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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No.110 of 2019 (O&M)
Date of decision: 13.2.2019

Krishna Bansal

.....Appellant

Vs.

Income Tax Officer, Ward 5(1), Chandigarh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Shreenath A. Khemka, Advocate for the appellant-assessee.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-assessee under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 14.12.2018, Annexure P.1 passed by the Income Tax Appellate Tribunal (in short, “the Tribunal”) for the assessment year 2014-15 in ITA No.484/Chd/2018, claiming following substantial questions of law:-

- “i) Whether the Assessing Officer had discharged the preliminary burden to demonstrate the existence of investments, for the application of Section 69?
- ii) Whether redeposit of cash withdrawn from bank account constitutes investment under Section 69?
- iii) Whether Section 69 will apply if the sum had been duly recorded in the cashbook of the appellant-assessee?
- iv) Whether the appellant-assessee had offered sufficient explanation regarding the re-deposit of cash withdrawn from bank account?

- v) Whether the Assessing Officer had wrongly exercised his discretion under Section 69 to declare the sum as the appellant-assessee's income?
- vi) Whether in case of ambiguity in Section 69, the statute must be read in favour of the appellant-assessee?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee maintained a bank account with the State Bank of India. She had withdrawn ₹ 20 lacs on 11.6.2012 for investment purposes from the said bank account. However, as the prospect of investment did not materialise, the assessee re-deposited the sum back into the same bank account from 20.4.2013 to 12.6.2013. The assessee recorded the cash transactions in her cashbook. The opening balance of the cashbook as on 1.4.2013 was ₹ 22,50,000/- because of the withdrawal of the amount of ₹ 20,00,000/- on 11.6.2012 which was being held as cash and had not been invested anywhere else. Subsequently, the said amount was re-deposited and the same was duly recorded in the cashbook. The assessee had re-deposited the huge sum of ₹ 20,00,000/- in smaller tranches by reason of abundant caution. The said amount had been carefully kept in smaller amounts at separate places in the house, so that in case of theft, complete loss could be foreclosed. The assessee had filed her income tax return for the assessment year 2014-15 on 29.7.2014 declaring her gross total income at ₹ 8,43,216/- and deduction of ₹ 1,00,000/- was claimed under Section 80C of the Act reducing the total income to ₹ 7,34,220/-. Notice under Section 143(2) of the Act was issued to the assessee on 4.9.2015. Subsequently, notice under section 142(1) of the Act was issued on 3.2.2016. During the assessment proceedings, the Chartered Accountant of the assessee discovered certain calculation mistakes pertaining to interest income for the assessment

year in question. While reconciling the bank statements, the Accountant of the assessee discovered that there had been an inadvertent omission to include interest income amounting to ₹ 69,347/-. Therefore, while the total interest income was ₹ 2,76,875/-, in the income tax return, income of ₹ 2,07,528/- had been declared. According to the assessee, there was a bonafide mistake in the calculation and there was neither any attempt to conceal nor was any malafide involved. The assessee suo motu revised her income from other sources from ₹ 2,07,528/- to ₹ 2,76,875/- on 30.3.2016 so as to rectify the calculation error. Consequently, the Assessing Officer revised the total income at ₹ 7,93,560/- for the assessment year in question. The Assessing Officer noticed that the sum of ₹ 20 lacs had been withdrawn from the assessee's bank account in 2012 which had been re-deposited in the next financial year into the same bank account. The Assessing Officer sought to include the said amount as taxable income as unexplained investment under Section 69 of the Act. The assessee explained that the said sum had been withdrawn for an investment opportunity. However, it was re-deposited in the Bank account when the investment plans did not materialise. The cashbook also showed that this amount was withdrawn in 2012 and later re-deposited in 2013. Despite that, the Assessing Officer included the sum of ₹ 20 lacs as taxable income as unexplained investment under Section 69 of the Act. Thus, the Assessing Officer issued notice of demand dated 29.9.2016 under Section 156 of the Act alongwith assessment order under Section 143(3) of the Act for further payment of ₹ 8,15,800/- as income tax for the assessment year in question. The assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] under Section 250(6) of the Act which was dismissed on 6.2.2018, Annexure P.7 holding the assessment order as valid on the assumption that because the assessee and her

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husband had taken certain home loans, they could not have had with them money for investment purposes and later re-deposited the same. Aggrieved thereby, the assessee filed further appeal before the Tribunal which was also dismissed vide order dated 14.12.2018, Annexure P.1 on the same ground. Hence the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the appellant-assessee.

4. The only issue arising in the present appeal relates to addition made on account of unexplained cash found deposited in the bank account of the assessee amounting to ₹ 20,79,000/- under the provisions of Section 69 of the Act. It has been recorded by the Tribunal that the assessee had deposited cash to the tune of ₹ 20,79,000/- in her bank account in the relevant previous year. When the assessee was asked to explain, she stated that the same was attributable to her opening cash in hand and furnished a copy of cash book for the relevant financial year showing opening balance of ₹ 22,50,000/-. The assessee was asked to justify the opening balance to which it was submitted that the cash in hand to the tune of ₹ 20 lacs was on account of cash withdrawn by her in the preceding year in June 2012 for the purpose of investment which was not made due to lack of investment and thus remained as such with her. The Assessing Officer noticed that the assessee had raised loans and also withdrawn cash numerous times thereafter which was not needed, if she already had so much cash in hand and had deposited cash in three installments after a period of 8-9 months. The Assessing Officer not accepting her explanation made the addition of ₹ 20,79,000/- on account of unexplained deposits, to the returned income of the assessee. The CIT(A) in appeal held that the circumstances showed that the withdrawal attributed by the assessee to the opening cash in hand was not actually available with her

so as to justify the cash deposited. The Tribunal upheld the findings recorded by the Assessing Officer and the CIT(A). The relevant findings recorded by the Tribunal read thus:-

“10. We have heard rival contentions and have also gone through the orders of the authorities below. We do not find any reason to interfere in the order of the learned CIT(A). The learned CIT(A) has noted the findings of the Assessing Officer that the cash withdrawal which was attributed to having been retained by the assessee and deposited in the impugned year, was 8-9 months old and though the assessee had claimed that the same was kept by her in the form of cash in hand, it was noticed that despite such huge amount of cash available with her she had taken loans thereafter and even made further withdrawals from the bank of substantial amounts. Moreover, the learned CIT(A) has noticed that the assessee had claimed that the amount had been withdrawn for making investment and since the investment did not materialize the same was re-deposited. But the deposit was made in a staggered manner over a period of three months. None of the facts as pointed out by the lower authorities has been controverted before us. Further, no explanation for the above has been given by the learned counsel for the assessee even before us. We therefore agree with the learned CIT(A) that the explanation of the assessee does not appear to be plausible. As rightly held by the CIT(A), merely making cash withdrawals at one point of time cannot be a sole basis for explaining the cash deposit in future. It is the totality of all the facts and circumstances which is to be considered and thereafter a plausible view to be taken on the issue which in the present case we find, that the assessee has been unable to offer to justify the cash deposits. The ground of appeal No.2 raised by the assessee is also dismissed.

In effect, the appeal of the assessee is also dismissed.”

5. The concurrent findings of fact recorded by the authorities below have not been shown to be illegal or perverse by the learned counsel for the appellant-assessee warranting interference by this Court. No substantial question of law arises. Consequently, the appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

February 13, 2019
'gs'
Whether speaking/reasoned
Whether reportable

(Manjari Nehru Kaul)
Judge
Yes
Yes