

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**  
**(DELHI BENCH 'C' : NEW DELHI)**  
**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER**  
**AND**  
**SH. ANUBHAV SHARMA, JUDICIAL MEMBER**  
**ITA No. 171/Del/2021, A.Y. 2015-16**

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| Smt. Karina Kunjana Kapoor<br>C-4, 6 Aurangzeb Road,<br>Central,<br>Delhi- 110001<br><b>PAN : BFNPK7229C</b> | Vs. | Deputy Commissioner of Income<br>Tax,<br>Central Circle-19,<br>New Delhi |
| <b>(APPELLANT)</b>   |     | <b>(RESPONDENT)</b>  |

|             |   |
|-------------|---|
| Assessee by | Sh. Lakshay Gupta, Ca & Sh. Rajat Vaishnav,<br>Adv. |
| Revenue by  | Mohd. Gaysuddin Ansari, CIT( DR)                    |

|                        |            |
|------------------------|------------|
| Date of hearing:       | 25.01.2023 |
| Date of Pronouncement: | 07.03.2023 |

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal has been filed by the Assessee against order dated 11.01.2021 passed in appeal no. 10293/2018-19 for assessment year 2015-16, by the Commissioner of Income Tax (Appeals)-26, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 31.12.2018 u/s 153A/143(3) of I.T. Act, 1961 (hereinafter referred to as 'the Act') passed by ACIT, Central

Circle-16, New Delhi (hereinafter referred as Ld. Assessing officer or in short Ld. AO).

2. **The facts of the case** a search and seizure operation was carried out on Deepak Talwar Group on 22.06.2016 and the case of appellant was also covered under search. Accordingly, the case of Appellant for the above Assessment Year was taken up for search and seizure assessment under Section 153A r.w.s. 143(3) and subsequently a notice under section 142(1) of the Income Tax Act, 1961 was issued to the Appellant. The appellant filed her return of income for the A.Y. 2015-16 on 06.12.2018 declaring total income of Rs. 1,52,780/-whereas the assessment has been framed at an income of Rs. 39,52,780/-. The Ld. AO has made following additions:

| <b>Particulars</b>   | <b>Amount (INR)</b> |
|--|---------------------|
| a) Addition on account of unexplained cash deposit u/s 69A | Rs. 3,50,000/-      |
| b) Addition on account of unexplained money credit u/s 69A | Rs. 34,50,000/-     |

2.1 During the year under consideration the assessee deposited cash total amounting to Rs. 3,50,000/- around in her bank account. In this respect, the appellant claimed that the source of the cash deposited in her bank account was on account of gifts received from various relatives, family members on different occasions like Birthday, Raksha Bandhan, Diwali, Milestones achievements etc. It was claimed that as per section 56 of the Act, gift received from the family members, relatives do not come under the purview of Income Tax and are exempt for the Tax. However, the Learned AO considered the plea to be after thought and considered the cash deposited as unexplained cash.

2.2 Further, during the assessment proceedings the appellant was asked to explain a credit entry of Rs. 34,50,000/- in her Indian bank statement with a narration "by RTGS- HSBC0400002-Karina Kapoor channel". The addition made by Ld. AO on this account was deleted by Ld. CIT(A).

3. Assessee has raised following grounds before the this Tribunal :
1. *“That the Ld. Commissioner of Income Tax Appeals (hereinafter referred as 'CIT(A)') has erred in law and facts of the case while partly confirming the assessment order passed u/s 153 A r.w.s 143(3) of the Income Tax Act. 1961 (hereinafter referred as ‘the act’) dated 31.12.2018.*
  2. *That the Ld. CIT(A) has erred in law and facts while confirming the addition of Rs. 3,50,000/- on account of unexplained cash deposit u/s 69A r.w.s 115BBE of the act, while the appellant left no stone unturned to give the lawful evidence of receipt of such amount during the appeal proceedings and no incriminating material to substantiate the confirmation of impugned addition were found by the Ld. CIT(A), hence the confirming the addition for Rs. 3,50,000/- without appreciating the evidence furnished and without producing any incriminating material been found in this regard is bad in law and may please be deleted.*
  3. *That the Ld. CIT(A) has erred in law and facts while confirming the addition of Rs. 3,50,000/- on account of unexplained cash deposit u/s 69A r.w.s 115BBE of the act, while not appreciating that the appellant has received the impugned amount as a gift in her bank account from her relatives and as per provisions laid in Sec 56(2)(vii) of the act the gifts received from relatives is not taxable in the hand of the recipient, hence the confirming such addition for Rs. 3,50,000/- is bad in law and may please be deleted.*

4. *The assessee craves to add, alter, delete, modify or withdraw any of the above grounds at the time of hearing.”*

4. Heard and perused the record. The ground wise determination of issues is as follows;

5. **Ground no. 1 and 2** are taken up together and in regard to these grounds the primarily contention of Ld. AR was that Ld. CIT(A) has failed to follow the judgment of Hon’ble Delhi High Court in **Kabul Chawla reported in 380 ITR 571**. It was submitted that the appellant had filed original return of income on 19.03.2016 for the assessment year 2015-16 which stood accepted u/s 143(1) of the Act and therefore the impugned assessment u/s 153A could have been only on the basis of incriminating material / evidence found from the possession of appellant. It was submitted that in the absence of any incriminating material found as result of search, no addition could be made in respect of cash gift deposited by the appellant in the bank account and sources being duly explained. Ld. DR however submitted that it is not a case of completed assessment.

6. In this regard it can be observed that Ld. CIT(A) in para no. 8.1 has dealt with the issue and made following observations :-

*“8.1 During the course of appellate proceedings, the report regarding filing of the IT return of the appellant for A.Y. 2015-16 was called from the AO. The AO vide letter dated had submitted that the return of income for AY 2015-16 had been filed by the appellant on 19.03.2016. It is further observed that the date to issue notice u/s 143(2) for this year expired on 31.07.2016, whereas, the search on the appellant was conducted on 22.06.2016. Thus, there was still time to issue notice u/s 143(2) on the date of search, therefore, it was not a completed assessment on the date of search. Therefore, the judgment of CIT vs. Kabul Chawla and other case laws cited by the appellant are not applicable to AY 2015-16. Accordingly, this ground of appeal is dismissed.”*

7. The Bench is of considered opinion that although on behalf of the assessee, the Ld. AR claims that the assessment was concluded, yet no evidence in that regard is on record. Neither intimation u/s 143(1) of Act is on record nor if assessment was completed u/s 143(2) r.w.s 143(3) of the Act. The only fact that comes up is of filing of the return on 19.03.2016.

8. In this context it can be observed that the proviso to section 143(2) entitles the assessing officer to issue notice u/s 143(2) for the purpose of assessment u/s 143(3) in period of six months ( as then applicable) from end of financial year in which the return was furnished. Also the 5<sup>th</sup> proviso to sub section (1) of section 143 lays down that “*no intimation under this sub section shall be sent after the expiry of one year from the end of financial year in which the return is made*”.

9. Thus, the Ld. CIT(A) makes correct observation that the limitation to issue notice u/s 143(2) of Act was available and before that the search was conducted, so the assessment cannot be considered to be completed assessment. Ld. CIT(A) is right in aforesaid conclusions, as the time period for summary assessment under section 143(1) and for notice under section 143(2) of Act had not lapsed, so it is a case of pending assessment, which gets merged with assessment u/s 153A. Hence the principles laid down in **Kabul Chawla case (supra)**, with regard assessment u/s 153A of Act have to be on basis of incriminating material found during search in case of completed assessment, do not benefit assessee. **Therefore, this ground is decided against the assessee.**

10. In regard to ground no. 2 it was submitted that assessee had submitted all the evidences, however, Ld. CIT(A) has arbitrarily failed to consider the same. Ld. DR however supported the findings of Ld. CIT(A). Appreciating the matter on record it can be observed that assessee claimed to have received cash gift worth Rs. 7,30,200/- during the years on

occasions like wedding of relatives and in family, Raksha Bandhan, her own birthday and sisters birthday and the occasion of Deepawali. It is not a case of receiving cash gifts on her own marriage.

11. The Bench is of considered opinion that apart from giving the details the assessee was under obligation to bring forth certain material information for which Ld. CIT(A) has observed that para 9.2 as follows :-

*“No further documentary evidence supporting the receipts of these gifts like gift deeds, source of cash in hand of donors, PAN & address of donors, status of their filing of income and their relationship with the appellant have been filed. In the absence of any documentary evidence backing the claim of the appellant, the sources of cash in hand of the appellant for making deposit in her bank account cannot be accepted.*

12. Ld. CIT(A) has also given considerable reasoning that while assessee was outside India, she kept this huge amount in Indian currency with herself.

13. Bench is of considered opinion that the cash/monetary gifts on the occasion referred by the assessee are either customary or out of token of love and affection and intended to be in lieu of material gifts reasonably given on the occasion or as good omen (*shagun*). These cash gifts, unlike Pin Money are ‘ a little something’ or ‘spending money’ to be spent on trivial needs or to create a memory of the event and cash gift itself.

14. However, when an assessee deposits these collected amounts of cash gifts in bank, and thus creates a capital or investment out of these cash gifts, the assessee is expected under law to offer a reasonable explanation of the sources and justification of the occasions and the relationships, to have received heavy denomination cash gifts or beyond threshold limits. Further that under what circumstances these cash gift

amount got accumulated over the period, so as to be deposited a lump sum, in particular FY.

15. In the case in hand there is nothing factual or substantial to disagree with the reasons of Ld. CIT(A). The burden was on assessee to give 'satisfactory explanation' for the purpose of Section 69A of the Act. Assessee certainly failed to bring forth evidence sufficient discharge that burden. So the Ld. CIT(A) was justified to sustain the addition. No interference is called for. Accordingly there is no substance in the ground no. 3 and same is decided against the assessee.

16. **Consequently, the appeal of assessee is dismissed.**

**Order pronounced in the open court on 7<sup>th</sup> March, 2023.**

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

*Date:-7.03.2023*

**\*Binita, SR.P.S\***

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI