

**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. 221/Ind/2021**

(निर्धारण वर्ष / Assessment Year: 2010-11)

<b>Shri Syed Sohaib Ali, H. No. Ahmedabad Palace, Kohe Fiza, Bhopal (MP)</b>	<b>बनाम/ Vs.</b>	<b>DCIT,1(1), Bhopal</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADHPA4878J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Ashish Goyal Shri N.D. Patwa
प्रत्यर्थी की ओर से /Respondent by :	Shri Amit Soni, Sr. DR

सुनवाई की तारीख / <b>Date of Hearing</b>	04/03/2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	21/03/2022

**आदेश/ORDER**

**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, Delhi [**“Ld. CIT(A)-NFAC” in short**] dated 30/09/2021, which in turn arises out of the assessment-order dated 28/03/2013 passed u/s 143(3) of the Income-tax Act, 1961 [**“the Act” in short**] by the learned DCIT-1(1), Bhopal [**“Ld. AO” in short**].

2. The assessee filed an application for grant of stay, which was registered as SP/01/Ind/2022 and taken up for hearing. In

para No. 4 of the Annexure-A to the stay application, the assessee has also prayed to hear this matter on priority basis. During hearing of stay application, it is observed that the issue involved is simple and the appeal could be heard immediately instead of granting the stay. Both sides agreed to this and therefore the stay application was dismissed and the appeal itself was heard.

3. The brief facts of the case emerging from the record, are such that the assessee filed his return of income on 24.02.2012 showing a total income of Rs. 1,58,900/- with an agricultural income of Rs. 3,85,900/-. The case was taken for scrutiny and the statutory notices u/s 143(2) and 142(1) were issued from time to time. Finally, the Ld. AO completed assessment vide order dated 28.03.2013 u/s 143(3) of the Act after making an addition of Rs. 19,00,000/- u/s 68 of the Act.

4. Aggrieved by the addition of Rs. 19,00,000/- made by Ld. AO, the assessee preferred an appeal to the Ld. CIT(A)-NFAC, who sustained the addition made by the Ld. AO and dismissed the appeal. Still being aggrieved by the order of Ld. CIT(A)-NFAC, the assessee is now in appeal before us on the following grounds:

- 1. The ld. NFAC was not justified in sustaining the assessment order, which is bad-in-law, void-ab-initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.**
- 2. That the ld. NFAC erred in not considering the Additional evidence filed vide application under rule 46A dated 31.03.2016 and confirming the assessment made by ld. AO. The ld. NFAC has not discussed or given any findings on the**

**additional documents filed during the course of appellate proceedings and had simply stated in para 5.2 that “deposits were in respect of the money deposited in the said bank account was given by other persons without any evidence does not has force”.**

- 3. That the ld. NFAC erred in sustaining the addition of Rs.19,00,000/- u/s 68 on account of alleged unexplained credits found in Saving Bank Account without accepting the explanations offered by the assessee.**
- 4. That the ld. CIT(A) erred in sustaining the levying of penal interest u/s 234 A/B and C and further erred in initiating penalty proceedings u/s.271(1)(c) of the IT Act. All the above levy and initiation are bad and unsustainable in law. Hence be deleted.**
- 5. That the appellant craves leave to add, to urge, to alter or to amend any of the ground of the appeal on or before the date of hearing.”**

5. The main grievance of the assessee is the addition of Rs. 19,00,000/- made by Ld. AO u/s 68 of the Act.

6. On perusal of the assessment-order, we find that the Ld. AO has made addition by observing as under:

**“2. In response to the above, Shri Satyajit Chatterjee, CA attended the hearings from time to time and submitted replies to the queries during the course of assessment proceedings. The various aspects of the case were discussed in reference to the written submissions filed which were considered and placed on record.**

**3. Upon perusal of the details filed by the assessee it is seen that there are cash deposits in the bank account of the assessee as follows:**

<b>Date</b>	<b>Mode of Payment</b>	<b>Amount Paid</b>
<b>04.02.2010</b>	<b>Cash</b>	<b>5,00,000</b>
<b>05.02.2010</b>	<b>Cash</b>	<b>5,00,000</b>
<b>27.03.2010</b>	<b>Cash</b>	<b>9,00,000</b>
	<b>Total Amount Paid</b>	<b>19,00,000</b>

**The assessee vide order sheet entry dated 15.03.2013 was show caused regarding the cash deposits in the bank account.**

**The assessee has only furnished the confirmation letter of the payer. No other details like the bank account from which the money was advanced, etc. were furnished. Therefore the source of the money credited through cash deposits in the bank account of the assessee remains unproved. Therefore the amount of Rs. 19,00,000 is treated as unexplained credit in the bank account of the assessee u/s 68 of the I.T. Act, which is disallowed and added to the total income of the assessee.”**

7. During appellate proceedings before Ld. CIT(A)-NFAC, the assessee has submitted “Statement of Facts”, which is reproduced by the Ld. CIT(A)-NFAC in Para No. 2.1 of his appeal-order, as under:

**“2.1. In the statement of fact, the appellant submitted that –**

- (i) The assessee is an individual. The return of income was filed on the 24<sup>th</sup> of February 2012.**
- (ii) The assessee was having bank interest income, apart from the income from Agricultural Activities. All the relevant information was submitted in justification of the income that has been declared. The same has been accepted by the assessing officer also.**
- (iii) In reply to the queries raised during the course of the assessment proceeding, written submission was made on the 15-03-2013. With respect to the bank transactions, the assessee furnished a detailed receipts and payment account, having explained all the transactions that took place in the bank account of the assessee, during the relevant previous year.**
- (iv) During the relevant previous year an aggregate amount of Rs.19,00,000/- were deposited in the bank account on the following dates:-**

<b>Date</b>	<b>Mode of Payment</b>	<b>Amount</b>
<b>04-02-2010</b>	<b>Cash</b>	<b>500000</b>
<b>05-02-2010</b>	<b>Cash</b>	<b>500000</b>

27-03-2010	Cash	900000
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- (v) ***With respect to such deposits and to justify the sources of such deposits, letter of confirmation was submitted, along with the addresses of the said party who gave money to the assessee. A written request was also made before the learned AO that the said person may please be summoned u/s 131 at the cost of the assessee. But the AO made the addition holding that the assessee has submitted the letter of confirmation only but no other details such as copy of bank account from which the money was advanced. The AO did not summon the said party inspite of written request, nor asked for the information she wanted to finally accept the source of money so received by the assessee. It may also be seen that the said person has confirmed to have paid the said money from his own resources in cash and the same were not drawn from the bank account.***
- (vi) ***It may be appreciated that the order has been passed in a haste without making proper inquires and without appreciation of the facts relating to the case.***
- (vii) ***In the circumstances narrated above the order is liable to be quashed.***

The assessee has also made written submission on 17/09/2021 before the Ld. CIT(A)-NFAC, contents of which have been reproduced by the Ld. CIT(A)-NFAC in Para No. 3 of his order. However, the Ld. CIT(A)-NFAC confirmed the action of Ld. AO by observing that the onus to prove the source of cash deposits is upon the assessee, which the assessee has not discharged. The Ld. CIT(A)-NFAC has also relied upon the following decisions:

- (i) M/s Shankar Industries Vs. CIT 114 ITR 489 (Cal) (1978)
- (ii) M/s Precision Finance (P) Ltd. Vs. CIT 208 ITR 465 (Cal) (1994)
- (iii) B.R. Petrochem (P) Ltd. Vs. ITO, Ward-1(1), Chennai, 407 ITR 87 (Mad) (2018)

- (iv) CIT Vs. N.R. Portfolio (P) Ltd. (Delhi) (2014)
- (v) Pr. CIT (Central)-1 Vs. NRA Iron & Steel (P) Ltd. 412 ITR 161 (SC) 2019

8. Before us, the Ld. AR relied upon the submissions made by the assessee before the lower authorities and argued that though the assessee has made adequate submissions, the lower authorities have not dealt with the same lawfully and appropriately and therefore the addition needs be deleted. On the contrary, the Ld. DR relied upon the conclusions taken by the lower authorities and argued that the lower authorities have taken a correct view on the submissions made by the assessee and therefore the addition is validly made, which needs to be upheld.

9. We have considered rival contentions and submission of both sides as also perused the material held on record. On a careful consideration, we observe that the assessee is an individual deriving income from interest and agriculture. The assessee does not have any other source of income. On perusal of the assessment-order, we observe that the assessee's counsel has appeared before the Ld. AO during the course of assessment-proceedings from time to time and made submissions to the queries raised by the Ld. AO. In response to the query of Ld. AO regarding the source of deposits of Rs. 19,00,000/- in the bank account, the assessee has filed a confirmation letter of the payer from whom the money was received and this fact is clearly admitted by Ld. AO in Para No. 4 of the assessment-order. On perusal of the "Statement of Facts"

filed before the Ld. CIT(A)-NFAC in Form No. 35, which is reproduced by Ld. CIT(A)-NFAC in Para No. 2.1 of the appeal-order, we observe that the assessee has profoundly stated that to justify the sources of deposit, letter of confirmation was submitted alongwith the address of the person who gave money to the assessee. Not only this but also the assessee has further stated that a written request was made before the Ld. AO that the said person may be summoned u/s 131 at the cost of the assessee. This "Statement of Facts" forming part of Form 35 is a statutory document, whose contents are duly verified by the assessee as true. It is also noteworthy that the contents of this "Statement of Facts" is not controverted by the revenue at any stage. Thus, we observe that by supplying the name and address of the payer and making a specific request to the Ld. AO to summon the payer u/s 131 and showing willingness to bear the cost to be incurred thereof, the assessee has discharged the primary onus cast upon him. Thereafter, the onus shifted upon the Ld. AO to act upon the request of the assessee and to summon the payer u/s 131. From the records, it is also observed that the Ld. AO has not acted upon the request of the assessee. Thus, having not done that, the Ld. AO cannot find any fault on the part of assessee. Regarding the observation of the Ld. AO that **"The assessee has only furnished the confirmation letter of the payer. No other details like the bank account from which the money was advanced, etc. were furnished"**, it is a trite law that the source of source cannot be asked. The assessee is under obligation to prove the receipt of Rs. 19,00,000/- from the payer only and has no duty

to prove the source available to the payer from which the payer advanced money to the assessee. We further observe that none of the lower authorities have shown any disbelief in the confirmation of account submitted by the assessee. With these facts on record, we observe that the Ld. AO has made an addition of Rs. 19,00,000/- in disregard of the submissions and request of the assessee, which is not appropriate. Hence we are persuaded to hold that the addition of Rs. 19,00,000/- made by the Ld. AO is not valid and deserves to be deleted. Therefore, we delete the addition of Rs. 19,00,000/-. This resolves the grievance of assessee involved in the Ground No. 1 to 3.

10. Ground No. 4 is pre-mature and Ground No. 5 is general in nature. Both of these grounds do not require any adjudication.

**11. In the result, the appeal of the assessee is allowed.**

Order pronounced in the Court on 21/03/2022 at Ahmedabad.

*Sd/-*

**(MAHAVIR PRASAD)  
JUDICIAL MEMBER**

Ahmedabad: Dated 21/03/2022

*\*Bt*

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 प्रतिनिधिअधिकरण अपीलीय आयकर ,/DR,ITAT, Indore,
6. गार्ड फाईल /Guard file.

*Sd/-*

**(BHAGIRATH MAL BIYANI)  
ACCOUNTANT MEMBER**

आदेशानुसार/ BY ORDER,

TRUE COPY

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

1. Date of dictation- ...07.03.2022.....
2. Date on which the typed draft is placed before the Dictating Member  
...07.03.2022/17.03.2022.....  
Other member.... ..
3. Date on which the approved draft comes to the Sr.P.S./P.S. - .....
4. Date on which the fair order is placed before the Dictating Member for Pronouncement ...
5. Date on which the file goes to the Bench Clerk.....
6. Date on which the file goes to the Head Clerk.....
7. The date on which the file goes to the Assistant Registrar for signature on the  
order.....
8. Date of Despatch of the Order.....