

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A No.902/Del/2020
निर्धारणवर्ष/Assessment Year: 2010-11**

Chokhram Bobaliya Patti, Near Government School Dhatir, Palwal, Haryana.	बनाम Vs.	ITO Ward 1(2) Faridabad, Haryana.
PAN No. AABTG8984G		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Shri Jitender Wadhwa, CA
राजस्वकीओरसे /Revenue by	Shri S.L. Anuragi, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	13.07.2022
उद्घोषणाकीतारीख/Pronouncement on	19.07.2022

आदेश / O R D E R

PER SHAMIM YAHYA, A.M.

This is an appeal by the assessee against the order of the Ld. CIT (Appeals), Faridabad dated 31.12.2019 and pertains to AY 2010-11. The grounds of appeal read as under:

1. "That having regards to the facts and circumstances of the case, Ld. AO has erred in law in making addition of Rs.50,21,000/- in the income of the assessee.

2. *That having regards to the facts and circumstances of the case, assessee denies his liability of pay the tax of Rs.41,85,771/- on the income of the assessee.*
3. *That having regards to the facts and circumstance of the case the order passed by the Hon'ble CIT(A), Faridabad is bad in law and facts and has erred in law by not following the principle of natural justice.*
4. *That having regards to the facts and circumstances of the case, Ld. AO has erred in law in treating the dummy/bookish deposit entry, by the bank manager present at that time of Sarv Haryana Gramin Bank (Mr. Rajender Singh) for achieving bank target, as the income of the assessee.*
5. *That having regard to the facts and circumstances of the case the Hon'ble CIT(A), Faridabad has erred in law by not cross examining the branch manager (Mr. Rajender) and in rejecting the affidavit of Mr. Rajender Singh on the basis that he has given the affidavit in the personal capacity not in the capacity of bank.*
6. *That having regard to the facts and circumstances of the case the Ld. AO has erred in law by giving the different opinion in different assessee on the same facts and not following the principle of natural justice.*
7. *That having regard to the facts and circumstances of the case, Ld. AO has erred in law by completing the assessment proceedings u/s 147 w.r.t. where no notice was served to the assessee.*

8. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

2. Brief facts of the case are that in this case, the assessee has not furnished his ITR u/s 139 of the Act. The assessee has made cash deposits of Rs.50,21,000/- in his savings bank account. Sources and nature of the same was not explained during the assessment proceedings. Therefore, the Assessing Officer has made addition of Rs.50,21,000/- on account of unexplained cash deposits.

2.1 Before the Ld. CIT(A) it was stated that cash deposits of Rs.50 lakhs were not made by him as the transaction was entered by the Bank Manager in order to meet his annual targets. In order to substantiate the submission, an affidavit from the Bank Manager was also submitted stating that amount deposited was not actual cash deposit. The said submission of the assessee was forwarded to the Assessing Officer for necessary comments. The Assessing Officer, in the Remand Report dated 15.05.2019, stated that the affidavit has been furnished by Shri Rajender Singh in his personal capacity and there was no evidence from the side of the bank to support the claim of the assessee. The AO also pointed out that such submission of the assessee was thus not substantiable as cash available in the currency chest must have been tallied with the cash book/receipt book of the bank. The Ld. CIT(A) held as under:

“The facts of the case and material available on record have been gone through. It is noted that there is a cash deposit of Rs.50 lakhs in the bank account of the assessee on 31.03.2010 with Gurgaon Gramin Bank, followed by cash withdrawals of Rs.50 lakhs on 02.04.2010. In the affidavit dated 18.01.2018, Sh. Rajender Singh, who has retired from the said bank on 31.01.2013, stated that during FY 2009-10, he was posted as Branch Manager and in order to meet the targets of deposits he made some paper entries of cash deposits, cash withdrawals on the next working day in some cases with his branch. It was stated that it was a paper entry and with no actual cash deposits/withdrawals took place. He confirmed that one such case was of Chokh Ram. Though Sh. Rajinder Singh has clarified that he has indulged in making false entries of cash deposits and cash withdrawals in the bank account of the assessee, however, such submission of Sh. Rajender Singh dated 18.01.2018 cannot be taken as an official confirmation from Gurgaon Gramin Bank. In the absence of any official confirmation, it is not proved that there was no actual cash deposits of Rs.50 lakhs in the bank account and it was just a paper transaction. The assessee has not even made any complaint with the bank or with the police against manipulation of his bank account by the officials to the bank. The onus was on the assessee to furnish satisfactory evidence to substantiate the explanation furnished regarding sources and nature of cash deposits in his bank account, which he had failed to do so. In the circumstances, it is held that the AO was justified in making addition of Rs.50,21,000/-.”

3. Against this order the assessee has filed the appeal before the ITAT.

4. We have heard the Ld. DR and perused the records.

5. Ld. Counsel for the assessee made following written submissions:

“The above-mentioned assessee, an illiterate individual, is an agriculturalist. He had a bank account maintained with Gurgaon Gramin Bank (Dhatir Branch) vide account no. SB/3090 in the year under consideration.

The sitting bank branch manager i.e., Mr. Rajender Singh had passed a fictitious entry of cash deposit of Rs.50 lakhs in the bank account of the assessee on 31.03.2010 to meet their target and the same amount was shown as withdrawal on 02.04.2010. Due to this fictitious entry addition was made against the assessee.

Further, Mr. Rajender Singh had passed such fictitious entries in 5 other cases also. The name of those five people are as under:

- Dharmender S/o Sh. Shiv Charan R/o Village Dhatir*
- Bir Singh S/o Sh. Bal Ram R/o Village Dhatir*
- Jagjit Singh S/o Sh. Karan Singh R/o Village Fatehpur*
- Rohtash S/o Sh. Mahender Singh R/o Village Dhatir*
- Virender S/o Sh. Lekh Raj R/o Villavge Dhatir*

The Income tax department had initiated enquiry proceeding u/s 133(6) for reopening the case u/s 148 in all the 6 cases. After receiving the notice, all these people contacted the branch manager of the bank. Thereafter, Mr.

Rajender Singh, who had passed fictitious entries as branch manager, confirmed the fact of passing fictitious entries. Furthermore, he also gave the declaration dated 08.03.2017, that he had passed fictitious entries in the bank account of all the other 5 cases, before the income tax authority i.e., Assessing Officer through the letter dated 08.03.2017. (Copy of Declaration Attached).

Further, the enquiry proceeding initiated against all the other 5 people was dropped by the Income Tax Department, Faridabad in the March 2017, on the basis of confirmation by the bank branch manager. However, Mr. Chokhram did not receive any notice during the enquiry proceeding u/s 133(6) and during the assessment proceeding u/s 147 of the Act. Therefore, he could not participate in the assessment proceeding and the assessment order in his case was passed u/s 144.

During the appeal proceeding before the CIT(A), the counsel of the assessee had submitted the confirmation of the bank branch manager dated 18.01.2018 and produced the branch manager for clarification before the Hon'ble CIT(A). However, the Hon'ble CIT(A) did not accept the clarification of the sitting bank branch manager stating that this is not the official confirmation of the Gurgaon Gramin Bank.

Furthermore, since the other five cases had the same set of circumstances as of the assessee, 3 out of the 5 people had submitted the request with the Income Tax Department on 17.05.2022 to provide the copy of the order sheet for dropping the enquiry proceeding in their

case. From the order sheet this can be verified that for the same set of reasons, other proceedings were dropped but the case of the assessee continued. (Copy of all the applications submitted with the Income tax Department is enclosed for your kind reference). However, we have not received any order sheet in any of the above case.

For this matter reliance is placed on the judgment of the Hon'ble Allahabad High Court in the case of Harish Chandra Bhati Vs. PCIT Noida and 2 Others dated 19.05.2022 (Writ Tax No. 465 of 2022). (Copy of order enclosed)."

6. Per contra, the Ld. DR relied upon the order of the authorities below.

7. Upon careful consideration, we find that assessee is an illiterate person. It was clearly a case made out before the Ld. CIT(A) that the same was done by a particular Branch Manager of the Bank for meeting annual targets, by Window Dressing his accounts. An acceptance from the said Branch Manager was also furnished. But it was rejected on the ground that this statement was given by the said person in his personal capacity and no official communication from the Bank was received.

7.1 In this regard, we note that nothing stops the revenue authorities from making enquiry from the concerned Bank. Moreover, Ld. Counsel for the assessee is giving details that the said Branch Manager has done

the same act in case 5 other persons. In the case of all those persons after the clarification matter were dropped by revenue authorities.

8. In this view of the matter in our considered opinion in the interest of justice, the issue needs to be remitted to the file of the Assessing Officer. The Assessing Officer shall examine the issue in light of our observation hereinabove. Needless to add, the assessee should be granted adequate opportunity of being heard.

The appeal is allowed for statistical purposes.

9. Both the parties fairly agreed to the above proposition.

Order pronounced in the open court on 19/07/2022

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: .07.2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi