

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-1": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 7136/Del/2019
(Assessment Year: 2011-12)

Rajan Nagpal, IC/133, NIT, Faridabad, Haryana PAN: AELPN9330B (Appellant)	Vs.	ITO, Ward-2(2), Faridabad (Respondent)
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Assessee by :	Shri R. P. Mall, Adv
Revenue by:	Shri R. K. Gupta, Sr. DR
Date of Hearing	04/11/2020
Date of pronouncement	25/11/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A), Faridabad dated 28.06.2019 for the AY 2011-12, wherein, appeal of the assessee was partly allowed.
2. The assessee has raised the following grounds of appeal:-
 - "1. *That, the Ld. CIT(A) has erred in law as well as on facts in not appreciating that assessment proceedings u/s 147 were bad in law and required to be quashed as the same is contrary to the provisions laid down by the legislature.*
 2. *That the Ld. CIT (A) has erred in law as well as on facts in confirming the assessment order and failed to appreciate that assessment made u/s 144/147 by Ld. AO is bad in law because he has initiated proceedings u/s 147 merely on the basis of information available with Department and did not apply his mind or enquired to satisfy himself to form reasons to believe that income of the assessee has escaped assessment.*
 3. *That, the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 5,14,000/- u/s 69 of the Act on account of unexplained source of cash deposit and that too by recording incorrect facts and findings and without observing the principles of natural justice.*

4. *That, the Ld. CIT(A) has erred in law as well as on facts in confirming the addition of Rs. 5,14,000/- by treating it as alleged unexplained cash deposits is bad in law and against the facts and circumstances of the case and without observing the principles of natural justice.*
5. *That, the Ld. CIT(A) has erred in law as well as on facts in appreciating that the deposit was made out of cash withdrawal from banks or any other means etc.”*
3. The brief facts of the case show that the assessee is an individual. On the basis of AIR information it was found that the assessee has made cash deposit of Rs. 10,49,000/- in his bank account maintained with Laxmi Vilas Bank Ltd during the financial year 2010-11 therefore, notice u/s 148 was issued on 26.03.2018. The assessee did not file any return of income and did not attend the notice for reopening. Consequently, show cause notice was issued to tax the above sum as income of the assessee. The assessee did not comply with the same and therefore, the Id AO passed an assessment order u/s 144 of the Act. The Id AO further obtained the bank statement u/s 133(6) from the bank itself. Accordingly, the addition of Rs. 1049000/- was made and the income of the assessee was assessed u/s 144 for order dated 15.12.2018 of Rs. 120330/-.
4. The assessee preferred an appeal wherein the Id CIT(A) granted him the relief of Rs. 535000/- as it was part of amount withdrawn of Rs. 550000/- from the bank account of the assessee on 04.03.2011. Accordingly, for the balance amount, he confirmed the addition of Rs. 514000/- u/s 69A of the Act. The assessee aggrieved with the same has preferred this appeal.
5. The Id AR submitted that the assessee has filed his return of income on 27.03.2012 declaring total income of Rs. 154330/-. He further referred to the bank account of the assessee with Laxmi Vilas Bank Ltd and also giving the source of bank deposit in the above bank account. It was stated that the assessee has submitted the cash flow statement before the Id CIT(A). He submitted that before the Id CIT(A) item wise details of deposits and its source was submitted. He referred to page No. 18 of the paper book wherein, the source of cash deposit has been explained. He submitted that merely because the cash has been deposited after his

withdrawal after certain time gap but merely on that basis it cannot be held to be the income of the assessee. He also pressed on the issues of reopening of the assessment also.

6. Id DR relied upon the orders of the Id AO & CIT(A).
7. We have carefully considered the rival contentions and find that there is no infirmity in action u/s 148 of the Act wherein, there was a requisite information and the Id AO has applied his mind and found that there is reason to believe for the reopening of the assessment as according to AIR information assessee has deposited Rs 1049000/- in his bank account with Laxmi Vilas Bank Ltd . Thus, There is no infirmity in the reopening of the assessment. Accordingly, ground No. 1 and 2 of the appeal are dismissed.
8. Ground No. 3 is on the merits of the issue. Assessee has submitted a detailed cash flow statement which is also reproduced by the Id CIT(A) at page No. 4 and 5 of his order. On careful analysis of the above statement it is apparent that a sum of Rs. 14000/- deposited on 13.09.2010, Rs. 14000/- once again on 13.09.2010 and Rs. 99000/- on 15.09.2010 were part of amount withdrawn by assessee of Rs. 150000/- from the same bank account on 15.07.2010. Therefore, the addition with respect to Rs. 127000/- on these three dates are explained by the assessee as withdrawal of cash on earlier dates. Further, Rs. 1 lakh deposited by the assessee on 28.09.2010 was also explained that out of sum of Rs. 150000/- withdrawn on 15.07.2010(already considered Rs 127000/- out of above for credit) , Rs. 20,000/- withdrawn on 19.07.2010 and Rs. 52,000/- were withdrawn on 20.07.2010 from the same bank account. Accordingly, the source of deposit of Rs. 95,000/- out of the above sum is properly explained by the assessee. Further certain miscellaneous amount were also deposited by the assessee in the month of October and November 2010 which assessee tried to explain that the same was withdrawn on 16.09.2010 amounting to Rs. 57000/-. Accordingly, Rs. 52,000/- deposited by the assessee on various dates in the month of October and November in small amounts cannot be taxed as the source of funds is available. Further in the month of January and February the

assessee deposited Rs. 14,000/- and 15,000/- respectively for which the assessee explained withdrawal in cash of Rs. 41,000/- on 16.12.2010. Therefore, the above sum of Rs. 29,000/- has also been explained by the assessee. On 08.03.2011 the assessee has deposited Rs. 2 lakhs in cash wherein it was stated that same was available with the assessee in the form of withdrawal from the bank. However, withdrawal of cash from the bank to the extent of only Rs. 11,000/- out of withdrawal made of Rs. 41,000/- on 16.12.2010 is available and withdrawal of Rs. 15,000/- out of the cash withdrawn of Rs. 550000/- on 04.03.2011 is available to the assessee. Therefore, out of the above Rs. 2 lakhs the source of Rs. 26,000/- has been explained by the assessee whereas the balance of Rs. 174,000/- remains unexplained. In view of the above analysis, we direct the Id AO to delete the addition of Rs. 340,000/- out of the addition of Rs. 514000/- sustained by the Id CIT (A) as the source to the above deposit is explained by the assessee out of the withdrawal of cash from the same bank account which was not found to have been utilized by the assessee for any other purposes. Merely some time lag between the withdrawal and deposit without any contrary evidence that such withdrawal has been used by assessee for some other purposes, cannot go against the assessee. Ld CIT (A) has used this proposition to confirm the above addition. Accordingly, we direct Id AO to delte the addition of Rs 340000/- out of Rs 514000/- sustained by CIT (A). Thus, This ground of appeal of the assessee is partly allowed.

9. In the result the appeal of the assessee is partly allowed.

Order pronounced in the open court on 25/11/2020.

Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 25/11/2020
A K Keot

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1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	25.11.2020
Date on which the typed draft is placed before the dictating member	25.11.2020
Date on which the typed draft is placed before the other member	25.11.2020
Date on which the approved draft comes to the Sr. PS/ PS	25.11.2020
Date on which the fair order is placed before the dictating member for pronouncement	25.11.2020
Date on which the fair order comes back to the Sr. PS/ PS	25.11.2020
Date on which the final order is uploaded on the website of ITAT	25.11.2020
date on which the file goes to the Bench Clerk	25.11.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	