

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member**

ITA No. 2022/Del/2022
(Assessment Year: 2015-16)

Poonam Garg, 85/4, East Azar Nagar Krishna Nagar, Delhi (Appellant) PAN: AIAPG0183A	Vs. ITO, Ward-55(3), New Delhi (Respondent)
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Assessee by :	Shri K. Sampath, Adv Shri V. Rajakumar, Adv
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Revenue by:	Shri Om Parkash, Sr. DR
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Date of Hearing	06/04/2023
Date of pronouncement	07/06/2023

ORDER

1. This is an appeal filed by the assessee against the order of the National Faceless Appeal Centre (NFAC) dated 28.06.2022 for AY 2015-16.

2. The assessee has raised the following grounds of appeal:-

"On the facts and in the circumstances of the case and in law the NFAC. CITIA). Delhi (Qua) erred in confirming the following additions made by the AO:-

i. Rs.6.74.500/- on account of cash deposited in bank treating the same as unexplained:

ii. Rs. 6,00,000/- on account of stamp duty paid on purchase of property on the ground that it has been paid out of alleged unexplained sources.

Both actions being arbitrary, fallacious, unwarranted and illegal must be quashed with directions for appropriate relief."

3. In the result, the appeal of the assessee is allowed.

4. Apropos ground No. 1 the Id counsel submitted that the AO has made addition of Rs. 6,74,500/- on account of cash deposit to the bank

account of the assessee which is contrary to the facts of the case. The Id counsel submitted before the authorities below the assessee is consistently submitting that the assessee has two bank accounts in her name and the assessee is earning cash income from tuition since very long time and has been filing her return of income for 20 to 25 years showing tuition income, rental income and interest income which was earned by the assessee from providing loans to her husband's brother firm and these amounts consists of income as well as savings of assessee earned during the long period of life. Ld counsel submitted that for housing loan that the assessee had monthly EMI had Rs. 1,30,000/- which was paid from UCO bank to which the assessee used to deposit cash for timely payment of her housing loan installments. The Id counsel submitted that the assessee has deposited total cash of Rs. 9,99,000/- in her UCO Bank account out of cash in hand from cash withdrawals made by the assessee from other bank account maintained with State Bank of India and copy of both the bank account were submitted before the authorities below but the same was not considered in right perspective. The Id counsel submitted that the AO has made addition of Rs. 6,74,500/- on the ground that the assessee has received tuition income of Rs. 3,24,500/- in cash during the financial period and remaining amount was treated as undisclosed income from undisclosed source. The Id counsel submitted that the assessee had some rental income also received in cash which was spent in household expenditure and the copy of the cash book along with bank statement of both the account clearly revealed that the assessee had sufficient cash in hand from the corresponding cash withdrawals made by her from her SBBJ/ SBI account which was deposited with the UCO Bank account for repayment of housing loan. Ld counsel also submitted cash flow statement and submitted that during the FY 2014-15 the assessee deposited Rs. 9,99,000/- with UCO Bank out of total withdrawals of Rs. 24 lakhs from her SBI Account and balance cash in hands of Rs. 14,01,000/- was cash flow to the next

year as opening balance. The Id counsel submitted that in such a situation when the withdrawals are much higher than the amount of cash deposit to the bank account then the balance amount of Rs. 6,74,500/- cannot be treated as cash deposited out of income from undisclosed source. The Id counsel finally submitted the entire addition may kindly be deleted.

5. Replying to the above the Id Sr. DR strongly supported the orders of the authorities below and submitted that the AO has given credit of Rs. 3,24,500/- to the total deposit of Rs. 9,99,000/- and balance amount of Rs. 6,74,500/- was rightly been treated as income from undisclosed source as the assessee has failed to submit any plausible explanation and documentary evidence in support of his claim that the amount was deposited out of cash withdrawals from the State Bank of India. However, the Id SR. DR did not controvert the reconciliation of the statement of funds for loan repayment and stamp duty payment submitted by the assessee along with copy of bank passbook of her account with State Bank of Bikaner and Jaipur later converted to State Bank of India wherein, it is clearly discernable that the assessee has withdrawn Rs. 24 lakhs from this bank account on five occasions and amount of Rs. 9,99,000/- deposited to the UCO Bank account for loan installment on different dates.

6. On careful consideration of the submissions I am of the considered view that the assessee has operating two bank accounts with UCO bank and State Bank of India and from the copy of the passbook with SBI it is clear that the assessee has withdrawn Rs. 24 lakhs during the FY 2014-15 from the period 29.05.2014 to 21.03.2015 and the amount of cash deposit to UCO bank i.e. Rs. 9,99,000/- and lesser than the amount of cash withdrawals by the assessee during the same financial period. The AO was not correct in considering the available cash out of cash in hand of Rs. 3,24,500/- for the purpose of adjudication the issue keep aside the factum of huge cash withdrawals

from the bank account of the assessee with State Bank of India. Therefore, in my humble view that the addition made by the AO and sustained by the Id CIT(A) is not sustainable as the factual position stated by the assessee in her submission before the Id CIT(A) as well as before the AO have not been controverted neither by the authorities below nor by the Sr. DR before us as noted above. Therefore, in view of foregoing discussion I reached on legal conclusion that the AO was not right in only considering the cash out of income leaving aside the amount of huge cash withdrawals from the state bank of India account of the assessee which is much higher than the amount of impugned cash deposit to UCO Bank account of the assessee. Therefore, ground No. 1 is allowed and the AO is directed to delete the addition.

7. The second issue is regarding addition of Rs. 6 lakhs made on account of stamp duty paid on purchase of property on the ground that it has been paid out of alleged unexplained sources.

8. The Id counsel for the assessee submitted that the AO has made addition of Rs. 6,74,500/- on account of payment of home loan and second addition of Rs. 9,14,400/- on account of addition of Rs. 9,14,400/- on account of payment for stamp duty of by the assessee. The Id counsel submitted that the assessee had purchased a property and made investment of Rs. 1,41,14,400/- and taken loan of Rs. 1,01,86,000/- from the bank. The Id counsel further submitted that the AO asked the assessee to explain source of remaining amount of Rs. 39,28,400/- and the assessee explained that the source of Rs. 30 lakhs was given to her as advance for property vide advance agreement dated 19.12.2013. The Id counsel further submitted that regarding stamp duty of Rs. 6 lakhs the assessee explained that the said amount was saved by her right from her marriage till date purchase of property which cannot be denied as the assessee got married much earlier from the date of purchase of property. Ld counsel further submitted that the Id CIT(A) has dismissed the appeal of the assessee without properly

considering the explanation and documentary evidence of the assessee. Id counsel submitted that the Id CIT(A) has deleted the part addition of Rs. 3,14,400/- by observing that it was paid during the immediately previous AY 2014-15 but restricted the disallowance to the tune of Rs. 6 lakhs without any basis therefore, the same may kindly be deleted.

9. Replying to the above, the Id Sr. DR strongly supported the orders of the authorities below and submitted that neither during the assessment nor even during the appellate proceedings the assessee could not file plausible explanation and sufficient documentary evidence with regard to the investment of Rs. 6 lakhs for the stamp duty payment therefore, the Id CIT(A) was right in confirming the addition.

10. On careful consideration of the above submission first of all I note that as per AO the assessee has declared rental income, tuition income and interest income and during the assessment proceedings the assessee filed detailed submission before the AO along with supporting documentary evidence. It is a peculiar situation of the present case that the authorities below have allowed major parts of investment for purchase of property i.e. Rs. 1,01,86,000/- as housing loan and Rs. 30 lakhs as advance given against sale of property totaling to Rs. 1,31,86,000/-. Further, the AO made addition of Rs. 9,14,400/- which was restricted by the Id CIT(A) to the tune of Rs. 6 lakhs considering the fact that the amount of Rs. 3,14,400/- was paid during the immediately preceding AY 2014-15. Before the Id CIT(A) it was categorically explained by the assessee that the assessee has two bank accounts in her name but the State Bank of Bikaner and Jaipur which is now SBI and other with UCO Bank. The assessee also submitted that she is earning cash income from tuition since very long time and has been filing her return of income from 20 to 25 years. It was also submitted that the assessee has been saving her income and has also given loan to her husband's brother firm and other known persons from where she was also earning interest income during relevant period. The

assessee also submitted her state of affairs as on 31.03.2014 and 31.01.2015 showing all the loans and advances given by her. It was submitted by the assessee that the stamp duty of Rs. 6 lakhs was paid out of sufficient cash in hands driven from past savings and said known and declared sources and this fact can be verified from the cash book submitted before the authorities below explaining the payment of entire stamp duty made in cash towards purchase of property in Vasundhara.

11. On careful consideration of the above submissions and allegations of the AO and conclusion drawn by the Id CIT(A), I am of view that the Id CIT(A) have not controverted written submission noted by him in para 3 of the first appellate order explaining the source of Rs. 6 lakhs as saving from past years which was utilized for payment of stamp duty in cash. When the assessee has source of income such as tuition income, interest income and rental income which is converting to in cash since 20 to 25 years and she is continuously filing her return of income with the department. Then the amount of Rs. 6 lakhs cannot be doubted or discarded only on the ground that the assessee has failed to furnish either documentary proof of satisfactory explanation regarding payment of Rs. 6 lakhs towards stamp duty. This is well known fact to understand the fabric of society and habits of Indian home maker women and issue has to be seen from the angle of normal women who has normal sources of income and has spent big part of her life's earning to financially strengthen her family from doing tuition work and again utilizing the tuition income for giving loans to the relatives for earning interest income. It is not the case of the AO that the assessee has not paid any tax or has not filed return of income but the submission of the AO noted by the Id CIT(A) have not been controverted by the Id CIT(A) while restricting the addition to the tune of Rs. 6 lakhs. Therefore, I am inclined to hold the explanation submitted by the assessee is a plausible explanation. In totality of the

facts and circumstances of the present case, the amount of Rs. 6 lakhs invested by the assessee towards payment of stamp duty in cash cannot be doubted in view of the conduct of assessee in the capacity of a consistent tax payer since 20 to 25 years and thus addition cannot be held as sustainable. Therefore, the AO is directed to delete the entire addition. Accordingly, the Ground No. 2 of the appeal is allowed.

12. In the result, the appeal is allowed.

Order pronounced in the open court on 07/06/2023.

**Sd/-
(C. M. GARG)
JUDICIAL MEMBER**

Dated: 07/06/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi