counsel for the assessee has made a statement at Bar that the assessee is not maintaining any bank account with HDFC Bank Ltd. No addition has been made by the AO, in respect of cash deposits with SBI and OBC. The revenue has not given the details of HDFC Bank account allegedly in the name of assessee where the cash amount of Rs. 25,00,000/- was deposited by the assessee. Once the assessee denies of having account with HDFC Bank, onus shifts of the Department to prove existence of HDFC Bank account in the name of assessee. The assessee cannot be asked to produce a bank statement of an account which he is not having. In the absence of such detail the addition made by the AO is unsustainable.

9. I find merit in appeal by the assessee, hence, the impugned order is set aside and appeal of the assessee is allowed.

10. The appeal is time barred by 110 days. The assessee has filed an affidavit given reasons for delay in filing appeal. A perusal of affidavit shows that the reasons are on same line as were given in AY 2011-12. Therefore, the delay in filing of appeal is condoned and appeal is admitted for adjudication on merits.

11. Both sides are unanimous in stating that the facts in the impugned assessment year are identical to the facts in AY 2011-12, therefore the submissions made in AY 2011-12 would equally hold good for assessment year 2012-13. Since, the reasons given for reopening assessment and the addition made by the AO are for similar reasons as given in AY 2011-12 except for quantum of addition and the fact that addition of Rs.33,00,000/- has been made by the AO on the basis of peak amount of cash deposits with HDFC Bank account.

12. The assessee has raised an additional legal ground challenging validity of assessment on the ground similar to AY 2011-12. Since, we have allowed appeal of the assessee for AY 2011-12 on legal issue as well as on merits of the addition, for parity of reasons, the present appeal of assessee is also allowed.

13. In the result, appeals of the assessee for AY 2011-12 & 2012-13 are allowed.

Order pronounced in the open court on Thursday the 28th day of November, 2024.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 28/11/2024

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI