

**IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE**

**BEFORE SHRI C.M. GARG, JUDICIAL MEMEBR
AND
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 214/Ind/2022
(निर्धारण वर्ष / Assessment Year : 2012-13)

Smt. Shikha Mahendra Singh, E-109/23, Shivaji Nagar, Bhopal, Madhya Pradesh – 462001	बनाम/ Vs.	The ITO 4(4), Aaykar Bhawan, Bhopal, Madhya Pradesh - 462001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BRGPS7395C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Anil Kamal Garg & Shri Arpit Gaur, ARs.
प्रत्यर्थी की ओर से / Respondent by :	Shri Ashish Porwal, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	07.11.2022
घोषणा की तारीख /Date of Pronouncement	11 /11/2022

ORDER

PER C.M. GARG, JM:

The instant appeal filed by the assessee is directed against the order dated 01.07.2022 passed by the National Faceless Appeal Centre (NFAC), Delhi, for A.Y. 2012-13.

2. The Id. Assessee's representative submitted that on the facts and circumstances of the case, the authorities below were not correct in making

and confirming the addition in the hands of the assessee u/s 69A of the Act. The Id. AR also submitted that the findings and decision of the AO for making the addition of Rs.17,63,000/- are wrong, opposed to the facts, unjudicious, unlawful and without jurisdiction. Hence, such findings be quashed and the addition may kindly be deleted. The Id. Counsel also submitted that the impugned addition is not in the nature of income referred to in sections 68 or 69 or 69A or 69B or 69C of the Act and, therefore, the provisions of section 115BB are not applicable to the case and, so, the levy of tax under the said sections are unlawful and without jurisdiction. The Id. Counsel submitted that the assessee has withdrawn Rs.12,90,000/- in the beginning of the previous year and also made withdrawals in the current year and again deposited the same in the same bank account. Therefore, no addition is called for in this regard. The Id. AR, alternatively, submitted that the statements showing sources of cash deposits with the bank account clearly shows that during the relevant financial period, the assessee withdrew cash and redeposited the same and the peak amount of credit is Rs.8,03,000/- as on 23.02.2012. Therefore, the entire deposits of Rs.17,63,000/- cannot be treated as unexplained deposit in the hands of the assessee for making addition u/s 69A of the Act. The Id. AR submitted that the assessee is approximately 40 year old and a working lady and has been consistently filing return of income for approximately 15 years, therefore, out of said peak amount, some credit is also required to be given to the assessee on account of cash in hand out of savings which is consistently kept in cash by the assessee.

3. Replying to the above, the Id. Sr. DR strongly supported the assessment as well as the first appellate order. The Id. Sr. DR also submitted that the statement submitted by the assessee showing sources of cash deposit in the bank account reveals minus peak credit as on

23.02.2012 at Rs.8,03,000/- which cannot be ignored in any case, therefore, the addition made by the AO and confirmed by the Id. CIT(A) may kindly be upheld.

4. On careful consideration of the above submissions, first all, we may point out that the Id. Sr. DR has not disputed that the assessee withdrew cash and redeposited the same to the same bank account and the statement showing sources of cash deposit to her bank account clearly reveals that the peak credit was Rs.8,03,000/- as on 23.02.2012. This factual situation has not been disputed by the Id. Sr. DR in any manner. The Id. AR, explaining the source of the impugned amount, submitted that the cash deposits in the bank were made by the appellant out of cash balance available on the first day of the relevant previous year, which, got accumulated by the agricultural income derived by her in the earlier years and also out of her past savings. But, the details of such amounts are not discernible neither from the orders of the authorities below nor from the submissions made by the assessee during assessment and first appellate proceedings. So far as redeposit of withdrawn amount is concerned, this fact has been taken care while preparing the statement showing sources of cash deposit in the bank account out of which the amount of peak credit has been extracted. It has also been contended that the deposit has also been made out of cash withdrawn by her from her bank account on regular intervals during the relevant previous year itself and from the said statement showing peak, the amount of Rs.3,60,000/- has been taken as opening balance which is taking care of withdrawals of previous year. So far as the third explanation that the impugned cash has been deposited out of receipts from other explained sources is concerned, in this regard, the Id.CIT(A), in the first appellate order, has categorically noted that no agricultural income has been disclosed by the appellant in the return of income for the relevant assessment year. Therefore, we reach to a logical conclusion that the

Id.CIT(A) has taken care of all facts and circumstances of the case and the Id. Sr. DR has not disputed the factum of peak credit as on 23.02.2012 amounting to Rs.8,03,000/-.

5. So far as the factum of cash in hand and the amount of savings made during the preceding years is concerned, we are of the view that when the assessee has consistently been earning income, filing the income-tax return, paying tax thereon, then, the possibility of cash in hand out of savings cannot be denied in toto. The onus was on the assessee to show the factum of cash in hand out of savings of preceding assessment years for which there is no facts before us. Therefore, we deem it proper to allow part relief on estimation basis on this count. In the totality of facts and circumstances of the case, we deem it just and proper to allow 50% deduction in the peak amount on account of cash in hand in the beginning of the year and past savings in the form of cash out of income earned during the immediately preceding several assessment years. Therefore, the addition made by the AO and confirmed by the Id.CIT(A) is restricted to Rs.4,01,500/-. The grounds of the assessee on merits are partly allowed in the manner as indicated above.

6. In the result, assessee's appeal is partly allowed.

Order pronounced in Open Court on 11 /11/2022

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Indore: Dated, 11 /11/2022

dk

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore

1. Date of taking dictation: 10.11.2022
2. Date of typing & draft order placed before the Dictating Member:
3. Date on which the approved draft comes to the Sr. P.S./P.S.:
4. Dt. on which the fair order is placed before the Dictating Member for Pronouncement:
5. Date on which the file goes to the Bench Clerk:
6. Date on which the file goes to the Head Clerk:
7. The dt. on which the file goes to the Astd. Registrar for signature on the order:
.....
8. Date of despatch of the Order: