

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI G. D. AGRAWAL, HON'BLE VICE-PRESIDENT
AND
SHRI C. M. GARG, HON'BLE JUDICIAL MEMBER**

**I.T.A .No.-5660/Del/2012
(Assessment Year-2009-10)**

Income Tax Officer
Ward 1 (2),
Meerut

Vs.

Mrs. Deepali Sehgal,
339 Dashmesh Nagar
Bagpat Road, Meerut.

**PAN: AEBPS5120C
(APPELLANT)**

(RESPONDENT)

**Revenue by:-Smt. Ashima Neb, Sr. DR
Assessee by:-Sh. Rama Kant Jain, CA.**

ORDER

PER C. M. GARG, JM.

1. This appeal has been preferred by the assessee against the order of the CIT(A) dated 31.08.2012 in appeal No. 321 of 2011-12 for A.Y. 2009-10.

The Revenue has raised following grounds in this appeal:-

- 1. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 2438000/- being unexplained cash deposits in the Saving Bank A/c with HDFC Bank U/S 69A of the I.T.Act, 1961, ignoring the fact that the cash was allegedly withdrawn from partnership firm which itself withdrew the cash from its bank a/c out of business OD account with Corporation Bank where debit balance remained in the range of 57 lac to 64 lac on which heavy interest was paid by the firm and thus the alleged withdrawals by the partner did not relate to firm's business in any way.*

2. *Whether in the facts and circumstances of the case the Ld. CIT(A) has erred in law in holding that there was no negative cash balance and that there is no law of law mandating assessee to keep her balance in bank only but ignoring that the capital account of assessee in the firm always remained in negative i.e. before alleged withdrawals as well as during and after such withdrawals that too out of withdrawals by firm made from OD Bank account showing heavy debit balance, which was in stark contradiction of principle of test of the human probabilities as laid down by the Hon'ble Apex Court. Reliance is placed on following case laws:-*
 - i) *Sumati Dayal Vs. CIT 214 ITR 801 (SC)*
 - ii) *Durga Prasad Morya Vs CIT 82 ITR 540 (1971)*
3. *That the appellant craves leave to add, modify and / or delete any ground(s) of appeal. .*
4. *In the facts and circumstances of the case, the order of the Commissioner of Income-tax(Appeals) may be set aside and that of the A.O restored.”*

2. Briefly stated the facts giving rise to this appeal are that the Assessing Officer (AO) noted that the assessee has withdrawn huge cash from bank account and the same amount has been deposited to the same account after lapse of substantial time. On query from the AO the assessee replied that the cash was deposited out of cash withdrawn. The AO rejected the explanation and held that the assessee has cash deposit of Rs.24,38,000/- as unexplained money and he assessee found to be the owner of the money and the assessee has not offered any acceptable and cogent explanation therefore, the AO concluded that the entire cash deposit of Rs.24,38,000/- was deemed to the income of the assessee from undisclosed sources and the AO made an

addition of Rs.24,38,000/- u/s 69 of the Income Tax Act, 1961 (for short the Act) for A.Y. 2009-10.

3. The aggrieved assessee preferred an appeal before CIT(A) which was allowed by passing the impugned order. Now the aggrieved Revenue is before this Tribunal with the grounds as reproduced herein above.

Ground No. 1 & 2 of the Revenue

4. Apropos these grounds we have heard arguments of both the sides and carefully perused the relevant material placed on record. The Id. Departmental Representative (DR) placed his reliance on the decision of the Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT 214 ITR 801(SC) and Durga Prasad Mourya Vs. CIT 82 ITR 540 (SC) and submitted that the cash was withdrawn from partnership firm bank account out of business overdraft account with corporation Bank where debit balance remained between 57 lac to 64 lac on which heavy interest was paid by the firm and thus alleged withdrawals by partner assessee did not relate to firms' business in any manner. The D.R. further contended that the CIT(A) also ignored the fact that the Capital account of the assessee in the firm always remained in negative before impugned withdrawals as well as during and after such withdrawals and also the withdrawals made by the firm from overdraft was increasing heavy debit balance resulting into heavy interest

liability on the firm which is not in accordance with behavior of a man of ordinary prudence rather the above conduct of the assessee was in contradiction of principles test of human probabilities. The D.R. also contended that the AO made addition on justified reasoning which was deleted by CIT(A) without and basis. Therefore, impugned order may be set aside by restoring that of the AO.

5. Replying to the above the Ld. assessee's Representative (AR) submitted that the AO merely acted on the basis that it was hard to believe that huge cash was kept by the assessee for deposit back in the bank account creating interest liability against the partnership firm and the AO rejected the explanation of the assessee deeming the same to be impractical and illogical but the cash flow statement clearly show that the assessee withdrew cash of Rs.19 lacs and 13 lacs from her saving bank account with HDFC Bank and from capital account of partnership firm M/s Shakti Traders, Meerut, respectively but this fact was not appreciated by the AO and the CIT(A) was quite justified in accepting the explanation of the assessee. The AR drawn our attention towards audited accounts of the partnership firm and submitted that no adverse inference can be drawn against the assessee about the impugned cash deposits as this is not the case of the AO that the amounts withdrawn from bank were utilized somewhere else for some irrelevant

purpose. The AR supported the impugned order and submitted that the appeal is devoid of merits and case laws relied by the Revenue are distinguishable.

6. On a careful consideration of above submissions and contention we observe that the AO made addition u/s 69A of the Act with following conclusion:

“From the perusal of return and the various documents submitted by the assessee during the course of assessment proceedings, it is gathered the assessee has made huge cash deposits in saving bank a/c bearing no.0285130002853 at HDFC Bank, W.K. Road, Meerut. The cash flow statement submitted by the assessee has many lacunae. From the said cash flow statement, it is gathered that:

1. cash withdrawal of Rs.3,00,000/- made on 08/04/2008 was deposited on 13/5/2008 and the explanation offered by the assessee is ‘cash deposited out of cash’. This explanation of the assessee is illogical as it is impossible to believe that such a huge amount of cash will be kept by the assessee for so long as to deposit the same amount in the bank after unnecessarily waiting for such a long duration. Similar explanation has been offered by the assessee for cash of Rs.5,00,000/- withdrawn on 3/10/2008 and deposited on 4/3/09.

2. no reason has been offered by the assessee in respect of cash deposits of Rs.5,00,000/- made on 16/3/2009; Rs.8,00,000/- made on 25/3/2009 and Rs.3,38,000/- made on 26/3/2009.

I, therefore, treat this above-mentioned cash deposit of Rs.24,38,000/- as Unexplained money u/s 69A of the I.T. Act, 1961, since the assessee has been found to be the owner of this money and has not offered any explanation about the nature and source of acquisition of this money and therefore, this

entire cash deposit of Rs.24,38,000/- is deemed to be the income of the assessee for the F.Y. 2008-09.”

7. During first appellate proceeding the CIT(A) called remand report from the AO on the submissions of the assessee and after considering the submissions of the assessee, remand report of the AO, assessee's rejoinder and assessee's additional submissions the CIT(A) deleted the addition with following observations and findings:

I have considered the facts of the case, AR's submissions, AO's remand report, AR's rejoinder and further submissions of the AR carefully. The only reason harped on the AO for the addition is that it was hard to believe by her that cash was kept by the assessee for deposit back in the bank. She has noted that the explanation offered by the assessee appeared to be impractical and illogical. The AR has placed on record the cash flow statement both during the assessment proceedings as well as the appellate proceedings. The cash flow statement duly shows that the appellant withdrew cash from her SB A/c in the HDFC bank and also withdrew capital balance from her capital account her partnership firm. M/s. Shakti Traders, Meerut. A copy of bank account also has been placed on record. The cash flow statement shows that there are cash withdrawal of .Rs.19 lakh from HDFC bank on different dates and withdrawal of Rs.13 lakh from her capital account in her partnership firm M/s. Shakti Traders on different dates. There is no negative cash balance at any point of time. It is not the case of the AO that the amounts withdrawn were utilized anywhere else. The AR has also placed on record the audit report of M/s. Shakti Traders along with the ledger account of the appellant. In view of material placed on record, no adverse inference can be drawn against the appellant for explanation that cash withdrawn from the bank and the capital account of her partnership firm was deposited in bank. It is not mandatory under any law of the land that n individual has to keep his/her savings in the bank account only and not as cash in hand. The AR's reliance on the following case laws also support his case:

- i. ACIT vs. Baldev Raj Chalra, 121 (TTJ) 366 (Delhi) 2009;
- ii. R. K. Dave vs. Income Tax Officer reported in 94 ITJ Jodhpur 19 (09.08.2004)
- iii. Hemant Prabhakar vs. Dy. CIT 31 Tax World 198 (JP)

In the light of the totality of the facts, the addition made by the AO is deleted.”

8. In view of above we noted that the AO, in his remand report could not bring out any fact that the cash withdrawn from Saving Bank Account and partnership overdraft account was used for other purpose anywhere else then, merely because there was a time gap between withdrawal of cash and its further deposit to the bank account, the amount can not be treated as income from undisclosed sources u/s 69 of the Act in the hands of the assessee. The AO rejected the explanation of the assessee on hyper technical basis which is not acceptable. On careful perusal of the decisions relied by the Ld. D.R. we are of the view that the facts of the present case are clearly distinguishable as in the present case the explanation offered by the assessee is reliable and acceptable on the touchstone of the prudence of an ordinary man but merely on the ground that the act of assessee created huge interest liability on partnership firm does not enable revenue authorities to consider the cash withdrawn and its deposit to same bank account after a substantial gap of time, as unexplained income u/s 69 A of the Act. Hence, we reach to

a conclusion that the AO made addition without any legal and justified reason which was rightly deleted by the CIT(A). Hence, both the grounds of the assessee are being devoid of merits and dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 05/09/2014.

Sd/-

**(G. D. AGRAWAL)
VICE-PRESIDENT**

Sd/-

**(C. M. GARG)
JUDICIAL MEMBER**

Dated: 05/09/2014

AK VERMA

Copy forwarded to:

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

ASSISTANT REGISTRAR