

आयकरअपीलीयअधिकरण, इंदौरन्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
श्रीसी.एम.गर्ग, न्यायिकसदस्यतथाश्रीओ.पी.मीना, लेखासदस्यकेसमक्ष
BEFORE SHRI C.M.GARG, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./ I.T.A. No.153/Ind/2015
निर्धारणवर्ष /Assessment Year: 2010-11

Shri Harish Pesswani, A-10, Exotica, Near Suvidha Vihar, Airport Road, Bhopal	v.	ITO-3(2)-Bhopal
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN:AJTPP-1741M		

अपीलार्थीकीओरसे/Appellant by	Shri Ashis Goyal, Advocate Shri N.D. Patwa, Advocate
प्रत्यर्थीकीओरसे/Respondent by	Shri Mohmd. Javed, Sr. (DR)

सुनवाईकीतारीख/Date of hearing	30.03.2017
उद्घोषणाकीतारीख/Date of pronouncement	17.04.2017

आदेश / O R D E R

PER O.P.MEENA, ACCOUNTANT MEMBER

This appeal is filed by the assessee against the order of Id. Commissioner of Income tax (Appeals)-II-Bhopal[hereinafter referred to as the CIT (A)] dated 19.12.2014. This appeal pertains to Assessment Year 2010-11 as against appeal decided in respect of assessment order dated 04.03.2013 passed u/s. 143(3) of Income Tax Act, 1961(herein after referred to as "the Act) by the

ITO- 3(2) Bhopal [hereinafter referred to as the AO]. The assessee has taken following grounds of appeal:

On the facts and circumstances of the case, the Ld. CIT(A)-II, Bhopal erred and was not justified in:

- 1. Dismissing the appeal and sustaining the assessment order of the Ld. AO under this appeal which is contrary to the material on records and provisions of the Act, unjust, bad in law and without jurisdiction.*
- 2. Sustaining the addition of Rs. 34,60,100/- out of Rs. 39,35,400/- made by the Ld. AO on account of unexplained cash deposits disregarding the facts of the case, settled legal position and explanation submitted by the appellant.*
- 3. Sustaining the addition of Rs. 84,400/- made by the Ld. AO on account of unexplained investment in immovable property disregarding the facts of the case, settled legal position and explanation submitted by the appellant.*

2. Ground no. 1 is not pressed by the Ld. Counsel of the assessee hence, the same is treated as dismissed as not pressed.

3. Ground no. 2 relates to sustaining addition of Rs. 34,60,100/- out of Rs. 39,35,400/- made by the AO on account of unexplained cash deposit.

4. Briefly stated the facts of the case are that the assessee is a bank employee in Bank of Baroda posted at Vidisha during the year under consideration. The assessee has filed his return of income on 26.07.2010 disclosing total income at Rs. 1,32,380/-. During the course of assessment proceedings, it was noticed that

the assessee has made cash deposits in his various bank accounts amounting to Rs. 39,35,400/-. The assessee has furnished the source of aforesaid cash deposits and also submitted 'cash flow statement' but the Ld. AO has declined to accept the sources stating that explanation of the assessee is not acceptable.

5. Being aggrieved, the assessee has filed the appeal before the CIT(A). The submissions made before the AO were reiterated and the explanation of the source of deposit was furnished and same was explained by cash flow statements. The submission made before CIT(A) is reproduced as under:

The details of cash deposits in various bank accounts along with their sources in the tabulated form are given as under:

A-[Axis Bank- Account No. 646010100014094]

Date	Cash Deposit [Rs.]	Remarks
23/06/2009	5,000/-	Out of withdrawal from BOB, Vidisha a/c no. 31370400000029 on 23/06/2009.
15/09/2009	1,00,000/-	Advance for salw of plot received in cash on 14/09/2009 amounting to Rs. 1,00,000/-
25/09/2009	4,50,000/-	Cash received on sale of plot on 25/09/2009- Rs. 2,72,000/-. Rs. 55,000/- withdrawn from same bank on 18/09/2009 and Rs. 1,23,000/- received from mother.
06/10/2009	4,00,000/-	Cash withdrawal from same bank on 01/10/2009
21/10/2009	4,00,000/-	Cash withdrawal from same bank on 19/10/2009
29/10/2009	4,00,000/-	Cash withdrawal from same bank on 24/10/2009
16/11/2009	4,00,000/-	Cash withdrawal from same bank on 04/11/2009
12/01/2010	5,000/-	Out of withdrawal from BOB, Vidisha account no. 313704000000206 on 09/10/2010.
10/03/2010	5,000/-	Out of salary and past savings
Total	21,65,000/-	

B-[Bank of Baroda, Vidisha, SB Account No. 31370100000206]

Total cash deposits as per bank statement during the year under consideration is Rs. 11,25,500/- whereas the Ld. AO has erratically considered the cash deposits at Rs. 13,74,800/-. Copy of the bank statement is enclosed herewith.

Date	Cash Deposit [Rs.]	Remarks
15/04/2009	50,300/-	Out of withdrawal from same bank on 11/04/2009
04/07/2009	25,000/-	Cash received from mother.
16/07/2009	1,00,000/-	Out of withdrawal from BOB, Vidisha account no. 31370400000029 on 14/07/2009- Rs. 50,000/- and out of withdrawal from same bank on 14/07/2009- Rs. 50,000/-
21/07/2009	1,00,000/-	Out of withdrawal from BOB, Vidisha account no. 31370400000029 on 20/07/2009- Rs. 1,00,000/-
24/12/2009	2,50,000/-	Out of withdrawal from same bank on 22/12/2009- Rs. 1,00,000/-. Withdrawal from Axis Bank on 19/12/2009- Rs. 1,50,000/-
05/01/2010	2,00,000/-	Out of withdrawal from same bank on 01/01/2010- Rs. 2,00,000/-.
01/02/2010	2,24,000/-	Out of withdrawal from same bank on 01/02/2010- Rs. 44,000/- and cash received from mother Rs. 1,80,000/-
19/03/2010	1,56,000/-	Out of withdrawal from same bank on 02/02.2010- Rs. 2,24,000/-
	20,200/-	Petty cash deposits on different dates.
Total	11,25,500/-	

C-[Bank of Baroda, Habibganj, SB Account No. 18600100005126]

There are no cash deposits in the above said bank during the year under consideration. Copy of the bank account is enclosed herewith [annexure-]. The Ld. AO has erratically considered a sum of Rs. 1,84,000/- as 'unexplained cash deposits' in the above said bank. Thus, the addition is erratic on the facts and therefore, is liable to be deleted.

D-[Bank of Baroda, Vidisha, OD Account No. 31370400000029]

Total cash deposits as per bank statement during the year under consideration is Rs. 1,64,600/- whereas the Ld. AO has erratically considered the cash deposits at Rs. 2,11,600/-. Copy of the bank statement is enclosed herewith.

Date	Cash Deposit [Rs.]	Remarks
22/04/2009	50,000/-	Out of withdrawal from same bank on 21/04/2009- Rs. 50,000/-
29/04/2009	50,000/-	Out of withdrawal from same bank on 28/04/2009- Rs. 50,000/-
02/05/2009	5,000/-	Out of withdrawal from same bank on 01/05/2009- Rs. 5,000/-

07/07/2009	7,500/-	Out of salary and past savings.
20/07/2009	44,600/-	Out of withdrawal from same bank on 14/07/2009- Rs. 50,000/-
	7,500/-	Petty cash deposits on different dates.
Total	1,64,600/-	

From the factual position narrated above, it is apparent that the addition of Rs. 39,35,400/- is totally misconceived and therefore, it is prayed that the same may kindly be deleted.”

4.2. *Assessee’s submissions along with assessment order have been considered carefully. Assessment records of the AO along with relevant bank account statement have also been perused. As per AIR information on record, total cash deposits of Rs. 28,92,500/- been made by the appellant in his bank account at BOB. Accordingly, the case been selected for scrutiny through CASS. During the course of assessment proceedings, the assessee has submitted his various bank accounts statements from where AO has computed total cash deposits of Rs. 39,35,400/-. However, on perusal, assessee’s submissions regarding amount of cash deposits are found acceptable, except for BOB A/c No. 18600100005126, since at many places AO has either taken O/D amount or even cheque amount as cash deposits. The correct position of bank deposits is found as under:*

S. No.	Bank Name	A/c no.	Cash deposits taken by AO (Rs.)	Cash deposits made as per bank statement (Rs)	Excess taken by AO. (Rs.)
1	BOB, Vidisha	31370400000206	13,74,800/-	11,25,500/-	2,49,300
2	BOB, Habibganj	18600100005126	1,84,000/-	5,000/-	1,79,000
3	BOB, Vidisha	3137040000029	2,11,600/-	1,64,600/-	47,000
4	Axis Bank, Bhopal	646010100014094	21,65,000/-	21,65,000/-	NIL
		Total	39,35,400/-	34,60,100/-	4,75,300

4.3 *Regarding source of these cash deposits of Rs. 34,60,100/- it is seen that the assessee has not been able to explain satisfactorily the amounts of cash deposits made in his various bank accounts with the help of supporting documentary evidences in his favour despite being given adequate opportunities in this regard. The assessee has merely stated these amounts as deposits from cash in hand, received from mother- Mrs. Madhu Pesswani, Mr. Naveen Kumar and out of money withdrawn earlier. Mere filing of income tax return of the lender i.e. his mother does not absolve the assessee of his duty to explain these cash deposits found made in his bank accounts. The income declared by his mother is not found commensurate with the amounts given to the assessee nor there have been equivalent withdrawals from her bank account. The assessee’s further contention that such frequent deposits and withdrawals of huge amounts have been necessitated for his mother’s*

treatment and certain property deals are also not found acceptable on the basis of evidences produced. The assessee has also failed to prove satisfactorily that the various amounts deposited in these bank accounts are, indeed made from withdrawals as purpose of these withdrawals has also not been proved. Therefore, theory of peak credit is also not found applicable in his case.

4.4 After perusal of entire material on record, addition of Rs. 34,60,100/- is, hereby, confirmed out of total of Rs. 39,35,400/- made by the AO.

6. Being aggrieved the assessee is filed an appeal before the Tribunal.

The Ld. A.R. submitted the CIT(A) has confirmed the addition on account of cash deposit of Rs. 34,60,100 out of cash deposit of Rs. 39,35,400 added by the AO. The source of these cash deposits of Rs. 34,60,100 is explained as under:-

Total cash deposit in 4 bank account		34,60,100
Less :out of earlier withdrawal	32,79,400	
Less: Received from mother	1,48,000	
Less: Cash received against sale of property	3,72,000	
Less: petty cash deposit from savings and salary	32,700	
Total	34,60,100	34,60,100
Balance		NIL

7. The Ld. A.R. submitted that the assessee has filed a detailed cash flow statement (Copy filed Paper Book Page No. 39-42) whereby the cash withdrawal and deposit are given. It could be seen from that deposit in cash are majority out of earlier withdrawals from bank. Out of the total deposit in bank, Rs.

32,79,400/- pertain to earlier withdrawals from the bank account. Each deposit entry in the bank were submitted to before the Ld. CIT (A) which are reproduced by the CIT(A) at page No 10 to 12 of appellate order. The Ld. A.R. contended that the glimpse of the cash flow would show that deposit are out of the earlier cash withdrawals, and there is no short fall of at any time . As regards , an amount of Rs. 3,72,000 , the Ld. A.R. submitted that the assessee has sold a property on 25.09.2009 of which registry is appearing at Paper Book Page No. 26 for Rs. 3,72,000. The assessee has received Rs. 1,00,000 on 15.09.2009 as advance against the sale of this property which has been deposited in bank account and same is being reflected in the cash flow statement at Page No 40 and Similarly an amount of Rs. 2,72,000 was received on 25.09.2009, which is also appearing at Paper Book Page No. 40 back. The sale deeds of this property depicts the said transaction , hence, the source of cash deposit of Rs. 2,72,000 is explained out of cash received from sale of property. Further, it was claimed that the assessee has received an amount of Rs. 1,23,000 on 25.09.2009 from her mother and similarly an amount of Rs. 25,000 was received in cash from his mother on 04.07.2009 . Thus, total cash amount of

Rs. 1,48,000 has been received from the mother of the assessee, and same is deposited in the various bank accounts of the assessee and same is reflected in cash flow statement filed by the assessee. Therefore, it was urged to delete the addition made by the AO.

8. On the other hand, the Ld. D.R. submitted that the assessee has sold the property during the year under consideration, hence, there is a possibility that the amount deposited in various bank account is out of on money receipts. Therefore, the explanation of the assessee should not be accepted.

9. We have heard the rival submissions of both the parties and have perused the material available on record. We find that there are four bank accounts of the assessee viz : two are with BOB at Vidhisha , one is BOB Habibganj, and other one is with Axis Bank. It is noticed that the assessee has made withdrawal of cash from one bank account and same is claimed to have been deposited with other bank account in cash. The assessee has filed cash flow statement in respect by merging all four accounts therein which explains the cash deposits. The peak amount as per cash flow statement comes to NIL. However, if we considered the individual bank account and cash deposit therein , then there

would be some amount on account of peak, therefore, in such a cash where no books of accounts are maintained the peak theory is best method to assess the actual income earned from such transactions. After taking into account, all the facts and circumstances of the case, we find it appropriate to send this issue back to the file of the AO to examine the cash flow statement in the light of explanation as offered in respect of each and every entry and peak theory. The will calculate the peaks of each bank accounts separately. The assessee shall submit all the evidences before the AO in support of its claim and shall be free to raise all legal and factual issues before the AO. The AO shall give adequate opportunity of hearing to the assessee and shall decide this issue afresh after considering all the details and evidences and judgements as may be placed by the assessee before him. The assessee shall also file its submissions along with requisite evidences with regard to all the reasons given by the AO in the assessment order which shall be duly considered by the AO before deciding this issue afresh. With these directions, this issue is sent back to the file of the AO. This ground may be treated as allowed for statistical purposes.

10. Ground no. 3 is regarding addition of Rs. 84,000 as investment in property.

11. Facts apropos of this ground are that the assessee had purchased a property for Rs. 3,09,400. The source of investment in this property is explained as Rs. 2,25,000 paid by cheque and balance Rs. 84,000 was paid in cash, which was claimed to have been received from mother of assessee, withdrawn from bank and cash in hand. However, the AO not satisfied with explanation, hence, made addition of Rs. 84,000.

12. In appeal before Id. CIT (A), the CIT (A) noted that the assessee has claimed the said amount is paid out of withdrawal made from Axis Bank account of Rs. 3,04,000 on 2-2-2010. However, the Ld. CIT (A) did not agree with explanation, hence, echoed the order of the AO.

13. Being, aggrieved the assessee filed this appeal before the Tribunal. The Ld. A.R. submitted that the assessee had withdrawn a sum of Rs. 1,50,000 on 02-02-2010 from Axis Bank account as appearing at Paper Book Page No. 42 from cash book for registry and permission of house , out of which an amount of Rs. 84000 has been paid in cash towards acquisition of property.

Thus, this amount was sufficient to explain to source of cash deposit of Rs. 84,000.

14. Per contra, the Ld. D.R. supported the order of lower authorities.

15. We have heard the rival submissions of both the parties and have perused the material available on record. We find that the assessee had withdrawn a sum of Rs. 1,50,000 as reflected as Paper Book Page No. 42 of cash flow statement. Out of this an amount of Rs. 35,000 was paid in cash on Rs.49000 was paid in cash on towards purchase of property. Thus, the source of cash payment of Rs. 84,000 is explained. Hence, addition of Rs. 84,000 is deleted. This grounds of appeal is allowed.

16. In the result, appeal of the assessee stands partly allowed.

17. The order pronounced in the open court on 17.04.2017.

Sd/-

(सी.एम.गर्ग)/(C.M. GARG)

न्यायिक सदस्य /JUDICIAL MEMBER

Sd/-

(ओ.पी.मीना)/(O.P.MEENA)

लेखा सदस्य /ACCOUNTANT MEMBER

Dated:17.04.2017

Sb*