

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.:-5437/Del/2014
Assessment Year: 2011-12

Shri Rakesh Arora A-143, Suraj Mal Vihar New Delhi – 110 092 PAN AAEP7082Q	Vs.	ACIT, Circle-35 (1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Ashwani Kumar, Shri Rahul, CA
Department by :	Shri Surender Pal, Sr. DR
Date of Hearing	11/12/2018
Date of pronouncement	21/02/2019

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 22.8.2014 passed by the Ld. CIT (Appeals) for the quantum of assessment u/s 143(3) for the assessment year 2011-12. The assessee is aggrieved by disallowance of Rs. 26,30,000/- out of total disallowance of Rs. 36,61,900/- made by the AO u/s 68.

2. The facts in brief are that, based on AIR information that assessee has made substantial cash deposits in saving bank accounts with Bank of Baroda and ICICI Bank, the case of the assessee was selected for scrutiny and assessment, wherein the AO found that cash

deposited in these two bank accounts aggregating to Rs. 36,61,900/- could not be explained and the same needs to be added u/s 68. The assessee's plea before the AO, that he has made huge withdrawal of cash from time to time and same was deposited back. However, the Ld. AO held that, cash was withdrawn throughout the year and it is only at the end of the year, the cash was deposited and when this fact was confronted to the assessee why assessee kept on withdrawing the money to be deposited at the year end, assessee could not give any positive response as the source of the income of the assessee is only from rental income. The details of the cash deposit in Bank of Baroda and ICICI Bank as per the finding of the AO was as under: -

“(i) Bank of Baroda

Total cash deposits in saving account were Rs. 28,40,000/- out of which Rs. 27,73,000/- remains unexplained which was received on following dates in the end of Financial Year 2010-11 :-

<i>Date</i>	<i>Cash Deposits (In Rs.)</i>
<i>27.01.2011</i>	<i>15,50,000/-</i>
<i>04.03.2011</i>	<i>2,00,000/-</i>
<i>07.03.2011</i>	<i>9,80,000/-</i>
<i>07.03.2011</i>	<i>43,000/-</i>
<i>Total</i>	<i>27,73,000/-</i>

So the unexplained cash deposits of Rs. 27,73,000/- have been added back to the income of the assessee under section 68 of the Income Tax Act, 1961.

(Addition of Rs. 27,73,000/-)

ICICI Bank:

Assessee has received cash deposits totalling Rs. 5,88,900/- in the beginning of the Financial Year 2010-11 on the following mentioned dates and Authorized Representative of the assessee could not furnish any explanation regarding the source of such deposits. Moreover, a very vague common reason given by the assessee that deposits are made out of withdrawals does not apply here: -

<i>Date</i>	<i>Cash Deposits (In Rs.)</i>
<i>05.04.2010</i>	<i>2,00,000/-</i>
<i>06.04.2010</i>	<i>49,900/-</i>
<i>20.04.2010</i>	<i>50,000/-</i>
<i>21.04.2010</i>	<i>40,000/-</i>
<i>26.04.2010</i>	<i>2,00,000/-</i>
<i>07.05.2010</i>	<i>49,000/-</i>
<i>Total</i>	<i>5,88,900/-</i>

Authorized Representative also could not furnish explanation regarding cash deposits of Rs. 1,50,000/- and Rs. 1,50,000/- on 02.02.2011 and 10.02.2011 respectively. So the unexplained cash deposits have been added back to the income of the assessee under section 68 of the Income Tax Act, 1961.”

3. The assessee's submission before the Ld. CIT(A) was that in so far as deposits made in ICICI Bank at the beginning of the year amounting to Rs. 5,88,900/- was out of cash in hand of the assessee at the beginning of the year for which copy of cash book for the financial year 2010-11 was filed. And for the remaining deposit of Rs. 3,00,000/- and with respect to the cash deposited in the Bank of

Baroda account amounting to Rs. 27,73,900/-, the only source stated by the assessee was that same has been deposited out of withdrawal from the bank account during the year. Ld. CIT(A) first of all held that, the cash book produced before him was not filed before the AO and therefore, same constitutes additional evidence and no explanation has been given, why assessee could not file it before AO and accordingly, he rejected the cash book produced during the course of appellate proceedings. He also held that even on the verification of the cash book filed by the assessee, it is clear that amounts withdrawn were Rs. 10,000/- to Rs. 5,00,000/- which has been stated to be accumulated and then deposited back at the year-end cannot be believed. During the appellate proceedings, Ld. CIT(A) had specifically asked the assessee to explain the source of following cash credits in his bank account once again: -

ICICI Bank Account :

<i>Date</i>	<i>Cash Deposits (In Rs.)</i>
<i>05.04.2010</i>	<i>2,00,000/-</i>
<i>26.04.2010</i>	<i>2,00,000/-</i>
<i>Total</i>	<i>4,00,000/-</i>

Bank of Baroda Account :

<i>Date</i>	<i>Cash Deposits (In Rs.)</i>
<i>27.01.2011</i>	<i>15,50,000/-</i>
<i>04.03.2011</i>	<i>2,00,000/-</i>
<i>07.03.2011</i>	<i>9,80,000/-</i>
<i>Total</i>	<i>27,30,000/-</i>

4. The assessee reiterated the same stand that it was partly out of opening balance and partly out of withdrawals made during the year. Ld. CIT(A) discarded the explanation of the assessee, firstly, regarding deposit of Rs. 4,00,000/- out of opening account, because assessee could not produced any proper evidence in the form of bank account or any additional evidence to show that assessee had substantial cash withdrawal in the previous financial year. However, with regard to the balance addition of Rs. 4,88,900/- in ICICI Bank, Ld. CIT(A) has deleted the same, holding that this much can be out of cash withdrawal from his bank account. With regard to the cash deposit of Rs. 27,73,000/- in Bank of Baroda, he held that the cash withdrawals in the month of May or July cannot be deposited on 27.1.2011 and to be Rs. 15,50,000/-. In so far as deposit of Rs. 2,00,000/- on 4.3.2011; deposit of Rs. 9,80,000/- on 7.3.2011, he held that same can be considered from the withdrawal of Rs. 5,00,000/- on 25.2.2011, therefore, he held that only the source of cash credit of Rs. 5,00,000/- can be considered to be explained and the balance he has confirmed. As a result, he sustained the addition of Rs. 22,30,000/- and gave relief of Rs. 5,43,000/- in respect of cash deposited in Bank of Baroda. Finally, the addition sustained by him aggregating to Rs. 26,30,000/- i.e., Rs. 22,30,000/- and Rs. 4,00,000/- and relief of Rs. 10,31,900/- was given.

5. After, considering the rival submissions and on perusal of the relevant finding given in the impugned orders, we find that the sole explanation given by the assessee during the course of the assessment and appellate proceedings was that, source deposits in the month of January to March 2011 in ICICI Bank and Bank of Baroda was out of oral cash withdrawals made during the year. Ld. CIT(A) has deeply analysed the pattern of the cash withdrawals and has given a finding that the cash withdrawals at the starting and mid of the year cannot

be held to be a source for making a deposit once again after a gap of substantial time. Such a finding cannot be faulted with because assessee has to substantiate as to why the cash was withdrawn and later on deposited. No purpose of cash withdrawals was shown and under which circumstances it was redeposited. In absence of any plausible explanation such a contention cannot be accepted. Accordingly, the finding of the Ld. CIT(A) is confirmed.

6. In the result appeal of the assessee is dismissed.

Order pronounced in the Open Court on 21st February, 2019.

sd/-

sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 21/02/2019

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi