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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **INCOME TAX APPEAL NO. 1115/2017**

% Date of decision: 13th November, 2018

RAJIV JAIN

..... Appellant

Through: Ms. Aakriti Dhawan, Mr. Madhur Jain,
Mr. Mayank Jain, Mr. Gautam Jain and Mr. Aditya
Jain, Advocates.

versus

INCOME TAX OFFICER

..... Respondent

Through: Mr. Asheesh Jain, Sr. Standing Counsel
for Income Tax Department.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

SANJIV KHANNA, J. (ORAL):

C.M. Nos.44226/2017 & 44227/2017

Applications for condonation of delay of 29 days in filing and 6 days in re-filing are allowed as there is no opposition. We record that the substantial question of law was framed on 5th December, 2017.

ITA 1115/2017

This appeal under Section 260A of the Income Tax Act, 1961 (Act, for short) by Rajiv Jain (hereinafter referred to as the, appellant-assessee) relates to Assessment Year 2010-11 and arises from the order of the Income Tax Appellate Tribunal (Tribunal) dated 26th May, 2017.

2. By order dated 5th December, 2017, the appeal was admitted for hearing on the following substantial question of law:-

“Did the ITAT fall into error in holding that the additions made under Section 68 of the Income Tax Act, 1961 to the tune of Rs.10,17,650/-, is justified in the circumstances of the case?”

3. For the Assessment Year 2010-11, the appellant-assessee as an individual engaged in commission agency business with a life insurance company, had filed return declaring income of Rs.5,84,146/-.

4. The return was taken up for scrutiny assessment.

5. Before the Assessing Officer, the appellant-assessee was asked to justify and explain source of cash deposits of Rs.16,42,592/- and Rs.10,17,650/- in Standard Chartered Bank and Axis Bank. Questions were also raised regarding under-statement of insurance commission.

6. In the present appeal we are only concerned with the addition of Rs.10,17,650/- on account of the cash deposits in the Axis Bank account of the appellant-assessee.

7. Before the Assessing Officer, the appellant-assessee had submitted that he had made total cash withdrawals of Rs.5,10,550/- on different dates between 12th June, 2009 and 16th October, 2009. Unutilized amount of Rs.4,92,900/- was included in Rs.10 lacs deposited in the Axis Bank account on 10th November, 2009. Regarding the balance amount, it was submitted that the appellant-assessee had sold inherited wearing apparel and silver utensils, which sale proceeds were deposited in cash.

8. The Assessing Officer rejected the explanation given by the appellant- assessee regarding the source of deposit of Rs.10,17,650/-, recording as under:-

“The assessee was in possession of person effects like wearing apparels and utensil made of silver of ancestral unique description and was agreed to sale for Rs. 510000/- and received advance of Rs. 510000/- on however subsequently the sale was finally settled for Rs.3,85,000/- and Rs. 1,25,000/- were withdraw from the bank on 27.11.2009 and returned back to the buyer who met the assessee in an exhibition. As the sale was made of personal effects and are not capital assets and consequently no capital gain is liable to pay as such.

The assessee has not linked the transactions of deposit made in cash out of available cash balance. further, in connection with sale of wearing apparels and silver utensils, the contention of the assessee has not been substantiated by any proof of sale. The contention of the assessee that silver utensil came under the definition of personal effect is also not correct. (sic) In view of definition of jewellery given U/s 2(14) of I.T. Act. Further, the assessee has not filed any evidence regarding the acquisition of the assets sold or any evidence regarding the actual sale of the utensils etc. In these circumstances, the explanation given by the assessee cannot be accepted and consequently the deposit of cash amounting to Rs.10,17,650/- is also treated as assessee's income from undisclosed sources U/s 68 of I.T. Act. I am satisfied that the assessee has concealed particulars of income. So, Penalty U/s 271 (1) (c) of I.T. Act have been initiated separately.

The professional receipts of the assessee from insurance commission as mentioned above exceed Rs.10 lac. The assessee is liable to obtain and file tax Audit

Report U/s 44 AB of I.T. Act. The assessee has not obtained tax Audit Report. Accordingly, Penalty proceedings U/s 271B of I.T. Act have been initiated separately.

With the above remarks, the total income is computed as under:

	<u>Rs.</u>
Total Income as declared	1,00,603/-
Add:-	
(i) Addition of a/c of understatement of insurance Commission receipts (as discussed)	8,22,390/-
(ii) Addition on a/c of unexplained cash deposit In Standard Chartered Bank A/c (as discussed)	16,42,592/-
(iii) Addition on a/c of unexplained cash deposit In Axis Bank A/c (as discussed)	<u>10,17,650/-</u>
Total	35,83,235/-

Rounded Off U/s 288A of I.T. Act to Rs.35,83,230/-”

9. Appellant-assessee had thereupon preferred an appeal with an application under Rule 46A of the Income Tax Rules, 1962 for leading additional evidence before the Commissioner of Income Tax (Appeals). Reliance was placed on the cash flow statement and bank account statements. Written submissions were filed. These have been placed on record before us.

10. The Commissioner of Income Tax (Appeals) vide order dated 31st October, 2016 deleted addition of Rs.16,42,592/- made by the Assessing Officer on account of cash deposits made in Standard Chartered Bank holding that the money belonged to the mother of the appellant-assessee.

11. The Commissioner of Income Tax (Appeals) however, upheld the addition of Rs.10,17,650/- observing that the appellant-assessee had not

given any explanation for cash withdrawals of Rs.5,10,550/- between the period 12th June, 2009 to 16th October, 2009. For clarity, we would like to reproduce the reasoning given on the said aspect by the Commissioner of Income Tax (Appeals), which reads:-

“8.8.2 I have carefully considered the observations of the Assessing officer and submissions of the Appellant. Appellant has stated that he has sold Personal effects like wearing apparel and silver utensils of unique ancestral description on 03.11.2009, 07.11.2009 of Rs.2,50,000/- ,and Rs.260,000/-respectively in cash and the sale was finally settled Rs.3,85,000/- and excess amount of Rs.1,25,000/- of advance was repaid to the buyer who met the Appellant in an Exhibition. Further, it is seen that Appellant is deposited Rs.3,250/- on 17.08.2009, Rs:14,400/- on 27.10.2009 and Rs.10,00,000/- on 10.11.2009. Appellant has stated that he has withdrawn cash of Rs.5,10,550/- in the following date:

S.No.	Date	Amount
1	12.06.2009	Rs.84,450/-
2	26.08.2009	Rs.1,30,000/-
3	26.08.2009	Rs.24,500/-
3	15.09.2009	Rs.12,000/-
4	19.09.2009	Rs.86,000/-
5	22.09.2009	Rs.1,70,000/-
6	16.10.2009	Rs.3,600/-

8.8.3 Appellant is claiming that amount of cash of Rs.5,10,550/- withdrawn on aforesaid dates have been re-

deposited in the bank account. Firstly, it is not understood why Appellant, would require to withdraw the money to .again redeposit the same in the bank account. It is also not the case of Appellant that one or two days before the deposits of cash, he has withdrawn the amount of cash. Appellant has not shown as to how the amount if withdrawn for some purpose could not be utilized and, therefore, same was re-deposited. As such, there is no basis in the claim of Appellant.

8.8.4 Further, it is seen that Appellant has not submitted any documentary evidence in support of its claim that he had sold personal effect of unique ancestral description; No details regarding the wearing apparels & silver utensils have been submitted as to when they were acquired, its value and to whom it was sold, date of sale, mode of transaction and when and to whom these were sold. Appellant has not produced any evidence, that he was in possession of "Personal effect" which has been gifted to him by his grandfather and neither the same is reflected in his Balance Sheet. Further, it is seen that the claims that he had received Rs.2,50,000/- on 03.11.2009 and Rs.2,60,000/- on 07.11.2009. However, at one side Appellant has been claiming that he has deposited the cash which was withdrawn on various dates in the bank account whereas on the other hand, he says that he was keeping cash of Rs.4,10,000/- with himself. Therefore, there is contradiction the argument of Appellant. Further, it is seen that Appellant -has made withdrawal of Rs.1,04,021/- during the year only. As .such, he cannot claim that the entire amount was re-deposited in the bank account. Appellant's story of selling the items of unique description is preposterous and illogical as there is not an iota of evidence or a single piece of evidence to substantiate his claim. As such, Appellant's claim has no legs to stand on. Therefore, there is no basis in the claim of Appellant. Accordingly, addition of Rs.10,17,650/- is

sustained and the Ground No. 5(a), (b) & (c) is dismissed.”

12. The aforesaid reasoning has been upheld and affirmed in the impugned order passed by the Tribunal, recording as order:-

“11. After hearing both the sides, I do not find any infirmity in the order of the learned CIT(A). The learned CIT(A) has already given the finding that it is not understood as to why assessee required to withdraw money to again redeposit the same in the same bank account. Assessee has also not explained with evidence to show as to how the amount, if withdrawn for some purposes, could not be utilized for which the same was re-deposited. Assessee has also not submitted any documentary evidence to support the claim that he had some personal effect of unique ancestral description. The explanation of the assessee that he was keeping cash of Rs.4,10,000/- is also without any basis and contradictory to his submission before the CIT(A). In these circumstances, I do not find any infirmity in the order of the CIT(A). Accordingly the same is upheld and the ground raised by the assessee is dismissed.”

13. We agree with the above reasoning and finding that the appellant-assessee has not been able to justify and explain that cash deposits of more than five lacs were made out of sale proceeds of wearing apparel and silver utensils. There is no evidence and material to establish sale, inheritance etc. To this extent the impugned order does not require interference.

14. The primary reason to reject explanation of the appellant-assessee that the cash deposit of Rs.4,92,900/- was from the withdrawals of Rs.5,10,550/- in cash made between 12th June, 2009 and 16th October, 2009 in the first appellate order was failure of the appellant-assessee to elucidate and explain

the reason why the said cash withdrawals were made. Referring to the said reasoning, counsel for the appellant-assessee has submitted that the Assessing Officer had not raised any such specific query. This was not the ground and reason given in the assessment order. On the other hand, the appellant-assessee had furnished evidence regarding cash withdrawals of Rs.5,10,550/-, which was un-disputed. The Commissioner of Income Tax (Appeals) had proceeded to give a different and new reasoning, which was not confronted for explanation before the first appellate order was passed. The appellant-assessee was taken by surprise. Reasoning in the form of additional ground, it is submitted, should not have been made the basis without asking and raising a specific query. It is also highlighted, with some merit, additions made include two small deposits of Rs.3,250/- and Rs.14,400/- made on 17th August, 2009 and 27th October, 2009. In the alternative, it was submitted that the addition should be partial.

15. Keeping in view the aforesaid position, we find that the Tribunal in the impugned order has failed and not taken note of the aforesaid contentions raised in respect of the deposit of Rs.4,92,900/-. The said issue has not been examined in the light of the pleas and aspects that arise for consideration. Accordingly, we feel that the matter should be re-examined by the Tribunal. Liberty is also given to the appellant-assessee to file an application for additional evidence to justify and explain the reason for substantial cash withdrawals made between 12th June, 2009 to 16th October, 2009. We clarify that we have only remanded the matter for fresh consideration and have not finally determined or decided the aspect and issue on merits.

16. The question of law is accordingly answered, partly in favour of the appellant-assessee and against the Revenue with an order of remand to the Tribunal. We clarify that the remand is only restricted to the extent of the deposit of Rs.4,92,900/-. We have not remanded the issue regarding sale of wearing apparel and silver utensils.

17. To cut short the delay, the parties are directed to appear before the Tribunal on 5th December, 2018, when a date of hearing would be fixed. In the facts of the case, there would be no order as to costs.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

NOVEMBER 13, 2018
NA/VKR