

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

BEFORE SHRI SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER &  
SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

I.T.A. No. 42/JAB/2022  
(Asst. Year: 2017-18)

Hemant Kumar Mulchandani, 316, Vijay Nagar Extension, Main Road Ranjhi, Jabalpur (MP)  [PAN : AKSPM 1201 F]  (Appellant)	vs.	Pr.CIT-1, Jabalpur.       (Respondent)
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Appellant by : Shri Manoj Jain, FCA  
Respondent by : Shri Sanjay Kumar, CIT-DR  
  
Date of hearing : 05/09/2022  
Date of pronouncement : 29/11/2022

**ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order under section 263 of the Income Tax Act, 1961 ('the Act' hereinafter) dated 09/03/2022 in respect of assessee's assessment u/s. 143(3) dated 09/12/2019 for Assessment Year (AY) 2017-18.

2. The brief facts of the case are that the assessee-individual, a partner in two firms, besides engaged in construction business in his proprietary firm, filed his return of income for the relevant year on 22/8/2018 (at Rs. 1,60,18,880), which was selected for scrutiny under the Computer Aided Scrutiny Selection (CASS) on the issues of 'large exempt income' and 'large value of cash deposits during demonetization period'. While the former was explained as share of profit from the two partnership firms, exempt u/s. 10(2A), the cash deposit during the

demonetization period (i.e., from 09/11/2016 to 31/12/2016), at Rs. 98 lacs, was explained with reference to the income of Rs. 109.70 lacs declared under Income Declaration Scheme, 2016 (IDS), comprising Rs. 100 lacs by way of cash and the balance Rs. 9.70 lacs as immovable property, being land. The income was, accordingly, assessed by the Assessing Officer (AO) at the returned income. Subsequently, the assessment record was examined by the Principal Commissioner of Income Tax-1, Jabalpur (for short, 'Pr. CIT'), i.e., the revisionary authority, who held as under:-

'8. It is noteworthy to mention here that the entire e-submissions of the assessee dated 27/07/2021 & 25/11/2021 were made available to the respective AO for re-examination of the subject matter in the light of said reply of the assessee with a direction to draw and communicate satisfaction along with specific comments in the matter through their respective range heads vide this office communication letter dated 16/02/2022. The AO vide his report dated 23/02/2022 has stated that "On verification of Form-1 of IDS scheme furnished by the assessee during assessment proceeding and which is placed on record, *it is noticed that the assessee has not disclosed any cash deposits during the demonetization period, as per Form-1* assessee has disclosed business income of Rs.1,00,00,000/- and investment in assets of Rs.9,70,201/-. This fact has completely left from the eyes of the erstwhile AO and he allowed assessee's claim of cash deposits". Further, the desired information was received in this office on 25/02/2022 with remarks "in view of the AO's report, the case is recommended for remedial action under section 263 for the interest of revenue" of the range-head.

9. I have considered the e-submission of the assessee furnished during the course of assessment proceedings as well as revision proceedings and have perused the documents available on records. *On examination of records and in continuation to the discussion held in ongoing paras specifically in para 2* above it is seen that the assessee has made cash deposit to the tune of Rs.98,00,000/- in his saving bank account No.364002010752135 kept with Union Bank of India, Branch Ranjhi Khamaria, Jabalpur. Further, in the assessment order the A.O. has mentioned that "The assessee has declared income under the Scheme of IDS 2016 amounted to Rs.1,09,70,201/- which includes Rs.1,00,00,000/- in cash. Out of this Rs.1,00,00,000/-, Rs.98,00,000/- has been deposited in bank during demonetization period. As it has been already declared in IDS 2016, the income tax liability has also been discharged in it. The same are verified at this end and found to be satisfactory.'

9.1 In continuation to the above and ongoing through the Form No. 1, i.e., Form of Declaration Under Section 183 of the Finance Act, 2016 in respect of Income Declaration Scheme, 2016 & The Income Declaration Scheme Rules, 2016 dated 26/09/2016 found in the record, wherein it has been noted that the assessee has not made any cash disclosure in this scheme and as per Form-1 the assessee has disclosed business income of Rs.1,00,00,000/- and investment in assets of Rs.9,70,201/-. Further, during the course of assessment proceedings, the assessee has submitted that *there was an opening cash balance as on 09/11/2016 amounting to Rs.2,09,070/- only*. This fact has completely left from the eyes of the erstwhile AO and he allowed assessee's claim of cash deposits without making any investigation as required and simply accepted the version of the assessee.”

(emphasis, ours)

He, accordingly, relying on the decisions in *CIT vs. Deepak Kumar Garg* [2008] 299 ITR 435 (MP); *Consolidated Photo and Finvest v. Asst. CIT* [2006] 281 ITR 394 (Del.); *CIT v. Himachal Pradesh Financial Corporation* [2010] 186 taxman 105 (HP) and *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83 (SC), set aside the impugned assessment for *de novo* consideration, to be made after making proper investigation and enquiries and applying the correct provisions of the Act and upon allowing adequate opportunity of being heard to the assessee.

Aggrieved, the assessee is in appeal.

3.1 Before us, the main plank of the assessee's submissions, through his counsel, Shri Jain, was that the income of Rs. 98 lacs, deposited cash in bank in November and December, 2016, was out of Rs. 100 lacs declared cash under IDS, for which Shri Jain would take us through Form-1 filed by the assessee for the purpose on 26/9/2016 (PB pgs. 69-74), as well as its acceptance by the Revenue by the issue of Form-2 on 13/10/2016 (PB pg.75), validating the tax (including surcharge) and penalty to be deposited toward the sum declared under IDS. The cash, he claimed, was duly entered by the assessee in his cash book on 26/9/2016. It was this cash which was subsequently deposited in the bank during November & December, 2016. On a query by the Bench as regards the payment of the demand of Rs. 49.37 lacs (under IDS), he would place on record three Challans exhibiting

the deposit of the same through the assessee's bank account with Union Bank of India, Branch Ranjhi Khamaria, Jabalpur, which also exhibit the dates of encashment of the cheques, being 28/11/2016, 16/3/2016 & 27/9/2017, further clarifying that the said Scheme, initially up to 31/12/2016, had been extended up to 30/9/2017.

3.2 The Revenue's case, on the other hand, is that there has been without doubt no verification of the assessee's claims by the AO in the assessment proceedings. The AO stating that the assessee had disclosed Rs. 100 lacs in cash under IDS, of which Rs. 98 lacs is deposited during the demonetization period (para 3, pg.2 of the assessment order) is not supported by any evidence on record; Form-1, i.e., the Form of Declaration u/s. 183 of the Finance Act, 2016 in respect of IDS, disclosing Rs. 100 lacs as business income and Rs. 9.70 lacs as invested in assets. *The finding by the AO is clearly wrong, and this is what stands brought-forth by the Id. Pr. CIT. In fact, the cash-in-hand as on 09/11/2016 was itself confirmed by the assessee during the course of assessment proceedings to be at Rs. 2,09,070 (paras 2.1 & 9.1 of the impugned order – IO). Section 263 of the Act, is accordingly, attracted, on facts, under clauses (a), (b) & (c) of Explanation-2 below s. 263(1). At this stage, Shri Jain was called upon by the Bench to clarify the basis for the Id. Pr. CIT to have, on a perusal of the record, so stated, i.e., of the opening cash-in-hand as on 09/11/2016 being at Rs. 2.09 lacs, while the copy of the cash-book (PB pg.24) reflected a cash balance of Rs. 102.09 lacs as on that date and, further, as to when the said document, if any, was submitted. Shri Jain would, upon this, cause to place on record the reply furnished in the assessment proceedings on 14/10/2019, whereat the assessee had stated the cash available with him from 01/04/2015 to 08/11/2015 (at Rs. 75,960), and from 01/04/2016 to 08/11/2016 (at Rs. 2,09,070). The cash-book was stated as furnished along with assessee's reply to notice u/s. 142(1) dated 15/10/2019 (PB pgs.23). Though there*

is nothing in the said, undated letter indicating furnishing of the cash-book, the same was, as admitted by him, furnished after 15/10/2019.

4. We have heard the parties, and perused the material on record, and given our careful consideration to the matter.

4.1 In our considered view, the assessment under reference is wholly without application of mind. The first and the foremost query in the matter would be with regard to the completion of the process initiated under IDS. It is only when a final certificate is issued in respect of income declared and accepted under IDS, could the same possibly be considered as so in law, while the same is admittedly not available with the assessee even at this stage. No inquiry in the matter was made by the AO, ascertaining its status as the final acceptance of the assessee's application, other things aside, is of vital significance to it's explanation as to the nature and source of the cash deposited in his bank account during the relevant previous year w.r.t. the income declared under IDS.

4.2 The second query that would naturally arise in the matter is the basis on which the assessee claims to have declared Rs. 100 lacs under IDS by way of cash. *This is as there is no whisper of the same in the said declaration (Form-1).* We may for better comprehension reproduce the statement of undisclosed income forming part of Form-1 (PB pg.71):

STATEMENT OF UNDISCLOSED INCOME				
Description of undisclosed income and income declared in the form of investment in assets				
I. Total undisclosed income				
	Assessment Year to which the undisclosed income pertains	Amount of undisclosed income (in Rs.)	Nature of undisclosed income	Description
1	2001	439368	Other	Investment in asset
2	2009	1000000	Business Income	
3	2010	530833	Others	Investment in asset
4	2010	1000000	Business Income	
5	2011	2000000	Business Income	
6	2012	1000000	Business Income	
7	2013	2000000	Business Income	
8	2014	2000000	Business Income	
9	2015	1000000	Business Income	

Total (to be taken to item 7 of the Form)	10970201		
II. Whether any part of income referred in (I) above is in form of investment in asset			Yes
III. <i>If reply to (II) above is Yes, furnish description of undisclosed income declared in the form of investment in assets (Use separate sheet in case of multiple assets in the same category)</i>			

(emphasis, supplied)

As apparent, declaration/s only to the extent of Rs. 9,70,201, i.e., *qua* land acquired in the year 2001 (Rs. 4.39 lacs) and in 2010 (Rs. 5.31 lacs), is by way of assets, while for the balance income of Rs. 100 lacs, declared for the years 2009 to 2015, no asset has been specified, as required to where any part of the undisclosed income is in the form of an asset. The statement is, as per the Form itself, followed by a detailed asset-wise breakup, to be stated under different specified asset categories, viz. immovable property; jewellery; diamonds, etc., with the last category being ‘Other Assets’, under which therefore cash would stand to be specified (PB pgs.72-75). *Needless to add, the only assets specified therein are by way of the land aforesaid, at Rs. 9.70 lacs.* Shri Jain would, on being queried on the aspect of non-mention of cash in the asset-column (of the Form), ascribed it to a ‘mistake’ by the assessee. On being further asked as to why would anyone, more particularly a businessman, who understands the time value of money and, rather, is always hard pressed for liquidity for his business, would retain cash and, as stated, for years (2009 to 2015), rather than ploughing it back in his businesses or otherwise for any other productive purpose, even if personal, he would submit that there is no bar in law for a person to hold cash, even if for years together. Clearly, there is thus no answer to the question posed inasmuch as it does not explain the reason for cash retention for years. The question posed is not one of law, but of fact, which calls for explanation inasmuch as the stated behaviour, apart from being inconsistent with the assessee’s reply dated 14/10/2019, i.e., *years after the date of cash deposit in bank in Nov/Dec, 2016*, furnished in assessment proceedings, also does not stand the test of preponderance of human probabilities or of reasonableness. Further, on being further asked as to why, then, i.e., assuming the reporting of cash balance on 09/11/2016 as a ‘mistake’, the assessee

did not deposit the cash in bank upon declaring 'it' on 26/9/2016 (as entered in its cash-book), or soon thereafter, Shri Jain would state that the same was on account of the same having been deployed in business, though had to be deposited in bank due to demonetization. This, then, answers the question posed earlier, i.e., that the cash, stated as declared under IDS, was in fact not available with the assessee in the form of cash, but admittedly deployed in some other assets. It is these assets, even if by way of 'sum receivable' (say), that therefore ought to have been, where so, declared under IDS as business income, representing the source of income and, further, brought in books of his proprietorship business. The only caveat here would be that the same is to be certain for realization for the assessee to have declared it as his income. Further, inasmuch as the detail of these assets is not specified, as required, in Form 1, it cannot be said if the same were in fact assets belonging to the assessee's business or otherwise, or to both the categories in part. The very fact that the assessee fills up a part of the Form-1, i.e., with regard to asset declared ('land'), exhibits that the non-declaration of any asset in respect of the 'business income' was deliberate, and with a purpose, rather than as being now claimed, 'a mistake'. The same gets in fact corroborated by the submissions during assessment proceedings, i.e., the reply dated 14/10/2019. That apart, what is being in effect said, i.e., *qua* the assessee's conduct, is that the undisclosed income of his business/es was in the form of sundry business assets, from which the same was withdrawn for being deposited in bank due to demonetization declared subsequently. *How could that be a mistake, though the burden to prove this would be only on the assessee?* The recording of cash balance in the cash book on 26/9/2016 is, thus, an after-thought, which also explains the assessee's replies in the matter in the assessment proceedings, as indeed its non-deposit in bank thereat or soon after. The assessee, after all, could not possibly have been sitting on cash, awaiting its demonetization as it were, for being deposited in bank! Retaining income in cash, year after year, piling it as it were, is, as afore-noted, against all canons of reasonableness and, rather, contrary to normal behaviour. That story,

not in agreement with anything on record and, rather, controverted by its conduct and statement in assessment proceedings, is as fantastic as it could get.

4.3 The foregoing is only to exhibit that even the basic questions were not asked by the AO, who failed to take note of the contradictions afore-stated, and which would have surfaced had he questioned the assessee with reference to the material on record and the explanations furnished before him. Why, the mention of an asset – of which the assessee cannot but be aware of, the asset (in the form of cash) in Form-1 would have quelled all such queries, as that would have explained the source of the cash deposit subsequently during the demonetization period, which followed soon after the issue of Form 2 on 13/10/2016. The only question that would have in that case survived is the completion of the declaration process, as, surely, the stated explanation would not hold unless the said process is formally closed; the assessee admitting to the source of the impugned cash deposit as being the past undisclosed income of his business, so that the only issue (in that case) that obtains is as to whether the same stands disclosed under IDS, or is to be, in the given facts and circumstances of the case, deemed as his income for the current year u/s. 69A. Why, the AO did not make any effort to enquire about Forms 3 & 4 (under IDS) which, as explained to us by Shri Jain, are in respect of communication by the assessee of the deposit of the demand as certified by Form-2 (i.e., Rs. 49.37 lacs in the instant case) within the time allowed under the Scheme (F/3), and the final certificate by the Revenue signifying the completion of the process (F/4). We say so as the same are not on record, and which Shri Jain, upon asking, clarified as not presently available with the assessee. There is, further, as also afore-noted, no explanation for, despite assuming the availability of adequate cash, non-depositing of cash on 26/9/2016 or soon thereafter, or for reporting cash on 09/11/2016 at Rs. 2.09 lacs only, suggesting Form 1 to be not mistaken.

*In sum*

5.1 The assessee before us, while admitting the non-reference to cash, i.e., the asset where-under the income (at Rs. 100 lacs) is claimed as declared under IDS, and which is the assessee's explanation (for the cash deposit of Rs. 98 lacs in his bank account during November & December, 2016), advances explanations which would need to be considered by the AO, who clearly did not inquire in the matter. The non-reference, which could as well have been in sundry business assets, i.e., assuming it to be the case, is quizzical considering that the Declaration Form specifically bears mention of the description of the asset/s in which the income declared is manifest. Before us, it was claimed to be by way of a 'mistake', the onus to show which would be on the assessee and, further, cannot be lightly inferred. It was in this context that the matter was examined in some detail by us to find the assessee's conduct as, on the contrary, consistent with the said non-reference; the cash, even so, not deposited with the bank on 26/9/2016 or soon after. Why? It could not be that the assessee was awaiting the demonetisation by the Government to do so! Then, again, even though introduced in the cash-book on 26/9/2016, swelling the cash balance to that extent, he, yet, reports the unchanged cash balance in the assessment proceedings. The conduct thus leads to the inference of the introduction of cash in cash-book after the demonetization.

5.2 We are conscious that we are in the instant proceedings not required to issue any final findings in the matter; the matter having been set aside by the revisionary authority for consideration on merits to the assessing authority, so as not to cause prejudice to either side. So, however, the assessee alluding to a 'mistake' by him is a tacit admission of an absence of any explanation to the most basic questions that ought to have been, but were not, raised by the AO during the assessment proceedings, inflicting his order with non-application of mind. Now, surely, a mistake, which though cannot be lightly inferred, where indeed so, should not foreclose anybody's case. It is this that led to the hearing in the manner afore-

stated, with it being apparent, and no case to the contrary made out, that no inquiry was made by the AO in assessment despite non-mention of any asset, much less cash, against the declaration for rs. 100 lacs, with, rather, the assessee reporting a cash balance of rs. 2.09 lacs as on 09/11/2016, despite which the AO records of the assessee having declared cash of rs. 100 lacs under IDS. The matter had, accordingly, to be per force examined from the stand-point of the stated case of a 'mistake', and *qua* which it shall also have to be in the set aside proceedings. The other of course is the investment in the sundry assets of the business, which appears to be of job work. Reference in this context is made to the decision by the Hon'ble jurisdictional High Court in *CIT v. Associated Food Products (P) Ltd.* [2006] 280 ITR 377 (MP), wherein it stands held as under:-

10. .... As is manifest the said authority has been governed by a singular factor that the order of the Assessing Officer is wrong. That may be so but that is not enough. *What was the sequitur or consequence of such order qua prejudicial to the interest of the Revenue should have been focussed upon.* That having not been done, in our considered opinion, exercise of jurisdiction under Section 263 of the Act is totally erroneous and cannot withstand scrutiny. Hence, the Tribunal has correctly unsettled and dislodged the order of the Commissioner.”

The absence of any material to support the assessee's case being admitted, there must be something on record to exhibit the 'mistake', for which the surrounding circumstances and conduct become relevant, which we though find as consistent with the non-reporting of cash in IDS. The assessee before us relied on the decisions in *Mahaveer Kumar Jain vs. CIT* (CA No.4166/2006, dated 19/04/2018) and *R. Natarajan vs. ACIT* (ITA No. 1058/MDS/2010, dated 23/02/2012), to the effect that income cannot be taxed twice, and on *Pr. CIT vs. Manju Osatwal* [2022] 443 ITR 107 (Cal) and *Gopalkrishnan Raj Kumar vs. Pr. CIT* (in W.P.Nos. 6367 & 6374/2021, dated 22/04/2022) to the effect that where an income stands declared under disclosure (immunity scheme), the same cannot be subject to tax again. There is no quarrel on the proposition *per se*. The issue, however, arising is factual, i.e., if the income declared under IDS, even assuming so (inasmuch as Forms 3 & 4 are, again, quizzically, not available), can be said to have been

deposited cash in the assessee's bank. We may though clarify that the onus to explain the nature and source of the deposit in his bank account u/s. 69A is on the assessee. In this regard it may be relevant to state that with a view to avoid such controversies, the earlier disclosure schemes, as VDIS, 1997, specifically required the assessee to record the asset declared, if any, as income, in his records/books of account. Two, the Revenue is under no obligation to locate the source of income of the assessee, i.e., once his explanation as to the nature and source of the credit or asset under reference is found absent or as non-satisfactory, so that the same, of income nature, is deemed as his unexplained income for the relevant year (*Govindarajalu Mudaliar v. CIT* [1958] 34 ITR 807 (SC), *Kale Khan Mohammad Hanif v. CIT* [1963] 50 ITR 1 (SC), *CIT v. Ganpathi Mudaliar* [1964] 53 ITR 623 (SC)). More recently, the Hon'ble Apex Court in *Dy. CIT v. M.R. Logistics (P.) Ltd.* held that merely because there has been a declaration under IDS, 2016, which in that case was of a related party, the same, unless linked with the impugned receipt, would not prove the same, again emphasizing that the matter, as clarified earlier, is primarily factual, and would therefore stand to be determined on the basis of firm factual findings, found absent in the instant case.

5.3 We, for the reasons afore-stated, find no reason to interfere. We may also add that our findings may not be, apart from bearing a general character clarifying on the legal as well as the factual aspects, regarded as final, foreclosing the assessee's case as the same stands set aside for a *de novo* consideration to the AO, who shall decide the same per a speaking order having regard to the entirety of the facts and circumstances of the case, and the evidences that may be led or explanations furnished before him. We may before parting with this order also clarify that though the Id. Pr. CIT had called for comments from the incumbent AO, as apparent from his order, his findings are based on his examination of the record and due application of mind, with in fact the comments called for being after eliciting the assessee's replies dated 27/7/2021 & 25/11/2021, so that no

adverse inference arises from the calling of comments from the AO, and are only facilitative.

5.4 We decide accordingly, upholding the impugned revision.

6. In the result, the assessee's appeal is dismissed.

*Order pronounced in the open Court on November 29, 2022*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Dated: 29/11/2022

*vr/-*

Copy to:

1. The Appellant: Hemant Kumar Mulchandani, 316, Vijay Nagar Extension, Main Road Ranjhi, Jabalpur.
2. The Respondent: Principal CIT-1, Jabalpur.
3. The CIT-DR, ITAT, Jabalpur.
4. Guard File.

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Jabalpur.