

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

**ITA No.1360/Del./2020
(ASSESSMENT YEAR : 2010-11)**

Shri Rajesh Kumar,
C/o Sanjiv Sapra & Associates LLP, CA
C – 763, New Friends Colony,
New Delhi – 110 025.

vs. ITO, Ward 56 (1),
New Delhi.

(PAN : AJGPK8079E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sanjeev Sapra, FCA
REVENUE BY : Shri Om Prakash, Senior DR

Date of Hearing : 21.04.2022
Date of Order : 21.04.2022

ORDER

Aforesaid appeal has been filed by the assessee against the impugned order dated 05.02.2020, passed by the ld. CIT (A)-37, New Delhi for the quantum of assessment passed under section 144 read with section 147 of the Income-tax Act, 1961 (for short 'the Act') for the assessment year 2010-11.

2. In the grounds of appeal, the assessee has raised the following grounds :-

“1. That the Ld. CIT (Appeal) has erred in sustaining the initiation of proceedings under section 147 of the IT Act which were

arbitrary, unjust and illegal on various factual and legal grounds including the following:

- a) Copy of reasons as recorded prior to issue of notice under section 148 along with copy of requisite sanction as required from competent authority were not provided to the Appellant by the AO despite specific request made in this connection.*
- b) Reasons as reflected in the assessment order appear to have been recorded merely on the basis of AIR/NMS information/data.*
- c) Explanation with regard to source of cash deposit of Rs.14,57,400/- in the bank account maintained with State Bank of Hyderabad as filed before the AO was not considered by him while recording reasons prior to issue of notice under section 148 of I.T. Act.*
- d) Addition as made by the AO for unexplained cash deposit of Rs.25,50,000/- in Corporation Bank account of the Appellant was not part of reasons as recorded prior to issue of notice under section 148 and neither any fresh notice under section 148 was issued for such new issue as taken by the AO while making such addition in the assessment order.*
- e) There was no proper application of mind on the part of the AO so as to come to an independent satisfaction that he had reason to believe that income has escaped assessment.*
- f) Requisite sanction as required from the competent authority under section 151 of I.T. Act appears to have been taken in a mechanical manner.*

2. That without prejudice to above ground, the Ld. CIT (A) has erred on facts and under the law in confirming the addition of Rs.25,08,500/- out of addition of Rs.40,07,400/- as made by the AO on account of cash deposits in Appellant's bank accounts allegedly out of undisclosed income of the Appellant. At any rate, such addition of Rs.25,08,500/- as sustained is very excessive.

3. That the interest as charged u/s 234A and 234B is illegally and at any rate, without prejudice, such interest as sustained is very excessive."

3. The facts in brief are that the assessee is an individual and was having income from dealing in real estate business. As per the record, the **return of income for AY 2010-11 was filed u/s 139 of the Act on 08.10.2010, vide Acknowledgement No.003145 before Ward 34 (1), New Delhi declaring total income at Rs.2,07,560/-**. Since no notice u/s 143 (2) was issued the returned income stood accepted as assessed income. Later on, assessee's case was reopened by issuance of notice u/s 148 on 30.03.2017 on the basis of AIR/NMS information that during the relevant period, assessee had made cash deposits aggregating to Rs.14,57,400/- in his bank account maintained with State Bank of Hyderabad. As per the AO, none appeared on behalf of the assessee and accordingly, he proceeded to make the assessment u/s 144 of the Act. AO had called for information u/s 133 (6) from the banks in which assessee has maintained bank accounts and from that he found that cash has been deposited from time to time during the relevant period of AY 2010-11. The details of which are as under :-

S. No.	Name & Address of the Bank	Account Number	Cash deposited (in Rs.)
1	State Bank of India, KG Marg	62071996357	14,57,400/-
2	Corporation Bank, Dilshad Garden	SB/01/0113399	25,50,000/-
		Total cash deposits	Rs.40,07,400/-

Accordingly, the ld. AO treated the entire cash deposit of Rs.40,07,400/- as undisclosed income and taxed under the head 'income from other sources'.

4. Before the ld. CIT (A), assessee had filed the details of cash deposits which have been tabulated in the appellate order at pages 7 & 8. Based on this, he has upheld cash deposits aggregating to Rs.25,08,500/-. For ready reference, his relevant findings read as under :-

"8.3 Finding

a) The major portion of Cash deposits have been explained to be out of Sale proceeds received in cash from Sale of four properties by the appellant vide Sale deeds dated 27.06.2009, 02.07.2009, 22.08.2009 and 05.11.2009. The appellant did not file its ITR inspite of the fact that it sold four properties during the year under consideration. No income from the said transactions was offered to tax. In spite of specific notices issued to the appellant by the AO to ITR in response to notice u/s 148, the appellant chose not to file its ITR for reasons best known to him. These facts clearly show that none of these Sale transactions have been disclosed by the appellant in his ITR. Thus, these Sale transactions are not reflected in the ITR. As they have not been recorded in the ITR, the genuineness of these transactions are not verifiable. Further, the financial capacity of the alleged buyers and their creditworthiness is also not established. The Hon'ble Delhi High Court in Kishan Kumar Sethi Vs. CIT (2018) 92 taxmann.com, 324/403 ITR 189 held that "where cash deposits were made in account of the assessee and the assessee had claimed that said payment was against agreement to sell, but he had not given any explanation for the same and also failed to establish financial capacity of the proposed buyers of his property, addition u/s 68 is called for". This judgment squarely applies in the case of the appellant as -

Haryana High Court in Kavita Chandra Vs. CIT reported in 398 ITR 641 and Hon'ble Delhi High Court in Dinesh Kumar Jain V s. PCIT (2018) reported in 407 ITR 65. In view of these facts, the following transactions are not acceptable.

- *Cash withdrawal of Rs.2,00,000/- on 30.07.2009 claimed to have been deposited in State Bank of Hyderabad on 30.10.2009. (After a period of three months)*
- *Cash withdrawal of Rs.4,00,000/- on 23.07.2009 claimed to have been deposited in State Bank of Hyderabad on 03.11.2009. (After period of three and a half months)*
- *Cash withdrawals of Rs.1,25,000/- and Rs.2,50,000/- on 26.08.2009 claimed to have been deposited on 05.11.2009. (After period of two and a half months)*
- *Cash withdrawal of Rs.2,00,000/- on 01.09.2009 from State Bank of Hyderabad claimed to have been deposited on 05.11.2009 in Corporation Bank (After a period of two months).*

Thus, the addition of Rs.11,75,000/- made by the AO is upheld.

d) In view of the above facts, the addition made by the AO to extent of (Rs.10,17,500/- + Rs.3,16,000/- + Rs.11,75,000/-) Rs.25,08,500/- is upheld and confirmed. Consequent relief is allowed to the appellant. Ground of appeal no.3 is partly allowed.”

5. Before us, ld. counsel for the assessee, Shri Sanjeev Sapra, first of all, countered the allegation of the ld. CIT (A) that no income-tax return has been filed by the assessee inspite of several opportunities provided by the AO. He submitted that the return of income has been filed way-back on 08.10.2010, the copy of which is appearing at pages 163 to 166 of the paper book and acknowledgement is at page 167 which included balance sheet and profit & loss account. This fact has also been stated before the AO vide letter dated 11.09.2013 to the AO whereby assessee had categorically stated that copy of income-tax

return is enclosed herewith along with annexures and balance sheet and profit & loss account. Thus, the contention of the ld. CIT (A) that the amount deposited out of sale proceeds received in cash from sale of 4 properties cannot be accepted as the assessee had not filed return of income is an erroneous finding and, therefore, the deposits of sale proceeds cannot be sustained as these are part of turnover of the assessee. On the issue of cash deposits in Corporation Bank, he pointed out that the AO had made addition of cash deposit to the tune of Rs.25,50,000/- and the ld. CIT (A) has given erroneous finding that there was withdrawal of Rs.3,16,000/- from the said account, whereas the fact of the matter is that there were withdrawal of Rs.25,40,800/-, the details of which has been placed in the paper book which read as under :-

<u>Date</u>	<u>Particulars</u>	<u>Credit</u>
09/04/2009	By Cash	50000.00
19/04/2009	By Cash	5000.00
16/05/2009	By Cash	2000.00
19/05/2009	By Cash	20000.00
20/05/2009	By Cash	5000.00
22/05/2009	By Cash	100000.00
15/07/2009	By Cash	10000.00
11/08/2009	By Cash	60000.00
11/08/2009	By Cash	55000.00
25/08/2009	By Cash	50000.00

09/09/2009	By Cash	2000.00
20/09/2009	By Cash	8800.00
04/10/2009	By Cash	4000.00
27/10/2009	By Cash	1000.00
31/10/2009	By Cash	5000.00
11/11/2009	By Cash	50000.00
17/11/2009	By Cash	4000.00
04/12/2009	By Cash	900000.00
04/12/2009	By Cash	900000.00
06/12/2009	By Cash	7000.00
24/12/2009	By Cash	100000.00
30/12/2009	By Cash	5000.00
02/01/2010	By Cash	3000.00
10/01/2010	By Cash	3000.00
20/01/2010	By Cash	25000.00
04/03/2010	By Cash	16000.00
14/03/2010	By Cash	<u>150000.00</u>
	<i>Total</i>	<u>2540800.00</u>

Thus, the cash deposits are totally out of cash withdrawals during the financial year.

6. Similarly, with regard to denial of benefit of cash withdrawals, the ld. CIT (A) has stated that there were gaps of 2 – 3 months from the withdrawal as well as deposits; therefore, he has confirmed the same. In this regard, he submitted that the assessee was dealing in the business of real estate with petty buyers and sellers whereas there

were mostly cash transactions and, therefore, assessee had to withdraw its funds in cash and thereafter if it is not required the same is deposited.

7. On the other hand, ld. DR for the Revenue relied upon the order of the ld. CIT (A).

8. I have heard the rival submissions and perused the relevant material placed on record as well as relevant findings given by the AO & CIT (A). In nutshell, the additions have been made on the basis of cash deposits in two bank accounts of the assessee who was dealing in real estate business in sale and purchase of plots. The details of cash deposits and the sources which have been explained by the ld. CIT (A) as well as before us are tabulated in the following manner :-

Date of cash deposit	Bank	Amount deposited	Source of cash deposited	Addition as made by AO in Rs.	Addition as sustained by CIT (A) in Rs. (reference of Para No. in CIT (A) order)	Addition as deleted by CIT (A) in Rs.
20.06.2009	State Bank of Hyderabad	Rs.1,400	Out of previous Cash in Hand	Rs.1,400		1,400
14.07.2009	State Bank of Hyderabad	Rs.2,00,000	Out of cash withdrawal on 25.06.2009 Rs.85000/- from Corporation Bank and Rs.1500000 received from Jitendra Kumar (sale proceeds of Flat No.F-2, A-51, DLF Dilshad Extn.II, Ghaziabad.	Rs.2,00,000	1,50,000 (Para 8.3(a)) 85,000 (Para 8.3 (b))	-35,000
30.10.2009	State Bank of Hyderabad	Rs.5,00,000	Out of cash withdrawal of Rs.2,00,000 on 30.07.2009 from State Bank of	Rs.5,00,000	4,25,000 (Para 8.3 (a)) 2,00,000 (Para 8.3	-1,25,000

			Hyderabad and Rs.4,25,000 received from Om Prakash Sharma (sale proceeds of Flat No.S-1, A-51, DLF Dilshad Extn.II, Ghaziabad.)		(c)	
03.11.2009	State Bank of Hyderabad	Rs.5,00,000	Out of cash withdrawal of Rs.60,000 and Rs.55,000 on 11.08.2009 from Corporation Bank, Rs.4,00,000 on 23.07.2009 from State Bank of Hyderabad	Rs.5,00,000	60,000 (Para 8.3 (b)) 55,000 (Para 8.3 (b)) 4,00,000 (Para 8.3 (c))	-15,000
04.03.2010	State Bank of Hyderabad	Rs.6,000	Out of cash withdrawal of Rs.16,000 on 04.03.2010 from Corporation Bank	Rs.6,000	16,000 (Para 8.3 (b))	-10,000
31.03.2010	State Bank of Hyderabad	Rs.2,50,000	Out of cash withdrawal of Rs.5,00,000 on 16.03.2010 from State Bank of Hyderabad	Rs.2,50,000		2,50,000
Total		Rs.1457,400		Rs.1457400	1391000	Rs.66,400
05.11.2009	Corporation Bank	Rs.5,00,000	Out of cash withdrawal of Rs.1,25,000 and Rs.2,50,000 on 26.08.2009 from State Bank of Hyderabad and Rs.1,80,000 received from Nisha Mazumdar (sale proceeds of Flat No.G-2, A-51, DLF Dilshad Extn.II, Ghaziabad)	Rs.5,00,000	1,80,000 (Para 8.2 (a)) 1,25,000 (Para 8.3 (c)) 2,50,000 (Para 8.3 (c))	-55,000
05.11.2009	Corporation Bank	Rs.5,00,000	Out of cash withdrawal Rs.50,000 on 25.08.2009 from Corporation Bank, Rs.2,00,000 on 01.09.2009 from State Bank of Hyderabad and Rs.2,62,500 received from Shyam Singh (sale proceeds of Flat No.F-1, A-51, DLF Dilshad Extn.II, Ghaziabad.)	Rs.5,00,000	2,62,500 (Para 8.3(a)) 50,000 (Para 8.3 (b)) 2,00,000 (Para 8.3 (c))	-12,500
20.11.2009	Corporation Bank	Rs.8,50,000	Out of cash withdrawal of Rs.4,57,500 on 10.11.2009 from State Bank of Hyderabad, Rs.50,000 on	Rs.8,50,000	50,000 (Para 8.3 (b))	8,00,000

			11.11.2009 from Corporation Bank and Rs.1,00,000 on 16.11.2009 from State Bank of Hyderabad			
20.11.2009	Corporation Bank	Rs.7,00,000	Out of cash withdrawal of Rs.10,00,000 on 16.11.2009 from State Bank of Hyderabad	Rs.7,00,000		7,00,000
Total		Rs.25,50,000		Rs.25,50,000	11,17,500	14,32,500
Grand Total		Rs.40,07,400		Rs.40,07,400	25,08,500	14,98,900

9. Now, insofar as the additions of cash deposit on account of sale proceeds of properties, the assessee had filed copies of sale deeds in the paper book which was also placed before the Id. CIT (A). The only reason given by the Id. CIT (A) is that no income-tax return has been filed originally by the assessee which fact, as noted above, is erroneous, because not only the assessee has filed the return of income but also filed the copy of balance sheet, profit & loss account and computation of income wherein sales have been shown and this fact has also been placed before the Assessing Officer. Thus, the reason given by the Id. CIT (A) that cash deposits out of sale of properties cannot be accepted since sale proceeds have been disclosed in the return of income is erroneous. Thus, cash deposits on account of sale proceeds cannot be treated as unexplained. Accordingly, the addition of Rs.10,17,500/- is deleted.

10. Insofar as, cash deposit in Corporation Bank, again the finding of the ld. CIT (A), incorporated above, is incorrect in view of the submissions made by the ld. counsel for the assessee (supra) that there was total cash withdrawal of Rs.25,40,800/- and not Rs.3,16,000/- as noted by the ld. CIT (A). If there are huge cash withdrawal of Rs.25,40,800/- then addition of Rs.3,16,000/- as upheld by the ld. CIT (A) cannot be sustained because same is covered by huge withdrawals made by the assessee.

11. Lastly, as regards the cash deposit of Rs.11,25,000/-, the same has been disbelieved on the ground that the explanation of the assessee that the subsequent cash deposit is out of the same withdrawals, cannot be accepted because there was a gap of 2 – 3 months. First of all, here in this case, there are huge cash withdrawals and deposits which have been noted by the ld. CIT (A) and benefit has also been given by him, though on some erroneous presumptions. Once it is a regular pattern of the assessee which has been contended to be due to its business exigencies, then the cash deposits out of cash withdrawals cannot be treated as unexplained and accordingly, it cannot be held that cash deposits are on account of undisclosed sources. The cash deposits duly stand explained by huge cash

withdrawals which is evident from chart given above. Accordingly, the additions sustained by the ld. CIT (A) are directed to be deleted.

12. Insofar as the legal issues are concerned, the same is redundant and infructuous as we have decided the appeal on merits.

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

Order was pronounced on 21st day of April, 2022.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 21.04.2022

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-37, New Delhi.
- 5.CIT(ITAT), New Delhi.

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