

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI**

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

I.T.A. No.416/DEL/2019  
Assessment Year: 2010-11

Balraj Singh, C/o Mehra& Co, CAs, 7, Rajeshwari Palace, Civil Lines, Meerut.	vs.	ITO, Ward-1(2), Meerut.
TAN/PAN: BDBPS 0010H (Appellant)		(Respondent)

Appellant by:	Shri Chander Mehra, FCA		
Respondent by:	Shri S.L. Anuragi, Sr.D.R.		
Date of hearing:	23	07	2019
Date of pronouncement:	18	10	2019

**ORDER**

**PER AMIT SHUKLA, JM**

The aforesaid appeal has been filed by the assessee against the impugned order dated 26.11.2018, passed by Commissioner of Income Tax (Appeals), Meerut for the quantum of assessment passed u/s.144 for the Assessment Year 2010-11. The assessee is aggrieved by addition of Rs.23,26,060/- on account of cash deposits in Savings Bank Account.

2. The facts in brief are that an AIR information was received from CIB, Kanpur that the assessee had deposited cash of Rs.40,65,117/- in his Savings Bank Account with

Union Bank of India during Financial Year 2009-10. Since source of cash deposits was not explained in response to the query letter dated 04.01.2017 and the PAN and ITR of the assessee was also not available, therefore, *prima facie* believe was entertained u/s 147 that cash deposited by the assessee was out of income from undisclosed sources. Accordingly, notice u/s.148 was issued on 21.03.2017. However, as per the assessment order, in response to such notice no compliance was made neither any of the other statutory notices was complied with. Finally, notice issued u/s.144 for passing the best judgment assessment not complied with. Accordingly, Assessing Officer added the entire amount of Rs.40,65,117/- u/s.68.

3. Before the Ld. CIT(A), the assessee had filed additional evidences in the form of PAN, address of the assessee, copy of agricultural holdings, copy of affidavits of brothers of the assessee, Shri Balraj Singh and Shri Raghuraj Singh along with copy of tax audit report, ITR V and computation of income of Shri Raghuraj Singh, stating that these were the Toll receipts from the business of his brother, Shri Raghuraj Singh, copy of security deposit of Executive Engineer, National Highway, PWD, Ghaziabad and catena of precedence were also filed to prove that the money deposited belonged to his brother out of toll collection business. All these evidences were forwarded to the Assessing Officer along with application under Rule 46A. Ld. Assessing Officer has given his remand report which has been incorporated in the impugned

appellate order at pages 3 to 5. In response to the said remand report, assessee has also filed his rebuttal.

4. Ld. CIT (A) though admitted the additional evidences but disbelieved the contention that younger brother of the assessee had deposited the cash in his Savings Bank Account earned out of his business from operating a toll collection of point of PWD on National Highway Division after observing and holding as under:

“i) The security deposit of Rs.13,00,000/- Lacs claimed to be deposited with the PWD department in not appearing in the balance sheet of Raguraj Singh for A.Y 2010-11.

ii) The total collection from toll plaza is of Rs. 1,41,83,370/- for the year ending 31.03.2010 on which profit of Rs.1,48,394/- has been declared. The bank account in which it is claimed that cash was deposited is not appearing in the balance sheet of Raguraj Singh.

iii) The cash of Rs.40,65,117/- has been alleged to be deposited out of toll receipts of Rs.1,41,83,370/- on which a sum of Rs.1,48,394/- was declared as income and Rs. 1,27,53,000/- was paid as toll charges paid to PWD Department . So how A.R can justify the deposit of cash of Rs.40,65,117/- out of toll collection is not only mathematically incorrect but also a blatant lie on affidavit. In the letters dated 03.10.2018 & 11.10.2018 the appellant is needlessly emphasizing the omissions on the part of the AO and the lack of opportunity before the AO. The fact of the matter is that appeal proceedings are a continuation of

assessment proceedings and if indeed the AR or the appellant wanted to file any credible evidence regarding source of cash deposit they could have done the same before the undersigned.

By merely stating that cash belongs to and has been taxed in the hands of Raghuraj Singh is nothing but a self serving argument which has not been proved by supporting evidence that it is indeed so despite numerous opportunities given in appeal.

By merely laying the blame on AO the appellant cannot get away with his responsibility to furnish credible corroborative evidence that indeed the money deposited in the appellant's account actually belonged to the Toll business being run by the brother of the assessee. A prima facie view of the cash availability and the cash flow which has been discussed herein in the opening lines of this para (iii) goes to prove that the whole argument is nothing but an afterthought conceived to confuse and mislead appellate authority.

iv) There is no merit in the submissions of assessee and during appellate proceedings nothing on the merits of the case has been argued and A.R has tried to mislead the proceedings by filing false affidavits without realizing the consequences of the same.

Thus, there is no merit in the appeal filed by the appellant and the A.O has correctly made addition of Rs. 40,65,117/- as neither in assessment proceedings nor in appellate

proceedings any credible document/evidence to prove the source of such deposits has been filed.”

5. Before us, ld. counsel for the assessee on merits of the case submitted that the assessee's brother was given a contract for toll collection from National Highway Division, PWD, Ghaziabad. Total toll collection disclosed in the P&L account and balance-sheet of Shri Raghuraj Singh was Rs.1,41,83,370/- from which Rs.1,48,394/- was declared as income. All these figures are appearing in the audited P&L account. The receipt of Rs.40,65,117/- were deposited in the bank account wherein all the brothers of the assessee and his nephew were the joint holders which was opened as Savings Bank Account in early 1990. The total Toll charges deposited, other expenses including security deposited and adjusted have been merged with the Toll received and paid. The Savings Bank Account has been merged with the Union Bank operated later on. He also drew our attention to the day to day cash deposits of Rs.40,65,117/- which are appearing at pages 29 to 30 of the appellate order. He pointed out that the details of cash deposits also includes the copy of bank account in which cash was deposited and all these are duly verifiable on the entries in the books of account. Thus, all these facts have not been properly appreciated, and therefore, matter needs to be re-examined. Accordingly, this issue should be remanded back to the file of the Assessing Officer to examine the issue of cash deposits on the basis of material evidence produced during the course of appellate proceedings including the

books of account and bank details of Shri Raghuraj Singh, brother of the assessee.

6. On the other hand, ld. DR referred to the various observations made by the Ld. CIT (A) in his orders as well as the remand report submitted by the Assessing Officer.

7. After considering the rival submissions and on perusal of the relevant findings given in the impugned orders, we find that it is an undisputed fact that the only source of income which assessee is having is from agricultural operations. The bank account in which amount has been found to be deposited has been stated to be opened by the assessee along with younger brothers and his nephew. Further, before the Ld. CIT (A) assessee has filed various additional evidences to demonstrate that his younger brother, Shri Raghuraj Singh was awarded a contract from NHAI, PWD, Ghaziabad for the area. Since, the entire Toll was received in cash, therefore, same were deposited in the common Savings Bank Account. These Toll receipts have been stated to be declared by Shri Raghuraj Singh in his audited account and income tax return wherein the entire Toll receipts have been declared along with Toll receipts deposited to the Government Account and various other expenses. The Toll charges received have been stated to be Rs.1,41,83,370/- and after deducting various expenses, the Toll charges paid was Rs.1,27,53,000/-. The net profit derives from such business by Shri Raghuraj Singh was Rs.1,48,394/-. Once assessee had no other source of

income other than agriculture income and the bank account does not belong alone to the assessee, then the explanation given that the cash deposit could be out of the Toll received business of the assessee brother, Shri Raghuraj Singh cannot be simply brushed aside. The reasons cited by the Ld. CIT(A) for rejecting the assessee's explanation is not based on correct appreciation of facts put up before him nor he has tried to analyze day to day cash deposits in the bank account, vis-a-vis the books of account maintained by Shri Raghuraj Singh which was subject to audit also. Under these facts and circumstances of the case and in the interest of justice, we are remanding this matter to the file of the Assessing Officer to examine all the evidences and to verify the cash deposits from the assessment records and the books of account of Shri Raghuraj Singh. The ld. Assessing Officer shall provide due and effective opportunity of hearing to the assessee to substantiate his case and assessee is also directed to co-operate with the Assessing Officer.

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

**Order pronounced in the open Court on 18<sup>th</sup> October, 2019.**

Sd/-  
**[PRASHANT MAHARISHI]**  
**[ACCOUNTANT MEMBER]**

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

DATED: 18<sup>th</sup> October, 2019