

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "SMC": NEW DELHI]**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER,
AS S.M.C.**

ITA. No. 627/Del/2021
(Assessment Year: 2017-18)

Shri Aniket Agarwal, 74, Murari Nagar, Khurja, Bulandshahar – 203 131. PAN: ARFPA3593E	Vs.	Income Tax Officer, Ward : 2 (3)(1), Bulandshahar.
(Appellant)		(Respondent)

Assessee by :	S/Shri Sahil Gupta, C.A.; & Mukesh Kumar Jain, C. A.;
Department by :	Shri Om Prakash, Sr.D. R.;
Date of Hearing :	05/05/2022
Date of pronouncement :	11/05/2022

ORDER

PER CHANDRA MOHAN GARG, J. M. :

The aforesaid appeal has been filed by the assessee against the impugned order dated 26.03.2021, passed by the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre [hereinafter referred to as CIT (Appeals)] / NFAC for assessment year 2017-18.

2. In this case the sole issue for my consideration is that as to whether any addition can be made and confirmed in the hands of the assessee on account of cash deposit of Rs.2,30,000/- during demonetization period.

3. The Id. assessee's representative (AR for short) made written submissions, which read as follows:-

“ Brief facts of the case :

1. The Appellant is a qualified professional (ICWA). The main source of income of the appellant is a salary income and the appellant is regularly filing ITR. For the concerned assessment year, the appellant had filed the ITR declaring a gross total income of Rs. 5,13,458/-. In the year under consideration the appellant has also deposited a cash in his bank account amounting to Rs.2,30,000/- (Two Lakhs Thirty Thousand only) during demonetization period which was from his past savings and out of the cash gifts received on the occasion of birthdays/ festivals from his friends / relatives.

The case of the appellant was selected for limited scrutiny through CASS to *'verify the Large Value cash deposits during demonetization period as compared to returned income'*. During the assessment proceedings, the appellant explained the source of cash deposit but the Ld. AO without correctly appreciating the factual and legal issue of the case made an addition of Rs. 2,30,000/- on account of cash deposit as unexplained cash deposits u/s 69 of The Income Tax Act, 1961 (*hereinafter referred to as Act*).

Further, the Hon'ble CIT (Appeals) had also upheld the addition made by Ld. A.O. without considering the contention of the appellant that the case of the appellant should not be scrutinized as the cash deposit is only Rs. 2,30,000/- which is less than Rs.2,50,000/- as per the instruction of CBDT.

2. *In this context, we hereby again strongly submit that as per the CBDT Instruction No. 03/2017 dt. 21.02.2017, point no. 1 of Annexure “in case of individuals (other than minors) not having any business income, no further verification is required to be made if total cash deposit is up to Rs. 2,50,000/-. In case of taxpayers above 70 years of age, the limit is 5.0 Lacs per person. The source of such amount can be either household savings/savings from past income or amounts claimed to have been received from any of the sources mentioned in Paras 2 to 6 below. Amounts above this cut-off may require verification to ascertain whether the same is explained or not. The basis for verification can be income earned during past years and its source, filing of ROI and income shown therein, cash withdrawals made from accounts etc. ”*

It is a trite law that the CBDT Instruction are binding on the income tax authorities. Therefore, the cash deposited by appellant in his bank account of Rs. 2,30,000/- from his past savings and out of the cash gifts received on the occasion of birthdays/ festivals from his friends/ relatives should not have been brought to tax as per the CBDT Instruction.

3. *The Hon'ble ITAT Delhi (ITA No. 872/Del/2021) in the case of Neeru Jain Versus Ito, Ward-67 (4) Delhi held that “in view of the CBDT Circular and relying on the decision of Co-ordinate Bench of Agra Tribunal in the case of Smt. Uma Agrawal, I am of the view that the explanation of the assessee about the source of cash deposits cannot be brushed aside without there being any evidence to the contrary. I therefore direct the deletion of the addition of Rs. 2 lakh upheld by CIT(A). Thus the ground of the assessee is allowed. ”*

Similar view has been expressed in various judgements mentioned below :

- a) Smt. Uma Agrawal Baba Kapur Sunaran Ka Mohalla Vs. I.T.O -1 (3) Gwalior, M.P (ITA No.35/Agr/2021) Dt. 18 June 2021;
- b) Priya Ranjan Saha Vs. ITO, Ward-2(4), Durgapur (I.T.A. No. 505/Kol/2021) Dt. 18 February 2022.

It is, therefore, requested to your good-self kindly quash the order passed by Ld. AO u/s 144 of the Income Tax Act, 1961. “

4. Further the Id. AR drew my attention towards Instruction No. 03 of 2013 dated 21.02.2017 Annexure guideline No. 1.1 and submitted that as per Instruction issued by Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, in the case of an Individual, no further verification is required to be made if total cash deposit is up to Rs.2,50,000/-. Therefore, in the case of present assessee who is an Individual earning income only from salary then addition made by the Assessing Officer and confirmed by the Id. CIT (Appeals) cannot be held as sustainable and valid in law.

5. Replying to the above the Id. Sr. DR strongly supported the assessment as well as the first appellate order. However, he could not controvert that the assessee is an Individual earning income from salary and regularly filing return of income and paying due tax thereon. The Id. DR also could not controvert that the total deposits made by the assessee to his bank account was Rs.2,30,000/- and as per CBDT Instruction No. 1.1 (supra) no further verification is required in a case where an Individual earning income from salary has deposited an amount up to Rs.2,50,000/- during demonetization period. I also inclined to hold that the order of ITAT, Agra Bench in the case of Smt. Uma Agrawal Baba Kapur Sunaran Ka Mohalla Vs. ITO (supra) and ITAT, Kolkata Bench in the case

of Priya Ranjan Saha Vs. ITO (supra) also supports the explanation and submission of assessee and no contrary judgement or order has been shown by the ld. DR in this regard.

6. Therefore, in view of foregoing discussion I hold Instruction No. 1.1 to a logical conclusion that when the CBDT Circulars clearly provide, no further clarification and verification is required to be made in the case of an Individual who is earning income from salary filing return of income has deposited amount of Rs.2,30,000/- during demonetization period. Therefore, addition made by the Assessing Officer and confirmed by the ld. CIT (Appeals) cannot be held as sustainable as the same is clearly against the Instruction issued by the CBDT. Therefore, sale ground of appeal of the assessee is allowed.

7. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on : 11/05/2022.

**Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

Dated : 11/05/2022.

Copy forwarded to :

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

**ASSISTANT REGISTRAR
ITAT, New Delhi**