

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC' NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

**I.T.A .No.-4806/Del/2018**  
**(ASSESSMENT YEAR-2010-11)**

ALOK SHARMA, C/O VIVEK BANSAL, ADVOCATE, IPB LEGAL, THIRD FLOOR 1A, JAIN MANDIR MARG, CONNAUGHT PLACE, NEW DELHI - 110 001 (PAN: BAFPS1094C) <b>(APPELLANT)</b>	vs	INCOME TAX OFFICER, WARD 70(3), ROOM NO. 308, 3 <sup>RD</sup> FLOOR, CIVIC CENTRE, D-BLOCK, NEW DELHI  <b>(RESPONDENT)</b>
<b>Appellant by</b>		<b>Sh. Vivek Bansal, Adv.</b>
<b>Respondent by</b>		<b>Shri S.L. Anuragi, Sr. DR</b>

**ORDER**

This appeal filed by the Assessee is directed against the order dated 13.06.2018 of the Ld. CIT(Appeals)-28, New Delhi relevant to assessment year 2010-11 on the following grounds of appeal: -

1. That under the facts and circumstances of the case Ld. CIT(A) has erred in law as much as in fact in not adjudicating ground no. 1 filed before him contending that the exparte assessment order passed u/s. 144 is wholly unjustified and illegal. While ignoring to do so he has failed to appreciate:

a) that there was no valid service of notice u/s. 143(2) on the assessee as it was in the knowledge of the AO that he was residing outside of India in the course of his employment.

b) that despite communication made through e-mail to the AO during the course of assessment proceedings, the AO has framed ex-parte assessment without communicating to the assessee of her intention to do so and in its manner the order passed by AO is against principle of natural justice and is illegal.

2. That under the facts and circumstances of the case Id. CIT(A) has erred in law as much as in fact in upholding the addition of RS. 22,50,000/- made u/s 68/69 of the Act. While upholding such addition Id. CIT(A) has failed to appreciate :-

a) that according to the facts and evidence furnished by the assessee during the course of assessment and appellate proceedings the assessee had discharged the primary onus laid upon him to prove the genuineness of the alleged unexplained credits particularly when the

additional evidence has been ordered to be admitted by Ld. CIT(A) on 13-01-2016.

b) that the assessee himself is a man of means.

c) that, as per well established law, the obligation of the assessee to prove the genuineness of the credit is limited to prove the source and it is not extended to prove the source of source.

d) That according to the facts the assessee had furnished the evidence even to prove the source of source of the credit.

3. That Id. CIT(A) has failed to adjudicate the ground relating to charging of interest u/s 234B & 234D and also against withdrawal of interest u/s 244A.

4. That each of the above ground is independent and without prejudice to the other grounds of appeal preferred by the Appellant.

5. The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal, so as to enable

the Hon'ble Tribunal to decide this appeal according to law.

2. Brief facts of the case are that the assessee filed his return of income on 08.7.2010 declaring an income of Rs. 1,69,618/-. The case of the assessee was selected for scrutiny and during the assessment proceedings. Thereafter, the statutory notices were issued and the same were remained uncomplined. Consequently, AO completed the assessment exparte u/s. 144 of the Income Tax Act, 1961 (in short "Act") by observing that there were cash deposits of Rs. 22,50,000/- in ICICI Bank of assessee, the source of which could not be explained by assessee. Accordingly, the AO treated the said cash deposits as unexplained income u/s. 68/69 of the Act and added the same to the income of the assessee by assessing the income of the assessee at Rs. 24,19,620/- u/s. 144 of the Act vide order dated 21.03.2013. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 13.06.2018 has dismissed the appeal of the assessee. Aggrieved with the impugned order dated 13.6.2018, assessee is in appeal before the Tribunal.

3. At the time hearing, Ld. Counsel for the assessee has only argued ground no. 2 and stated that Ld. CIT(A) has erred in law as much as in fact in upholding the addition of RS. 22,50,000/- made u/s 68/69 of the Act and failed to appreciate that that

according to the facts and evidence furnished by the assessee during the course of assessment and appellate proceedings the assessee had discharged the primary onus laid upon him to prove the genuineness of the alleged unexplained credits particularly when the additional evidence has been ordered to be admitted by Ld. CIT(A) on 13-01-2016. It was further submitted that Ld. CIT(A) also failed to appreciate that the assessee himself is a man of means and as per well established law, the obligation of the assessee to prove the genuineness of the credit is limited to prove the source and it is not extended to prove the source of source. It was further submitted that Ld. CIT(A) also failed to understand that according to the facts the assessee had furnished the evidence even to prove the source of source of the credit. In support of his contention, Ld. Counsel for the assessee has filed a Paper Book containing pages 1-117 in which he has attached the copy of Written submissions; Form No. 16 for FY 2009-10; ITR for AY 2010-11; Application under Rule 46A filed before Ld. CIT(A)-XI; Memorandum of Gift, Bank statement with PNB, ITR, Statement of Total income; PAN, AADHAR Card and cash account of Shri Anoop Kumar Sharma; Memorandum of Gift, bank statement with PNB, ITR, Statement of total income, PAN, Aadhar card and cash account, computation of income of Shri Gopal Krishna Sharma; Memorandum of Gift, Bank statement with ICICI Bank and cash account of Sh. Ashok Sharma; Written submission

filed before Ld. CIT(A)-XI dated 18.11.2014; copy of passport of Shri Alok Sharma alongwith visa and immigration stamps; reply filed by ICICI bank on 15.1.2012 to the ITO, Ward 43(1) in response notice u/s. 133(6) alongwith statement of Shri Alok Sharma for the period of 1.4.2009 to 31.3.2010; Inspector's Report with regard to service of notice u/s. 142(1) and list of documents as found on inspection of file by the counsel and order sheet notings; letter dated 17.9.2013 filed before the ITO, Ward 43(1) requesting for photocopies of documents alongwith fees paid; letter from the officer of CIT(A)-28, forwarding the remand report to the CIT(A) alongwith notice of date fixed for hearing; Remand Report date 3.5.2017; Rejoinder dated 23.5.2017 to the remand report; order sheet entries in CIT(A) register; written submissions dated 6.6.2017; notice dated 5.7.2017 issued by ITO, Ward 70(3) requesting for certain documents; reply dated 11.7.2017 to notice dated 5.7.2017 submitting the documents requested for; Notice dated 17.7.2017 issued by ITO, Ward 70(3) requesting for certain documents; reply dated 28.7.2017 to notice dated 17.7.2017 submitting the documents requested for; PAN, AAdhar Card, Voter identity card and ITR acknowledgement; Remand Report dated 28.7.2017; Rejoinder dated 23.8.2017 to remand report dated 28.7.2017 and order sheet entry dated 13.01.2016 before CIT(A).

4. On the other hand, Ld. DR relied upon the orders of the authorities below. He stated that there were cash deposits of Rs. 22,50,000/- in ICICI Bank of assessee, the source of which could not be explained by assessee. Accordingly, the AO rightly treated the said cash deposits as unexplained income u/s. 68/69 of the Act and added the same to the income of the assessee, which the Ld. CIT(A) has correctly upheld. Hence, he stated that the well reasoned impugned order does not require any interference and need to be upheld.

5. I have heard both the parties and perused the records, especially the impugned order as well the Paper Book filed by the Ld. Counsel for the Assessee. I find that assessee is an individual and during the year under consideration he was employed with M/s Birla Soft India Ltd., New Delhi on the post of Senior Software Engineer and has filed the income for A.Y. 2010-11 on 08.7.2010 declaring the income of Rs. 1,69,618/-. The assessment proceedings were initiated by the AO vide scrutiny notice issued on 25.8.2011 and assessment order was passed on 21-03-2013 u/s. 144/143(3) of the Income Tax Act, 1961 (Act) by making the addition of Rs. 22,50,000/- on account of unexplained cash deposits in the bank account of the assessee in ICICI Bank and thus, the income was assessed at a sum of Rs. 24,19,618/-. It is also noted that the addition of Rs. 22,50,000/- was challenged in the appeal before Ld. CIT(A) on the ground

that the said amount was received from his father and brother to whom he had given earlier the similar amounts. It is further noted that during the assessment proceedings the assessee was out of the country in the course of his employment and was in the U.S.A. Therefore, could not represent before AO. Therefore, during the course of hearing before Ld.CIT(A) the assessee submitted application for admission of additional evidences on 18-11-2014. On 18-11-2014, the assessee has also filed written submissions before the Ld. CIT(A) in which, after inspection of file, the reply regarding service of each of the notices issued by the AO either u/s 143(2) or u/s 142(1) of the Act has been filed. It was submitted that none of these notices were ever served upon the assessee. Simultaneously, the assessee also submitted explanation regarding deposits in the bank accounts of the assessee for which the evidences were filed in the shape of bank account of the assessee, bank account of his brother (Mr. Anoop Kumar Sharma) and also the bank account of his father (Mr. Gopal Krishan Sharma). Not only copies of bank accounts were filed but their copy of ITR. Computation of Income and Declaration showing that they had given the said amounts to the assessee after withdrawing the same from their bank account in cash. From the details of the passport filed with the APB the period describing the departure of the assessee and the arrival of the assessee in India. The dates are as under: -

S. No.	Departure from India	Arrival in India
1.	16-08-2008 (Australia)	5-12-2008
2.	13-12-2008 (Australia)	25-09-2009
3.	03-10-2010 (USA)	03-03-2011
4.	21-03-2011 (USA)	Still in USA

5.1 It is also noted that constantly from 13-12-2008 to 25-09-2009, the assessee was in Australia, therefore, the salary income derived by him from start of the F.Y relevant to A.Y. 2010-11 i.e 01-04-2009 to 25-09-2009 the salary was drawn overseas in Australian Dollars and the amount has come from overseas in the bank account of the assessee bank account No. 00701533354. The salary has also come to the bank account of the assessee from India also. The bifurcation of salary received by the assessee and credited to above bank account in ICICI Bank is as under: -

S. No	Date	Salary from Overseas	Salary from India
		Opening Balance	
1.	01-04-2009	1,75,333/-	
2.	08-04-2009	1,74,975/-	
3.	15-04-2009	1,76,675/-	
4.	05-05-2009	1,80,875/-	
5.	24-08-2009	28,024/-	
6.	04-09-2009	4,06,075/-	
7.	05-10-2009	6,15,275/-	
8.	03-11-2009		38,064/-
9.	26-11-2009	62,899.55/-	
10.	09-12-2009	2,25,587/-	

11.	30-12-2009		35,489/-
12.	05-01-2010		8,000/-
13.	29-01-2010		35,243/-
14.	26-02-2010		34,107/-
15.	13-03-2010		45,066/-
16.	30-03-2010		33,815/-
<b>Total</b>		<b>20,45,718/-</b>	<b>1,89,284/-</b>
<b>Grand Total</b>		<b>22,35,002/-</b>	

5.2 It is also noted that out of the above bank account, the assessee has given the amounts to his father and brother as under: -

			<b>Gopal Krishan Sharma)</b>	<b>Anoop Kumar Sharma)</b>
1.	16-04-2009	335126		1,75,000/-
2.	23-04-2009	335127		1,75,000/-
3.	20-05-2009	335129	1,75,000/-	
4.	23-05-2009	335130	1,75,000/-	
5.	10-09-2009	335132	2,00,000/-	
6.	10-09-2009	335131		2,00,000/-
7.	14-10-2009	335134		3,00,000/-
8.	14-10-2009	335133	3,00,000/-	
9.	04-12-2009	335139		50,000/-
10.	4-12-2009	335138		50,000/-
11.	14-12-2009	335140 withdrawn cash and given to brother		2,00,000/-
<b>Total</b>			<b>8,50,000/-</b>	<b>11,50,000/-</b>

5.3 However, the details of the cash deposited in the bank account of the assessee were as under: -

Date of deposit	Amount (Rs.)
21-10-2009	2,50,000
27-10-2009	2,50,000
29-10-2009	10,00,000
04-11-2009	5,00,000
06-11-2009	2,50,000
<b>Total</b>	<b>22,50,000</b>

5.4 From the above facts, it is clear that firstly the assessee has given the above amounts to his father and brother and from the very same amount the amount was received back by the assessee. This factual position has been admitted by the AO in the first remand report dated 03-05-2017 submitted to the Ld. CIT(A). Copy of this remand report has been filed at pages, the relevant para read as under: -

*"Against the Addition of Rs. 22,50,000/- made on account of cash deposits in ICICI Bank u/s 68/69 of I T Act 1961. As per additional evidence submitted by the AR of the assessee, Shri Alok Shtarma had gifted total amount of Rs. 11,50,000/- and Rs. 8,50,000 to his brother Sh. Anoop Kumar Sharma and his father Sh. Gopal Krishan Sharma respectively during the F. Y. 2009- 10. During the same F.Y. Sh. Anoop Kumar Sharma and Sh. Gopal Krishan Sharma had gifted total amount of Rs. 11,20,000/- And Rs. 9,30,000/- respectively to Sh. Alok Sharma. Sh. Alok Sharma*

*had also deposited Rs.2,50,000/- on 27/10/2009 in his bank account as out of cash in hand.*

*From the documents produced as additional evidence it is crystal clear that firstly the assessee had transferred his money from his account to his brother's and father's account and after that the same amount was received back by him in cash form and no source of that amount is explained. Further memorandum of Gift is not an instrument of sifts of immovable property. An immovable property can be transferred by way of a sift only by a written document known as a sift deed."*

5.5 It is also noted that similar position has been also admitted by the AO in the second remand report, who is the AO different to the AO who submitted the first report and it is report dated 28-07-2017 and the relevant observations are as under: -

*"Sri Anoop Kumar Sharma*

*The assessee has claimed to have received gift of Rs. 11,0,000/- from Sri Anoop Kumar Sharma, the brother of the assessee. In support of his contention, copy of gift deed dated 31-03-2010 has been filed [copy of gift deeds is enclosed herewith for your kind perusal. A perusal of the bank account reveal that the assessee had given gifts to his brother Sri Anoop Kumar Sharma, who in turn withdrawn the amount and the said amount has been shown as receipt of sift. Sri Anoop Kumar Sharma had filed Return of Income for the A. Y. 2010-11 declaring an income of Rs. 1,30,912/-. The income has been declared u/s 44AD of the Income tax Act. Sri Gopal Kish an*

*Sharma on this case also. The son sifted the amount to this father by cheque who in turn withdrawn the amount in cash and sifted the amount in cash to the assessee. The copy of ITR for the A.Y. 2010-11 has been filed. The income declared is Rs. 1,58,460/-. The basis of income declared is under the provisions of section 44AF of the Income tax Act. In view of above facts, the gifts do not appear to be genuine and the appeal of the assessee is liable to be dismissed."*

5.5 So far as it relates to remaining amount of Rs. 2,50,000/- it was the contention of the assessee before the Ld. CIT(A) and AO that the same was out of cash available with the assessee which was withdrawn from bank account from time to time as per written submissions filed before Ld. CIT(A) dated 06-06-2017. The details of cash withdrawals made by the assessee was submitted and it was pointed out as per table described in the said written submission that from 26-08-2009 to 29-03-2010 the assessee had withdrawn a total sum of Rs. 4,09,400/- in cash and that submission of the assessee has totally been ignored by the AO in the second remand report dated 28-07-2017 with the following observations: -

*"As regard the cash deposit of Rs. 2,50,000/- out of cash available with the assessee is concerned, it is an afterthought as the assessee has not shown sufficient withdrawls which may enable the assessee to make cash deposit in bank. Further the assessee has not filed Cash*

*Flow Statement from which the availability of cash could be examined. When the assessee was having cash at hand, why he did not deposit the amount in bank. "*

5.6 From the above documents it is clear that the cash deposits in the bank accounts of the assessee belonging to him and were from legitimate source of salary derived by him from M/s Birla Soft India Pvt Ltd. The AO has not doubted regarding any other deposit in the bank account of the assessee other than cash deposits. Cash deposits are fully explained as above.

5.7 For proving the identity of brother and father of the assessee, not only the assessee has submitted documentary evidence in the shape of copy of ITR, their bank accounts, their PAN and Aadhar Card etc., however, Ld. CIT(A) has doubted regarding the creditworthiness of brother and father of the assessee. It is noted that the credit worthiness of the father and brother of the assessee cannot be solely determined on the basis of quantum of return of income filed by them but that has also to be seen in the light of the fact that the money they provided to the assessee was earlier provided by the assessee to them and this fact has been admitted in both of the remand reports submitted by the AO before Ld. CIT(A). Therefore, on merits the amount credited in cash in bank account of assessee cannot be considered as assessable either u/s 68 or u/s 69 of the Act. Assessee has placed on record all the documentary evidence to

show and prove that the money deposited in the bank account of the assessee had come from the bank accounts of the father and brother of the assessee and also earlier withdrawal made by the assessee and the burden of the assessee was not more than to produce the evidence which has been produced by the assessee. Keeping in view of the facts and circumstances of the case as discussed above, the addition of Rs. 22,50,000/- made u/s. 68/69 of the Act made by the AO and upheld by the Ld. CIT(A) is hereby deleted and accordingly the ground no. 2 is allowed.

6. In the result, the Appeal filed by the Assessee stands partly allowed.

Order pronounced on 15/05/2019.

**Sd/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

Dated: 15/05/2019

**\*SR BHATNAGAR\***

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT TRUE COPY

By Order,

**ASSISTANT REGISTRAR**

