

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

(through web-based video conferencing platform)

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER AND
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

**I.T.A. No. 157/Ind/2021
(निर्धारण वर्ष / Assessment Year: 2012-13)**

Shri Naveen Kumar Shrivastava UG-37, Trade Centre, 18 South Tukoganj, Indore, MP	बनाम/ Vs.	Income Tax Officer 1(1), Ujjain
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : CGLPS9845N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Yash Kukreja, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Amit Soni, Sr. DR

सुनवाई की तारीख / Date of Hearing	02/03/2022
घोषणा की तारीख /Date of Pronouncement	09/03/2022

□ देश/O R D E R

PER BHAGIRATH MAL BIYANI, A.M.:

This appeal filed by the assessee is directed against the order of learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)" in short] dated 14.06.2021, arising out of the assessment-order dated 27.12.2019 passed u/s 143(3) of the Income-tax Act, 1961 ["the Act" in short] by the Income-Tax Officer 1(1), Ujjain ["Ld. AO" in short].

2. The brief facts of the case, as culled out from the record, are that the Revenue got information that the assessee had deposited a total sum of Rs. 11,19,200/- into his bank account during the Previous Year 2011-12, relevant

to the Assessment Year 2012-13 under consideration which represents income chargeable to tax and has escaped assessment. Therefore, the Ld. AO issued a notice u/s 148 of the Act on 28.03.2019; in response to which, the assessee filed his return declaring income of Rs. 1,32,950/-. Thereafter, the statutory notices u/s 142(1) of the Act were issued from time to time. During assessment proceedings, the assessee made submissions to justify the sources of deposits made in bank account. However, the Ld. AO was not satisfied and passed assessment-order after treating the deposits of Rs. 11,19,200/- as unexplained income of the assessee.

3. Aggrieved by the order passed by Ld. AO, an appeal was preferred by the assessee before the Ld. CIT(A), who sustained the addition made by the Ld. AO and dismissed the appeal.

4. Still being aggrieved by the order of Ld. CIT(A), the assessee is now in appeal before us on the following grounds:-

"1. That on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in confirming the erroneous additions made by the Ld. AO to the tune of Rs. 11,19,200/- u/s 68 of the Income Tax Act, 1961.

2. That on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not allowing the assessee the benefit of peak credit, and rejected the claim of the assessee without properly appreciating the facts of the case and the case laws submitted before him.

3. That on the facts and circumstances of the case and in law the re-assessment order passed under Section 143(3) r.w.s. 147 is erroneous as the reasons recorded were based on borrowed satisfaction.

4. The appellant craves leave to add, amend, modify, or withdraw any of the grounds of appeals at the time of hearing."

5. We have heard both sides at length and proceed to decide these Grounds as follows.

6. **Ground No. 3:**

6.1. First of all, we deal with Ground No.3. In this Ground, the assessee has claimed that the assessment-order passed by Ld. AO u/s 147 read with 143(3) is erroneous as the reasons recorded were based on borrowed satisfaction.

6.2 The Ld. CIT(A) has dealt with this ground as under:

“4.1. The appellant has further argued that the order passed u/s 143(3) r.w.s 147 was merely based on the AIR information and was not based on independent application of mind by the AO on fresh information within his possession. The appellant therefore contends that the order passed u/s 143(3) r.w.s. 147 is bad in law and should be quashed.

5. The submissions of the appellant have been carefully considered. Through his submissions the appellant has challenged the very order passed u/s 143(3) r.w.s. 147. However, this issue has neither been raised in the grounds of appeal nor has any additional ground been filed in this respect during appeal proceedings. Therefore, the only issue to be adjudicated in this case is regarding the addition of Rs 11,19,200 held to be appellant's unexplained income u/s 69A. Be that as it may, it is seen that the AO has properly analysed the information in his possession which was the fact of deposit of cash in the bank account of the appellant. The appellant is not engaged in any business and draws income from salary and pension. It is incumbent on the appellant to explain the source of cash in his hands for deposit in his bank account. The fact of cash deposit is not doubted, the only question is the source in the hands of the appellant. The appellant perhaps seeks to challenge the reopening. It is to be noted that the appellant has not asked for reasons for reopening from the AO, nor has he objected to the same. In the light of this, it is mere conjecture on part of the appellant that the AO has not applied his mind. Further, the provisions of Expl 2(a) and 2(ca) to Sec 147, as under, would apply to the facts of this case:

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person

in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;

(b)

(ba)...

(c)....

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;"

It is evident from the provisions of sec 147 as above, the AO was well within his rights to reopen the assessment and make an addition based on AIR information. The appellant is admittedly drawing only salary and pension from the Govt. It naturally stands to reason that there is no cause for the appellant to deposit such a large sum of cash in his bank account. Be that as it may, it is seen that the appellant has not formally raised this ground in the present appeal and therefore the argument of the appellant is to be rejected based on the discussion above."

6.3 We find that the Ld. CIT(A) has given cogent finding and reasoning on this issue and thereafter rejected the challenge made by assessee. We do not find any infirmity in the order of Ld. CIT(A) and, therefore, this ground of assessee is dismissed.

7. **Ground No. 1:**

7.1 The issue involved in this Ground is the addition of Rs. 11,19,200/- made by Ld. AO treating the deposits in bank account as unexplained income.

7.2 Facts *qua* this issue are such that during the previous year 2011-12 relevant to the assessment year 2012-13, the assessee made an aggregate deposit of Rs. 11,19,200/- on various dates in his bank account with State

Bank of India. During assessment-proceeding, when the Ld. AO asked the assessee to explain the source of deposits, the assessee submitted a cash flow statement and tried to convince the Ld. AO that he had sufficient funds to make the impugned deposits. However, the Ld. AO was not satisfied with the submissions of assessee and made an addition of Rs. 11,19,200/- in total income by observing as under:

"As per return, the assessee has derived income from Salary & pension from Army during the year under consideration. The assessee was asked to explain the cash deposit in saving bank account of Rs. 1119200/-. In this regard the assessee has stated that "The assessee is retired Army officer and working as Sub inspector and earned Salary during the year under consideration. The assessee has also received Pension from Indian Army of Rs. 153922/- during the year under consideration. The assessee has deposited entire 1119200/- from his withdrawal from bank on various dates during the year under consideration. The cash flow statement showing availability of cash in hand for the year under consideration is enclosed. That after perusal of cash flow statement, your honor will find that assessee has cash in hand at time of deposit during the year under consideration."

The reply of the assessee is duly considered.

On perusal of bank statement of State Bank of India A/c No. 10142169289, it is seen that the major amount deposited in cash by the assessee on 25.07.2011 at Rs. 1,75,000/- & on 04.11.2011 at Rs. 8,00,000/- & on 19.11.2011 at Rs. 1,00,000/- and small amount on various dates. The assessee was asked to explain the cash deposit, but the assessee has not explained the same, the assessee has produced only cash flow chart. As the assessee was having source of income only from salary & pension and the assessee has not produced any kind of evidence regarding cash deposit. As, the assessee not furnished any documents to substantiate the source of cash deposits amount to Rs. 11,19,200/- in her saving bank account of above mentioned bank. Therefore the same is being added to total income of the assessee as unexplained income of the assessee."

7.3 During first appellate proceeding, the Ld. CIT(A) has sustained this addition of Rs. 11,19,200/- by observing as under:-

“6. On the merits of the case, the appellant has stated that the AO has overlooked his explanation and has not made any independent enquiries. This argument of the appellant is side stepping the issue. The fact is that the appellant has deposited cash in his bank account. Admittedly the appellant derives income from salary only which is not paid in cash. It is therefore incumbent on the appellant to disclose the source of cash in his hands, else the deeming provisions of sec 69A would apply. It is precisely for this reason that deeming provisions exist in the IT Act. The appellant is admittedly the owner of money which he deposited in his bank account. He furnished an explanation to the AO, which was not acceptable and therefore the amount of cash deposited was added under the deeming provision. The AO has not mentioned the deeming provision under which he has made the addition, but it is obvious that such cash deposit in the hands of a salary earner could be added only u/s 69A. The appellant has presumed the addition to be u/s 68, which is an erroneous presumption. Now coming to the explanation of the appellant on merits, the submissions made before the AO have been reiterated in the present appeal. The simple explanation is in the form of a cash flow which has been reproduced above in this order. It is the contention of the appellant that he has been withdrawing money from his bank account at regular times, and the surplus from the same is the source of deposit. It is straightaway observed that the appellant has claimed an opening cash balance of Rs. 7,90,000. The withdrawals made by the appellant from his bank account are small amounts through ATM withdrawals. He is declaring only Rs. 10,000 per month as household expenses and the surplus is claimed to be the source for deposit of cash. This explanation is simply not acceptable. The contention of household expenditure of only Rs. 10,000 per month, stretches the imagination too far. This works out to about Rs. 300 per day which is lower than the minimum wage. There being no evidence for the same, it is apparent that the cash flow is an afterthought to justify the cash deposit. Similarly, there is no evidence of the opening balance, nor any explanation as to the source of the same. There is absolutely no explanation from the appellant as to the source of the

so-called opening balance of cash. The whole so called cash flow statement is merely an afterthought to somehow explain the source of cash. It is evident that the appellant has no explanation worth its while as to the source of cash in his hands, he admittedly being a salary earner. The long and short of the explanation is that the appellant for some strange reason is in the habit of withdrawing small amounts from the ATM, storing the unused portion with him in cash over the years and then one fine day, deposits the same in his bank account. This stretches one's imagination too far and is simply untenable."

7.4 Before us, the Ld. AR relied upon the submissions made by the assessee before lower authorities. The assessee is a retired army officer and working as sub-inspector and earning income from salary and pension only and there is no other source of income available to the assessee. Regarding deposits in bank account, it is the submission that those deposits have been made out of the funds saved from salary and pension income which are withdrawn / re-deposited time to time from / into bank account. The Ld. AR pleaded that during assessment proceeding, the assessee has submitted a cash flow statement to Ld. AO which is reproduced by Ld. CIT(A) in Para No. 4 of the appeal-order. The Ld. AR further submitted that the lower authorities have not controverted this cash flow statement, they have only drawn their own inferences based on conjectures and surmises. The Ld. AR argued that the cash flow statement clearly explains the sources of deposits made in the bank account and therefore the deposits made in bank account stand explained fully and no adverse view needs to be taken. Hence the Ld. AR prayed for deletion of the addition.

7.5 Per contra, the Ld. DR strongly supported the orders of lower authorities. Referring to the cash flow statement, the Ld. DR submitted that first of all the assessee has shown an opening cash balance of Rs. 7,90,000/- which is quite huge and unbelievable. Going further, the Ld. DR submitted

that it is true that the assessee has made cash withdrawals from the bank account but those cash deposits are not of big amounts. The Ld. DR further emphasized that the assessee has shown about Rs. 10,000/- per month for household expenses, which comes to Rs. 300/- per day only which again is unbelievable. Thus, the Ld. DR contended that the assessee was not having sufficient sources to explain the cash deposits made in bank account and hence the addition made by Ld. AO is in order, which deserves to be upheld.

7.6 We have considered rival contentions and submission of both sides and also perused the material available on record. On a careful consideration, we firstly observe that the assessee is a retired army officer and thereafter working as sub-inspector. The assessee is earning income from pension and salary only and there is no other source of income available to the assessee. Thereafter, we also observe that the assessee is not engaged in any kind of business or profession and therefore not required to maintain books of account or prepare Balance-Sheet. Hence the assessee is justified in preparing a cash flow statement and submitting the same to Ld. AO. We have perused this cash flow statement and observed that the statement clearly depicts the opening balance of cash, the withdrawals made from the bank during the year, the deposits made in the bank during the year and the closing balance of cash. On perusal of the assessment-order, we observe that the Ld. AO has not controverted this cash flow statement, instead the Ld. AO has simply stated "*The assessee was asked to explain the cash deposit, but the assessee has not explained the same, the assessee has produced only cash flow chart.*" We observe that the cash flow statement submitted by the assessee embodies the deposits made by assessee in his bank account on various dates and therefore the Ld. AO is not correct in concluding that the assessee has not explained the cash deposits. On perusal of the appeal-order, we observe that the Ld. CIT(A) has drawn his own

inferences based on conjectures and surmises rather than controverting the cash flow statement in concrete terms. We observe that the Ld. CIT(A) has stated that the appellant has claimed an opening cash balance of Rs. 7,90,000/- and the withdrawals made by the appellant from his bank account are small amounts through ATM withdrawals. When we look into the cash flow statement, we observe that the assessee has made a single cash withdrawal of Rs. 7,25,000/- on 21.12.2011, which shows that the assessee is making high cash withdrawals too, though there are small withdrawals of course as stated by Ld. CIT(A). Thus, to say that the assessee is making only small withdrawals, is baseless. We also note from the cash flow statement that the assessee has shown a closing cash balance of Rs. 9,22,680/- which supports the fact that the assessee is keeping high cash balance as well. Another observation made by Ld. CIT(A) and emphasized by Ld. DR too that the assessee is declaring only Rs. 10,000/- per month and the household expenses cannot be as low as Rs. 300/- per day, is also a self-drawn inference for the sake of argument and does not have much substance unless the lower authorities would have found substantial household expenditure of the assessee on the basis of some material. With these facts on record, we observe that the assessee has submitted cash flow statement wherein the sources of deposits in bank account are well explained and this statement is not conclusively and adequately rebutted by the lower authorities. Hence we are inclined to hold that the assessee has explained the source of deposits of Rs. 11,19,200/- and the same deserves to be accepted. Therefore, we allow this Ground of assessee.

8. **Ground No. 2:**

8.1 In this Ground, the assessee has submitted that even if any addition in respect of bank deposits is required to be made, the benefit of peak credit must be given.

8.2 Since we have already decided Ground No. 1 in favour of the assessee and deleted the entire addition of Rs. 11,19,200/-, this ground does not survive. Hence this ground is dismissed.

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

Order pronounced in the Court on 09/03/2022 at Ahmedabad.

Sd/-

**(MAHAVIR PRASAD)
JUDICIAL MEMBER**

Ahmedabad: Dated 09/03/2022

**E*

Sd/-

**(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Indore,
6. गार्ड फाईल /Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Indore