

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC – C” BENCH, BANGALORE**

Before Shri Chandra Poojari, Accountant Member

ITA No.2668/Bang/2019 : Asst.Year 2013-2014

Sri.Dhruva Mungamuri C/o. S.Parthasarathi, Advocate, 3/1, Pranava Complex, 5 th Cross, Malleshwaram Bangalore – 560 003. PAN : AAQPD5739H.	Vs.	The Income Tax Officer Ward 5(3)(5) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Smt.Sheethal Borkar, Advocate
Respondent by : Dr.Ganesh R.Ghale, Standing Council for DR

Date of Hearing : 18.02.2020	Date of Pronouncement : 19.02.2020
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ORDER

This appeal filed by the assessee is directed against the order of the CIT(A), dated 27.11.2019. The relevant assessment year is 2013-14.

2. The ground raised by the assessee is that the CIT(A) has erred in sustaining addition of Rs.10,10,000 on account of unexplained deposit in assessee's bank account.

3. The facts of the case in brief are that the Assessing Officer noticed on verification of bank account statement with ICICI Bank held jointly with Smt.Sandhya Rukmini that there is a cash deposit of Rs.20,80,000 on 03.11.2012 which is converted into FD of Rs.20,00,000 on 05.11.2012. The assessee was asked to file documentary proof for the sources of the deposit. In reply the assessee filed a letter dated 23.02.2016 stating that

the sources for the deposit of Rs.20,80,000 is out of the withdrawals from SBI savings bank account and ICICI bank account made from 09.06.2012 onwards which is tabulated as under:-

Bank Name	Account No.	Date	Amount withdrawn	Amount deposited
SBI	10447408042	09.06.2012	2,50,000	--
SBI	10447408042	10.06.2012	4,10,000	--
SBI	10447408042	27.06.2012	--	4,67,000
SBI	10447408042	26.07.2012	4,50,000	--
SBI	10447408042	14.08.2012	3,50,000	--
ICICI	16901006061	14.08.2012	11,00,000	--
ICICI	16901006061	08.09.2012	2,00,000	--
SBI	10447408042	10.10.2012	8,00,000	--
ICICI	16901509902	03.11.2012	--	20,00,000

3.1 According to the Assessing Officer, as per the above table, the assessee is explaining the sources as withdrawals made from 09.06.2012 onwards from SB account of SBI and ICICI bank, which was deposited in one lump sum on 03.11.2012 at ICICI bank. The A.O. was of the opinion that the explanation offered by the assessee is not acceptable being a tech-savy person who is highly conversant in transferring money on-line is not expected to withdraw the monies in various denominations on different dates even prior to six months and keep it at home and subsequently deposit the lump sum on a single day. On a cross verification at the bank statement of SBI, Indiranagar branch, the A.O. noted that the withdrawal amount of Rs.4,10,000 made on 10.06.2012 in the above table is deposited by cash on 27.06.2012 in the same account. Again on 28.06.2012 an amount of Rs.4,11,025 has been paid through cheque in favour of the sub-registrar Kolar. This is

only an illustration, the withdrawals stated to have been made as per the above table cannot be taken as the sources for the deposit of Rs.10,80,000. As the explanation offered is not satisfactory the amount of Rs.20,80,000 was brought to tax by the Assessing Officer.

3.2 The CIT(A), in the first round, observed that the Assessing Officer has given a finding that the assessee held jointly an ICICI bank account with Smt.Sandhya Rukmini and there was a cash deposit of Rs.20,80,000 on 03.11.2012 which was converted into FD of Rs.20 lakh on 05.11.2012. The assessee was asked to file documentary proof for the sources of the deposit. During the scrutiny proceedings, the assessee explained that the sources for the same was out of the withdrawals from SBI savings bank account and ICICI bank account. The explanation given by the assessee has not accepted by the A.O. stating that the assessee being a tech-savvy person who is highly conversant in transferring money online is not expected to withdraw the monies in various denominations on different dates even prior to six months and keep it at home and subsequently deposit the lump sum on a single day. During the appellate proceedings, the assessee submitted that the A.O. has erred in concluding the genuine explanation offered by the assessee with regard to cash deposit of Rs.20,80,000 made as not satisfactory ignoring the fact that the assessee being a salaried employee has no other means of income other than his prior withdrawals from his bank account that were subsequently deposited into the bank account. The CIT(A), observed that during the appellate proceedings the

assessee was asked to reconcile the bank statements the deposits vis-à-vis withdrawals in the other bank accounts. The assessee made an attempt to reconcile the same, but could not do it. Further, the assessee has also not furnished any fresh material than furnished before the A.O. to substantiate his claim of explaining the source for the cash deposits into the bank account. Accordingly, the CIT(A) upheld the view taken by the Assessing Officer.

3.3 Against the same, the assessee went in appeal before the Tribunal. The Tribunal vide its order dated 15.03.2018, restored the matter back to the file of the A.O. with following observations:-

“I have considered the rival submissions. I find that only dispute is regarding explanation of assessee in respect of source of cash deposit of Rs.20.80 lakh on 03.11.2012 in ICICI Bank. The finding of CIT(A) is this that the assessee has made an attempt to reconcile the cash withdrawals and cash deposits but could not do it. But there is no comment about this document which is available on page no.10 of the paper book which is a certificate of CA and as per the certificate given by the assessee in the paper book, this document was also made available before the AO and CIT(A) both. Hence I feel it proper to restore the matter back to the file of CIT(A) for fresh decision after examining this document and even if he is not satisfied with this, he should give reasoning for rejecting this document as reconciliation of cash withdrawals and cash deposits. The CIT(A) should pass necessary order as per law in the light of above discussion after providing adequate opportunity of being heard to both sides.”

3.4 In the second round of appeal before the CIT(A) as per the order of the Tribunal, the assessee along with his wife explained that there were certain peculiar circumstances, which necessitated the exercise of cash withdrawals and subsequent re-deposits over the relevant period. Attention was invited towards the admission documents / formalities completed during the period, as they were attempting to secure medical admission of their son, which was stated to be not ultimately materialize. The assessee contended before the CIT(A) by placing copies of the admission letter / DDs etc. drawn towards admission formalities, that due to this fact that the assessee was constrained to redeposit the impugned sums in his ICICI bank account. The assessee further submitted that there was no basis for rejecting its explanation as there was no contrary or corroborative evidence before the AO to point out towards other undisclosed sources of income, apart from assessee's regular salary income. The CIT(A) observed that as per the CA's certificate it is apparent that the deposit of Rs.20,80,000 has been made on 03.11.2012. The prior cash withdrawals during the period 09.06.2012 to 10.10.2012 works out to Rs.34.60 lakh, which includes this amount of Rs.20.80 lakh. The immediate proximate prior withdrawals before the deposit are Rs.8 lakh on 10.10.2012, Rs.2 lakh on 08.09.2012, Rs.3.5 lakh on 14.08.2012, Rs.11 lakh on 14.08.2012. The other amounts of Rs.4.10 lakh on 10.06.2012, Rs.3.50 lakh on 09.06.2012 and Rs.2.50 lakh on 09.06.2012 are seen to pertain to the period June 2012. Accordingly the CIT(A) restricted the addition of Rs.20.80 lakh to Rs.10.10 lakh

(inclusive of Rs.4.10 lakh on 10.06.2012 + Rs.3.50 lakh on 09.06.2012 + Rs.2.50 lakh on 09.06.2012, pertains to the cash transactions / withdrawals made as far back as June 2012, which remain more or less unexplained either in terms of relatability to the cash deposits made as late as 03.11.2012 as also due to absence of any evidentiary support to explain its specific sources / or application between the protracted period of June 2012 to November 2012, the date on which the final impugned cash deposit was made.

4. Aggrieved by the order of the CIT(A), the assessee once again is in appeal before the Tribunal. The learned AR submitted that the amount deposited to bank account on various dates were the earlier withdrawals from banks, hence, it should be considered as properly explained by the assessee. The learned DR relied on the order of the CIT(A) and submitted that the assessee has not properly reconciled the withdrawals from the banks as used for the purpose of redeposit to bank account. According to the learned DR, the withdrawals made by the assessee on various dates for specific purpose is not available to the assessee to redeposit with bank. Further, it was stated that there was long time gap between the withdrawals and redeposit to bank account and hence it cannot be considered as source of deposits into bank account.

5. I have heard the rival submissions and perused the material on record. In the present case, the assessee has deposited a sum of Rs.25.47 lakh into assessee's bank account with SBI Indiranagar Branch and ICICI Bank. Schedule of the

transactions made with the said banks from 09.06.2012 to 03.11.2012 is as follows:-

Bank Name	Account No.	Date	Amount withdrawn	Amount deposited
SBI	10447408042	09.06.2012	2,50,000	--
SBI	10447408042	10.06.2012	4,10,000	--
SBI	10447408042	27.06.2012	--	4,67,000
SBI	10447408042	26.07.2012	4,50,000	--
SBI	10447408042	14.08.2012	3,50,000	--
ICICI	16901006061	14.08.2012	11,00,000	--
ICICI	16901006061	08.09.2012	2,00,000	--
SBI	10447408042	10.10.2012	8,00,000	--
ICICI	16901509902	03.11.2012	--	20,00,000

5.1 The CIT(A) accepted only a sum of Rs.10.70 lakh as available to the assessee to redeposit into the bank account and for the balance amount of Rs.10.10 lakh, he confirmed the addition. It was the plea of the assessee that the assessee has withdrawn the money for the admission of his son in a medical college, for which the assessee has also produced evidence like copies of admission letter, demand draft etc. before the CIT(A). Thus, it was explained by the assessee that the amount was withdrawn for the admission of his son in a medical college. Since the admission was not materialized, the assessee has redeposited the amount to the bank. These facts were not disputed by the department. However, according to the CIT(A), the withdrawals were made in June 2012 and the assessee has deposited the same into the bank account in November 2012. There was a longtime gap ranging from June to November, the CIT(A) has given relief only to the extent of Rs.10.70 lakh. However, the department has no material to show that the

earlier withdrawals made by the assessee has been spent for any specific purposes and not the said amount available with the assessee to redeposit into the bank account. There is also no evidence that the assessee has made withdrawals on various dates for any other purposes than the admission of assessee's son in a medical college. In such circumstances, it cannot be said that the withdrawals have not been utilized to redeposit with the bank account. Therefore, it has to be presumed that the assessee has withdrawn the cash and the same remained to be unutilized for one reason or the other, and the cash remained with the assessee. In such circumstances, due credit has to be given for such withdrawal of cash by the assessee. In my opinion, In my opinion, similar view was taken by the Cochin Bench of the Tribunal in the case of Sri.Mathew Philip v. ITO [ITA No.443/Coch/2019 – order dated 29.11.2019] wherein it was held as under:-

“10. We have heard the rival submissions and perused the material on record. In the present case, the dispute is with regard to cash deposit of Rs.32.5 lakhs into the various bank accounts of the assessee. The main plea of the assessee is that the assessee had withdrawn cash of Rs.50 lakhs on 26/09/2014. The assessee had withdrawn cash on various dates at Rs.68 lakhs as narrated in para 5 of this order.

10.1 These amounts were redeposited into Bank accounts on various dates as follows: 02/04/2014 Rs. 3,00,000/- 27/08/2014 Rs. 1,50,000/- 26/09/2014 Rs.50,00,000/-

11. The Assessing Officer has given credit of Rs.23.50 lakhs towards cash in hand for depositing it into Bank account of the assessee. The Assessing Officer treated Rs.28.5 lakhs as unexplained sources. Thus, he treated the following amounts as unexplained cash deposits of the

assessee: Rs. 3 lakhs Rs. 1 lakh Rs.28.5 lakhs Total: Rs.32.5 lakhs 11.1 The assessee explained that during the assessment year 2012-13, the assessee had an ailment of cancer and he could not attend to business and financial matters and kept the cash withdrawn from Bank on 31/12/2013 for medical treatment and other expenses and deposited the amount in Bank only on 26/09/2014. In support of his claim, the assessee has produced discharge summary dated 06/11/2013 from Lourde Hospital, Ernakulam before AO. He has also produced CT Scan report dated 11/07/2013 which is not disputed by the lower authorities. The Assessing Officer has not accepted the contention of the assessee that he has kept the cash idly in his hands on the reason that he has not filed the wealth tax return showing the cash in hand. The Assessing Officer has not doubted the withdrawal of cash. However, the fact is that the assessee has withdrawn cash of Rs.50 lakhs on 31/12/2013. There is no evidence brought on record to show that these withdrawals have been used by the assessee or deposited by the assessee in any other Bank. It cannot be said that these withdrawals made from the Bank account were used for household expenses or any other investment. In such circumstances, it cannot be disputed that the withdrawals have been used for redeposit into the Bank account of the assessee. In other words, the Assessing Officer has not disputed the existence of Bank accounts and withdrawal from the same. The earlier withdrawal of Rs.50 lakhs from the Bank account on 31/12/2013 or withdrawal from various Bank accounts on different dates is not disputed. The assessee might have kept the cash withdrawals with him and redeposited into various Bank accounts on a later date. It is quite possible that the assessee might have withdrawn the cash for some purpose but the same remains to be utilized for one reason or the other and the cash continues to be remained with him. Sometimes it may also happen that the cash withdrawals from Bank accounts continues to remain as cash balance with the assessee even for many months and sometimes cash withdrawn is utilized on the same day. All these probable aspects of the matter cannot simply be ignored or brushed aside but the fact remains that the cash has been withdrawn from the Bank and that is not at all disputed. In view of this, the explanation of the assessee

deserves to be accepted, unless contrary is brought on record which has not been done in this case. Considering the totality of the facts and circumstances of the case and in view of the discussions above, the cash deposits made by the assessee on various dates should be reasonably presumed that it is from earlier withdrawals made by the assessee on various dates. Accordingly, we delete the entire addition of Rs.32.5 lakhs made by the Assessing Officer.”

5.2 In view of the above, I am inclined to delete the impugned addition.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 19th day of February, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Bangalore ; Dated : 19th February, 2020.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-5, Bengaluru.
4. The Pr.CIT-5, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore