

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI**

BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER

I.T.A. No.4253/Del/2018

AY: 2007-08

I.T.A. No.4254/Del/2018

AY: 2009-10

Sh. Pankaj Arora, J-1839, C.R. Park, New Delhi-110019 PAN-BBOPS2128D	Vs.	Income Tax Officer, Ward-23(2), New Delhi
[Appellant]		[Respondent]

Assessee by:	Sh. R.S. Singhvi, C.A.
Respondent by:	Sh. S.L. Anuragi, Sr. DR

Date of Hearing:	20	02	2019
Date of Pronouncement:	29	03	2019

ORDER

PER R.K. PANDA, A.M:

The above two appeals filed by the assessee are directed against the separate orders dated 28.2.2018 and 21.3.2018 of the Id. CIT(A)-31, New Delhi for Assessment Years 2007-08 and 2009-10 respectively. For the sake of convenience these were heard together and are being disposed of by this common order.

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2. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 16th July, 2008 declaring total income of Rs.

1,08,010/- which was processed under section 14143(1) of the Income Tax Act. Subsequently the case was reopened under section 147 / 148 on the basis of information received from Additional Director of Income Tax (Investigation) Unit-V, New Delhi. The assessee, in response to the notice issued under section 148 of the Income Tax Act, requested the AO to treat the original return filed earlier as return in response to notice under section 148. Subsequently the AO issued notice under section 143(2). During the course of assessment proceedings the AO noted that the assessee has made cash deposit of Rs. 4,97,452/- during the financial year 2006-07 relating to impugned assessment year. In absence of any satisfactory reply given by the assessee to substantiate the source of such deposit and since the assessment was getting time barred, the AO made addition of Rs. 4,97,452/- to the total income of the assessee.

3. Before the learned CIT(A), the assessee filed elaborate submission based on which the learned CIT(A) called for a remand report from the AO. Even after several reminders, the AO did not submit any remand report. Therefore, the learned CIT(A), on the basis of material available before him and after considering the submissions of the assessee upheld the action of the AO by observing as under:-

“4.6. I conclude that the AO has treated the matter of sending the report very causally. Since the AO's report has not been received till date, I am proceeding to adjudicate the matter based on judicial principle. The source of cash deposited in bank account remains unexplained. In view of the fact that books of account and confirmation(s) of third parties, and even the source/confirmation(s) of credits in bank accounts have not been produced/provided, such investments/credits have remained not explained satisfactorily. Merely producing some agreements of transactions does not show whether the amounts were actually received from the named persons, and what was the source thereof.

An examination of facts at hand clearly establishes that the appellant has been buying and selling properties in a systematic manner. The appellant is also in the business of being a builder. I find that the appellant is depositing cash in bank accounts as and when cheques needed to be issued. Further, there are credits appearing in bank accounts which remain unexplained. Similarly, source of cash deposited in the bank account(s) remains unexplained. The appellant is presenting a proposition that transactions carried out through banking channels are to be treated

as explained. Routing a transaction through bank, in itself, does not give a certificate of the transaction being genuine. The source of credits (and cash deposits) has remained unexplained. In fact, the appellant has created balance in the bank accounts by deposit of cash and by receiving unexplained credits, whenever the appellant wanted to make payments/investments (by issue of cheque or DD). The appellant did this so that the investments/expenditure is shown to have been made/incurred from the bank account. Even otherwise the explanation of appellant is not acceptable. The appellant has claimed it had sold certain property on which short capital gain amounting to Rs.78,500/- had arisen. This is for the reason that it has been noted in the assessment order that the appellant had claimed to have derived income from house property only. This also established that the appellant did not disclose income from capital gain which it has admitted now. Thus the conclusion made by the AO that the credits in the bank account have remained unexplained is valid. I also find that the several members of the family - Sh. Pankaj Sapra, Smt. Daya Sapra (Mother of Sh. Pankaj Sapra) Sh. S.N. Sapra (also known as Sh. Som Nath Sapra/Arora, father of Sh. Pankaj Sapra) have been systematically involved in such business activities and credits/cash deposits in the bank accounts have remained unexplained.

5. *In final analysis, I uphold the action of the AO-(i) With regard to addition on account of unexplained deposits in bank account amounting to Rs. 4,97,452/-*

However the AO will verify and grant relief to the extent of income from the house property, as (and if) has already been shown by the appellant in his return of income. This will avoid double addition."

4. Aggrieved with such order of the learned CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

"1(i) That on the facts and circumstances of the case, the Assessing Officer has wrongly assumed jurisdiction u/s. 148 without proper appreciation of facts, recording of satisfaction and requisite approval in terms of provisions of sec. 151 and CTT(A) was not justified in confirming order of AO.

(ii) That there is no case of any income escaping assessment and whole basis of reassessment is illegal and without jurisdiction.

2(i). That on the facts and circumstances of the case, the observation of the CIT(A) regarding addition of Rs. 4,97,452/- is highly arbitrary and contrary to facts on record.

(iii) That various transactions are inter related and there is no presumption that same represent unexplained credit or unexplained investment.

(iv) That impugned addition is highly arbitrary and unjustified and merely based on presumption and surmises.

3. That the assessee crave leave to add, amend, alter or forgo any or all of the grounds as may be necessary and in the interest of justice.

4. That orders of the lower authorities are not justified on facts and same are bad in law."

5. The learned counsel for the assessee referring to page no. 1 of the paper book drew the attention of the Bench to the copy of notice issued under section 148 of the Income Tax Act dated 26th March, 2013 and submitted that there is no proper sanction or approval obtained as Clause no. 3 of the said notice is blank. Therefore, from whom the AO has obtained permission is not known. Referring to page no. 2 of the paper book, he submitted that the reasons submitted by the AO shows that there is cash deposit of Rs.4,97,452/-. Referring to the bank account of the assessee maintained with Vijaya Bank and HDFC Bank account, he drew the attention of the Bench to the various entries and submitted that there is no such cash deposit of Rs. 4,97,452/- as alleged by the AO. He submitted that out of the total deposit of Rs. 4,97,430/- during the year an amount of Rs. 2,70,900/- was deposited in cheques and the cash deposit was only Rs. 226530/-. Therefore, the reasons recorded by the AO are vague and not on proper appreciation of facts and based on reports of investigation wing without any independent application of mind. Therefore, on this ground itself, the reassessment proceeding should be quashed.

6. Even on merit the learned counsel for the assessee drew the attention of the Bench to the item wise deposit made in the bank account and submitted that the amount of Rs. 2,50,000/- deposited on 27.07.2006 was out of the cheque payment received on account of sale of property bearing no. 547, Block-D, Gali No. 5, Sangam Vihar, New Delhi. Similarly the cash deposit of Rs. 1,00,000/- on 18.4.2006 was out of advance amount against sale of property which was deposited in the bank account. The other deposits are either the rental income or out of the proceeds of the property no. 547. Thus the amounts stand fully explained and therefore, no addition is called for.

7. The learned DR, on the other hand, heavily relied on the order of the learned CIT(A).

8. I have considered the rival submissions made by both the sides and perused the orders of the authority below. I find the AO on the basis of the information received from the investigation wing of the Department that the assessee has made cash deposit of Rs. 4,97,452/- reopened the assessment by issuing notice under section 148 and thereafter made addition of Rs. 4,97,452/- to the total income of the assessee by invoking the provisions of Section 68 of the I.T. Act, 1961. I find the learned CIT(A) upheld the action of the AO, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned counsel for the assessee that there is complete non application of mind of the AO while recording the reasons and he has not verified the facts properly and the reopening was made on the basis of report of the investigation wing. Further the deposits in the bank accounts are fully explained and therefore no addition is called for.

9. I find force in the above arguments advanced by the learned counsel for the assessee. A perusal of the notice issued under section 148 shows that the notice has been issued in a very casual manner, Clause 3 of the notice reads as under:-

"Notice under section 148 of the Income Tax Act, 1961.

3. This notice is being issued after obtaining the necessary satisfaction of the commissioner of Income Tax/the Central Board of Direct Taxes."

10. Similarly, a perusal of the bank account maintained with Vijaya Bank account no. 004427, copy of which has been placed at page no. 25 and 26 of the paper book, shows that an amount of Rs. 2,50,000/- was by way of clearing of Cheque No. 719443 and not cash deposit. If the same is excluded from the total deposits made during the year from the two bank accounts then there is no such cash deposit of Rs. 4,97,452/- in the two bank accounts maintained by the assessee. Therefore, I find force in the argument of learned counsel for the assessee that the reasons recorded are either vague reasons or not based on

any application of mind. In any case, the assessee has explained the source of each deposit made both in cash as well as in cheque and therefore, even on merit also no addition is called for. I, therefore, set aside the order of the learned CIT(A) and direct the AO to delete the addition. The ground raised by the assessee is allowed.

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11. In the impugned assessment year, the AO reopened the assessment on the basis of information received from the investigation wing that assessee has made cash deposit of Rs. 36,82,199/- in the bank account. After considering the reconciliation statement filed by the assessee, the AO made addition of Rs. 14,33,000/- after accepting the remaining amount as explained.

12. In appeal, the learned CIT(A) sustained an amount of Rs. 13,00,000/- and deleted the balance amount of Rs. 1,33,000/- by observing as under:-

“4.4. I have examined the facts at hand. I find that the appellant has systemically carried business as a builder/ transacting in real Calais. The books of accounts or supporting evidence(s) were not produced before me (or even before the AO). The appellant sought to produce certain documents as additional evidence. However, the source of cash deposited in bank account remains unexplained. In view of the fact that books of account and confirmation(s) of third parties, and even the source/confirmation(s) of credits in bank accounts have not been produced/provided such investments/credits have remained not explained satisfactorily. Merely producing some agreements of transactions does not show whether the amounts were actually received from the named persons, and what was the source thereof. As such, the additional evidence sought to be submitted by the appellant is not worthy of admission. The same is therefore not admitted.

An examination of facts at hand clearly establishes that the appellant has been buying and selling properties in a systematic manner. The appellant is also in the business of being a builder. I find that the appellant is depositing cash in bank accounts as and when cheques needed to be issued. Similarly, source of cash deposited in the bank account(s) remains unexplained. The appellant is presenting a proposition that transactions carried out through banking channels are to be treated as explained. Routing a transaction through bank, in itself, does not give a certificate of the transaction being genuine. The source of cash deposits has remained unexplained. In fact, the appellant has created balance in the bank

accounts by deposit of cash whenever the appellant wanted to make payments/investments (by issue of cheque or DD). The appellant did this so that the investments/expenditure is shown to have been made/incurred from the bank account. I also find that the several members of the family - Sh. Pankaj Sapra, Smt. Daya Sapra (Mother of Sh Pankaj Sapra) Sh. S.N. Sapra (also known as Sh. Soria Nath Sapra/Arora, father of Sh. Pankaj Sapra) have been systematically involved in such business activities and credits/cash deposits in their respective bank accounts have remained unexplained.

5. I find that the findings of the AO in the assessment order and in the remand report (as received) remain uncontroverted. The appellant has not been able to explain the credibility or creditworthiness of the persons from whom cash has been stated to be received in the ICICI Bank A/c No. 0131101505014. I also find that genuineness of transactions has not been established. I hold, on the basis of my analysis as aforesaid, that the cash deposits in the bank account remain unexplained to the extent of Rs. 13,00,000/-, out of the addition made by the AO at Rs. 14,33,000/-. Further, the appellant has claimed that the following entries in the ICICI Bank Account represent cash receipts already disclosed in the relevant ITR, viz-

13. Aggrieved with such order of the learned CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds.

(i) That on the facts and circumstances of the case, the Assessing Officer has wrongly assumed jurisdiction u/s. 148 without proper appreciation of facts, recording of satisfaction and requisite approval in terms of provisions of sec. 151 and CIT(A) was not justified in confirming order of AO.

(ii) That there is no case of any income escaping assessment and whole basis of reassessment is illegal and without jurisdiction.

2(i). That on the facts and circumstances of the case, the observation of the CIT(A) regarding addition of Rs. 13,00,000/- is highly arbitrary and contrary to facts on record.

(ii) That all these transactions are fully corroborated and supported from bank statements and explanation of the appellant and as such there is no case of any addition in respect of the same.

(iii) That various transactions are inter related and there is no presumption that same represent unexplained credit or unexplained investment.

(iv) That impugned addition is highly arbitrary and unjustified and merely based on presumption and surmises

3. That the assessee crave leave to add, amend, alter or forgo any or all of the grounds as may be necessary and in the interest of justice.

4. That orders of the lower authorities are not justified on facts and same are bad in law."

14. I have considered the rival submissions made by both the parties and perused the orders of the authorities below. A perusal of the reasons recorded by the AO shows that Clause 3 of the notice under Section 148 is again blank and it is not known as to whether the AO has obtained approval from the higher authorities and if so from whom. Even otherwise a perusal of the details filed by the assessee shows the following reconciliation statement explaining the various deposits in the bank account.

Statement showing cash, credit in ICICI Bank A/c No. 031101505014 A.Y. 2009-10

<i>Date</i>	<i>Addition made by A.O.</i>	<i>Addition upheld by CIT(A)</i>	<i>Details</i>
21.04.2008	100,000	100,000	Security Money Deposit received from tenant (paper book page 10-12)
25.05.2008	100,000	100,000	Receipts in respect of agreement to sell of property No. 2, Sangam Vihar (paper book page
02.06.2008	45,000	-	Requisite relief to be given by A.O. after due verification as directed by CIT(A)
04.06.2008	25,000	25,000	Contra cash deposit from withdrawal
18.06.2008	200,000	200,000	Receipts in respect of agreement to sell of property No. 2, Sangam Vihar (paper book
22.07.2008	230,000	230,000	Receipts in respect of agreement to sell of property No. 2, Sangam Vihar (paper book page)
26.08.2008	100,000	100,000	Receipts in respect of sale of property bearing Khasra no. 1417 (paper book page 32)
03.09.2008	200,000	200,000	Receipts in respect of sale of property bearing Khasra no. 1417 (paper book page 25.)
08.09.2008	8,000	-	Requisite relief to be given by A.O. after due verification as directed by CIT(A)
24.09.2008	150,000	150,000	Receipts in respect of sale of property bearing Khasra no. 1417 (paper book page 36)
25.09.2008	50,000	50,000	Receipts in respect of sale of property bearing Khasra no. 1417 (paper book page 36)
08.12.2008	50,000	-	Requisite relief to be given by A.O. after due verification as directed by CIT(A)
22.12.2008	25,000	25,000	Contra cash deposit from withdrawal
21.02.2009	120,000	120,000	Advance received back against cancellation of purchase agreement of property bearing no. K-

12.03.2009	30,000	-	<i>Requisite relief to be given by A.O. after due verification as directed by CIT(A)</i>
Total	1,433,000	1,300,000	

15. Since neither the AO nor the CIT(A) has verified all these deposits alongwith various sale deeds or agreement to sell of properties etc., I deem it appropriate to restore this issue back to the file of the AO with a direction to verify the same and if he found correct then delete the addition. The ground raised by the assessee is allowed for statistical purposes.

16. In the result, ITA No. 4253/Del/2018 is allowed and ITA No. 4254/Del/2018 is allowed for statistical purposes.

Order pronounced in the open court on 29.03.2019.

Sd/-
[R.K. PANDA]
ACCOUNTANT MEMBER

DATED: 29.02.2019

SH

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant Registrar

Sl. No.	Particulars	Date
1.	Date of dictation	21 .02.2019
	Date on which the draft is placed before the Dictating Member	
3.	Draft placed before the other Member	
4.	Approved draft comes to the Sr. PS/PS	
5.	Kept for pronouncement on	
6.	Final order received after pronouncement	
7.	File sent to the Bench Clerk	
8.	Date on which files goes to the Head Clerk	
9.	Date on which file goes to the Assistant Registrar	
10.	Date of dispatch of order	
11.	Date of uploading	29.03.2019