

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR “SMC” BENCH: AMRITSAR**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.383/Asr/2019**

**[Assessment Year : 2011-12]**

Navdeep Sood, S/o-Jyoti Bhusan Sood, Jaijon Doaba, Garhshankar, Hoshiarpur, Punjab-144530. <b>PAN-BOZPS8638J</b>	vs	ITO, Ward-3, Hoshiarpur.
<b>APPELLANT</b>		
<b>RESPONDENT</b>		
<b>Appellant by</b>	Shri Tarun Bansal, Adv. & Shri Lakshay Bansal, CA	
<b>Respondent by</b>	Shri Manpreet Singh Duggal, Sr.DR	
<b>Date of Hearing</b>	16.06.2022	
<b>Date of Pronouncement</b>	30.06.2022	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee for the assessment year 2011-12 is directed against the order of Ld. CIT(A)-1, Jalandhar dated 22.02.2019.

2. The assessee has raised following grounds of appeal:-

- 1). *“ That the re-opening u/s 148 by ld. A.O merely on the basis of cash deposit is invalid, void-ab-initio, bad-in-law, a borrowed satisfaction and no reasons to believe arises from the reasons recorded.*
- 2) *That the sanction of Pr. CIT(A) Bathinda for re-opening of the case is mechanical in nature and bad-in-law.*
- 3) *That the ld. CIT(A) has blown hot & cold by accepting the cash deposit of Rs. 16,18,605, but wrongly confirmed the addition @ 50% of Rs. 16,18,605= Rs.8,09,303 on estimated basis and is bad-in-law.”*

## **FACTS OF THE CASE**

3. Facts giving rise to the present appeal are that the Assessing Officer (“AO”) was in possession of information regarding deposits of cash amounting to Rs.16,18,605/- in the Saving Bank Account of the assessee held with State Bank of India, Mahilpur, Distt.-Hoshiarpur. The AO issued a letter dated 06.12.2017 calling upon the assessee to explain the source of cash deposits made in his bank account. However, no requisite explanation or reply was filed on behalf of the assessee. Therefore, the AO re-opened the assessment and issued a notice to the assessee u/s 148 of the Income Tax Act, 1961 (“the Act”). It was noticed that the assessee did not co-operate in the assessment proceedings despite having been given various opportunities of hearing to the assessee. The AO on the basis that the assessee failed to substantiate the source of cash deposits amounting to Rs.16,18,605/- in the Saving Bank Account, made addition in his income thereby, he assessed income at Rs.17,84,370/- against the income disclosed as per income tax return dated 14.12.2018 of Rs.1,65,760/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions and perusing the material available on record, partly allowed the appeal. Thereby, the Ld. CIT(A) deleted 50% of the addition and sustained addition of Rs.8,09,303/-.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Ground Nos.1 & 2 raised by the assessee are against the legality of the re-opening of the assessment.

7. Ld. Counsel for the assessee re-iterated the submissions as made in the written submissions. For the sake of clarity, the relevant contents of the written submissions of the assessee are reproduced as under:-

1. a) *“That the reasons were recorded by A.O on 09-03-2018 and in the reasons so recorded at point no. 2, the Ld. A.O says the cash deposit by assessee is Rs. 1548500 and at point no. 3, he says there is a cash deposit/transfer/interest of Rs. 1618605 and in his order at page-1, Para 1, he again says there is a cash deposit of Rs. 1618605 and at page 3, Para 2.5, he says there is a cash deposit of Rs. 1618605. So he negated the theory of transfer /interest in his order ultimately.*  
b) *That the Ld. A.O has not at all recorded his satisfaction in his order, that how he has derived a figure of Rs. 1548500 - in Para 2 of reasons so recorded and what was the ultimate relevancy of figure of Rs. 1548500 with Rs.1618605.*  
*The ld. AO was not clear in his mind regarding the break-up of figures, while recording the reasons.*
2. *That the Ld. A.O even has not mentioned the bank account number in the reasons so recorded.*
3. *That the A.O said in point no 1 of reasons so recorded that "as per information available in the office" and he has not mentioned, what was the source of information whether it was AIR or CIB or something else.*
4. *That the reasons recorded did not make out a case, the assessee might be engaged in some business and income from such a business had not been returned by the assessee.*
5. *The factum per se., of deposit in the bank account of the assessee could not be made the basis for holding the view that income had escaped assessment, overlooking that the sources of deposits need not necessarily be the income of assessee and that as such the reasons recorded were not sufficient to believe escapement of*

income rather the reasons so recorded is to "suspect escapement of income" and which is not enough for issuance of notice u/s 148.

6. a) It is pertinent to mention that the total cash deposit during the year is rs.1573500, whereas following are the entries not related to cash deposit as the assessee went to ATM to withdraw the money and he could not withdraw the same due to some technical issue of ATM machine. Hence it is clearly written in bank statement that - ATM withdrawal and reverse ATM withdrawal. Meaning thereby there is neither cash deposit nor cash withdrawal.
- b) Following are some of the entries which have also been included as cash deposit to derive the figure of Rs. 1618605 and it is clear cut case of non-application of mind by AO, while recording the reasons u/s 148 ,as per the following table:-

**Table**

<b>Sr.No.</b>	<b>Date</b>	<b>ATM withdrawal</b>	<b>Reversal ATM withdrawal</b>	<b>Enclosed at page no.</b>
1	18-05-2010	10000	10000	53
2	18-05-2010	5000	5000	53
3	30-08-2010	15000	15000	64
4	09.10.2010	10000	10000	67
	<b>Total</b>	<b>40000</b>	<b>40000</b>	

- b) No addition can be made on Rs. 40000/-, which are just reversal of entries.
- c) So much so The Ld. A.O even added the credit received as transfer amounting to Rs.5000 on 29-04-2010, as a cash deposit in total figure of cash deposit of Rs. 1618605/-, as per his order.
- d) Further AO in his order added interest of Rs. 67 received on 30-06-2010 and interest of Rs. 38 received dtd. 31-12-2010 respectively, totaling = Rs. 105 in a total cash deposit figure of Rs. 1618605/- hence the Ld. A.O included all the amount in cash deposit. Both the figures are appearing at page 59 & 68 respectively in the bank statement as enclosed.
8. The copy of reasons so recorded for initiating of proceedings is enclosed at page 4 to 6 .

9. *A.O reopened the case purely on the basis of cash deposit*
10. *A.O recorded the reasons with wavering mind, no application of independent mind and is a case of borrowed satisfaction, as he tried to play between two figures being he was not sure, as which figure is correct.*

*Following are the case laws which have been relied upon in favour of the above arguments:-*

*A) Reopening purely on the basis of cash deposit is bad in law :-*

*(Reasons recorded did not mentioned Bank a/c number- refer Para 7)*

*1) Ashwani Kumar vs. ITO*

*ITA No. 129(ASR)/2015, A.Y 2005-06*

*ITAT, Amritsar Bench*

*(Enclosed at page – 73 to 76)*

*2) Amrik Singh vs. ITO-Return not filed in this case*

*ITA NO. 630(ASR)/2015, A.Y 2006-07*

*ITAT, Amritsar Bench (Enclosed at page 77 to 91 )*

*3) Bir Bahadur Singh Sijwali vs. ITO*

*ITA NO. 3814/Del/ 11, A.Y 2008-09*

*ITAT, Delhi Bench*

*(Enclosed at page 92 to 96)*

*4) Hindustan Lever Ltd. vs. R.B. Wadkar*

*137 Taxman 479 Bom*

*Bombay High Court*

*(Enclosed at page 97 to 104)*

*B) Reopening is bad when there is no application of independent mind by A.O as per the following case laws*

*1) Pr. CIT vs. G & G Pharma India Ltd. (2016)*

*384 ITR 147 (Delhi)*

*(Enclosed at page 105 to 110)*

*2) Karanvir Verma vs. ITO (2016)*

*61 IT Repts 428 (ITAT, Asr)*

*(Enclosed at page 111 to 116)*

C) *If we reduce the figure of Rs. 40000/-out of the total figure of cash deposit, then the whole addition will be liable to be deleted*

3) *AASH Trading Co. Pvt. Ltd. vs. ITO*

*ITAT, Delhi Bench*

*ITA NO.4797/Del/2019 (Enclosed at page 117 to 124)*

**Ground No. 2**

1. *That the sanction of PCIT, Jalandhar for reopening the case is mechanical in nature being he has not scrutinized the reasons so recorded by A.O before the sanction. The A.O has written two different figures of cash deposit in the reasons so recorded. At Point 2, he is writing figure of Rs. 1548500 and in Para 3, he is writing a figure of Rs. 1618605. AND Ld. PCIT-1 has not categorily mentioned in a satisfaction note that how he had made his satisfaction regarding the two figures of cash deposits and how they are relevant with each other. What information and document he has examined for his satisfaction and sanction to AO. The sanction of PCIT-1, Jalandhar is mechanical in nature.*

2. *Even PCIT has not put date while signing the sanction and the sanction is undated and invalid.*

*Following are the case laws in support of the above Sanction should not be mechanical:-*

1) *Approval given by PCIT-1, Jalandhar at page and note is as under, which is bad-in-law, as per the following case law:-*

*"I am satisfied with the reasons recorded by A.O that this is a fit case for issue of notice u/s 148 of Income Tax Act, 1961."*

*This issue has been discussed in the case of Som Raj vs. ITO, ITA no. 628/Asr/2016, enclosed at page 152 to 168 and reopening is bad-in-law. The same order at page-10 discussed case of Tralochan Singh & Narotam Singh vs. ITO, ITA no. 306 & 307/Asr/2019 dated 30/06/2021 and approval is mechanical in nature and bad-in-law.*

2) *Ghanshyam vs. ITO (2018)*

*66 IT REP (ITAT, AGRA)*

*(Enclosed at page 125 to 133)*

3) *Gorika Investment & Exports P. Ltd. Vs ITO*  
*(2018) 66 IT REP 234 (ITAT, Del)*

*(Enclosed at page 134 to 142)*

4) *Approval of CIT not indicating which material, information, documents etc. examined, approval is mechanical :-*  
*Dharmender Kumar vs. ITO (2019)*  
*75 ITR (trib) (S.N.) 62 (Delhi)*  
*(enclosed at page to IM).”*

8. On the contrary, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below. He submitted that it is evident from the assessment record that the AO before initiating the re-opening of the assessment proceedings, provided adequate opportunities to explain the source of cash deposits. The assessee grossly failed to explain the source of cash deposits in his Saving Bank Account. Therefore, in the absence of explanation regarding source of cash deposits, the AO was justified in presuming that the cash deposited by the assessee has escaped the assessment.

9. I have heard the contentions of Ld. Authorized representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Ld. Counsel for the assessee could not rebut the findings of AO by placing material evidences regarding the failure of the assessee to give explanation about the source of cash deposited in his Saving Bank Account. It was incumbent upon the taxpayer to explain the amount credited into his Saving Bank Account by way of cash deposits. The assessee was required to explain the source of such cash deposits. In the absence of any material placed before the AO explaining the source of cash deposits in his Saving Bank Account, I am of the considered view that the AO was justified in

treating the cash deposited in Saving Bank Account having escaped the assessment. The case laws as relied by Ld. Counsel for the assessee are distinguishable on the facts of the present case despite having given notices, the assessee did not give any explanation regarding deposits of cash prior to issuance of notices u/s 148 of the Act. Therefore, the AO had reason to form belief that the cash deposited and presented the income escaped assessment. Therefore, Ground Nos. 1 & 2 raised by the assessee in this appeal are devoid of any merit, the same are therefore, dismissed.

10. Ground No.3 raised by the assessee is against sustaining 50% of addition on estimate basis.

11. Ld. Counsel for the assessee vehemently argued that there was no justification in treating the cash deposited in Saving Bank Account of the assessee as unexplained. He further re-iterated the submissions as made in the written submissions. For the sake of clarity, the relevant contents of the written submissions are reproduced as under:-

*“The Ld. CIT(A) has suo-moto estimated and restricted the addition of Rs. 1618605 to Rs. 809303 i.e; @50%, without mentioning any reason. It means he accepted the amount of Rs. 1618605/-, as cash deposit. Whereas Rs.40000/- are reversal entries. Rs. 5000/- is transfer and Rs. 105 is interest income. He made addition @ 50% on all the above items and has not applied his mind.*

*Though the ledger was filed to him and cash book was filed to A.O, as per Para 2.5 of A.O's order. The assessee also explained that he is doing a business of mobile recharge. The revenue says he has not put on record the evidence that he was doing the business of mobile recharge. It was clearly explained that the appellant is now doing job and left mobile recharge business. Secondly, it is a very small business and not possible*

*to have the evidence being it is just like doing a business on roadside. The revenue also could not brought on record that the appellant was not doing the business of mobile recharge and was doing something else.*

*The net profit comes to Rs. 139094/- as per the Profit & Loss A/c derived from the cash book as filed to A.O copy enclosed at page to 8 to 23. The assessee has shown income of Rs. 165764 while filing the return u/s 148, which is more than the profit shown and there is no loss of revenue and telescopic benefit has to be given to appellant.*

### **Alternative Plea**

*If we assume that the appellant was not doing any business then the A.O can access the peak as per the cash book and not the whole deposit being the assessee has deposited, as well as, withdrawn the cash time and again from the bank account mainly the same day. The appellant has taken a mere opening balance of cash-in-hand of Rs. 40,000. Then the maximum addition which can be made is the peak/maximum balance outstanding any day of the year and copy of cash book prepared from the bank a/c itself is enclosed at page 24 to 43 (prepared from the order of A.O, if we assume that the assessee was not doing any business) and indicates the maximum cash-in-hand dated 17/05/2010 is Rs. 60,000 and the income shown by assessee is Rs. 165764 which can take care the Rs. 60,000 as mentioned above by allowing telescopic benefit to appellant. Further there is no negative cash-in-hand during the year which can be a part of the addition.*

***Only the peak can be accessed as income and not the whole deposit:-***

***1) Nothing on record to suggest that withdrawal cannot be a source of subsequent deposits - Peak to be taxed:-***

*Bandi Sadanandan vs. ITO (2017)*

*56 ITR (Trib.) (S.N) 40 (Hyd. Trib.)*

*(Enclosed at page I So to 151).”*

12. Per contra, Ld. Sr.DR opposed these submissions and supported the orders of the authorities below.

13. I have heard the contentions of Ld. Authorized representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The Ld.CIT(A) has decided the issue by observing as under:-

4.3. *“I have carefully considered the facts of the case and submissions of the appellant. The Ld. counsel has stated that presently the assessee is working as an employee with M/s Khurana furniture and is a person of no means. From the bank statement submitted by the assessee, it is apparent that the assessee has made deposits and withdrawals of cash from time to time. The assessee has taken the plea that transactions of deposits and withdrawals were repeated for the purposes of showing higher with for visa purposes. But, no such evidence has been brought on record. The assessee has been making ATM withdrawals of smaller amounts, Some part of the withdrawals would have been used for the activates being done by the assessee and for personal purposes. The assessee has not brought on record any facts in this regard. In the circumstance, considering that part of the withdrawals were for personal purposes and for the activities being conducted by the assessee and partly cash was again deposited into the bank account, the addition made on account of cash deposits is restricted to Rs.8,09,303 (50% of 16,18,605). These grounds of appeal are thus partly allowed.”*

14. From the above finding of Ld.CIT(A), it is evident that the addition is sustained on adhoc basis, on the ground that the assessee failed to support his claim regarding deposits and withdrawals were repeated for the purpose of showing higher income for VISA purposes. So far the contention of the assessee that the authorities below failed to appreciate the fact that the

assessee was engaged in the business of mobile recharge is concerned even before this Tribunal, no evidence has been filed. It was incumbent upon the assessee to prove with documentary evidence about his business activities. In my considered view, business activity cannot be carried out in vacuum. He is required to prove payments made to service provider. Therefore, the contention of the assessee that he was engaged in the business of mobile recharging business is devoid of merit as he failed to furnish supporting evidences. Ld. Counsel for the assessee stated that looking to the fact that in the present case, there were repeated deposits and withdrawals from the bank account. Therefore, the AO should have worked out to peak credit of such transactions. Ld. Counsel for the assessee has also placed reliance on various case laws in the written submissions. The Revenue could not controvert the fact that there has been frequent deposits and withdrawals by the assessee out of his saving bank account. No evidence is available on record suggesting that the money as withdrawn by the assessee was used for any other purpose. In the absence of such evidence prayer for adopting peak cannot be brushed aside. In the light of the binding precedents, I hereby direct the AO to work out peak credits and restrict the addition to the extent of peak credits and he would also allow telescoping under the facts and circumstances of the present case, as prayed by the assessee. This Ground of the assessee is allowed in terms indicated above.

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

Order pronounced in the open Court on 30 June, 2022.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, AMRITSAR