

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.206/Ind/2024
Assessment Year : 2011-12

Kamal Chand Sisodiya, Azad Marg, Nai Basahat, Nisarpur Tehsil, Kukshi District, Dhar	<u>बनाम/</u> Vs.	Income-tax Officer, Dhar
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AGDPS8971R		
Assessee by	Shri Milind Wadhvani, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	08.10.2024	
Date of Pronouncement	11.10.2024	

आदेश / O R D E R

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

Feeling aggrieved by appeal-order dated 17.01.2024 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 13.12.2018 passed by learned ITO, Dhar ["AO"] u/s 144/147 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2011-12, the assessee has filed this appeal.

2. The background facts leading to present appeal are such that the case of assessee-individual was taken up by AO for proceeding u/s 147 by issuing notice u/s 148 for the reason of cash deposits made in bank a/c during the financial year 2010-11. Thereafter, the AO also issued notices u/s 142(1). All notices issued by AO remained uncompiled with. Ultimately, the AO called bank-statement of assessee directly from concerned bank u/s 133(6). On the basis of entries found in bank-statement, the AO made addition of Rs. 2,47,881/- on account of salary income and addition of Rs. 11,61,000/- on account of unexplained deposits in bank a/c and thereby completed assessment u/s 147/144 determining total income at Rs. 14,08,880/-. Aggrieved, the assessee carried matter in first-appeal whereupon the CIT(A) granted a part-relief of Rs. 22,748/- in the matter of addition of Rs. 2,47,881/- made by AO on account of salary income and thereby upheld remaining addition of Rs. 2,25,133/-. Further, the CIT(A) upheld fully the addition of Rs. 11,61,000/- made by AO on account of unexplained deposits in bank. Now, the assessee has come in this appeal before us.

3. The assessee has raised following grounds:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 2,25,133/- on account of salary out of total addition of Rs. 2,47,881/- made to the income of the assessee.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the AO in making an addition of Rs. 11,61,603/- to the income of assessee on account of unexplained cash deposits.*

4. **Ground No. 1** relates to the addition of Rs. 2,25,133/- upheld by CIT(A) out of addition of Rs. 2,47,881/- made by AO on account of salary income. During hearing, Ld. AR for assessee submitted that the assessee is not pressing this ground. Ld. DR did not have any objection. Accordingly, Ground No. 1 is dismissed as non-pressed.

5. **Ground No. 2** relates to the addition of Rs. 11,61,000/- (amount is wrongly mentioned as Rs. 11,61,603/- in ground) made by AO on account of unexplained deposits in bank a/c and upheld by CIT(A).

6. Apropos to this ground, we firstly extract the impugned order passed by CIT(A) while upholding this addition:

"4.3.1 As regards the addition of Rs. 11,61,000/- by the AO on account of cash deposits in savings bank account, I find that the appellant had explained that he had received Rs. 4,64,050/- as death cum retirement gratuity claiming the same as exempt and GPF withdrawal of Rs. 2,18,376/- also claimed as exempt as part of said deposits made in bank. The Government might not had given the said the said amount of Death-cum-retirement gratuity of Rs. 4,64,050/- and GPF of Rs. 2,18,376/- in cash. The AO had treated the amount of cash deposits only while making addition of Rs. 11,61,000/- as appellant's undisclosed income. The appellant had given an estimated self-service explanation that if he had made past savings of Rs. 10,000/- per year for 38 years, there would had been cash balance with him at Rs. 3,80,000/- and therefore the inflow of cash as calculated for 38 years including the sum of cash withdrawals of Rs. 12,41,000/- totaling to Rs. 16,21,000/- was explained by him in hypothetical manner as having been his inflow of cash while explaining the cash deposits of Rs. 11,61,000/- in bank. It is also not acceptable that as on the year ending 31.03.2011, as calculated in the submission, the appellant had cash in hand of Rs. 3,40,000/-. The decision of the Hon'ble ITAT cited by the appellant in the case of Piyushbhai Mangalbhai Patel (supra), in my opinion, is not applicable with the facts of the case as to why and how the appellant made no cash deposits for last 38 years in the bank account and retained such cash of Rs. 16,21,000/- for depositing in cash in this relevant assessment year of Rs. 11,61,000/- and again not depositing the entire such inflow of cash, had continue to keep cash in hand of Rs. 3,40,000/- as calculated in the submission made during the appellate proceedings. Apart from all the factual details against the appellant, the appellant also had not complied to any of the notices before the AO. Further,

the natural disaster etc. of submergence of the Narmada River Basin, in my opinion, cannot be the due explanation for the sudden cash deposit after 38 years and not the gradual deposits from year to, year of Rs. 11,61,000/- in the bank account. I, therefore, hold that the AO had correctly passed the assessment order u/s 144 r.w.s. 147 of the Act following all the provisions of the Act and so also rightly added the amount of Rs. 11,61,000/- on account of undisclosed cash deposits as unexplained investment in bank u/s 69 of the Act. No interference in AO's order is called for. The addition made of Rs. 11,61,000/- is therefore confirmed."

7. Thus, before CIT(A), the assessee filed a cash flow statement showing opening cash balance of Rs. 3,80,000/- as on 01.04.2010 and the deposits/withdrawals made into/from bank during the financial year 2010-11 to show that there was no shortage of cash at any point of time. However, the CIT(A) rejected assessee's submission.

8. During hearing before us, Ld. AR firstly made a preliminary submission that the assessee is aged about 75 years who had retired from Govt. service of 39 years as teacher. The assessee was resident of Nisarapur Village falling within the submergence area of Sardar Sarovar Dam of Narmada River. The assessee was directed to vacate his residence as it was falling within submergence area, which the assessee did. Therefore, the assessee could not receive notices issued by AO which led to passing of *ex-parte* assessment-order u/s 144. However, during first-appeal, the assessee made complete submissions to CIT(A) with documentary evidences.

9. Thereafter, Ld. AR made submissions on merit of the impugned addition. He submitted that the AO has made addition of Rs. 11,61,000/- just by making arithmetical total of credit entries/deposits in bank a/c of assessee during financial year 2010-11 instead of taking a peak shortage of

cash, if any, with the assessee having regard to the funds available from opening cash balance as on 01.04.2010 and cash withdrawals made from the very same bank a/c during the same financial year 2010-11 itself. To show the peak shortage, if any, Ld. AR has filed three alternative statements of cash flows at Page 34 to 36 of Paper-Book which incorporates opening cash-balance, deposits made in bank and withdrawals from bank. The 1st statement starting with opening cash balance of Rs. 3,80,000/- does not show any peak shortage; the 2nd statement starting with opening balance of Rs. 1,00,000/- shows a peak shortage of Rs. 2,05,000/-; and the 3rd statement starting with opening balance of Rs. 2,00,000/- shows a peak shortage of Rs. 1,05,000/-. Ld. AR submitted that the assessee had been in service of Govt. for as many as 39 years from which there were accumulation of funds. Further, the assessee has made cash withdrawal of Rs. 2,00,000/- on 11.03.2020, cash deposit of Rs. 1,00,000/- on 17.03.2020 and cash withdrawal of Rs. 1,00,000/- on 23.03.2020 in the very same bank a/c immediately prior to 01.04.2020; these cash transactions have also left a net cash balance of Rs. 2,00,000/- with the assessee as on 01.04.2010. Therefore, an opening balance of Rs. 3,80,000/- as shown in 1st statement, which was also narrated before CIT(A), is reasonable and must be accepted. Thus, according to Ld. AR, once opening balance of Rs. 3,80,000/- and the deposits and withdrawals made during the financial year 2010-11 as shown in 1st statement are considered, there remains no shortage of cash. Hence, the entire addition made by AO purely

on the basis of deposits without having regard to the funds available with assessee, is not tenable and deserves to be quashed.

10. Ld. DR for revenue though dutifully supported the order of AO yet fairly agreed to leave the matter for the wisdom of bench while expressing that the assessee is aged about 75 years and a retired person from Govt. service.

11. We have considered submissions of both sides and perused the documents to which our attention has been drawn. Admittedly, the AO has made impugned addition of Rs. 11,61,000/- by just aggregating various credit/deposits made by assessee throughout the financial year 2010-11 in bank a/c. On perusal of bank statement, we find that the assessee has made frequent deposits in bank a/c and it is not a case of one time sudden deposit. Further, the assessee has also made frequent cash withdrawals from the very same bank a/c. Therefore, looking at the pattern of deposits and withdrawals, the assessee should not be denied the benefit of peak credit. That means, only peak-shortage can be considered as unexplained income. This is in consonance with the view taken by various judicial forums. Bearing in mind this, we have carefully examined the three alternative cash-flow statements filed by assessee in Paper-Book and find the 3rd cash flow statement starting from opening balance of Rs. 2,00,000/- as on 01.04.2010 is more appropriate as the assessee was having immediate source to show net cash of Rs. 2,00,000/- available with him from withdrawals/deposits made from very same bank immediately before 01.04.2010. Therefore, we re-produce below the 2nd statement submitted by assessee as under:

Statement of Peak Credit For the Period of 01.04.10 to 31.03.11
Opening Cash Balance is Rs. 2,00,000/-

Date	Particulars	Cash Withdrawal (A)	Cash Deposit (B)	Running balance (C)
01/04/2010	Opening Cash Balance			Rs. 2,00,000/-
16/04/2010	BOI 980810100009988		200000.00	0.00
19/04/2010	BOI 980810100009988		25000.00	-25000.00
23/04/2010	BOI 980810100009988		20000.00	-45000.00
13/05/2010	BOI 980810100009988	10000.00		-35000.00
17/05/2010	BOI 980810100009988		10000.00	-45000.00
24/05/2010	BOI 980810100009988	20000.00		-25000.00
01/06/2010	BOI 980810100009988		80000.00	-105000.00
08/06/2010	BOI 980810100009988	10000.00		-95000.00
14/06/2010	BOI 980810100009988	40000.00		-55000.00
29/06/2010	BOI 980810100009988	20000.00		-35000.00
01/07/2010	BOI 980810100009988		20000.00	-55000.00
06/07/2010	BOI 980810100009988		10000.00	-65000.00
08/07/2010	BOI 980810100009988	10000.00		-55000.00
17/07/2010	BOI 980810100009988	65000.00		10000.00
19/07/2010	BOI 980810100009988	50000.00		60000.00
02/08/2010	BOI 980810100009988	7000.00		67000.00
03/08/2010	BOI 980810100009988	5000.00		72000.00
11/08/2010	BOI 980810100009988	5000.00		77000.00
16/08/2010	BOI 980810100009988	140000.00		217000.00
20/08/2010	BOI 980810100009988	25000.00		242000.00
25/08/2010	BOI 980810100009988		23000.00	219000.00
01/09/2010	BOI 980810100009988	5000.00		224000.00
01/09/2010	BOI 980810100009988	15000.00		239000.00
23/09/2010	BOI 980810100009988		32000.00	207000.00
13/10/2010	BOI 980810100009988		30000.00	177000.00
18/10/2010	BOI 980810100009988		30000.00	147000.00
19/10/2010	BOI 980810100009988	35000.00		182000.00
21/10/2010	BOI 980810100009988	5000.00		187000.00
26/10/2010	BOI 980810100009988	200000.00		387000.00
29/10/2010	BOI 980810100009988		20000.00	367000.00
02/11/2010	BOI 980810100009988	26000.00		393000.00
09/11/2010	BOI 980810100009988	10000.00		403000.00
13/11/2010	BOI 980810100009988	7000.00		410000.00
19/11/2010	BOI 980810100009988		235000.00	175000.00
24/11/2010	BOI 980810100009988		27000.00	148000.00
30/11/2010	BOI 980810100009988	5000.00		153000.00
02/12/2010	BOI 980810100009988	70000.00		223000.00
03/12/2010	BOI 980810100009988		60000.00	163000.00
09/12/2010	BOI 980810100009988	15000.00		178000.00
13/12/2010	BOI 980810100009988	5000.00		183000.00
18/12/2010	BOI 980810100009988	5000.00		188000.00
20/12/2010	BOI 980810100009988	115000.00		303000.00
23/12/2010	BOI 980810100009988		100000.00	203000.00
29/12/2010	BOI 980810100009988	200000.00		403000.00
01/01/2011	BOI 980810100009988	5000.00		408000.00
07/01/2011	BOI 980810100009988	10000.00		418000.00
13/01/2011	BOI 980810100009988		22000.00	396000.00
19/01/2011	BOI 980810100009988	6000.00		402000.00
19/01/2011	BOI 980810100009988		200000.00	202000.00
22/01/2011	BOI 980810100009988	10000.00		212000.00
24/01/2011	BOI 980810100009988	5000.00		217000.00
10/02/2011	BOI 980810100009988	60000.00		277000.00
17/02/2011	BOI 980810100009988	10000.00		287000.00
28/02/2011	BOI 980810100009988	10000.00		297000.00
15/03/2011	BOI 980810100009988		7000.00	290000.00
25/03/2011	BOI 980810100009988		10000.00	280000.00
31/03/2011	Closing Cash Balance			Rs. 2,80,000/-

According to this statement, we find that there is a peak shortage of Rs. 1,05,000/- on 01.06.2010 which can only be treated as unexplained. Consequently, the addition made by AO is restricted to the extent of Rs. 1,05,000/- and the rest of the addition is deleted. The assessee gets relief accordingly. Thus, Ground No. 2 is partly allowed.

12. Resultantly, this appeal is partly allowed.

Order pronounced in open court on 11.10.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 11.10.2024
CPU/Sr. PS

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

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore