

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

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.6036/Del/2018
Assessment Year: 2010-11

Ashok Kumar Singh Bahadauria, X-26, Hauz Khas, New Delhi -1100017 PAN No.AAHPB3067B (APPELLANT)	Vs	Income Tax Officer Ward – 32 (5), New Delhi (RESPONDENT)
--	----	---

Appellant by	Sh. Neeraj Mangla, CA
Respondent by	Sh. S. L. Anuragi, Sr. DR

Date of hearing:	03/07/2019
Date of Pronouncement:	24/07/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 17.07.2018 of the CIT(A)-11, New Delhi relating to A. Y. 2010-11.

2. Facts of the case, in brief, are that the AO had reopened the assessment u/s.147 of the Act on the basis of AIR information that the assessee has made cash deposits of Rs.60,55,000/- in his savings bank account. During the course of assessment proceedings, it was found by the AO from the bank statements that the total cash deposits amounted to Rs.34,20,000/-during the year under consideration. The AO

asked the assessee about the source of cash deposits and the assessee explained that there was an opening cash balance as on 01.04.2009 of Rs.10,82,297/- and agriculture income of Rs. 9,00,500/-. The assessee also filed the cash flow statement in which it was shown that the assessee had withdrawn Rs. 23,55,000/- from the bank account. The AO did not give the benefit of opening cash balance of Rs. 10,82,297/- and redrew the cash flow in the assessment order. After treating some of the entries of cash deposits as explained the AO treated cash deposits amounting to Rs. 13,13,000/- as unexplained.

3. Before CIT(A) the assessee apart from challenging the addition on merit challenged the validity of the reassessment proceedings. However, the Ld. CIT(A) was not satisfied with the arguments advanced by the assessee on both the issues. So far as the ground challenging the validity of reassessment proceedings are concerned, he decided the same against the assessee by observing as under :-

5.1 The AO had reopened the assessment u/s 147 of the Act on the basis of AIR information that the appellant has made cash deposits of Rs. 60,55,000/- in his savings bank account and the appellant has not filed the Return of Income for AY 2010-11. The AR has challenged the reopening of the assessment by stating that the actual cash deposits amounted to Rs. 34,22,000/- and the appellant has duly filed the Return of Income u/s 139(1) of the Act on 26.07.2010. In view of this, it is contended that the reopening of the assessment was

based on incorrect information and therefore, the reopening proceedings should be quashed. A perusal of the reasons recorded by the AO shows that the reopening of the assessment was done with respect to the other PAN held by the appellant which is AKOPB2313B and the Return of Income was being filed by the appellant using the PAN AAHPB3067B. Since the AO had information related to the other PAN not being used by the appellant for filing of Return of Income and it was the duty of the appellant to surrender the duplicate PAN, it cannot be said that the AO had reopened the assessment based on wrong information. The AO had done due verification with respect to the other PAN and had found that no Return of Income was filed for that PAN. In view of this, I don't find any reason to find fault with the reopening proceedings and therefore, the ground of appeal is dismissed.

4. So far as the addition on merit is concerned he also decided the issue against the assessee on the ground that the assessee could not explain the nexus between the cash deposits and cash withdrawals. The relevant observations of the Ld. CIT(A) reads as under :-

“4.2 I have considered the facts of the case and the submission made by the AR. The AR has contended that the opening cash balance of Rs. 10,82,297/- is duly shown in the balance sheet on 31.03.2009 as closing balance and has filed a copy of the same. The AR has further furnished the copies of bank statement and the description of source of cash deposits with respect to some of the entries which have been treated as unexplained by the AO.

4.2.1 However, the AR has failed to provide any direct nexus between the cash withdrawals and the cash deposits. He is at loss of words / arguments when asked about the possibility that the cash withdrawals might have been used by The AO had reopened the assessment u/s 147 of the Act on the basis of AIR information that the appellant has made cash deposits of Rs. 60,55,000/- in his savings bank account and the appellant has not filed the Return of Income for AY 2010-11. The AR has challenged the reopening of the assessment by stating that the actual cash deposits amounted to Rs. 34,22,000/- and the appellant has duly filed the Return of Income u/s 139(1) of the Act on 26.07.2010. In view of this, it is contended that the reopening of the assessment was based on incorrect information and therefore, the reopening proceedings should be quashed. A perusal of the reasons recorded by the AO shows that the reopening of the assessment was done with respect to the other PAN held by the appellant which is AKOPB2313B and the Return of Income was being filed by the appellant using the PAN AAHPB3067B. Since the AO had information related to the other PAN not being used by the appellant for filing of Return of Income and it was the duty of the appellant to surrender the duplicate PAN, it cannot be said that the AO had reopened the assessment based on wrong information. The AO had done due verification with respect to the other PAN. and had found that no Return of Income was filed for that PAN. In view of this, I don't find any reason to find fault with the reopening proceedings and therefore, the ground of appeal is dismissed.

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

1. *That the assessment order passed u/s 147 r.w.s. 143(3) of the Income Tax Act, 1961 and subsequently upheld by Ld. CIT(A) is perverse to law and to the facts of the case because of reopening of the assessment proceedings in a mechanical manner only on borrowed information regarding cash deposits of Rs. 60,55,000/- without verification of the same despite the fact that the appellant had cash deposits of Rs. 34,20,000/- only.*

2. *That the addition of Rs. 13,13,000/- made by the Ld. AO and upheld by Ld. CIT(A) is not tenable under the law because of being made and upheld on the presumption that the earlier cash withdrawals were consumed and not available for subsequent cash deposits.*

3. *That the Ld. CIT(A) grossly erred in facts of the case in upholding the addition of Rs. 13,13,000/- made by the Ld. AO on the presumption that the nexus between the cash deposits and withdrawals was not explained despite the fact that copies of bank statement and description of source of cash deposits was duly filed.*

4. *That the Ld. CIT(A) grossly erred in facts of the case in holding the statement of affairs for F.Y. 2008-09 to self serving documents and rejecting the claim of opening cash balance of Rs. 10,82,297/-, on incorrect presumption that the amount of cash was entered as "NIL" in ITR despite the evident fact that the particulars of statement of affairs were not entered in the ITR.*

That the appellant assails his right to amend, alter, change any grounds of appeal or take any further ground at any time even during the course of hearing of instant appeal.

6. The Ld. Counsel for the assessee strongly challenged the order of the CIT(A) in confirming the validity of reassessment proceedings. He submitted that the reopening of the assessment

was made on suspicion and without verification of information received. He submitted that as per AIR information received the assessee had made cash deposit of Rs.60,55,000/- whereas the assessee has actually deposited an amount of Rs.34,20,000/-. Therefore, the reopening of the assessment has been done on incorrect facts in a mechanical manner and without verification of facts, therefore, the reopening is bad in law.

7. He submitted that the reopening has been made on borrowed satisfaction which can lead to reasons to suspect but cannot be considered as reasons to belief. There was no tangible or credible material to form a reason to believe that cash deposit represented income of the assessee. There can be number of sources of cash deposits in the bank account. Relying on the following decisions he submitted that the reopening is bad in law and should be quashed.

1. Munni Devi Vs. ITO Rewari, ITA No.3534/Del/2014
2. Harmeet Singh Vs. ITO, Delhi ITA No.1939/Del/2016
3. Bir Bahadur Singh, 68 SOT 197
4. Praveen Kumar Jain Vs. ITO, ITA No.1331/Del/2015
5. Sh. Mahavir Prasad Vs. ITO Rewari, ITA No.924/Del/2015

8. So far as the merit of the case is concerned he submitted that the assessee during the course of assessment proceedings as well as appeals proceedings had furnished the date wise details of cash withdrawn and cash deposit. However, it was

presumed by the Assessing Officer that the cash withdrawn on earlier dates would have been consumed prior to subsequent withdrawal and therefore, the benefit of the same cannot be allowed. He submitted that the above observation of the Assessing Officer is solely based upon surmises and presumptions and without any evidence contrary to the claim of the assessee. He submitted that the assessee during the course of assessment proceedings as well as before the CIT(A) has duly explained the nexus of cash in hand, deposit in the bank account and its utilization.

9. So far as the non-acceptance of the statement of affairs of earlier years is concerned he submitted that in the ITR for A. Y. 2009-10 there was no column to enter the details of statement of affairs of the assessee. Only balance sheet of proprietary business of the assessee was entered in the said ITR form. Since in the instant case the opening cash in hand was part of personal assets appearing in statement of affairs, the same could not have been reported in said column. He accordingly submitted that the addition on merit is also not sustainable. He accordingly submitted that the grounds raised by the assessee should be allowed. He also relied on the following decisions :-

- 1) CIT Vs. Kulwant Rai 291 TIR 36 (Delhi)
- 2) DCIT Vs. Manish Kumar Agarwal ITA No.3301/Del/2012

10. The Ld. DR on the other hand heavily relied on the order of the CIT(A) on both the issues. He submitted that when the assessee was having two PAN numbers and since the Assessing

Officer had information related to the other PAN not being used by the assessee for filing of the return and when there were huge cash deposits in the bank account, therefore, the Assessing Officer had rightly initiated the proceedings u/s. 147 of the IT Act. So far as the merit of the addition is concerned the Ld. DR heavily relied on the order of the CIT(A).

11. I have considered the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. I have also considered the various decisions relied on by Ld. Counsel for the assessee. I find the Assessing Officer, on the basis of AIR information received that the assessee has deposited cash amounting to Rs.60,55,000/- in his bank account reopened the assessment. While doing so he had observed that no return has been filed by the assessee for A. Y.2010-11 which is discernable from the copy of the reasons placed at paper book pages 4&5. It is also an admitted fact that the assessee was having two PAN numbers, the reason of which is best known to the assessee. When the Assessing Officer had information related to the other PAN number not being used by assessee for filing of return of income, and since the assessee has not surrendered the duplicate PAN, therefore, it cannot be said that the Assessing Officer reopened the assessment based on wrong information. I find the Assessing Officer in the instant case had done due verification with respect to the PAN number and had found that no return of income was filed in that PAN. In view of the above and in view of the detailed reasoning given by the CIT(A) while

upholding the validity of reassessment proceedings, I do not find any infirmity in the same. Accordingly the same is upheld. The various decisions relied by Ld. Counsel for the assessee are not applicable to the facts of the present case especially when in non of the cases, the assessee was having two PAN numbers. The ground raised by the assessee on the issue of reopening is accordingly dismissed.

12. So far as the addition on merit is concerned I find as against the information received of cash deposit of Rs.60,55,000/-, it was found by the Assessing Officer that the assessee has actually deposited cash of Rs.34,20,000/-. I find the Assessing Officer accepted an amount of Rs.20,07,000/- and treated the balance amount of Rs.13,13,000/- as unexplained. It is not understood why there is a difference of Rs.1,00,000/- between the actual difference of Rs.14,13,000/- and addition made at Rs.13,13,000/-. From the various details furnished by the assessee in the paper book I find the assessee has declared income of Rs.23,48,906/- which includes agricultural income of Rs.4,39,876/-. The assessee during the current year has declared an income of Rs.26,79,460/- after claiming deduction chapter VI-A. I find the assessee during the course of assessment proceedings has also filed the following cash flow statement to substantiate the deposit of cash in the bank account which is as under :-

PARTICULARS	CASH FLOW	PARTICULARS	CASH OUTFLOW
Opening Cash balance as on 01.04.2009	1,082,297	<u>Cash deposited during the year</u>	
<u>Withdrawal From Bank</u> :		OBC Defence Colony	3,420,000
OBC Defence Colony	2,355,000	Federal Bank	2,000
OBC Hauz Khas	24,000	Drawings made during the year	1,80,000
Agricultural Income during the year	9,00,500	Repairs & Maintenance Expenses made during the year	87,710
Other Receipts	12,500	Miscellaneous Expenses	4,645
Total Cash Inflow during the year	<u>4,374,297</u>	Total cash flow during the year	<u>3,694,355</u>

Closing Balance of cash in hand as on 31.03.2010 679,942

13. I find the basis of rejection of the above cash flow statement is due to non consideration of the opening cash balance and non consideration of the earlier cash withdrawals which were utilized again for deposit in the bank account. I find from the assessment order that the Assessing Officer had presumed that the earlier cash withdrawals were consumed for house hold expenses and not available for re-deposit. This, in my opinion, cannot be accepted in absence of any evidence with the AO that the assessee has infact consumed such huge cash and incurred huge expenditure for some other purpose such as any capital expenditure or for some marriage function in the family etc. Further when the assessee is showing huge income and also having agricultural income in the preceding years as well as during the current year, therefore, non consideration of the opening cash balance as on 01.04.2009 in my opinion is also incorrect. So far as the cash flow statement is concerned the assessee has shown the opening balance at Rs.10,82,297/-

and closing cash balance at Rs.6,79,942/-. Even if the opening cash balance at Rs.10,82,297/-is considered to be higher, however, the same cannot be considered as nil. If a reasonable amount of opening cash balance of 50% of the above amount is considered and the withdrawal from the bank made earlier is considered as available for redeposit in the bank account then also there appears to be sufficient cash balance available to the assessee for deposit in the bank account. In view of the above discussion I am of the considered opinion that no addition is called for on account of cash deposit made in the bank account and the assessee in my opinion has successfully explained the source of cash deposit in the bank account. I, therefore, set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition.

14. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 24.07.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 24.07.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	24.07.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	