

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

**ITA Nos. 74/Jodh/2022**  
**(ASSESSMENT YEARS- 2016-17)**

Chandan Singh 286 286 Aaola, V- Aaola-345026.	Vs	Income Tax officer Jaisalmer.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. BCPPS 4784 P</b>		

<b>Assessee By</b>	Shri Rajendra Jain (Adv.)
<b>Revenue By</b>	Ms. Nidhi Nair, JCIT-DR
<b>Date of hearing</b>	17/01/2023
<b>Date of Pronouncement</b>	20/01/2023

**ORDER**

**PER: Dr. S. Seethalakshmi, JM**

This is an appeal filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi (herein after referred as “NFAC” ), Ld. CIT(A) for the assessment years 2016-17 dated 15.04.2022, which in turn arises from the order passed by the Income Tax Officer, Jaisalmer passed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 17.12.2019.

2. The assessee has raised the following ground:-

*“1. That on the facts and in the circumstances of the case the ld. CIT(A) erred in violating the principal of faceless appeal as announced for justice of honest taxpayers and the functioning of faceless processing’s in honesty and judicially manner and to avoid litigation as created unnecessary by AO.*

*2. That on the facts and in the circumstances of the case the ld. CIT(A), NFAC erred in upholding the validity of order passed by the ld. AO.*

*3. That on the facts and in the circumstances of the case the ld. CIT(A), NFAC grossly erred in invoking provision of section 69 of the Act by substituting the provisions of section 68 of the Act as applied by ld AO.*

*4. That on the facts and in the circumstances of the case the ld. CIT(A)NFAC erred in sustaining addition of Rs. 1,59,789/- in respect of cash deposited in bank account particularly when the nature and source of such cash deposits had been explained with evidences.*

*5. That on the facts and in the circumstances of the case the ld. CIT(A), NFCA grossly erred in without analyzing the nature of transaction in right prospective and judicious manner and sustained the addition in a hypothetical way which is against principle of natural justice.*

*6. That on the facts and in the circumstances of the case he ld. CIT(A) erred in invoking the provision of section 69A of the Act for sustaining addition whereas it is evident that the AO has not made out a case calling for an addition under section 69A of the Act.*

*7. That on the facts and in the circumstances of the case the CIT(A) NFAC grossly erred in representing erroneous and irrelevant finding in the order and thereby sustaining arbitrary addition in a hypothetical*

*way by putting the assessee to erroneous harassment and inconvenience.*

*8. That the petitioner may kindly be permitted to raise any additional or alternative grounds at or before the time of hearing.*

*9. The petitioner prays for justice & relief.”*

3. Briefly the facts of the case are that the assessee is an LIC Commission agent and authorized collector of LIC premium. The assessee filed its return of income for the assessment year 2016-17 on 23.07.2016 declaring total income of Rs. 4,26,000/-. The assessment u/s 143(3) was calculated vide order dated 24.10.2018 determining the total income at Rs. 15,85,790/-. In the assessment order the AO made addition of Rs. 11,59,789/- u/s 68 of the Act towards unexplained cash deposited in the bank accounts. The present appeal has been preferred against the said assessment order.

4. The AO observed that the explanation filed by the assessee has been duly considered but not found satisfactory. The assessee himself accepted that he has arranged cash from some other persons but not entered in cash book. The assessee did not furnish any name and address of persons from whom cash loan was accepted, therefore, these borrowings are not subject to verification. Therefore, it is clear that the assessee has deposited cash out of his undisclosed sources. As the assessee failed to prove the source of above cash deposited, therefore, I have no other option to add the above undisclosed

cash to the total income of the assessee. Keeping in view the above facts, undisclosed cash deposited amounting to Rs. 11,59,789/- is added to the total income of the assessee u/s 68 of the IT Act under the head Income from Other Sources. The assessee has concealed the particulars of income, therefore, penalty proceeding u/s 271(1)(c) of the IT Act, 1961 is initiated.

5. Being aggrieved by the AO the assessee preferred an appeal before the Id. CIT(A) and the findings are reproduced as under:-

*“7 I have carefully considered the facts of the case the assessment order and the written submission of the assessee. The case of the assessee was selected for scrutiny for verification of large cash deposits in savings bank accounts. During the course of the assessment proceedings, the assessee explained that the cash deposits made in the savings bank accounts represent the LIC premium collected from policy holders in cash and deposited in the bank accounts for transferring the same to LIC, in his capacity as an authorised cash collector on behalf of LIC of India. The assessee furnished the authorisation letter issued by LIC of India in support of the said explanation. The assessee also furnished the details of premium amounts collected and paid by him, as available in the Premium Collection Portal of the LIC. However, the details available in the portal do not contain the names of the policy holders who paid the premium in cash to the assessee. The assessee was therefore required to furnish the cash book to facilitate further verification of the immediate sources of cash deposited in the bank. On verification of the cash book furnished by the assessee, the AO noticed that the cash balance available in the cash book was less than the amount of cash deposited in the bank on 38 days during the year. The aggregate of the cash deposited in the bank account in excess of cash balance available in cash book for the said 38 days amounted to Rs.11,59,789/-.*

8. In this regard, the assessee explained during the assessment proceedings that on certain occasions when some of the clients did not pay the premium in time but the premium had to be remitted to LIC, he had deposited cash in the bank account for remitting the premium to LIC out of the cash temporarily borrowed from his friends or relatives and repaid the same to them after the premium amounts were subsequently received from such clients. He explained that such borrowed of funds and repayment of funds were not recorded in the cash book. However, the assessee did not furnish the names and addresses of the persons from whom funds were borrowed to meet the cash deficit of Rs.11,59,789/-. The assessee did not furnish any material to prove the source of the said excess cash deposited in the bank account. Hence, the AO treated the said excess cash deposited in the bank accounts as unexplained cash and made addition in the assessment order.

9 In the written submission furnished during the appellate proceedings, the assessee has merely reiterated the facts which are not in dispute. The assessee did not furnish the details of cash borrowings stated to have been made from his friends and relatives for the purpose of depositing the cash in the bank accounts on 38 days, in excess of cash balance available in the cash book. Mere assertion that the funds were borrowed on a temporary basis from his friends and relatives, without furnishing details and evidences with regard to the identity of the lenders, genuineness of the transactions and creditworthiness of the lenders in respect of such excess cash deposited in the bank accounts of Rs 11.59.789/- is not acceptable. It is therefore evident that the assessee has failed to furnish satisfactory explanation regarding the nature and source of the cash deposited in his bank accounts to the tune of Rs 11.59 789/-, which is in excess of cash balance available in the cash book Hence, it is held that the said amount is liable for addition u/s 59A of the Act as unexplained money.

10 In view of the foregoing discussion, the addition of Rs.11.59.789/- made in the assessment order towards unexplained cash deposited in the bank accounts is hereby sustained. These grounds of appeal are accordingly dismissed.

Ground No.5

*Levy of interest u/s 234A, 234B and 234C*

*11 In this ground of appeal, the assessee has disputed the action of the AO in charging interest u/s 234A, 234B and 234C. The assessee did not furnish any contentions in respect of this ground of appeal during the appellate proceedings. The levy of interest under these sections is mandatory on satisfaction of the conditions specified in the respective sections. The assessee did not point out specific mistakes that occurred in computation of interest under these sections. This ground of appeal is accordingly dismissed*

*Ground No.6*

*Initiation of penalty proceedings*

*12 In this ground of appeal, the assessee has disputed the action of the AO in initiating penalty proceedings u/s 271(1)(c) of the Act. This ground of appeal does not have any merit, as no prejudice is caused to the assessee on mere initiation of penalty proceedings. Penalty proceedings are separate proceedings and levying of penalty is not automatic after its initiation. Therefore, this ground of appeal is premature and the same is hereby dismissed”*

6. Against the above final show cause notice the ld. A/R of the assessee filed his written submission which is reproduced as under:-

“1] That the assessee is an individual and derives commission income from LIC of India. In addition to this derives income from other source.

2] For the previous year ended on 31/03/2011 the assessee has filed return of income by declaring total income of Rs. 4,80,305/- from the above source of income.

3] That the case of assessee was selected for limited scrutiny through CASS to verify "Large cash deposits in saving bank account" and accordingly notice u/s 143(2) and 142(1) were issued.

41] That in response to the notices issued by the Ld AO the assessee has furnished the documentary evidence and explained that the he had received the cash from various clients and subsequently deposited such amount in his bank account which is used for making the payment of premium of that persons and duly recorded in the books of accounts.

5] That on 24/10/2018 the Ld AO has passed the assessment order u/s 143(3) of the Act and assessed the total income of Rs. 15,85,790/- by making the addition of Rs. 11,59,789/- as undisclosed cash deposit in bank u/s 68 of the Act.

Having discussed the facts of the case I would like to submit on each ground of appeal raised in the memo of appeal:-

1] As regards ground of appeal No..... relating to making addition of Rs. 11,59,789/- in respect of undisclosed cash deposits in saving bank account.

a) It is submitted that the assessee is a LIC agent and also authorized to collect premium on behalf of LIC from clients and issue the receipt to customer and such fact duly verified from LIC Department. Further the LIC has also provided grace period of 3 days to assessee to transfer such premium to LIC account and such facts was dully verified by Ld AO during the assessment proceeding.

b] Sometimes, the assessee had made payment either in cash or through banking channel on behalf of customer as the customer instructed to the assessee to pay premium and payment was given to the assessee subsequently by such customers. From the bank statement bearing a/c No. 10973588308 your good self had found that the assessee had transferred the amount as a premium on behalf of customer out of commission income received from the LIC. Further whenever the customer had given such premium amount to the assessee, the assessee had deposited same in the bank account.

c] From the bank statement bearing A/c No. 20064495080, 35371148355 your honour will observed that entire cash deposits and amount transferred from other account of assessee were utilized for making payment to LIC no other transaction

in such bank account and same was also verified from the premium collection account issued by the LIC. Further the assessee has explained before the Ld AO that what so ever amount deposited in his bank account was belonging to his client as the assessee is only acted as an agent between the client and LIC and in lieu of providing such services he has obtained Commission income of Rs. 5,51,109% which is duly disclosed in the return of income and also accepted by the Ld AO as genuine.

d] Further it is relevant to mention that the assessee had authorized to collect the premium from customers and issued the receipts on behalf of LIC. The assessee having grace period of 3 days from cash received from customer to transfer to LIC account and accordingly the assessee has deposited such amount in his bank account and accordingly the assessee has deposited such amount in his bank account for transferred the amount to the LIC account. The documentary evidence had been submitted before the Ld AO during the assessment proceeding which established the direct nexus of source of cash deposit with the business activity carried out by the assessee. Therefore the allegation made by the Ld AO that the assessee failed to prove the source of cash deposit in bank account is totally baseless and contrary to the material available on record.

e] It is further submitted that during the assessment proceedings the ld AO had directed to the assessee to prepare the cash book and the assessee had prepared the cash book on the basis of "Merchant Premium Collection Portal of LIC". While preparing cash book the assessee had made certain bonafide mistake as he has issued the receipt but the payment of such receipt had been received after certain period from the customer and accordingly the assessee had transferred the fund from own accounts to premium account through banking channel and whenever he had received the fund same was also deposited in the same bank account which has not been considered while preparing such cash book. These facts was brought on record of Ld AO but the Ld AO had not considered and fasten such liability on assessee which is contrary to the principle of natural justice.

f] It is relevant to mention here that while preparing the cash book the assessee had made bonafide mistake and recognized the cash collected from customers: on the date of premium receipt generated by him in respect of making payment. to LIC

account whereas the cash was actually received on date of issue of receipt to the customers. Further the Ld AO is quasi judicial authority and while executing his duty he should have judicial approach and cannot be made any arbitrary addition on bonafide mistake/ignorance which was proved from material on record. In the case of assessee, the bank statement itself established that the assessee has transferred fund through banking channel on behalf of customer and which was received subsequently in cash from customer. It is further submitted that in the past on the identical facts the Ld AO had accepted the same while passing the assessment order u/s 143(3) of the Act.

g] When the Ld AO one hand accepted the income from commission as genuine and other hand the amount so received from customer on behalf of LIC treated as not genuine u/s 68 is contrary to the principle of natural justice and also contrary to the decision of I.T.A.T Jodhpur Bench in case of ITO V/s M/s. Ashok Transport Co. ITANo.336/Jodh/2018 DATED 10.05.2019 held that: We note the entire turnover on transportation of Rs.11,70,63,030/- has been accepted by the AO as genuine, so question of addition of the sum of Rs.78.22.863/- which represented the liability to pay the truck owners by assessee cannot be added us. 68 of the Act. Therefore, we do not find any infirmity in the order of the CIT(A) and we agree that section 68 of the Act was wrongly invoked in the present case in respect of the outstanding liability payable by the assessee to the truck owners.

In the light of above facts and judicial decision, I request your honour to kindly delete the addition and oblige.”

7. Now the assessee is in appeal.
8. The ld. DR relied on the orders of the lower authorities.
9. We have heard both the parties, perused materials available on record. From the submissions of the assessee, it appears that the assessee was not provided adequate opportunity by the ld. CIT(A) while disposing off the

case. It will be in the interest of equity and justice to restore the matter to the file of the AO to verify the revised computation filed by the assessee before us and give the relief in accordance with law. The assessee is also directed to produce the documentary evidences concerning the issue in question and will cooperate the AO. Thus the appeal of the assessee is allowed for statistical purposes.

In the result, the appeal of the assessee is allowed for statistical purposes .

Order pronounced in the open Court on 20/01/2023.

**Sd/-**  
(B. R. BASKARAN)  
ACCOUNTANT MEMBER

**Sd/-**  
(Dr. S. SEETHALAKSHMI)  
JUDICIAL MEMBER

Dated : 20/01/2023

*\*Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar  
Jodhpur Bench