

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

SHRI SAKTIJIT DEY: JUDICIAL MEMBER

**ITA No.367/Del/2021
Assessment Year: 2011-12**

Santosh, H.No. 666, Village Kanjhawala, Delhi-1100 81	Vs.	ITO, Ward-37(2), New Delhi
PAN :BPXPS3166N		
(Appellant)		(Respondent)

Assessee by	S/Shri M.P. Rastogi, P.N. Shastri & Ram Naresh, Adv.
Respondent by	Shri Narpat Singh, Sr. DR

Date of hearing	16.11.2022
Date of pronouncement	28.12.2022

ORDER

This is an appeal by the assessee against order dated 18.10.2019 of learned Commissioner of Income-Tax (Appeals)-13, New Delhi pertaining to assessment year 2011-12.

2. The registry has notified delay of 469 days in filing the appeal. The assessee has filed an application seeking condonation of delay. It is submitted by the assessee that the assessee is an uneducated lady and not well conversant with niceties of law. It is submitted, for this

reason, the assessment order was passed ex parte. It is submitted, though, the order passed by the first appellate authority was handed over to the counsel for further action, however, the counsel did not take any action. Only when the department proceeded for recovery of the demand, the assessee came to know that the appeal against the order of first appellate authority has not been filed. Therefore, the assessee appointed another counsel and fee for filing the appeal before the Tribunal was deposited on 17.09.2020 and appeal was sent through e-mail on 21.09.2020 as physical movement was restricted due to Covid-19 Pandemic. It is submitted, subsequently, physical copy of the appeal was filed on 31.03.2021. Thus, it is submitted, the exact delay in filing the appeal is 278 days and not 469 days as notified by the registry, since, the appeal was presented through e-mail on 21.09.2020. Thus, learned counsel for the assessee requested for condoning the delay.

3. The learned Departmental Representative did not object to condonation of delay.

4. Having considered rival submissions, I find the delay in filing the appeal was due to a reasonable cause. Accordingly, I condone the delay in filing the appeal and admit it for adjudication on merits.

5. The assessee has raised grounds both on the validity of assessment under Section 147 of the Act as well as the merits of the addition made under Section 69A of the Act.

6. Briefly the facts are that the assessee is a resident individual. For the assessment year under dispute, the assessee did not file any return of income.

7. Subsequently, based on AIR information that in the year under consideration, the assessee had deposited cash amount to Rs.27,60,000 in her saving bank account with Punjab National Bank, the Assessing Officer reopened the assessment under Section 147 of the Act. Alleging that the assessee did not comply with the notices issued under Section 148 as well as section 142(1) of the Act, the Assessing Officer proceeded to complete the assessment to the best of his judgment under Section 144 read with section 147 of the Act. While doing so, he treated the cash deposits of Rs.27,60,000 as unexplained money under Section 69A of the Act and added back to the income of

the assessee. Assessee contested the aforesaid addition before learned Commissioner (Appeals).

8. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) was convinced to the extent that part of deposit in the bank account were out of earlier withdrawals. Accordingly, he granted relief to the extent of Rs.18,60,000. Whereas, he sustained the addition of the balance amount of Rs.9,00,000.

9. Before me, learned counsel appearing for the assessee submitted that the assessee is the wife of a gardner Shri Nafe Singh, earlier employed with Municipal Corporation of Delhi (MCD) and has since retired. He submitted, in the year under consideration, assessee's husband had received an amount of Rs.17,10,082 on account of acquisition of land from the Land Acquisition Collector and the amount was deposited in his saving bank account maintained with SBI. He submitted, out of the said amount, assessee's husband withdrew an amount of Rs.10,00,000 on 05.01.2020 for certain purposes but since the amount could not be utilized, he deposited an amount of Rs.9,00,000 in assessee's bank account. He submitted, only

because of a gap of six months between the date of withdrawal and deposit, learned Commissioner (Appeals) has disbelieved assessee's claim and sustained the addition. He submitted, when the department has failed to establish that the amount withdrawn by assessee's husband was used for some other purposes and not available for deposit, they cannot disbelieve the claim of the assessee, only because there is a gap of six months. In support of his contention, learned counsel for the assessee relied upon the following decisions:

- i) 127 ITR 807 (Karnataka) in the case of SR Venkatarathnam vs. CIT; &
- ii) 121 TTJ 366 (Delhi Trib) in the case of ACIT Vs. Baldev Raj Charla.

10. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

11. I have considered rival submissions in the light of decisions relied upon and perused the material available on record.

12. It is a fact on record that in the year under consideration, the assessee had made certain cash deposits in her bank account. Though, the Assessing Officer has added back an amount of Rs.27,60,000

representing the alleged cash deposits, however, learned Commissioner (Appeals) being convinced with the fact that an amount of Rs.18,60,000 was deposited out of earlier withdrawals, deleted the addition to that extent.

13. As regards the balance amount of Rs.9,00,000 sustained by learned Commissioner (Appeals), it is the explanation of the assessee that the said amount was deposited out of Rs.10,00,000 withdrawn from her husband's bank account. On perusal of material placed on record, it is observed that in the year under consideration, assessee's husband received an amount of Rs.17,10,082 towards compensation on land acquisition. The land acquisition compensation was deposited in the account of the husband. However, on 05.01.2010, assessee's husband withdrew an amount of Rs.10,00,000. It is the claim of the assessee that out of such withdrawals, amount of Rs.9,00,000 was redeposited in assessee's bank account in June, 2010. Apparently, learned Commissioner (Appeals) has disbelieved assessee's claim only for the reason that there is a gap of six months between the withdrawal of money from husband's account and deposit in wife's account.

14. In my view, when the assessee was able to establish that an amount of Rs.10,00,000 was available from the withdrawals made by the husband from his bank account which facilitated the deposit of Rs.9,00,000, the explanation cannot be discarded merely because of six months gap between the withdrawals and deposited. More so, when there is no material brought on record by the departmental authorities that Rs.10,00,000 withdrawn from the bank account was utilized for some other purposes and not available with the husband of the assessee. Since, the explanation furnished by the assessee regarding the source of deposits of Rs.9,00,000 is a plausible explanation, I delete the addition of Rs.9,00,000.

15. In view of my decision on merits, grounds raised challenging the validity of reopening of assessment under Section 147 of the Act having become academic, do not require adjudication.

16. In the result, the appeal is allowed, as indicated above.

Order pronounced in the open court on 28th December, 2022.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 28th December, 2022.
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi