

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.4917/Del/2014
Asstt. Year: 2010-11

Shri Jitender Pal Singh, House No. 592P, Sector-7 Near Huda Jymkhana Club Sonapat 131001 PAN APVPS7211K	Vs.	ACIT Range-17 New Delhi.
(Appellant)		(Respondent)

ITA No.4550/Del/2015
Asstt. Year: 2011-12

Jitender Pal Singh, House No. 592P, Sector-7 Near Huda Jymkhana Club Sonapat 131001 PAN APVPS7211K	Vs.	DCIT Circle-26(2) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Neelesh Kumar Jain, CA
Department by :	Shri C.P. Singh, Sr.DR
Date of Hearing	26/02/2019
Date of pronouncement	28/02/2019

ORDER

PER O.P. KANT, A.M

These two appeals by the assessee are directed against two separate orders dated 31/03/2014 and 31/03/2015 passed by the Ld. Commissioner of Income-tax (Appeals), New Delhi [in short the Ld. CIT(A)] for assessment year 2010-11 and 2011-12 respectively. Both the appeals being connected with the one assessee, same were heard together and disposed off by way of this consolidated order for convenience.

2. The grounds of appeal raised in assessment year 2010-11 are reproduced as under:

1. That the appellant is an individual and a regular Income Tax assessee and has filed his return of income u/s 139 for the A.Y. 2010-11 on 26/07/2010 declaring income of Rs. 44,17,4001- under the head Salary, as per the provisions of I. T. Act, 1961. The return was processed u/s 143(1).

2. The appellant is a salaried employee. During the year under consideration appellant has deposited in his bank account a total sum of Rs.38,05,000/- in cash received by him from two sources. Firstly, he has received an amount of Rs.26,25,000/- as advance for sale of agricultural land owned by his family. Secondly he has received a sum of Rs. 11,80,000/ - from his mother as money towards applying for HUDA plots in the name of her mother.

3. Appellant's case was opened ix]», 143(3) and assessment was done. During the course of assessment proceedings the Learned assessing officer asked for the explanation of the above mentioned deposit of cash amount of Rs. 38,05,000/-. The explanations along with evidences were duly submitted before the Ld/ - AO. However, since the Ld/ - AO was not satisfied with the appellant's assertions, the appellant surrendered an

amount of Rs. 26,25,000/- equivalent to cash deposited in the bank account received as advance for sale of agricultural land in order to avoid long drawn litigation process.

4. However, the Ld/ - AO did not accept appellants plea and made addition of Rs. 38,05,000/- on account of unexplained cash credit and Rs. 18,298/ - on account of bank interest earned by the appellant.

5. Being aggrieved from the said order of the learned AO, appellant had preferred an appeal before the Ld. CIT(A) on the various grounds. During the course of appellate proceedings, assessee made his submissions before the Ld. CIT(A). However Ld. CIT(A) has not considered the submissions made by the assessee and upheld the additions made by the Ld. AO.

6. Thus, being aggrieved from the order of the learned CIT(A), appellant had preferred an appeal before the Honorable ITAT on various grounds.”

3. Briefly stated facts of the case are that the assessee derived income from salary from the company namely M/s Visionri Connexion Services Private Limited as Director. The assessee filed return of income on 26/07/2010 declaring total income of Rs.44,17, 400/-. The case was selected for scrutiny and notice u/s. 143(2) of the Act was issued and served upon the assessee. The Assessing Officer observed cash deposits of Rs. 38,05,000/- in the bank account of the assessee and asked the assessee to explain the source of the said deposit. Before the Assessing Officer, the assessee accepted the amount of Rs. 26,25,000/- as unexplained cash credit and regarding the remaining amount of Rs.11,82,100/- the assessee explained that he has received the same from his mother Mrs. Laxmi Devi for deposit of earnest money in Haryana Urban Development Agency (HUDA) for booking of plots. This amount of Rs. 11,80,000/- was found to be

deposited in the bank account of the assessee on various dates as under :

S.No.	Date of Deposit	Amount (Rs.)
1	03.12.2009	4,50,000/-
2	19.12.2009	2,00,000/-
3	23.12.2009	1,30,000/-
4	15.01.2010	4,00,000/-
Total (Rs.)		11,80,000/-

4. The source of cash in the hands of the mother was explained out of her agricultural income from lease of agricultural land. The Ld. Assessing Officer issued summons to the lessee of the agricultural land but none attended before him. The landholding in the name of the mother of the assessee was also found in joint ownership. The Assessing Officer summarised the ground for rejection of the claim of source of the amount of Rs. 11,82,000/-as under:

- 1) *“No gift by the mother, Smt. Laxmi Devi, to any other siblings ever*
- 2) *No money deposited in the Bank from agricultural proceeds*
 - 1) *Non provisions of the details asked for*
 - 2) *The assessee accepted the unexplained credit*
 - 3) *Summons u/s 131 were issued to Mr. Sudhir Kumar but no one appeared*
 - 4) *No conclusive amount of land in Smt. Laxmi Devi’s name*
 - 5) *Huge amount of cash kept at home and still withdrawals made from bank ”*

In view of the observation, the Assessing Officer made addition of the unexplained cash credit of Rs. 38,05,000/-.

5. Before the Ld. CIT(A), the assessee explained the source of cash of Rs. 11,80,000/-being out of mother's capital as under:

S.No.	Particulars	Amount
1	Amount received from sale of jewellery	3,42,640/-
2.	Amount sreceived from agricultural income	2,00,000/-
3.	Monthly pension of Rs. 7,000/- in Ksetriya Gramin Bank, Haryana	72,000/-
4.	Savings in the form of PIN Money	6,30,000/-
Total (Rs.)		12,44,460/-

6. The Ld. CIT(A) rejected the contention of the assessee in absence of any documentary evidence and upheld the finding of the Ld. Assessing Officer. Aggrieved, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

7. Before us, the Ld. Counsel of the assessee did not press ground No. 1, 2, 4, 5 and 6 of the appeal and the only ground which was contested is ground No. 3 in respect of the addition of Rs. 11,80,000/-.

8. The Ld. Counsel filed a paper book containing pages 1 to 57 combined for both the assessment years involved. The source of money in the hands of the assessee's mother was explained as per the capital account filed before the Ld. CIT(A), which is reproduced above in para 5 of this order. The Ld. Counsel

referred to pages 21-24 and pages 28 to 34, which are pages of registers maintained by the land revenue authority regarding ownership of the land. According to him the mother of the assessee owned agricultural land admeasuring 8.5 acres in village "Dhanana" and Village "Madhana" in District Bhiwani of Haryana, which was given on lease to persons Shri Sudhir Kumar, Shri Vinay Kumar and Shamsher Singh , who gave lease rent of Rs. 2.00 lakhs in cash. He also submitted that assessee's mother received monthly pension of Rs. 7000/-in her bank account maintained with Haryana Kshetriya Brahmin bank at Village "Dhanana". He further submitted that amount of Rs. 6,37,140/-was given by her from saving which she maintained in cash at her residence due to the reason that her bank account was in remote village. He explained the source of Rs. 3,42,460/- as received from the sale of the jewellery. The Ld. Counsel submitted that the Assessing Officer issued summons to the lessee of the agricultural land as well as to the jeweller to whom the jewellery was sold by the assessee's mother, only at the fag end of the assessment proceedings and due to which they could not comply before the Assessing Officer. According to him the landholding of the assessee's mother fully justify the agricultural income and saving in her hands. Further he submitted that the money which was received back from the HUDA, was received directly in the name of the assessee's mother, which proves that the initial money deposited with HUDA was belonging to the mother of the assessee.

9. On the contrary, the Ld. DR relied on the order of the lower authorities and submitted that in the documents of the Land Revenue Authorities referred by the Ld. Counsel of assessee, the land is in the name of joint holding of many persons and actual land in the name of the mother of the assessee is very small fraction of land, which cannot justify earning of agricultural income claimed in the hand of the assessee's mother. He further submitted that the assessee's mother was maintaining bank account in her village "Dhanana" and thus the argument of the Ld. Counsel of the assessee that bank account was located in

remote place is without any basis and there was no justified reasons for withdrawing small sum of money from the bank despite keeping huge cash with her.

10. We have heard the rival submissions and perused the relevant material on record. We find that the assessee deposited Rs. 11,80,000/- in cash in his bank account on various dates mentioned in the table below paragraphs-3 of this order. The assessee claimed that out of the above cash deposits, he made demand draft for depositing with HUDA for allotment of plot of land in the name of the mother of the assessee. It is claimed that due to non-allotment of the plot, the said amount was refunded to the mother of the assessee and deposited in her bank account. Regarding the source of the cash deposited in the bank account of the assessee, it was claimed that same was given to him by his mother out of her sources, which are mentioned above. The major sources of money claimed are from amount received on sale of jewellery (Rs.3,42,460/-; amount received from lease of agricultural land (Rs. 2,00,000/-); and saving in the form of PIN money (Rs. 6,30,000/-). We have observed from the order of lower authorities that the vouchers produced in respect of the sale of jewellery were not found proper by the Assessing Officer and therefore the assessee was asked to produce the jeweller, to whom sale of the jewellery has been claimed. Similarly , the assessee claimed that agriculture income of Rs. 2.00 lakhs was received by way of lease rent from three persons , but when summons were issued to the person , they failed to attend before the Assessing Officer .The Ld. Counsel has claimed that summons were issued to the jeweller and alleged lessee of the agricultural land at the fag end of the assessment proceeding and therefore those persons could not attend before the Assessing Officer. But we are unable to understand as why the assessee did not raise this issue before the Ld. CIT(A) and sought to file additional evidence for producing those persons. But no efforts were made by the assessee either for producing those persons before the Ld. CIT(A) or seeking issue of the fresh summons for producing those persons. Even no such request has

been made before us also. The assessee was required to establish that Rs. 2 lakh was received from the so-called lessee of the land and in absence of which , proof of ownership of the landholding itself are not relevant to explain the source of the money . In such circumstances, the burden of proof of the assessee remained undischarged regarding the source and nature of the cash deposits of Rs. 11,80,000/-in the bank accounts of the assessee. The claim of cash in hands of more than Rs. 6 lakh with the mother of the assessee is against the normal conduct of the human probability , when she has withdrawn a small amount of money from the bank during that period. In view of the above facts and circumstances, we reject the contention of the assessee and dismiss the ground No. 3 of the appeal of the assessee.

11. In the result, the appeal of the assessee is dismissed.

12. Now we take up the appeal of the assessee for assessment year 2011-12, . The grounds the appeal are reproduced as under:

“1. That the learned Commissioner of Income Tax (Appeals) has erred both on facts and in law in sustaining the addition made of Rs. 47,10,000 and held as an undisclosed income of the assessee company.

2. That in sustaining the addition, the learned CIT (A) has erred in recording adverse findings which were not only based on misappreciation of evidence but are also based on non-existent facts and such findings as recorded are factually incorrect.

3. That the learned Commissioner of Income Tax (Appeals) has further erred both on facts and in law while disposing of the appeal in completely brushing aside the detailed written submissions dated 26-03-2015. Thus, the order of CIT (A) is vitiated for non-consideration of the factual and legal submissions made and thus suffers from the vice of arbitrariness and is thus vitiated in law.

4. That the learned Commissioner of Income Tax (Appeals) has erred, both on facts and in law in sustaining the addition made of Rs. 38,10,000/- over and above the amount of surrender made by the appellant on account of cash deposited out of cash withdrawn from bank as unexplained cash credits.

5. That the learned Commissioner of Income Tax (Appeals) has erred both on facts and in law in not giving the benefit of the additions made in the assessment year 2010-11 of Rs. 38,05,000/-.

6. That on facts & circumstances of the case the learned AO has erred in charging interest of Rs. 4,94,836/- u/s 234B of I.T. Act.

7. The above ground of appeal is without prejudice to one another.

8. The appellant craves the right to add, amend, alter, withdraw or forgo any ground or grounds of appeal before or at the time of hearing.”

13. In the year under consideration the assessee filed return of income on 30/07/2011 declaring income of Rs. 19,67,400/-. In the scrutiny proceedings the Assessing Officer observed cash deposits of Rs. 47,10,000/- in bank accounts maintained in ICICI bank (Rohini Branch, New Delhi) on the basis of information received from Annual Information Return (AIR) and asked the assessee to explain the source of said cash deposits. During the scrutiny proceedings the assessee attempted to explain the said deposits by way of agriculture income of Rs. 2 Lacs, business income of Rs. 7 lakh, cash withdrawn from bank account of the mother of the assessee of Rs. 12 lakh and cash withdrawals from various banks on various dates. Further, the assessee himself admitted the amount of Rs. 2 lakh shown as from agriculture income and Rs. 7 lakhs shown from business income as unexplained cash deposits however for the remaining amount of Rs. 38,10,000/- was claimed as explained. The Assessing Officer

rejected the contention of the assessee regarding Rs. 38, 10,000 and added the amount of Rs. 43,30,000/- to the returned income. Before the Ld. CIT(A) the assessee claimed cash deposits in the bank account were made out of the cash withdrawn from the bank. But the Ld. CIT(A) observed that the assessee did not file any additional evidence under Rule 46A of the Income Tax Rules, 1962 in support of his claim and accordingly he rejected the claim of the assessee and sustained the addition. The relevant finding of the Ld. CIT(A) is reproduced as under:

“3.5 The appellant has claimed that he had withdrawn Rs.43,3000/-from the same bank account and this was used to deposit cash in the bank account. In the assessment order, the AO has pointed out that the appellant failed to furnish necessary evidence in support of this claim. In appeal, it was for the appellant to controvert the findings of the A.O. however, the appellant has failed to do so. No request has been made for admission of any additional evidence under Rule 46A, and the appellant has not made any claim that he was prevented by reasonable cause from filing any evidence during assessment proceedings. If the appellant wished to claim that the cash deposits were out of cash withdrawals, then it was necessary for him to produce the cash book, or cash account before the A.O. and substantiate its claim. The A.O. has pointed out that the required evidence was not produced during assessment proceedings. Even in appeal, the appellant has failed to controvert the findings of the AO in the assessment order with necessary evidence. In view of these facts, the appellant’s claim is not acceptable.”

14. Aggrieved with the finding of the Ld. CIT(A), the assessee is in appeal before us challenging the addition of Rs. 38,10,000/-.

15. The Ld. Counsel of the assessee referred to page 46 to 48 of the paper book, which is a cash flow statement prepared on the basis of cash withdrawn from various banks and subsequently

redeposited in bank accounts under reference i.e. ICICI Rohini Branch. According to the Ld. Counsel addition in dispute of unexplained cash deposits amounting to Rs. 38,10,000/- stands explained. He submitted that said details were though filed before the Assessing Officer, but was rejected by the Ld. CIT(A) holding the same in the nature of additional evidence. He submitted that matter may be restored to the file of the Ld. Assessing Officer for verifying the source of cash deposits on the basis of the withdrawals made from the bank accounts.

16. On the contrary, the Ld. DR relied on the order of the lower authorities.

17. We have heard the rival submission and perused the relevant material on record. We find that out of the Rs. 47,10,000/- found as deposited in cash in bank account with Rohini Branch of the ICICI, the assessee has already accepted Rs. 2 Lacs which was claimed as out of agriculture income and Rs. 7 lakhs, which was claimed as out of business income, as unexplained and undisclosed income of the assessee. Regarding the balance amount of Rs. 38,10,000/-, the assessee is claiming that source of the same is out of the withdrawals from various bank accounts. The issue of dispute is the assessee is claiming that cash flow statement was filed before the Assessing Officer whereas the Ld. CIT(A) observed that same was not filed before the Assessing Officer and it was in the nature of the additional evidence and being no application filed by the assessee for admitting the additional evidences, he rejected the cash flow statement submitted by the assessee. In our opinion the claim of the assessee that deposits stands explained in view of the withdrawals, should not be brushed aside without verifying only on the ground that same was not submitted before the Assessing Officer and in the nature of additional evidence. The verification of the above claim of the assessee is crucial for holding whether the said cash deposits was explained or unexplained. The Ld. CIT(A) should have given opportunity to the assessee for filing the application for additional evidence or should have verified the

record of the Assessing Officer but rejecting the same without examining would amount to denial of justice to the assessee. In view of the above circumstances, we feel it appropriate to restore this issue of addition of Rs. 38,10,000/-to the file of the Ld. Assessing Officer with the directions to verify the claim of the assessee of withdrawal of the money from bank accounts to justify the cash deposits. The assessee shall produce cash flow statement and relevant bank statements before the Assessing Officer alongwith other documents which he may like to rely upon for necessary verification and enquiry as deemed fit by the Assessing Officer. The assessee shall be afforded adequate opportunity of being heard. With above directions, the issue in dispute is restored to the file of the Assessing Officer. The ground of the appeal in respect of the addition in dispute are accordingly allowed for statistical purposes.

18. In the result, the appeal of the assessee is allowed for statistical purposes.

19. To sum of out of the two appeals, the appeal for assessment year 2010-11 is dismissed whereas appeal for assessment year 2011-12 is allowed for statistical purposes.

This decision was pronounced in the Open Court on 28th February, 2019.

sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 28 /02/2019

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Copy forwarded to

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

sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, New Delhi

