

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव,लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं./ ITA No. 450/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Avinash Murlidhar Rukari,  
408/1, Gultekdi,  
Pune-411 037  
PAN : ACVPR5749L

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward 2(1), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare  
Revenue by : Shri Sudhendu Das

सुनवाई की तारीख / Date of Hearing : 01.10.2018  
घोषणा की तारीख / Date of Pronouncement : 05.10.2018

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

This is the appeal filed by Assessee against the order of CIT(Appeals)-2, Pune dated 18.12.2015 for the assessment year 2011-12.

2. Briefly stated relevant facts include, Assessee is an individual deriving 'income from other sources'. Assessee filed return of income declaring total income of Rs.3,65,459/-. The Assessing Officer during assessment

proceedings u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') assessed the total income of assessee at Rs.33,09,460/-. In the assessment proceedings, the Assessing Officer made addition of Rs.29,44,000/- u/s. 69A of the Act. Contents of Para 4 of assessment order are relevant in this regard.

2.1 The background facts leading to the said addition of Rs.29,44,000/- includes that Assessee deposited cash to the tune of Rs.53,50,000/- in the savings bank account in Vishweshwar Sahakari Bank Ltd. Assessing Officer asked the assessee to furnish requisite documents explaining the source of said cash deposits in bank account. Assessee submitted that he is a member and Karta of HUF, which owns a piece of land. The said land, located at Urulikanchan, was sold for sum of Rs.71 Lakhs. The HUF reflected the said transaction in its IT return and paid the taxes due on the said transaction.

2.2 Regarding the source of Rs.53,50,000/-, the assessee submitted that the purchaser of the land gave the consideration in both the names of the assessee as well as his mother. Assessee and his mother withdrew the cash from the bank individually and kept the same as cash in hand. The assessee further submitted that the cash was deposited out of withdrawals for various bank accounts during the year 2008-09, 2009-10 and 2010-11. Assessee did not file return of income for the assessment year 2009-10 and 2010-11 as the income was below taxable limit. After considering contents in the Balance Sheets prepared by assessee for both assessment years 2009-10 and 2010-11, Assessing Officer noticed closing balance as on 31.03.2010 is of Rs.34,33,500/-. Questioning correctness of the said cash balance, the Assessing Officer rejected the claim of the assessee and proceeded to make addition in the following manners:

“4. I have considered the submission made by the assessee. However, the same is not found to be acceptable due to the following reasons:

i. The assessee has claimed that the cash deposited in the Bank Account is out of sale of Land of HUF at Urulikanchan. The amounts have been withdrawn by himself and his mother. This plea is not acceptable, since HUF has filed separate I.T. Return disclosing the Capital Gain on sale of land.

ii) It is claimed that the cash deposited pertains is withdrawals made from various banks during the year 2008-09, 2009-10 and 2010-11. It is noticed that the assessee did not file return of income for the A.Y.2009-10 and 2010-11. Since the income was below taxable limit. The assessee has now prepared Balance Sheets for both A.Y.2009-10 and 2010-11 and shown closing cash balance as on 31.03.2010 of Rs.34,33,500/- The assessee has made all the paper work to explain that the cash deposited in the bank account is out of opening cash balance of Rs.34,33,500/-. It is rather doubtful that when the assessee had bank accounts in various bank and was earning income from other sources and not income from Business, why such Bank Balance was shown of Rs.34,33,500/- as on 31.03.2010. This is so done so as to explain the source of cash deposited in Vishweshwar Sahakari Bank Ltd. of Rs.53,50,000/- during the previous year relevant to the A.Y.

iii) The opening cash balance of Rs.34,33,500/- is not found to be correct and excluding cash balance of Rs.15,95,000/- pertaining to A.Y.2009-10 and earlier period is considered as available as opening cash balance which comes to Rs.18,38,500/- (3433500-1595000). It is seen from the details and extracts of Bank accounts of the assessee that assessee has withdrawn cash of Rs.32,25,500/- from various bank accounts during the previous year relevant to the A.Y. The assessee has re-deposited cash of Rs.9,45,000/- in the previous year and has shown cash in hand of Rs.17,13,000/- as on 31.03.2011. Considering the above cash available for depositing into the Vishweshwar Sahakari Bank are of withdrawals made during F.Y.2010-11 comes to Rs.5,67,500/-.

iv) After considering the above the unexplained cash deposited in the Vishweshwar Sahakari Bank is considered as under:

Cash deposited in Vishweshwar Sahakari Bank Ltd.	Rs.53,50,000/-
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Less:

Opening cash balance considered as Discussed above	Rs.18,38,500/-
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Add:

Out of withdrawals made during F.Y.2010-11 from various Bank as discussed Above	Rs.5,67,500/-
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Rs.24,06,500/-

Unexplained cash deposited in Bank Account	Rs.29,44,000/-”
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2.3 From the above, it is evident that the Assessing Officer rejected the cash balance working provided by the assessee and after considering the withdrawal of cash from other banks account in the year under consideration allowed the computed cash available out of transactions totaling Rs.24,06,500/-and taxed the balance cash deposit amount of Rs.29,44,000/- (Rs.53,50,000/-- Rs.24,06,500/-), and made addition of the same amount i.e. Rs.29,44,000/- u/s. 69A of the Act.

2.4 Aggrieved with the order of Assessing Officer, assessee filed appeal before the CIT(A).

3. During First Appellate proceedings before CIT(A), Assessee made various submissions for the entire relief including that of Rs.29,44,000/-. However, CIT(A) took objection to the manner of granting relief by the Assessing Officer to the extent of Rs.29,44,000/-. Thus, the CIT(A) enhanced the addition by disallowing the entire cash deposit of Rs.53,50,000/-. The reasons given by the CIT(A) in this regard are discussed in Para 6 and its sub-paras.

3.1 In summary, it is the view of CIT(A) that the withdrawal of cash from various other banks represent withdrawals for personal purposes as the said withdrawals are small in nature cannot be construed to move for depositing back in the savings bank account of assessee with Vishweshwara Sahakari Bank Ltd. The CIT(A) also rejected the arguments by way of peak Theory principle advanced by the assessee during proceedings before him vide discussion given in Para 6.3.1. Relevant discussion is given in para 6.2.2 of the impugned order and same is extracted as under:

*“6.2.2..... On a perusal of the bank accounts with UCO Bank, Central Bank of India and Bank of Maharashtra, it is seen that there are*

*small periodical withdrawals ranging from Rs.10,000/-, Rs.4,000/- and Rs.5000/- etc. No prudent person will draw from his own account in small denomination over a period of time and deposit the same in another bank account to the tune of Rs.53,50,000/- In fact, the withdrawals in small denominations basically represent withdrawals for personal purposes which have been wrongly claimed as one of the source of huge cash deposits in the bank account maintained with Vishweswara Sahakari Bank. It is also emphasized that the appellant has not filed any return of income in the preceding A.Ys. i.e. 2009-10 and 2010-11 and therefore the Department did not have any opportunity to examine the source of deposits and withdrawals in the bank accounts in the earlier years. No linkage can be established between the small withdrawals and huge cash deposits in the bank account with Vishweshwara Sahakari Bank. Therefore, this line of argument is not acceptable.”*

4. Aggrieved with the order of CIT(A), assessee filed appeal before the Tribunal raising following grounds :

*“1. The learned CIT(A) erred in law and on facts in enhancing the income of the appellant by Rs.24,06,000/- in respect of cash deposit into Vishweshwar Sahakari Bank Ltd. and thereby bringing the entire cash deposit of Rs.53,50,000/- to tax u/s.69A without appreciating the source explained and supported by cash flow statement.*

*2. The learned CIT(A) erred in law and on facts in confirming the addition of Rs.29,44,000/- made by learned AO in respect of cash deposit in Vishweshwar Sahakari Bank Ltd.*

*3. The learned CIT(A) erred in law and on facts in not appreciating that the appellant received money from sale of property of HUF which were deposited in Bank accounts. The appellant has been consistently withdrawing cash from various bank accounts, which is not proved to have been spent elsewhere. The learned CIT(A) erred in rejecting the withdrawals from other banks as sufficient source for the cash deposit.*

*4. The appellant craves to add, alter, modify or substitute any ground of appeal at the time of hearing.”*

5. Before us, on the relief given by the Assessing Officer in assessment proceedings, Ld. Counsel for the assessee submitted that it is fact, assessee withdrew the cash from various bank account amounting to Rs.24,06,500/-. It is not the case of Assessing Officer that the said amount is utilized for any other purposes and Assessing Officer does not appreciate the same. In the absence of any evidence and satisfactory explanation regarding source of Rs.53,50,000/- i.e. entire cash deposits into Vishweshwar Sahakari Bank Ltd., Assessing Officer as well as CIT(A) granted relief to the assessee to the

tune of Rs.24,06,000/-. Therefore, the assessee is in appeal before the Tribunal against enhancing the income of assessee by Rs.24,06,500/- in respect of cash deposits into Vishweshwar Sahakari Bank Ltd bringing entire cash deposit of Rs.53,50,000/- to tax u/s.69A of the Act without appreciating the source explained and supported by cash flow statement.

5.1 With regard to addition to Rs.53,50,000/- as against Rs.29,44,000/-, made by Assessing Officer and confirmed by CIT(A), Ld. Counsel for the assessee submitted that source of cash deposit to advance is sale proceeds of land at Uralikanchan. The said advance was deposited in bank accounts from which withdrawals were made. She further submitted that assessee received money from ancestral land by cheque which was deposited in bank and assessee has sufficient cash for explaining the cash deposits as per cash flow statement.

6. Per contra, Ld. DR for the Revenue submitted that the manner of withdrawals of cash from other banks accounts of the assessee and the amount involved are the same amount which has been deposited in the Vishweshwar Sahakari Bank Ltd. Eventually, Ld. DR has placed reliance on the order of Assessing Officer and CIT(A).

7. We have heard both the parties and have perused the material available on record. Total addition on cash deposits is Rs.53,50,000/-. It has two segments i.e. (i) Rs.29,44,000/- and (ii) Rs.24,06,500/-. While the Assessing Officer considered fair to restrict the addition to Rs.29,44,000/-, the CIT(A) enhanced the balance sum of Rs.24,06,500/- for the reasons discussed above. We find that it is an undisputed fact that the assessee demonstrated the cash withdrawals from other banks to the tune of Rs.24,06,500/-. It is not the case of CIT(A) that the said amount although smaller amounts of withdrawal was utilized for other miscellaneous expenditure of assessee. In the absence of the

same, in our view, discussion given by Assessing Officer in Para 4 already extracted above is considered a reasonable view. Therefore, we are of the opinion that enhancement made by the CIT(A) stands reversed upholding the order of Assessing Officer.

7.1 However, regarding the addition of Rs.29,44,000/-made by Assessing Officer and confirmed by CIT(A), we find that the reasoning given by the Assessing Officer as well as the CIT(A) are fair and reasonable. In our view, this findings does not call for any interference. Accordingly, grounds raised by the assessee are partly allowed.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced on 05th day of October, 2018.

Sd/-  
(विकास अवस्थी /VIKAS AWASTHY)  
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-  
(डी. करुणाकरा राव/D. KARUNAKARA RAO)  
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 05<sup>th</sup> October, 2018.

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**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-2, Pune.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.