

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

श्री कुल भारत, न्यायिक सदस्य

तथा

श्री मनीष बोरड, लेखा सदस्य के समक्ष

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER

आ.अ.सं /I.T.A. No. 441/Ind/2014		
निर्धारणवर्ष/ Assessment Year : 2009-10		
Shri Shiv Kumar Bansal, Bhopal	vs.	ITO, 3(1), Bhopal
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN: AEXPB3056J		

आ.अ.सं /I.T.A. No. 442/Ind/2014		
निर्धारणवर्ष/ Assessment Year : 2009-10		
Smt. Laxmi Devi Bansal, Bhopal	vs.	ITO, 3(1), Bhopal
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN: AAUPB4671R		

अपीलार्थी की ओर से/Appellants by	:	Shri M.K.Sharma, CA
प्रत्यर्थी की ओर से/Respondent by	:	Shri Ram Prasad Morya, DR

सुनवाई की तारीख/Date of hearing	:	25 .06.2018.
उद्घोषणा की तारीख/Date of pronouncement	:	27 .06.2018

**आदेश / O R D E R**

**PER KUL BHARAT, J.M. :**

Appeal in I.T.A.No. 441/Ind/2014 is directed against the order of CIT(A)-II, Bhopal dated 03.03.2014 pertaining to lay 2009-10.

2. The assessee has raised the following grounds of appeal :-

1. Ld. CIT(A) has erred on facts and in law, in confirming the addition of Rs. 1,11,12,261/- in the total returned income of the appellant.

2. That the Id. CIT(A) has erred in confirming the addition of Rs. 1,11,12,261/- u/s 69 of the Income-tax Act, 1961, despite the fact that the amount has already been recorded in books of

account which were produced before AO at the time of assessment proceedings.

2.1 That the AO has erred to make the addition u/s 69 of the Income-tax Act, 1961, on account of unexplained bank deposits despite the fact that the appellant has provided various documents like cash book, bank book, cash flow statement etc. to justify all the bank deposits and in this way explained the nature and source of the same properly.

3. Briefly stated, the facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income-tax Act, 1961, (hereinafter referred to as 'the Act') was framed vide order dated 29.12.2011. During the course of assessment proceedings, the AO noticed that as per AIR information, the assessee had deposited the cash of Rs. 79,40,000/- in

Bank of India. The AO further noticed that a sum of Rs. 42,72,261/- has been deposited as credits including interest totaling to Rs. 1,22,12,261.62. The AO did not accept the explanation of the assessee. The AO treated out of Rs. 1,22,12,261/-, Rs. 11,00,000/- as explained and rest of the deposits were treated as unexplained and made the addition of Rs. 1,11,12,261/- u/s 69 of the Act. Against this, the assessee preferred appeal before the Ld. CIT(A), who confirmed the addition made in respect of unexplained deposits. Now the assessee is in further appeal before this Tribunal.

4. The only effective ground is against sustaining addition of Rs. 1,11,12,261/- u/s 69 of the Income-tax Act, 1961.

5. The Ld. Counsel for the assessee reiterated the submission as made in the written submissions. The submissions of the assessee are reproduced as under :-

*"In the given case, an addition of Rs. 1,11,12,261/- was made by the A.O. in his assessment order for the A. Y. 2009-10. The case was selected for scrutiny on the basis of AIR Information. A.O. has made addition for amounts deposited in savings bank account, and such additions were for cheques deposited in that account for Rs. 42,72,261/- and cash deposition after reducing a sum of Rs. 11,00,000/- for cash debits in bank account, for Rs. 68,40,000/-. The appellant in the course of assessment proceedings furnished Cash Flow Statement, Balance Sheet and Profit & Loss Account of the assessee and also explained that cheque deposits are from various concerns, which are as follows:*

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1. Rs.25,14,000/- M/s.Sure Foundation
2. Rs. 13,50,000/- Sure Electricals
  
3. Rs. 1,83,687/- Amount credited on account of maturity of policy of ICICI Prudential Life Insurance
4. Rs. 2,23,458/- Amount received from debtors

*These are the amounts which were received through account payee cheques from various persons, those who are income tax assesses and copies of their Balance Sheets, Income Tax Returns, copy of ledger accounts of the appellant and their affidavits confirming the fact of giving such sum to the appellant are enclosed at Page No. 25-31 of the Paper Book.*

*It is further submitted that these facts were also explained to the A.O. and all such papers/ documents except the affidavits were furnished before the A.O. too. M/s Sure Electricals and Sure Foundation, both are concerns owned by income tax assesseees, and such*

*amounts are well reflected in their accounts and balance sheets as advance given to the appellant.*

*The addition was made u/s 69 claiming it to be unexplained investment, despite the fact that proper explanation was offered for such amounts taken as a loan from income tax assesseees through account payee cheques, and also evidenced by books of accounts and balance sheets of lenders. The above amounts received through account payee cheques include a sum of Rs. 2,23,458/- collected from various debtors for whom appellant had carried out small civil work petty contracts. The corresponding incomes in respect to these amounts have already been offered to tax in our Profit & Loss Account for the relevant assessment year, therefore this cannot be the unexplained investment. A sum of Rs. 1,83,687/- received from ICICI Prudential is an amount on account of maturity of Life Insurance*

*Policy, which is exempt from income tax u/s 10(10D), therefore same cannot be treated as income. Consequently, none of the cheque amounts received by the appellant can be treated as undisclosed investment u/s 69. Your Honour is therefore requested to delete the additions made on this account.*

*There is an addition of Rs. 68,40,000/- on account of cash deposits in bank account of the appellant. All these amounts are preceded by cash withdrawals from bank, and such cash withdrawals and deposits were also reflected in Cash Book furnished before the A.O. However, A.O. has not accepted those transactions and decided to make the additions. A.O. has not found any defect in the documents and records furnished before him, yet he decided not to accept those transactions and treated them as undisclosed investments u/s 69.*

*Even otherwise, if "peak credit" of the amounts*

*deposited in bank account is calculated, it shall be much less than the sum of Rs. 68,40,000/-, which has been added as undisclosed investment by the A.O. It is undisputed that the amounts were withdrawn from the bank account but not used for any other purpose, and A.O. has not brought anything on record to show the utilisation of such cash withdrawal for any other purpose. It is important to note that A.O. has given credit of Rs. 11,00,000/- for the preceding withdrawals, but he has not given credit for other preceding withdrawals without giving any reasons for the same. Therefore, as an alternative plea, only the peak balance can be added to the income of the appellant.*

*Therefore, Your Honour is requested to delete the addition of cash deposits in bank account, as the same was well explained during the course of assessment proceedings."*

6. On the contrary, the Ld. Departmental Representative opposed the submissions and supported the orders of the lower authorities .

7. We have heard the rival contentions and perused the records and have gone through the orders of the lower authorities. It is contended that all the amounts preceded by cash withdrawals shown in the Bank account and such cash withdrawals and deposits were duly reflected in the cash book and furnished before the AO. It is contended that even if it is assumed that the deposits are unexplained, even in that event, the addition of peak credit can only be sustained. The Ld. Counsel for the assessee further submitted that the authorities below have not appreciated the details filed by the assessee. We find that the assessee has furnished details in the form of Bank statement, balance sheet. We find merit in the contention

of the assessee that the AO ought to have considered these details. We, therefore, looking to the totality of facts and circumstances of the present case, deem it proper to set-aside the impugned order and restore the issue to the file of AO to decide it afresh. The AO is directed to verify the details filed by the assessee and also consider the peak credits. In that event, if the AO finds that there are certain unexplained investment and also finds that there are deposits and withdrawals in the Bank statement, he would compute the peak credit and make addition to the extent of peak credits. However, if he finds that the deposits are explained by the evidence filed by the assessee, he would delete the addition.

8. In the result, the appeal filed in the case of Shri Shiv Kumar Bansal in I.T.A.No. 441/Ind/2014 is allowed for statistical purposes.

9. Now, we take up the appeal in I.T.A.No. 442/Ind/2014 in the case of Smt. Laxmi Bansal.

10. The assessee has raised the following grounds of appeal :-

1. Ld. CIT(A) has erred on facts and in law, in confirming the addition of Rs. 1,44,66,374/- in the total returned income of the appellant.

2. That the Id. CIT(A) has erred in confirming the addition of Rs. 1,44,66,374/- u/s 69 of the Income-tax Act, 1961, despite the fact that the amount has already been recorded in books of account which were produced before AO at the time of assessment proceedings.

2.2 That the AO has erred to make the addition u/s 69 of the Income-tax Act, 1961, on account of unexplained bank deposits despite the fact that the appellant has provided various documents

like cash book, bank book, cash flow statement etc. to justify all the bank deposits and in this way explained the nature and source of the same properly.

11. Briefly stated, the facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income-tax Act, 1961, (hereinafter referred to as 'the Act') was framed vide order dated 29.12.2011. During the course of assessment proceedings, the AO noticed that as per AIR information, the assessee had deposited the cash of Rs. 54,85,000/- in Bank of India, HEL, Bhopal and Rs. 18,05,000/- in Bank of Baroda, BHEL. The AO further noticed that a sum of Rs. 49,85,000/- has been deposited by the assessee as cash and there are other deposits of Rs. 86,95,865/- in the Saving Bank Account. The AO did not accept the explanation of the assessee. The AO treated out of Rs.

1,36,81,374/-, Rs. 10,20,000/- as explained and rest of the deposits were treated as unexplained and made the addition of Rs. 1,44,66,374/- u/s 69 of the Act. Against this, the assessee preferred appeal before the Ld. CIT(A), who confirmed the addition made in respect of unexplained deposits. Now the assessee is in further appeal before this Tribunal.

12. The only effective ground is against sustaining addition of Rs. 1,44,66,374/- u/s 69 of the Income-tax Act, 1961.

13. The Ld. Counsel for the assessee reiterated the submission as made in the written submissions in the case of Smt. Laxmi Devi Bansal. The submissions of the assessee are reproduced as under :-

*"In the given case, an addition of Rs. 1,44,66,374/- was made by the A.O. in his assessment order for the A. Y. 2009-10. The case was selected for*

*scrutiny on the basis of AIR Information. A.O. has made addition for amounts deposited in savings bank account, and such additions were for cheques deposited in Bank of India saving account for Rs. 86,95,865/- and cash deposition after reducing a sum of Rs. 10,20,000/- for cash debits in Bank of India saving account, for Rs. 39,65,000/- and cash deposits of Rs. 18,05,000/- in the Bank of Baroda savings account. The appellant in the course of assessment proceedings furnished Cash Flow Statement, Balance Sheet and Profit & Loss Account of the assessee and also explained that cheque deposits are from various concerns, which are as follows:*

1. Rs. 35,00,000/- Sure Foundation
2. Rs. 13,00,000/- Shanti  
Construction

3. Rs. 13,00,000/- S.S.Enterprises.
4. Rs. 25,00,000/- Sure Electricals
5. Rs. 70,865/- Amount received on account of FDR
6. Rs. 25,000/- Amount received from debtors.

*These are the amounts which were received through account payee cheques from various persons, those who are income tax assesses and copies of their Balance Sheets, Income Tax Returns, copy of ledger accounts of the appellant and their affidavits confirming the fact of giving such sum to the appellant are enclosed at Page No. 17-43 of the Paper Book.*

*It is further submitted that these facts were also explained to the A.O. and all such papers/ documents except the affidavits were furnished before the A.O. too. M/s Sure Electricals, Sure Foundation, Shanti Construction and*

*S.S.Enterprises, all are concerns owned by income tax assesseees, and such amounts are well reflected in their accounts and balance sheets as advance given to the appellant.*

*The addition was made u/s 69 claiming it to be unexplained investment, despite the fact that proper explanation was offered for such amounts taken as a loan from income tax assesseees through account payee cheques, and also evidenced by books of accounts and balance sheets of lenders.*

*The above amounts received through account payee cheques include a sum of Rs. 25,000/- collected from various debtors for whom appellant had carried out small civil work/ petty contracts.*

*The corresponding incomes in respect to these amounts have already been offered to tax in our Profit & Loss Account for the relevant assessment*

*year, therefore this cannot be the unexplained investment. Consequently, none of the cheque amounts received by the appellant can be treated as undisclosed investment u/s 69. Your Honour is therefore requested to delete the additions made on this account.*

*There is an addition of Rs. 57,70,000/-- on account of cash depositions in bank account of the appellant. All these amounts are preceded by cash withdrawals from bank, and such cash withdrawals and depositions were also reflected in Cash Book furnished before the A.O. However, A.O. has not accepted those transactions and decided to make the additions. A.O. has not found any defect in the documents and records furnished before him, yet he decided not to accept those transactions and treated them as undisclosed investments u/s 69.*

*Even otherwise, if "peak credit" of the amounts deposited in bank account is calculated, it shall be much less than the sum of Rs. 57,70,000/--, which has been added as undisclosed investment by the A.O. It is undisputed that the amounts were withdrawn from the bank account but not used for any other purpose, and A.O. has not brought anything on record to show the utilisation of such cash withdrawal for any other purpose. It is important to note that A.O. has given credit of Rs. 10,20,000/- for the preceding withdrawals, but he has not given credit for other preceding withdrawals without giving any reasons for the same. Therefore, as an alternative plea, only the peak balance can be added to the income of the appellant.*

*Therefore, Your Honour is requested to delete the*

*addition of cash deposits in bank account, as the same was well explained during the course of assessment proceedings."*

14. On the contrary, the Ld. Departmental Representative opposed the submissions and supported the orders of the lower authorities .

15. We have heard the rival contentions and perused the records and have gone through the orders of the lower authorities. It is contended that all the amounts preceded by cash withdrawals shown in the Bank account and such cash withdrawals and deposits were duly reflected in the cash book and furnished before the AO. It is contended that even if it is assumed that the deposits are unexplained, even in that event, the addition of peak credit can only be sustained. The Ld. Counsel for the assessee further submitted that the authorities below have not appreciated the details filed by the assessee. We find that

the assessee has furnished details in the form of Bank statement, balance sheet. We find merit in the contention of the assessee that the AO ought to have considered these details. We, therefore, looking to the totality of facts and circumstances of the present case, deem it proper to set-aside the impugned order and restore the issue to the file of AO to decide it afresh. The AO is directed to verify the details filed by the assessee and also consider the peak credits. In that event, if the AO finds that there are certain unexplained investment and also finds that there are deposits and withdrawals in the Bank statement, he would compute the peak credit and make addition to the extent of peak credits. However, if he finds that the deposits are explained by the evidence filed by the assessee, he would delete the addition.

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16. In the result, the appeal filed in the case of Smt. Laxmi Devi Bansal in I.T.A.No. 442/Ind/2014 is allowed for statistical purposes.

17. Consequently, both the appeals of the assesseees are allowed for statistical purposes.

The order pronounced in the open court on 27.06.2018.

Sd/-

(मनीष बोरड)

लेखा सदस्य

(MANISH BORAD)

ACCOUNTANT MEMBER

Sd/-

(कुल भारत)

न्यायिक सदस्य

(KUL BHARAT)

JUDICIAL MEMBER

Indore; दिनांक Dated : 27/06/2018

***CPU\*/SPS***

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Private Secretary/DDO, Indore**