

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

Before Smt. Diva Singh, JM AND Sh. O.P.Kant, AM
ITA No.1626/Del./2013
Asstt. Year : 2008-09

ITO, Ward-26(3), Room No.1809, E-2, Block, 18 th Floor, Civic Center, New Delhi	Vs	Deepak Chawla, D-19, Om Vihar, Uttam Nagar, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AEPPL9361R		

Appellant by : Sh. Devi Sharan Singh, Sr. DR
Respondent by : None.

Date of Hearing : 29.10.2015	Date of Pronouncement :30.10.2015
-------------------------------------	--

ORDER

PER O.P.KANT, A.M.

This appeal of the Revenue is directed against the order of the learned Commissioner of Income-tax (Appeals)-XXIV, New Delhi dated 29.01.2013 in respect to Assessment Year 2008-09. The Revenue has raised following grounds:-

- “1. On the facts and circumstances of the case, the and in law CIT(A) erred in-*
- 2. Restricting the addition of Rs.27,000/- against Rs.20,27,289/- made by the AO on account of unexplained income u/s 68 of the income tax Act.*
- 3. Accepting additional evidence in the form of cash flow statement which was not produced before the AO in the contravention to Rule 46A.”*

2. Facts in brief as culled out from the order of the lower authorities are that the assessee was an individual and was running a general store in the name and style of M/s. 'Chawla General Store' during the relevant period of time. The assessee filed return of income on 20.01.2009 declaring total income of Rs.1,27,240/-. The case was selected for scrutiny through computer assisted selection of scrutiny (CASS). In the course of the scrutiny proceedings, the learned Assessing Officer (in short 'AO') observed cash deposit of Rs.19,27,289/- in saving bank account with ICICI Bank and cash deposit of Rs.1 lakh in saving bank account with Kotak Mahindra Bank. In the assessment order passed under section 143(3) of the Income-tax Act, 1961 (in short 'Act') on 23.12.2010, the ld. AO held that even after providing so many opportunities, no reply was filed by the assessee regarding source of cash deposits, and therefore, cash deposits of Rs. 20,27,289/- appearing in both the accounts were held as unexplained cash credits under section 68 of the Act.

3. Aggrieved, the assessee filed an appeal before the learned Commissioner of Income-tax(appeals) [in short 'CIT(A)']. The ld. CIT(A) in his order has mentioned that, after filing the appeal, the assessee demised at the young age of around 40 years and his wife smt. Minu Chawala, being legal heir of the assessee, authorised Mr Arjun Gupta,

CA as Authorised Representative (in short 'AR') to appear in appellate proceedings. Before the Id CIT(A), the Id. AR submitted that cash was deposited out of personal savings, opening cash balance and business turnover of the assessee and the cash withdrawn from the bank was re-deposited to increase the volume of money transactions in the bank. The Id. AR prepared a cash flow statements on the basis of bank statements and submitted to the Id. CIT(A). The Id CIT(A) observed a negative cash balance of Rs.26,998/- in the cash flow statement during period from 1st July to 15th July. 2007. Further, the Id CIT(A) observed that cash of Rs.12,59,750/-was withdrawn from bank accounts during the previous year , which has been utilized for re-deposit in banks. Further, he also observed that the assessee had declared a cash turnover of Rs.9,02,219/- from his business and there was a opening cash balance of Rs.1,52,312/- , which had also been utilised for deposit in banks . In view of the availability of cash from withdrawal, business turnover and opening balance, the Id CIT(A) held that cash availability with the appellant was more than cash deposit of Rs.20,27,289/-, but in view of the negative cash balance from 1st July to 15th July, 2007 of Rs.26,998/-, he sustained the addition of Rs.27,000/-.

4. Aggrieved the Revenue is before us.

5. The learned Senior Departmental Representative (in short 'SR DR') relied on the order of the ld. AO and submitted that assessee failed to explain the source of deposits in banks, whereas, on the other hand an application for adjournment was filed by the wife of the assessee , which was rejected.

6. We have heard the submission of the Revenue and perused the material available on record. We are of the opinion that the ld CIT(A) has thoroughly examined the availability of cash balance and in view of the withdrawals from banks, cash generated from business turnover and opening cash balance, the deposits of Rs.20,27,289/- in banks stands fully explained and sustained an addition of Rs.27,000/- in view of the negative cash balance for the period from 1st July to 15th July, 2007. In view of above clear findings of the ld. CIT(A) , we are of considered view that no interference is required in the order of the ld CIT(A) on this issue. Accordingly, the first ground of Revenue is dismissed.

7. As regards to the next ground of the Revenue that additional evidence in the form of cash flow statement was admitted by the ld. CIT(A) in contravention of Rule 46A is concerned, the ld SR DR submitted that ld. CIT(A) has not provided opportunity to the learned AO to go through the

cash flow statement . But, we are not in agreement with the ld. SR DR. It is apparent from the facts that in the case, copy of bank statements was available with the ld. AO and cash flow statement was prepared on the basis of those bank statements, therefore, the cash flow statement cannot be termed as additional evidence. The ld. CIT(A) has done the task of examination of availability of cash for deposits under co-terminus powers of the Assessing Officer and accordingly he has sustained addition of Rs. 27,000/-. In view of above, we find that there is no contravention of Rule 46A of the IT Rules and therefore this ground of the Revenue is also dismissed.

7. In the result the appeal of the Revenue is dismissed.

Order Pronounced in the Court on 30/10/2015.

-Sd/-

(Diva Singh)
JUDICIAL MEMBER

Dated:30/10/2015

Ajay

Copy forwarded to:

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

-Sd/-

(O.P.Kant)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR