

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1551/DEL/2022
[Assessment Year: 2011-12]

Shashi Maheshwari, A-4, Kalindi, New Delhi-110065. PAN: AAJPM4316Q	<u>Vs</u>	Income-tax Officer, Ward-70(1), New Delhi.
APPELLANT		RESPONDENT
Assessee represented by	Sh. Archit Bhargava, CA	
Department represented by	Sh.Sumesh Swani, Sr. DR	
Date of hearing	06.12.2022	
Date of pronouncement	21.12.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceles Appeal Centre (NFAC), Delhi, dated 12.05.2022, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in disallowing the appeal of the assessee ignoring the facts provided by the assessee during the proceedings supported by the

bank statement.

2. *That on the facts and in the circumstances of the case, the learned CIT(A) erred in upholding the addition of Rs. 11,48,000/- deposited in the bank in three transactions*

Rs. 50,000/- - 02.11.2010

Rs. 7,98,000/- - 17.01.2011

Rs. 3,00,000/- 18.01.2011

The Ld. CIT(A) has himself has admitted in the order that the cash has been withdrawn regularly since June, 2010 total amounting to Rs. 35,00,000/- till the date of deposit.

The Ld. CIT(A) has erred in presuming in the order "That there may be possibility that the assessee would have engaged in a certain kind of business like civil contract etc. where periodical cash is needed to pay the labourers etc., however, in such circumstances, the cash is entirely utilized towards the payments. As a result, meager cash is left for accumulation particularly in situation where every month cash is withdrawn. There appears to be no sense in rotating the cash from one account to another account without having any plausible explanation" the Ld. CIT(A) has made assumption without any ground

3. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing."*

2. The only effective ground is against sustaining the addition made in respect of bank deposits. Facts giving rise to the present appeal are that the Assessing Officer was having information regarding deposit of cash in the bank account of the assessee amounting to Rs. 11,48,000/-. Therefore, the Assessing Officer reopened the assessment u/s 147 of the Income-tax Act, 1961 (in short "the Act"). In this case the original return was filed declaring income of Rs. 8,04,480/-. In response to the statutory notice no one attended the proceedings. Therefore, the

Assessing officer proceeded to frame assessment u/s 144 read with section 147/143(3) of the Act. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who sustained the addition. Aggrieved, the assessee is in appeal before this Tribunal.

3. At the outset learned counsel for the assessee submitted that the assessee had deposited amount out of the cash withdrawals. He contended that the factum of withdrawal of the amount can be verified from the bank statement of the assessee. He drew my attention to the paper book pages 14 to 17. He, therefore contended that the authorities below were not justified in making the addition.

4. On the contrary, learned DR submitted that the assessee could not explain the source of income. He, therefore, vehemently supported the orders of the lower authorities.

5. I have heard rival contentions and perused the material available on record. I find that the learned CIT(Appeals) has not adverted to the explanation offered by the assessee. For the sake of clarity the reasoning of the learned CIT(Appeals) is reproduced as under:

“5.2.2 I have gone through the submission of the assessee and given a careful thought. Admittedly, in impugned case an amount of Rs. 11,48,000/- was deposited in cash in the account maintained with Kotak Mahindra Bank on the following dates

<i>Date of Deposit</i>	<i>(Amount) in Rs.</i>
<i>02.11.2010</i>	<i>50,000/-</i>

17.01.2011	7,98,000/-
<u>18.01.2011</u>	<u>3,00,000/-</u>
Total	11,48,000/-

5.2.3 *The assessee vide his written submission has brought on record that the said deposited amounts represent cash withdrawal from assessee's another Bank account maintained with ICICI Bank. However, on careful examination of both of the bank accounts revealed that major cash amounts were deposited on 17.01.2011 and 18.01.2011, however, cash were withdrawn from ICICI bank account regularly from the month of June 2010 onwards. As per assessee's submission total cash withdrawal shown during the relevant year is at Rs.35,00,000/-. Therefore, according to the assessee, amount of cash deposited in Kotak Bank was out of the aforesaid cash withdrawal, however, the assessee has failed to submit the explanation as well as evidence suggesting the above claim. Since the assessee has maintained two bank accounts and in this background, as to why, he needed so much cash every month despite the fact that the assessee was conversant about the transactions to be done through banking channels. There may be possibility that the assessee would have engaged in a certain kind of business like civil contract etc. where periodical cash is needed to pay the labourers etc., however, in such circumstances, the cash is entirely utilized towards the payments. As a result, meager cash is left for accumulation particularly in situation where every month cash is withdrawn. There appears to be no sense in rotating the cash from one account to another account without having any plausible explanation. The assessee has failed to bring on record any cogent material to prove the motive of huge cash withdrawal from one bank account and subsequent deposit in another bank account. The entire episode actually proves that the cash withdrawn from ICICI Bank account were fully utilized towards the purposes for which it was withdrawn and cash deposited in Kotak Bank account were from other sources which have not been explained satisfactorily by the appellant. Therefore, contention of the assessee is rejected. As a result, ground nos. 4 to 6 are dismissed."*

6. The learned CIT(A) without verifying the veracity of the claim of the assessee that it had withdrawn amount from his bank account and again deposited

the same, proceeded on the basis of surmises that why the assessee would need such a big amount. I do not see any justification for such a reasoning. Therefore, the order of the learned CIT(Appeals) is set aside. The issue is restored to the file of Assessing Officer to verify whether the assessee had withdrawn the amount and the amount so withdrawn was again deposited in the bank account. Grounds of appeal are allowed for statistical purposes.

7. Assessee's appeal is allowed for statistical purposes.

Order pronounced in open court on 21st December, 2022.

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

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**