



% 09.12.2009

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Present: Mr. Sanjeev Sabharwal, Advocate for the appellant.

+ ITA No.1305/2009

The Assessing Officer has made addition of Rs.60, 000,00/- under Section 68 of the Income Tax Act on the ground that it was an unexplained cash. The assessee, however, could demonstrate that this amount was withdrawn by the assessee from the bank accounts. Its explanation was that this amount was withdrawn for the purpose of purchasing some immovable property. Since that could not have fructified, the amount was deposited back in the bank accounts. Finding it be a correct fact, CIT (A) deleted the addition *inter alia* observing that there is no provision in the Income Tax Act, which can bar an assessee to withdraw the cash and keep it at his home for some period until and unless it is proved that the same was actually utilized for some undisclosed or under hand transactions. This finding of fact is approved by the Income Tax Appellate Tribunal in the following manner:

- "6. We have heard both the parties and perused the material available on record. The only dispute in this appeal relates to the time gap between the amount withdrawn and deposited in the bank account. There is no dispute that the amount has been withdrawn on various dates but according to the Revenue the amount might have been utilized



for some other purposes not disclosed to the department. The Assessing Officer while rejecting the claim of assessee has not brought any material on record to prove that the amount withdrawn on earlier occasions was utilized for some other purposes. This is a mere presumption on the part of Assessing Officer that the amount withdrawn on earlier occasions was utilized for some other purposes. Ld. CIT (A) has also noted that eh (sic. the) presumption mad by the Assessing Officer that some under hand money in the purchase of property might have been passed is also baseless. Even the findings of the valuation officer to whom the mater (sic. matter) was referred for valuation of the property was not on record so as to make the basis for under valuation of the property. In our considered view, the Ld. CIT (A) was justified in coming to the conclusion that the addition made by the Assessing Officer is based on the presumptions, surmises and conjectures and without bringing any evidence on record in the support of his findings. Contrary that the case deposits in the assessee's company passbook are subsequent to the withdrawals and have been made withdrawn for a short period of one month and tally quantity-wise also."

Therefore, no substantial question of law arises for our consideration. This appeal is accordingly dismissed.


A.K. SIKRI


SIDDHARTH MRIDUL

December 09, 2009

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