

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'B': NEW DELHI**

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

**ITA Nos.3612 & 3613/DEL/2019  
[Assessment Years: 2010-11 & 2015-16]**

Sh. Subhash Suman, H. No.2241, Sainik Colony, Sector-49, Faridabad, Haryana	Vs	ITO, Ward-2(4), Faridabad, Haryana
<b>PAN-BIGPS2817E</b>		
Assessee		Revenue

Assessee by	None
Revenue by	Sh. R.S. Yadav, Sr. DR

<b>Date of Hearing</b>	<b>29.08.2022</b>
<b>Date of Pronouncement</b>	<b>31.08.2022</b>

**ORDER**

**PER SHAMIM YAHYA, AM,**

These appeals by the assessee are directed against respective orders of the Ld. CIT(A), Faridabad, for the Assessment Years 2010-11 and 2015-16 respectively, wherein, the issue raised is that the Ld. CIT(A) has erred in sustaining the addition of cash deposits in bank account as under:-

<b>Sl. No.</b>	<b>Assessment Year</b>	<b>Amount</b>
1	2010-11	Rs.8,39,000/-
2.	2015-16	Rs.22,84,700/-

**Assessment Year 2010-11**

2. In this case, the Assessing Officer noted that there is cash deposits of Rs.10,88,000/- in the saving bank account of the assessee maintained with HDFC Bank. The Assessing Officer made enquiry from the assessee; however, the assessee did not reply to the Assessing Officer's notices.

Hence, the Assessing Officer held that the assessee has not explained the source and nature of the same and hence in an order passed u/s144 of the Act, the Assessing Officer made addition of Rs.10,88,000/-.

3. Before the Ld. CIT(A), the assessee explained that the Rs.4 lakhs was from the sale of property of his wife and Rs.3 lakhs out of own savings, however, the Ld. CIT(A) granted part relied by holding as under:-

*“ During the appellant proceedings, it has been stated by the Learned AR that the appellant has received amount of Rs.4,00,000/- from Smt. Leelawati Suman, his wife who has sold her property to Shri Anil Bansal in cash and produced a copy of the cash receipt to this effect along with copy of agreement for the sale of above property. Regarding the balance cash deposits, it was stated that it was out of cash in hand available with the appellant and out of the current income of the appellant. The submission of the Learned AR has been reproduced as above.*

6. From the facts of the case and material available on record, it is noted that there were cash deposits of Rs.10,88,000/- in the bank account of the appellant. Out of the same amount of Rs.4,00,000/- has been explained as received from the sale of property from Smt. Leelawati Suman, wife of the appellant to Shri Anil Bansal vide agreement dated 29.01.2010. From the perusal of the bank statement of the appellant, it is noted that total cash deposits subsequent to 27.01.2010 are for Rs.2,49,000/-. Thus, the appellant has explained the source of cash deposits for Rs.2,49,000/-. However, for the balance cash deposits the explanation furnished as above out of the cash in hand available with the appellant has been found vague and without any corroborating evidence. The appellant has furnished the return of income of Rs.4,15,997/-. After deducting the investments made u/s 80C of the Act for Rs.73,500/-, the appellant is left with net income of Rs.4,15,997/-. After deducting the investments made u/s 80C of the Act for Rs.73,500/-, the appellant is left with net income of Rs.3,42,497/-. After meeting the household expenses from this amount of Rs.3,42,497/-, it is difficult to assume that the appellant was left with any surplus cash in hand from this. Thus, the submission of the Learned AR that further cash deposit of Rs.3,00,000/- out of amount of Rs.3,42,297/- has been found as unreasonable and unjustified. Under the fact, it is found that the appellant could not explain the source and nature of

*the cash deposits to the extent of Rs.8,39,000/-. The onus was on the appellant to explain the same. However, such onus could not be discharged. In the circumstances, it is held that the AO was justified in making addition of balance amount of Rs. 8,39,000/- to the income of the appellant and the same is hereby confirmed.”*

4. Against the above order, the assessee is in appeal before the Tribunal.

5. We have heard the Ld. DR. None appeared on behalf of the assessee. We note that in explanation of the cash deposits, the first explanation of the assessee is that Rs.4 lakhs has been received from the sale of property of the wife for which cash receipt was shown as well as copy of agreement. The Ld. CIT(A) gave credit only to the extent of Rs.2,49,000/- being the cash deposited after the date of agreement of the property. The Ld. CIT(A)'s order is quite silent on the date of cash receipt by the wife. In this view of the matter and in our considered opinion, the Ld. CIT(A) should have allowed the entire Rs.4 lakhs as explained as the necessary cash receipt was already shown to him.

6. Further the assessee has claimed Rs.3 lakhs out of net income of Rs.3,42,497/- for the year under consideration, however, the Ld. CIT(A) held that it is difficult to assume that the assessee was left with any surplus cash in hand from this. We find that this addition has been made on surmises. There is no reason why Rs.3 lakhs cannot be available with the assessee to make the deposits. Hence, we are of the opinion that as against the cash deposits of Rs.10,88,000/-, Rs.7 Lakhs (Rs.4 Lakhs + Rs.3 Lakhs) should be treated as explained and the addition for the balance amount of Rs.3,88,000/- addition is sustained.

7. Accordingly, this appeal of the assessee is partly allowed.

**Assessment Year 2015-16**

8. For this year, the cash deposits was Rs.31,70,000/- in the bank account of the assessee. The source and nature thereof was not explained by the assessee to the Assessing Officer and there was no proper response to the Assessing Officer's notices. The Assessing Officer after considering the gross receipt of Rs.8,85,300/- as shown in the return of income has held that remaining amount of Rs.22,84,700/- as unexplained and made the corresponding addition.

9. Before the Ld. CIT(A), the assessee made following submission, which reads as under:-

*“During the appellate proceedings, it has been stated that the appellant has withdrawn amount of Rs.2,90,000/- from HDFC Bank account on various dates and besides this, he has received back cash of Rs.15,65,000/- from M/s Sheetsha Communications (Rs.5,40,000/-), Smt. Leelawati Suman (Rs.5,25,000/-) and Smt. Manisha Mehta (Rs.5,00,000/-). In addition to this, there was cash in hand of Rs.1,79,000/- with the appellant. The submission of the Learned AR has been reproduced as above.*

*It was further explained that the appellant had given loan to these three persons by cheque, but the same were returned by M/s Sheetsha Communications in cash on various dates in small amounts. The Learned AR has furnished affidavits from Smt. Leelawati Suman and Mrs. Manisha Mehta in which they have declared that they have returned cash to the appellant on different dates as they have taken loan from the appellant in past through cheques.”*

10. The Ld. CIT(A) was not convinced, he noted that cash withdrawal from the bank by the assessee during the year was Rs.2,90,000/- that after meeting the household expenses, nothing would remain. Hence, he confirmed the entire addition.

11. Against the above order, the assessee is in appeal before us.
12. We have heard the Ld. DR. None appeared on behalf of the assessee. Though, the assessee has given various documents and papers, the ld. CIT(A) was found it to be vague and without containing the verifiable particulars. We find that the assessee has given details of receipt of cash from certain persons to whom who had given loan of Rs.15,65,000/-. Therefore, the assessee has explained that there was cash in hand for deposits of Rs.1,79,000/-. The Ld. CIT(A) has found that explanation to be vague and confirmed the addition. We note that the assessee has given the names of person from whom he had received the cash. If the Ld. CIT(A) was not satisfied, he could have summoned these persons but no further enquiries has been done. In our considered opinion and the interest of justice will be served, if the issue is remitted to the file of the Assessing Officer. The Assessing Officer is directed to examine the veracity of assessee's submissions by enquiring from the persons from whom, the assessee has claimed to have received the funds. Needless to say, the assessee be given adequate opportunity of being heard.
13. In the result, appeal in ITA No.3612/Del/2019 is partly allowed and appeal in ITA No.3613/Del/2019 is allowed for statistical purposes.

Order pronounced in the open court on 31<sup>st</sup> August, 2022.

**Sd/-**  
**[YOGESH KUMAR US]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

**Delhi; 31.08.2022.**

*Shekhar,*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi