

**INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH SMC: DEHRADUN
(Through Video Conferencing)**

**BEFORE
SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 35/DDN/2019
Asstt. Year 2012-13

Kultar Singh, 134, Bhagar Singh Chowk, Ward No. 6, Kichha, Udham Singh Nagar, Uttarakhand. PAN DIRPS3988H	Vs.	ITO-1(4) Rudrapur
(Appellant)		(Respondent)

Assessee by:	Shri Vimal Kishore, CA
Department by :	Shri A.S. Rana, Sr. DR
Date of Hearing	18/12/2020
Date of pronouncement	31/12/2020

ORDER

PER R.K. PANDA, AM

This appeal filed by the assessee is directed against the order dated 28th February 2019 of the Ld. CIT-(A)- Haldwani relating to assessment year 2012-13.

2. Although a number of grounds have been raised by the assessee these all relate to the order of the Ld. CIT(A) in confirming the addition of Rs. 21,50,000/- made by the AO on account of unexplained cash deposit in the saving bank account of the assessee.

3. Facts of the case, in brief , are that the assessee is an individual. As per the AIR information that cash deposit of more than Rs. 10 lacs has been made in the Saving Bank Account , the AO issued a letter on 24th January 2014 and 21st February, 2014 to the assessee for verification. Since there was no compliance from the side of the assessee the case was reopened by issuing notice u/s 148 of the Act. Since there was no compliance from the side of the assessee, the AO completed the assessment u/s 144/147 determining the total income of the assessee at Rs. 21,50,000/-.

4. In appeal the Ld. CIT(A) confirmed the addition made by the AO by observing as under :-

“Now the basic facts of the case are that in Appellant's Account Number 1578442365 of Central Bank of India, Rs. 55,00,000/- were deposited by clearing being amount received as sale of agricultural land, same detailed below-

Date	Cheque No.	Amount Deposited
20.10.2009	182776	20,00,000/-
17.05.2010	182779	30,00,000/-
09.08.2010	182785	5,00,000/-

Later the Appellant withdrew Rs, 32,00,000/- from bank as cash in different dates as below' -

Date	Cheque No.	Amount Deposited
09.08.2010	035688	8,00,000/-
10.08.2010	035690	8,00,000/-
11.08.2010	035691	8,00,000/-
12.08.2010	035693	8,00,000/-

Appellant submitted that he had withdrawn these amounts for purchase of land but due to reasons known to him the deal was cancelled and AR explained that out of these cash amounting Rs. 32,00,000/-, Appellant spendd Rs. 10,50,000/- towards repair of home and carrying out agricultural processes and redeposited a sum of Rs. 21,50,000/- to his bank account as below :-

Date	Amount Deposited
11.04.2011	49,000/-
15.04.2011	49,000/-
18.04.2011	1,00,000/-
20.04.2011	49,000/-
21.04.2011	3,00,000/-
03.05.2011	9,51,000/-
05.05.2011	2,51,000/-
19.05.2011	4,01,000/-

I have perused the case laws cited in these case laws the issue is that the assessee has been depositing the "same amount" or nearby amount on a particular date but in the Appellant's case he is depositing amounts in various round figures which has been listed above and is claiming that these deposits, which have absolutely no nexus with the withdrawals, have been deposited and the Appellant is claiming that these various deposits are out of the withdrawals. If a prudent person has made a withdrawal of Rs. 32 Lacs in four installments between 09.08.2010 to 12.08.2010 then if the required purpose is not met then such prudent person will deposit the amount in one installment or two. But in this case after 08 months deposits of small amounts are being made as listed above and effort is being made to co-relate these with withdrawals made 08 months ago. The facts of the present case are clearly distinguishable from the facts of the case laws relied and do not rescue the assessee since he has in the first place failed to establish the facts and circumstances of withdrawals and then re-deposit in small amounts in round figures 08 months later. Thus the Appellant has failed to explain the source of deposit as noted by the A.O and has not done the same before me as well. Accordingly the present Appeal fails."

5. Aggrieved with such order of the Ld. CIT(A) the assessee is in appeal before the Tribunal.

5.1 Ld. Counsel for the assessee strongly challenged the order of the Ld. CIT(A) confirming the addition made by the AO. He

submitted that the assessee had withdrawn the money from the bank account for purchase of certain properties. However since the deal did not materialise the assessee subsequently redeposited the same amount in the bank. He submitted that the assessee is an agriculturist and is deaf and dumb and has no other source of income. The amount so deposited earlier in the bank account relates to the amount received from sale of agricultural land. Relying on various decisions he submitted that it is not mandatory under any law of land that an individual has to deposit the amount of cash in hand in the same manner as the cash was withdrawn. He submitted that the amount deposited in the instant case is less than the amount originally withdrawn. He submitted that the assessee has duly explained the cash deposits made in the bank account and the Ld. CIT(A) without considering the submissions made by the assessee has sustained the addition which is not justified.

6. Ld. DR on the other hand heavily relied on the order of the Ld. CIT(A).

6.1 We have considered the rival arguments made by both the sides, perused the orders of the AO and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs. 21,50,000/- to the total income of the assessee in the order passed u/s 144/147 on the ground that the assessee could not explain the source of deposits in the bank account and the bank statement was also never filed before him. We find the Ld. CIT(A) sustained the addition, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that the amount from the bank were withdrawn for purchase of land but due to certain reasons the deal could not materialise and therefore the assessee redeposited the amount in the bank on different dates. It is also his submission that the amount deposited in the bank account is less than the amount withdrawn earlier and merely because there is a time gap between the amount withdrawn from the bank and subsequent deposits, no adverse view should be taken. We find the assessment in this case was completed u/s 144/147 due to non compliance from the side of the assessee. Although the assessee has stated before the

Ld. CIT(A) that the amount was withdrawn from the bank for purchase of certain land which did not materialise for which the assessee subsequently redeposited the amount in the bank account out of the earlier withdrawals, however, no such evidence was furnished before us to substantiate the arguments advanced by the Ld. Counsel for the assessee that there was certain negotiations going on for purchase of land for which the amounts were withdrawn. Ld. Counsel for the assessee submitted that given an opportunity, the assessee shall substantiate before the AO by producing the concerned persons with whom such deal/negotiation was going on and also produce necessary evidences . Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the AO with a direction to give an opportunity to the assessee to substantiate his case by producing necessary evidence that he was in process of purchasing certain land and if necessary the AO may direct the assessee to produce the parties with whom such negotiations was going on. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The

grounds raised by the assessee are accordingly allowed for statistical purposes.

In the result the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 31st December, 2020.

sd/-

sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**(R.K. PANDA)
ACCOUNTANT MEMBER**

Dated: 31/12/2020

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi