

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.5904/Del./2017
Assessment Year 2007-2008

Shri Shiv Shankar Sharma, 91, Pandit Chowk, Mandawali Fazalpur, Delhi – 110 092. PAN AVAPS1384A	Vs	The Income Tax Officer, Ward-59(1), D-Block, Vikas Bhawan, New Delhi – 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri Dev Raj Sharma, Advocate
For Revenue :	Ms. Ashima Neb, Sr. D.R.

Date of Hearing :	07.05.2018
Date of Pronouncement :	08.05.2018

ORDER

This appeal by assessee has been directed against the order of the Ld. CIT(A)-19, New Delhi, dated 03rd July, 2017, for the A.Y. 2007-2008, challenging the addition of Rs.7,32,000/- on account of unexplained money deposited in the bank account.

2. Briefly, the facts of the case are that in this case earlier ex-parte assessment order was passed on 18th

December, 2009 at an income of Rs.11,76,000/- against the returned income of Rs.1,44,000/- after making addition of Rs.10,32,000/- being unexplained cash deposits in the bank account. The assessment was however set aside by the Tribunal vide order dated 10th September, 2015 and matter was restored to the file of A.O. to pass assessment order afresh, after giving opportunity of being heard to the assessee.

2.1. The assessee explained before A.O. that actual cash deposits in the bank account was of Rs.7,32,000/- and not Rs.10,32,000/-. It was submitted that the Bank A/c. No.xxx 35051 maintained with Axis Bank Ltd., Krishna Nagar, belongs to Shri Mahesh Sharma and not to the assessee. Therefore, it cannot be taxed against the assessee. The A.O. summoned the assessee as well as Shri Mahesh Sharma. The statement of assessee was recorded. However, Shri Mahesh Sharma, the other account holder did not attend the proceedings before him. A.O, therefore, noted that assessee failed to prove that transactions entered into in this bank account were not related

to him. The assessee did not produce any supporting evidence to substantiate his claim that these transactions were not entered into by him. The assessee is joint account holder of this bank account. In the absence of source of the cash deposited in this bank account, A.O. made the addition of Rs.7,32,000/-. Assessee challenged the addition before Ld. CIT(A). However, Ld. CIT(A) also confirmed the addition and dismissed the appeal of assessee. The findings of the Ld. CIT(A) in paras 5 to 9 are reproduced as under :

5. All the grounds of appeal are in respect of the addition of Rs. 7,32,000/-. I have gone through the facts. Normally, joint accounts are opened between blood relations, are close friends, who have an utmost faith on each other and who normally pool their resources for common use. In the present case, the joint account has been opened by the assessee with his authorized representative, an advocate Mr. Mahesh Sharma. It cannot be stated that these two persons were pooling their resources for their common use. While Mr. Shiv Shankar Sharma the assessee might be dependent upon Sh. Mahesh Sharma for his financial matters relating to investment, accounting and income tax. There was no

reason to state that Sh. Mahesh Sharma will pool his money in the account which the assessee was authorized to operate.

6. *Once the assessee was holding a joint account with someone else and he alleges that the money was not deposited in the bank by him, then the onus is on him to produce the other person and to prove that the money was deposited by the other person. The circumstances in the present case show that since Sh. Mahesh Sharma was carrying out investments and various financial compliances on behalf of the assessee. The assessee was depositing the money in the bank account to facilitate his Authorised Representative to withdraw the money for various necessities like investments, payment of taxes, etc. without bothering the assessee from time to time.*

7. *In absence of any relationship it is against all probabilities that Sh. Mahesh Sharma will open an account with the assessee and deposit money into the same with the risk of the assessee withdrawing the money or misappropriating the same. Clearly, therefore, this was a client account being maintained by the authorized representative to manage the clients' affairs as and when required. The assessing officer is, therefore, correct in*

treating the deposits made in the bank account as the unexplained money of Sh. Shiv Shankar Sharma. The assessee states that he has filed an affidavit to the effect that the money was not deposited by him. It would have been much more useful to file an affidavit of Sh. Mahesh Sharma accepting the deposits rather than filing a self-serving affidavit. Where a person is a joint owner of a bank account, there is an equal onus on him to explain the deposits in the bank. He cannot remain ignorant to the entries appearing in the bank account.

8. *The assessee has relied upon the judicial decisions in the case of :*

- *Commissioner of income tax vs. Savitri Devi Shukla*
- *Arup Kumar Sao versus IDEO*

to state that in the case of joint account holders, addition, if any, should be made in the account of the first holder. I have gone through these cases and in the first case it was the mother and the daughter who were joint holders. In the second case, it was the husband and the wife who were joint holders. As already held that where the joint holders are close relatives, it is normal that the dominant relative or the senior relative, is presumed to have made the deposits but where the joint accounts have been opened between

unrelated persons, the onus is on each co-owner to adduce evidence that the deposits have not been made by him but by the other co-owner. The assessee has not been able to discharge his onus that the deposits were not made by him. The assessing officer was, therefore, correct to retain the addition of Rs. 7,32,000/-in the case of the assessee.

9. As a result, the appeal of the appellant is dismissed.”

3. After considering the rival submissions, I do not find any merit in the appeal of assessee. Learned Counsel for the Assessee merely contended that assessee was a mere second holder of the joint bank account and authorities below merely on presumption that first account holder is an Advocate of the assessee made the addition.

4. On the other hand, Ld. D.R. relied upon the orders of the authorities below.

5. Learned Counsel for the Assessee also filed copy of the statement of assessee recorded by A.O. under section 131 of the I.T. Act. On consideration of the material on record, no interference is called for in the matter. The statement of

assessee recorded by A.O. shows that assessee admitted therein that he has opened this bank account jointly with Shri Mahesh Sharma. However, assessee denied doing any transaction in this bank account. The assessee admitted in his statement that he knew Shri Mahesh Sharma for the last 4 to 5 years and he was filing his return of income. Learned Counsel for the Assessee stated that Shri Mahesh Sharma is not an Advocate but an Accountant of the assessee and he used to file I.T. return on behalf of the assessee. The assessee admitted that bank account in question was opened with Shri Mahesh Sharma. However, no reasons have been explained as to under what circumstances joint bank account was opened with Shri Mahesh Sharma. It is unbelievable that a professional like Advocate, C.A. or Accountant, would open a bank account with his client. The Ld. D.R. rightly contended that any professional would open a bank account for an assessee if unaccounted transactions are conducted on behalf of the assessee. Since, Shri Mahesh Sharma was acting as Accountant on behalf of the assessee and was providing professional advice to the assessee

and filing return by the assessee, therefore, there is no reason to believe that Shri Mahesh Sharma would open a joint bank account with the assessee for his personal affairs. It is probable that assessee would have opened this bank account with the professional for conducting unaccounted transactions on his behalf. The onus is upon the assessee to explain the circumstances under which this bank account was opened with his Accountant. However, no explanation have been filed in this behalf. The Ld. CIT(A) rightly noted that normally joint bank account are opened between the relatives or close friends. But here is the case where the assessee has opened a bank account with the professional who was authorised representative of the assessee. There is no reason why a professional will provide his own money and operate bank account with the assessee. If there was money of Shri Mahesh Sharma, he could have given confirmation or would have appear before A.O. for recording his statement. However, he did not support the case of the assessee and did not appear before A.O. for recording his statement. The explanation of assessee is clearly an afterthought. The

authorities below, therefore, correctly considered the deposit of unaccounted cash bank account as the money belongs to the assessee. The decisions relied upon by the assessee before Ld. CIT(A) have already been found distinguishable on facts, copies of which are also filed in the paper book of the Learned Counsel for the Assessee.

6. Considering the totality of the facts and circumstances of the case in the light of finding of fact recorded by the authorities below, particularly when first account holder is authorised representative of the assessee would clearly support the findings of the authorities below that it was an unaccounted bank account maintained by the assessee with his Authorised Representative and in the absence of any explanation of source of the cash deposited in the bank account, no interference is called for in the matter.

7. In the result, appeal of assessee is dismissed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 08th May, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.