

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

*(Conducted through Virtual Court)*

**ITA No.613/Ind/2017**  
**Assessment Year: 2012-13**

ITO-5(5) Indore	<b><u>बनाम/</u></b> Vs.	Shri Rajeev Sareen Indore
(Appellant / Revenue)		(Respondent / Assessee)

**ITA No.618/Ind/2017**  
**Assessment Year: 2012-13**

Shri Rajeev Sareen Indore	<b><u>बनाम/</u></b> Vs.	ITO-5(5) Indore
(Appellant / Assessee)		(Respondent / Revenue)
<b>PAN: ASWPS 1142 D</b>		
Assessee by	Shri Ashish Goyal & Shri N.D. Patwa, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	11.10.2022	
Date of Pronouncement	17.10.2022	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 21.06.2017 passed by learned Commissioner of Income-Tax (Appeals)-II, Indore [**“Ld. CIT(A)”**], which in turn arises out of assessment-order dated 30.03.2015 passed by learned ITO, Ward-5(5), Indore [**“Ld. AO”**] u/s 143(3) of the Income-tax Act, 1961

**["the Act"]** for Assessment-Year **["AY"]** 2012-13, the revenue as well as assessee have filed these cross-appeals.

2. Briefly stated the facts are such that assessee-individual is engaged in property business. He filed return of income declaring total income at Rs. 7,90,290/- and agricultural income of Rs. 5,04,360/-. The case was selected under scrutiny and statutory notices u/s 143(2)/142(1) were issued from time to time, which were complied with by assessee. Finally, Ld. AO completed assessment whereby (i) an addition of Rs. 1,56,25,499/- was made on account of unexplained cash-deposits in Bank A/c; (ii) agricultural income of Rs. 5,04,360/- was not accepted; and (iii) Development expenses of Rs. 31,83,223/- claimed by assessee as business-deduction were disallowed. Being aggrieved, the assessee filed first-appeal to Ld. CIT(A) and got substantial relief. Now, the revenue as well as assessee both are aggrieved by the order of Ld. CIT(A) and have come before us.

3. We first take up revenue's appeal and thereafter assessee's appeal.

**Revenue's Appeal:**

4. Revenue has raised following grounds:

*"1. Whether in facts and circumstances of the case the Ld. CIT(A) erred in deleting the addition of Rs.1,56,245,499/- made by the AO on account of unexplained cash deposit in the bank account.*

*2. Whether in facts and circumstances of the case the Ld. CIT(A) erred in deleting the addition of Rs.1,56,245,499/- even when the income of earlier years does not support this kind of cash balance claimed and even the turnover of assessee for preceding year was blow auditable limits and or A.Y.2010-11, there was no business income of assessee.*

*3. Whether Ld. CIT(A) was justified in restricting the addition on account of bogus agricultural income of Rs. 5,04,360/- to Rs. 1,25,000/- without affording any opportunity to AO before accepting the sale bills of agriculture produce and estimating agricultural expenses."*

Ground No. 1 and 2:

5. In these grounds, the revenue has claimed that the Ld. CIT(A) has erred in deleting the addition of Rs. 1,56,25,499/- (Rs. 1,56,245,499/-) is wrongly mentioned in Ground) made by Ld. AO on account of explained cash-deposits in Bank.

6. During assessment-proceeding, Ld. AO observed that during the AY 2012-13 (previous year 2011-12), the assessee had made a total cash-deposit of Rs. 1,56,25,499/- in different bank accounts. When the Ld. AO confronted the assessee about the source of cash-deposit, the assessee submitted Cash-Book showing opening balance of Rs. 1,76,64,438/- as on 01.04.2011. The assessee claimed that the impugned cash-deposits of Rs. 1,56,25,499/- were made out of the aforesaid opening cash-balance available with him. Ld. AO perused the return of income of the immediately preceding AY 2011-12 held by department on record and observed that the assessee had declared "Nil" cash balance as on 31.03.2011 in the return. Accordingly, Ld. AO was not satisfied with the opening cash-balance of Rs. 1,76,64,438/- as on 01.04.2011 claimed by assessee. Therefore, the Ld. AO treated the cash-deposited in bank as unexplained and made addition.

7. During first-appeal, Ld. CIT(A) was satisfied with the submissions of assessee and hence deleted addition by observing as under:

*"2.2 After carefully examining the submission of the appellant, it is clear that the audited cash book so produced cannot be just brushed aside by the AO. Further, the assessments for A.Y.2010-11 & 2011-12 were completed u/s 143(1) of Income Tax Act, 1961 and thus there was no occasion to examine or produce cash book or other accounts for these year. The appellant had submitted the cash flow/cash book for these year. The appellant had submitted the cash flow /cash book for the A.Y.2011-12 for co-relating the opening cash balance of A.Y.2012-13. Thus, in view of these facts and evidence so produced the contention of the AO that the cash in hand for A.Y. 2011-12 was Nil cannot be accepted. In view of the above discussion, detailed submission of the appellant, the cash flow and cash book so produced both at the stage of assessment and appeal, this addition does not appear to be warranted. Further, the appellant has also produced the assessment order for A.Y.2009-10 in which despite specific query and AIR information on cash deposit, the addition was not made by the AO after detailed examination of cash book. Same was the case for the appellant's wife*

for A.Y.2009-10 where no addition was made on account of deposit of cash in bank account after due examination of the Books of accounts. **Also the Hon'ble I.T.A.T. Bench (E) New Delhi in the case of Deputy Commissioner of Income Tax vs. Shri Manish Kumar Agrawal ITA No. 3301/Del/2012 for A.Y.2008-09 and in ITA No. 3475/Del/2012 for A.Y.2008-09 held that "when in the Electronic filing of the return, there is no provision for filing of the balance sheet, then non furnishing of the balance sheet cannot lead to the presumption that there was no cash in hand with the appellant."** So the AO's contention that there was NIL cash balance for F.Y.2010-11 does not hold good as the return was accepted u/s 143(1) of the Income Tax Act, 1961 and the appellant has given detailed cash flow for the A.Y.2011-12 for co-relating the cash balance with the opening cash balance of A.Y.2012-13. Thus, I am afraid that this addition cannot be sustained and is hereby deleted. This ground of the appeal is allowed."

8. Before us, learned representatives of both sides made strong submissions contesting their rival claims. We have heard them peacefully at length. The controversy between parties is very simple and can be fit in a narrow compass of facts. **It is so that the assessee made a cash-deposit of Rs. 1,56,25,499/- in bank accounts and claimed to have sourced from opening cash-balance of Rs. 1,76,64,438/- possessed by him as on 01.04.2011 but the claim of assessee is not acceptable to revenue. Hence we only need to examine whether the assessee had opening cash-balance or not?**

9. Ld. AR submitted that the assessee was possessed of cash-balance from year to year as under:

Date	Related to AY	Cash balance
01.04.2008 (closing of 31.03.2008)	2008-09	2,23,14,855
01.04.2009 (closing of 31.03.2009)	2009-10	1,65,83,322
01.04.2010 (closing of 31.03.2010)	2010-11	1,52,93,056
01.04.2011 (closing of 31.03.2011)	2011-12	1,76,64,438

The crux of the contention of Ld. AR is that the assessee was having a cash-balance of Rs. 2,23,14,855/- as on 01.04.2008 / 31.03.2008 which had

been brought uptill AY 2012-13 for making deposits. Regarding the basis of holding balance of Rs. 2,23,14,855/- as on 01.04.2008 / 31.03.2008, Ld. AR has made a limited submission that the assessee received a compensation of Rs. 72,68,378/- from Greater Noida Industrial Development Authority in the year 1998-99 which was credited in assessee's bank account and thereafter the assessee made cash-withdrawals from the same bank account and the same too formed a part of the balance of Rs. 2,23,14,855/- as on 01.04.2008. In response to a query raised by Bench as to the justification of holding such a high cash-balance for several years, at least from 01.04.2008 to AY 2012-18 and rather to say from a date much prior to 01.04.2008, Ld. AR submitted that the assessee was in the habit of holding such a high magnitude of cash-balance with him, though it may not be a commendable practice. Ld. AR further submitted that there is no ceiling-limit prescribed in Income-tax Act law for holding cash-balance. Ld. AR also contended that the revenue has completed scrutiny-assessment of assessee in AY 2009-10 wherein the cash-book was duly produced and the Ld. AO did not make any objection to the high cash-balance. Therefore, not only the habit of assessee of maintaining high cash-balance but also the factum of holding opening balance of Rs. 1,76,64,438/- as on 01.04.2011 is proven. On legal side, Ld. AR also made a submission that the books of account of AY 2012-13 under consideration were audited and had not been rejected by Ld. AO, therefore no adverse inference can be drawn against the assessee and the opening balance as on 01.04.2011 had to be accepted.

10. Ld. DR appearing on behalf of revenue is neither satisfied with the decision of Ld. CIT(A) nor with the pleadings made by Ld. AR. Firstly, Ld. DR raised a strong doubt against the holding of such a high cash balance at home, that too for several years and in spite of the fact that the assessee is maintaining several bank accounts. Raising objection on quality of entries in the cash-books, Ld. DR also argued that although the cash-books were produced before Ld. AO, they do not represent the realistic cash-balance. Regarding scrutiny-assessment having been done by department in AY 2009-10, Ld. DR submitted that the scrutiny assessment was done for AY

2009-10 and thereafter intervening AY 2010-11 and AY 2011-12 have passed wherein the revenue had made only processing u/s 143(1). Ld. DR argued that having regard to the factum of passage of two years, it is neither logical nor legal to conclude that the scrutiny-assessment done by revenue once upon a time for AY 2009-10, gives a passport to assessee that he was having cash balance in AY 2012-13. Thus, Ld. DR demonstrated a total dissatisfaction with respect to the theory of opening cash-balance put forward by assessee. In conclusion, Ld. DR placed a heavy reliance upon the observations made by Ld. AO in assessment-order and prayed that the addition made by Ld. AO must be upheld.

11. We have considered rival contentions of both sides and material held on record. At the outset, we would like to narrate the assessment-history of assessee, as culled out from submissions of both sides, during the hearing:

AY	Type of assessment done by revenue	Type of Income-tax Return ["ITR"] filed by assessee
2011-12	Processing u/s 143(1)	"Business-ITR" was filed.
2010-11	Processing u/s 143(1)	"Non-Business ITR" was filed.
2009-10	Scrutiny u/s 143(3)	"Business-ITR" was filed.

Thus, we observe that the assessee has sometimes filed "Business-ITR" and sometimes filed "Non-Business ITR". Further, the assessment-history of AY 2008-09 and earlier years is not available on record.

12. Now, reverting back to the claim of assessee, we observe that the assessee is claiming to be holding enough cash balance from as back as 01.04.2008 (or better to say, much prior to 01.04.2008 too). At this stage, we refer a categorical finding made by Ld. AO in assessment-order which states **"on perusal of the return of income submitted by assessee for the AY 2011-12, the cash in hand shows at NIL."** To understand this finding of Ld. AO, we take note of the fact that under the provisions of income-tax law, the Govt. has prescribed different types of forms of ITR,

which can be broadly classified, for our purposes, in two categories, viz. (i) "Business-ITR" i.e. the returns in which business income is declared; and (ii) "Non-Business ITR" i.e. the returns not containing business-income. In case of "Business-ITR", again there are two positions, viz. (i) if the assessee is required to maintain books of account u/s 44AA, the assessee has obligation to file Balance-Sheet which necessarily includes "Cash-Balance", and (ii) If an assessee is not required to maintain books of accounts as per section 44AA, even then section 139(9) mandates reporting "the amount of cash balance at the end of the previous year". From this, we can conclude that "cash-balance" has to be mandatorily reported for a person engaged in business irrespective of whether he is required to maintain books of accounts or not. Even the prescribed forms of "Business-ITR" have suitable columns to furnish the details of "cash-balance". This is a statutory requirement and cannot be taken so lightly. Obviously, a person not engaged in business is not required to make reporting of cash-balance and that is the precise reason that "Non-business ITR" do not have any column for reporting of cash-balance. This law / procedure has been in statute for several years and nobody can dispute it. Now, it is in that context that the Ld. AO himself verified the Business-ITR of AY 2011-12 filed by assessee and found that the assessee had reported "Nil" cash-balance as on 31.03.2011, and on such perusal the Ld. AO concluded that the assessee was not having opening cash-balance of Rs. 1,76,64,438/- as on 01.04.2011 as claimed. To repeat, this is the precise reason due to which Ld. AO did not accept the claim of assessee. During hearing, Ld. AR submitted that the reporting of "Nil" cash balance was just a reporting- error, but the assessee was factually having cash-balance as claimed. We note that the ITR is a sacred document prescribed in law and reporting-error cannot be pleaded so lightly. But, however, even if we accept that it was a reporting-error on the part of assessee, the assessment-order does not show that it was so pleaded before Ld. AO. Had this been pointed out to Ld. AO, he would have perhaps dug the case-records of assessee in more detail, considered the pleading of assessee in accordance with law and taken an appropriate view in the

matter, particularly whether there is a justification behind claim of reporting-error and even if it is so, whether it is acceptable to revenue authorities or not. At this stage, we also observe that the hearings of assessment took place in last month of time-barring i.e. on 19.03.2015 / 27.03.2015 and the assessee has also raised a grievance before Ld. CIT(A) in his written-submission (Page No. 37 of the Paper-Book) that no opportunity was given to explain "Nil" cash balance as on 01.04.2011. The grievance of assessee is reproduced below:

*"Further the assessing officer has neither given any opportunity as to why the cash balances as on 01.04.2011 be not taken at NIL nor there was any question raised in connection with the alleged cash balance at NIL and thus it could not be used against the assessee as to allegation made that the assessee was not in a position to explain the credit entries appearing the bank accounts is not sustainable particularly when no query raised in this connection and thus fanciful. In view of the above facts the decision of the alleged entry of Rs.1,56,25,499/- treated an unexplained money deposited in banks as unexplained cash credit u/s 68 and added to the total income of the assessee is fanciful."*

As a matter of fact, even if we consider that "Nil" reporting of cash-balance was a reporting-error in AY 2011-12, it would be necessary to go back to some more years because the assessee is claiming that he was having cash-balance from a date prior to 01.04.2008. In that event, there would be a need to dig entire case-record of assessee for several years to identify in which year, the assessee has filed "Business-ITR" or "Non-business ITR" and also the amount of cash-balance disclosed by the assessee in the ITR submitted to revenue authorities. Needless to mention that the revenue has done scrutiny-assessment in AY 2009-10 and there is a sentence mentioned in assessment-order that the cash-book was produced, but on perusal of assessment-order it is manifest that the assessment-order simply contains such statement but nowhere speaks that cash-book was carefully examined by Ld. AO. Further, the assessment-order of AY 2009-10 focuses on limited items of minuscule nature only. Since the assessee is claiming to be possessing cash-balance from a date prior to AY 2008-09, it is necessary to dig entire case-record of assessee and examine the cash-balance reported by



assessee year to year so as to settle the claim of assessee more judiciously. Therefore, we have no option except to refer this issue back to Ld. AO who shall verify the complete case-record of assessee. This would also address the grievance raised by assessee to the effect *“Further the assessing officer has neither given any opportunity as to why the cash balances as on 01.04.2011 be not taken at NIL nor there was any question raised in connection with the alleged cash balance at NIL”*. Hence we order accordingly and direct the Ld. AO to examine complete case-records of assessee; give a full opportunity to the assessee to submit explanation on “Nil” cash-balance including justification on reporting-error in ITR; and to look into the aspect whether the reporting-error of cash-balance in the ITRs was only in AY 2011-12 or other years as well and whether such error can be excused by revenue authorities. Accordingly, Ground No. 1 to 2 of revenue are remanded back to Ld. AO for a fresh consideration in terms indicated here.

Ground No. 3:

13. In this ground, the revenue has claimed that the Ld. CIT(A) has erred in restricting the addition of agricultural income to Rs. 1,25,000/- as against the addition of Rs. 5,04,360/- made by Ld. AO.

14. We have considered the submissions made by learned representatives of both sides and perused the material held on record. We observe that the Ld. CIT(A) has adequately discussed the factual aspects of this issue with the relevant documentary evidences and thereafter restricted addition to Rs. 1,25,000/-. The findings and observations of Ld. CIT(A) are reproduced below:

*“3. This ground is with regard to addition of Rs. 5,04,360/- of agricultural income. I have carefully gone through the submission of the appellant and the reasons for making the addition by the AO in the assessment order. The AO had apparently made the addition on the ground that the appellant had sold off his agricultural land and thus the very basis of agricultural income did not exist. However, the appellant has submitted that the said agricultural land was sold in the month of September, 2011 and January 2012 for which the sale deeds were also*

*produced. Further, the appellant has given the following details of sale of crops:*

- 1. Sale of crop at Rs.188250/- on 08.04.2011*
- 2. Sale of crop at Rs.137880/- on 06.12.2011*
- 3. Sale of crop at Rs.86770/- on 17.12.2011*
- 4. Sale of crop at Rs.91460/- on 23.01.2012*

*3.1 However, on examining the details of sale of agricultural produce, it is clear that the appellant has claimed the entire sale as his agricultural income, which is not understandable as there cannot be any crop production/sale without incurring necessary expenses. Against the agricultural income claimed out of Rs.5,04,360/-, I disallowed a sum of Rs.1,25,000/- on account of expenses. Thus, an addition of Rs.1,25,000/- is confirmed and this ground of appeal is partly allowed.”*

15. We do not find any infirmity in the observations made by Ld. CIT(A) which, as narrated above, are well-reasoned. Hence, we do not feel necessity to interfere in his action. Accordingly, Ground No. 3 of revenue is dismissed.

**Assessee’s Appeal:**

16. The assessee has raised several grounds in Appeal-Memo, although the issue involved is solitary i.e. Ld. CIT(A) has erred in confirming the disallowance of Rs. 31,83,222.77 made by Ld. AO on account of development expenses.

17. During assessment-proceeding, Ld. AO observed that the assessee has claimed deduction of development expenses. When the Ld. AO asked the assessee to justify his claim and submit details / documentary evidences of the developmental work undertaken, the assessee only filed cash-book where the entries of payments of expenses had been recorded. However, the assessee did not file any evidence in support of expenditure. Finding that the assessee had failed to justify the claim, Ld. AO made addition. During appellate proceeding, the assessee re-filed copies of Cash-Book. Additionally, the assessee also filed vouchers of expenses, which are placed in the Paper-Book. However, Ld. CIT(A) confirmed the disallowance by holding as under:

*“4.2 .... The appellant had indeed produced that vouchers but the fact remains that all these vouchers were not only found to be self-made but were also found to be made on letter head which thus lacked not only the authenticity but also genuineness of the same were seriously in doubt as all payments were made in cash. Thus, the sum and substance of the matter is that the vouchers so produced were not credible to support the claim of expenditure incurred. Further, the AO had commented adversely in its report regarding the appellant’s claim. Thus, the appellant has failed to prove the genuineness of the development expenses so incurred. Hence the addition so made on this ground is confirmed.”*

18. Ld. AR drew our attention to Paper-Book Page No. 99 to 105, where the vouchers of the expenditure are placed. On perusal of the same and after discussion during hearing, we observe that there are total 7 vouchers of 3 suppliers. Ld. DR submitted that the vouchers, though having values of Rs. 81,650/-, 3,93,250/-, 5,19,900/-, 4,60,400/-, 3,24,600/-, 11,75,000/- and 2,31,400/- which are quite high and abnormal, are just paper-notings on the letter-heads of suppliers and not invoices / bills. Ld. DR also analysed contents of a few vouchers and demonstrated that no credence can be accorded to such vouchers. The submissions of Ld. DR could not be controverted by Ld. AR. It is also observed that the assessee has filed a copy of Ledger A/c of Developmental Expenses in Paper-Book which shows cash-payments spread over so many dates, each not exceeding Rs. 20,000/-. Thus, the high value vouchers are claimed to have been paid in cash over so many dates, which further puts the credibility of claim at stake. On perusal of Profit & Loss A/c placed at Page No. 11 of the Paper-Book, it is further observed that the assessee has made sale of “land” for a sum of Rs. 1,24,22,636/- against which opening stock of land is claimed at Rs. 72,03,001/- and impugned “development expenditure” of Rs. 31,86,222/- is claimed. Since there is sale of land only, the bench raised a query as to how such developmental expenditure was incurred, but the query could not be answered successfully. Keeping in view the entirety of facts, we do not find

any infirmity in the addition made by revenue authorities. Hence, the grounds raised by assessee are dismissed.

**19. In the final result, the appeal of revenue is partly allowed for statistical purpose and the appeal of assessee is dismissed.**

*Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 17/10/2022.*

Sd/-

Sd/-

(SIDDARTHA NAUTIYAL)  
JUDICIAL MEMBER

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 17.10.2022

Patel/Sr. PS

*Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File*

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	

8.	Date of dispatch of the Order	
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