

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, AM**

ITA No. 1661/Mum/2020  
(Assessment Year: 2013-14)

Shri Manish Manila Gosar HUF N. M. Associates, 1, Tarlika, Ground Floor, 216, Sir Bhalchandra Road, Matunga, Mumbai-400 019	Vs.	ITO-26(2)(2) Mumbai-400 051
PAN/GIR No. AAFHM 2740 A		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Appellant by</b>	:	Shri Nitin Furia
<b>Respondent by</b>	:	Ms. Usha Shrote
<b>Date of Hearing</b>	:	04.04.2022
<b>Date of Pronouncement</b>	:	26.04.2022

**ORDER**

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-38, Mumbai (‘Id.CIT(A) for short) dated 24.10.2019 and pertains to the assessment year (A.Y.)2013-14.

2. The grounds of appeal read as under:

**1) Addition of Cash Credit of Rs.18,16,480/-**

a. The Ld. A.O erred in law and on facts in treating the unexplained cash cash deposit of Rs.18,16, 480/- as unexplained cash credit u/s. 68 and as a consequence erred in making an addition of Rs.18,16,480/- to the returned income.

b. The Hon.CIT (A) has erred in law and on facts in confirming the action of the Id. A.O. in confirming the cash deposit credit u/s. 68 and as a consequence erred in confirming an addition of Rs.18,16,480/- as unexplained cash credit u/s.68 and as a consequence erred in confirming an addition of Rs.18,16,480/- to the returned income.

c. Your appellant submits that he had withdrawn the cash from the bank & redeposited in the same bank during the period from May, 2012 to March, 2013.

d. Your appellant prays for the deletion of the said addition of Rs.18,16,480/-.

**2) Assessment of Total Income**

- a. The Id. A.O. erred in law and on facts in assessing the total income at Rs.21,22,100/- against the returned income of Rs.3,05,620/- & in the process erred in making an addition of Rs.18,16,480.
- b. The Id. CIT (A) erred in law and on facts in confirming the action of the Id. A.O in confirming the total income at Rs.21,22,100 against the returned total income of Rs.3,05,620 and in the process erred in confirming an addition of Rs.18,16,480 to the returned total income.
- c. Your appellant submits that the appellant had determined the total income of Rs.3,05,620 as per the provisions of the Income Tax Act, 1961.
- d. Your appellant pleads that the returned total income of Rs.3,05,620 be accepted and the addition made to such returned income of Rs.18,16,480 be deleted and income be assessed at Rs.3,05, 620.

**3) Levy of Interest u/s 234B:**

- a. The Id. A.O. erred in levying interest u/s 234B of Rs.1,32,012/- without giving an opportunity of hearing and without passing a speaking order.
- b. The Hon. CIT (A) erred in law and on facts in confirming the levy of interest u/s.234-B of the Income Tax Act, on the assessed income instead of returned income, where no such interest was leviable.
- c. your appellant denies any liability to payment or interest and further submits that the tax was paid as per the provisions of the law.
- d. Your appellant prays that the interest should be deleted.

**4) Initiation of Penalty Proceeding u/s 271(1)(c)**

- a. The learned Assessing Officer erred in law and on facts in giving direction for initiation of penalty proceedings u/s 271(1) (c) of Income Tax Act, 1961 for filing inaccurate particulars of income when no inaccurate particulars were filed.
- b. The Hon.CIT(A) erred in law and on facts in not adjudicating the initiation of penal proceedings u/s.271(1)(c) of the Income Tax Act, 1961 as the same is premature because initiation of penalty u/s. 271(1)(c) is not applicable till the time penalty is levied by the Assessing Officer.
- c. Your appellant prays that the initiation of penalty proceedings u/s 271(1)(c) is bad in Law and therefore direct the Learned Assessing Officer to drop the penalty proceedings u/s. 271 (1) (c) of the Income Tax Act, 1961.

**5) Violation of Natural Justice:**

- a. No opportunity was provided by the Hon.CIT (A) to the appellant in gross violation of the principles of equity and natural justice.  
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- b. Your appellant strongly objects such action and prays that the order of Hon.CIT(A) be quashed as result of gross violation of the provisions of natural justice.

3. Brief facts of the case are that the assessee is a HUF engaged in the business of share trading. During the year under consideration the assessee had deposited cash amounting to Rs.18,16,480/- in their bank account. The Assessing Officer (A.O. for short) had asked the reasons for such huge cash deposits. In response to same the assessee had stated that they had withdrawn cash from the bank account for negotiation of the property. However, the deal did not materialize. Therefore, said cash was re-deposited. The AO had not accepted the contention of the assessee as no documentary evidence was provided. Thus, the AO considered the said cash deposit as unexplained and added to the income of the assessee.

4. Upon the assessee's appeal, the Id. CIT(A) confirmed the A.O.'s order by holding as under:

7.1.2 The appellant had relied on various judicial pronouncements wherein the courts had accepted that if cash deposit was out of withdrawals, then same cannot be considered as income, if the assessee had provided reasons for such cash withdrawn with evidence. In the appellant's case, cash is withdrawn on various dates and cash is deposited on various dates wherein there is a time gap of almost three to four months in each transaction. Further the cash deposit of Rs.18,16,480/- was made on various dates which is spread over the whole year. In response show cause notice appellant stated that the same was for negotiation of purchase of property, however such explanation do not match with the pattern of cash deposited throughout the year. It is not practically possible that negotiation for purchase of property can spread over the whole year.

7.1.3 The appellant has also failed to provide any documentary evidence, which could justify that the said withdrawals were for purchase of property. From the cash summary, it is gathered that cash is deposited at regular intervals of time and there is no valid reason backed by documentary evidence to relate these deposits to withdrawals. Besides, the fact pointed out by the AO that it is not practically possible that negotiation for purchase of property can spread over the whole year, if the withdrawals from the bank account were made for purchasing a property, appellant is bound to have incurred expenses in the process of hunting for a good property, No such expenses are manifested to have incurred. Hence, the contention raised by the appellant is not explained by the transactions reflected in the bank statement. In the given facts and circumstances, linking cash withdrawals to the cash deposits in the saving bank account of the appellant is not feasible and untenable. Hence, the nature and source of cash deposits in the saving bank account of the appellant stand unexplained. The said cash deposits are liable to be treated as unexplained cash deposits u/s.68 of the Income Act, 1961.

7.1.4 In support of my above view, reliance is placed on the judicial pronouncement in the case of Sudhir Kumar Sharma (HUF vs. Commissioner of Income Tax – III, Ludhiana reported in [2014] 224 Taxmann 178. It has been held that, "When during the assessment proceedings, Assessment Officer noticed that assessee had deposited huge amount of cash in his bank account; the addition of the said amount in the income of the assessee by invoking the provisions of Sec. 68 of Income Tax Act is justified. The onus is on the assessee to explain nature and source of said cash deposits". A Special Leave Petition was preferred challenging the above judgment; however, Supreme Court has dismissed the same and it has been reported in [2016] 69 taxmann.com

7.1.5 The jurisdictional Hon'ble High Court of Bombay in the case of Arunkumar Muchala in Income Tax Appeal No. 363 of 2015 in its order pronounced on 14.08.2017 has placed reliance

on the decision held in the afore-cited case and held as,"13.When even after giving opportunities, the Appellant had failed to produce relevant documents and explain the nature and source of the amount received by him as narrated above; the order of the Assessment Officer and the Appellate Authorities in respect of those amounts is justified. We do not find any substantial question of law raised by the appellant in this appeal and therefore, we proceed to pass following order."

7.1.6 Further reliance is placed on the judicial pronouncement made by the Hon'ble Delhi High Court in case of Dinesh Kumar Jain vs. Principal Commissioner of Income Tax, New Delhi [2018] 97 taxmann.com 113.

7.1.7 In the light of the above discussion, I find merit in the findings of the AO that there is no correlation between deposits and withdrawals considering the long time gap between deposits and withdrawals and difference in the amounts deposited and withdrawn. The deposit and withdrawal statement found no nexus between the two. Besides, the appellant is engaged in the business of trading in shares and has no involvement of cash transaction, hence, the said cash deposits made in the saving hank account of the appellant held with Axis Bank cannot be related to business transactions of the appellant. In view of the above facts, as the appellant has not produced any substantial proof to explain the source and nature of the deposit of cash in the saving bank account and following the above judicial pronouncements, the amount of Rs.18,16,480/- is treated as unexplained cash credit u/s. 68 of the Income Tax Act. Accordingly, the addition of Rs.18,16,480/- is confirmed. Hence, grounds of appeal No.1 & 2 are dismissed.

5. Against the above order, the assessee is in appeal before the ITAT.
6. I have heard the parties and perused the material available on record. The Id. Counsel of the assessee submitted that the decision referred by the Id. CIT(A) are not applicable on the facts of the case for following reasons:

vi. The decision of Sudhri Kumar Sharma HUF vs. CIT-III Ludhiana 224 TAXmann 178 is not applicable to the appellant's case. In that case the assessee had contended that the cash was received from clients and the assessee had failed to give the list of persons along with confirmation. The hon. Punjab & Haryana High Court had held that the onus is on the assessee to explain nature and source of the said cash deposits. In your appellant's case the cash deposit is from the cash withdrawn from the same bank. The appellant had provided the explanation and supporting documents such as monthly cash flow and date wise details of cash deposit and withdrawal.

vii. The decision of the hon. Bombay High Court in the case of Arunkumar Muchala 85 taxmann.com 306 is not relevant because in that case the assessee had failed to produce relevant documents and explain nature and source of the amount received by him. The assessee had also argued that since he is not applicable. In your appellant's case the appellant has submitted relevant documents and also provided the explanation. The explanation and documents are rejected by the Id. A.O. and Hon. CIT(A) without providing any contrary evidence.

viii. The decision of Hon. Delhi High Court in the case of Dinesh Kumar Jain vs. Pr. CIT 97 taxmann.com 113 is also not applicable to the appellant's case because in that case the assessee had contended that the cash withdrawn was used for construction of a building and surplus money when not required was deposited without providing any details of construction project. The appellant has contended that the amount was withdrawn for purchase of property but the negotiations failed and therefore were deposited back into the same bank. The Id. A.O. and CIT(A) has rejected the explanation provided by the appellant without providing any contrary evidence.

7. He submitted that in following decisions, similar issue was decided in assessee's favour:

- a) Deora Trading Co. vs. ITO 20(2)(1) 23 taxmann.com 326 (Mum Trib)
- b) Jaspal Singh Sehgal vs. ITO WD 21(2)(1) 83 taxmann.com 246 (Mum Trib)
- c) CIT vs. Shailesh Rasiklal Mehta 76 CCH 1088 (Guj)
- d) Jaya Aggarwal vs. ITO 302 CTR 0241 (Del)
- e) Dipesh G. Mamania vs. ITO 23(1)(2) ITA No. 1530/Mum/2014 (Mum) (Ann-XII Page No. 42-54 of PB)
- f) Income Tax Officer vs. Ashish Amratlal Patel (2013) 36 CCH 0097
- g) Sauring Nankumar Shodhan vs. ITO (ITA No. 2075/Ahd/2012 reported in (2013) 36 CCH 0061 (Ahd)

8. Upon careful consideration, I found that the assessee's explanation for deposit of cash withdrawn earlier for property negotiation is apparently un rebutted. It is not the case of revenue that from the examination of assessee's book, there is any infirmity in assessee's plea. It is also not the case that cash earlier withdrawn has been utilized elsewhere. Hence the addition is solely based upon surmise and conjunction. Such additions are not sustainable in law. Hence, I set aside the order of authorities below and decides the issue in favour of the assessee.

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

*Order pronounced in the open court on 26.04.2022*

Sd/-  
(Shamim Yahya)  
Accountant Member

Mumbai; Dated : 26.04.2022

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai