

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 6886/Del/2019  
Asstt. Year: 2014-15

Parveen Kumar, Anaj Mandi, Julana Distt. Jind, Jind Haryana, Pin - 126101 PAN ANVPK9210A	Vs.	ITO, Ward-2, Haryana
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Prem Rajpal, Advocate & Shri Pulak Rajpal, Advocate
Department by :	Shri Vivek Vardhan, Sr. DR
Date of Hearing	31/01/2023
Date of pronouncement	31/01/2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals) - 5 Ludhiana ("**CIT(A)**") on 24.06.2019 pertaining to Assessment Year ("**AY**") 2014-15.

2. The assessee has taken the following grounds of appeal:-

*"On the facts and in the circumstances of the case and in law the Ld. CIT (A) erred in:*

1. *Upholding the validity of assessment which is without jurisdiction;*
2. *confirming the addition amounting to Rs.36,04,847/- on account of unexplained cash deposited in bank account of the assessee without*

*passing the speaking order on Grounds of Appeal submitted before the Commissioner of Income tax (Appeals), Hisar.*

3. *confirming the addition amounting to Rs.57,694/- on account of difference in the account of creditor Sh. Sushant.*
4. *Confirming the addition without any section mentioned by Ld. AO in the assessment order.*

*The above actions being arbitrary, erroneous and unlawful must be quashed with directions for appropriate relief.”*

3. Facts in brief are that the assessee derives income from business as commission agent at Julana. For AY 2014-15 he filed his return on 23.01.2015 declaring income of Rs. 2,95,870/-. His case was selected for limited scrutiny through CASS. During assessment proceedings, the Ld. Assessing Officer (“**AO**”) noticed that the assessee has deposited cash in his savings bank account with State Bank of Patiala, Julana on various dates during the year aggregating in all to Rs. 71,00,000/-. The assessee was asked to furnish the complete details/evidence in respect of the said cash deposits. According to the Ld. AO the assessee replied vide letter dated 08.12.2016 which the Ld. AO placed on record. Without discussing the explanation of the assessee, the Ld. AO concluded that the source of the said cash deposits remains unexplained and hence is taxable as income from undisclosed sources. The Ld. AO further found difference of Rs. 57,694/- in the credit balance appearing in the name of Shri Sushant which he also treated as unexplained and added the same to the income of the assessee. Accordingly, the Ld. AO completed the assessment on total income of Rs. 74,53,564/- including therein the aforesaid additions on 20.12.2016 under section 143(3) of the Income Tax Act, 1961 (**the “Act”**).

4. Aggrieved, the assessee appealed before the Ld. CIT(A) who maintained the addition to the extent of Rs. 36,04,847/- out of total addition of Rs. 71,00,000/- on account of unexplained cash deposits in savings bank account and confirmed the addition of Rs. 57,694/- being difference between the amount of credit balance as per books and the

amount confirmed by the creditors. The findings and observation of the Ld. CIT(A) are as under:-

*“The facts of the case, the basis of addition made by the AO and the arguments of the AR during the course of appellate proceedings have been considered. The AR has submitted that the cash was deposited out of 'sale of agriculture produce' and out of 'cash withdrawn from the same bank account'. It is also submitted that the assessee owns 17 acres of agricultural land and also took 20 acres (12 acres + 8 acres from two different persons) agricultural land on lease and argued that during the year under consideration, total agriculture produce was sold for Rs. 55,33,487/- and enclosed copies of Form 'J' in support of the sale of agricultural produce. The AR submitted that the amounts received from M/s. Partap Singh Jita Ram on account of 'agricultural produce sale' was Rs. 55,10,947/- and the 'cash withdrawn from the same saving bank account' was Rs. 50,00,000/- and as per the AR thus the total cash available was Rs. 1,05,10,947/-. It is submitted that the agriculture land is ancestral land in the status of HUF and hence as per the AR, the agriculture income was not declared in the return filed in the status of individual. The AR was asked to give the details of expenses incurred for earning the agriculture income and also to show the date-wise availability of cash-in-hand to explain the cash deposits of total Rs. 71 lacs in the bank account of the assessee on different dates during the year under consideration. The AR has stated that the total 'agricultural expenses' were Rs. 24,59,223/- against the total agriculture sale produce as per the 'J' Form amounting to Rs. 55,33,487/-. From the details, it is seen that thus the net surplus available with the assessee out of agricultural sale receipts for the whole year (after the deduction of expenses) is only Rs. 30,74,264/-. The AR has also filed a copy of the 'account statement' of the bank account in which the cash was deposited (and the details are tabulated by the AO also in the assessment order at page no. 2). The AR has taken the plea that the source of cash deposited is partly out of cash withdrawn from the saving bank account also, however a perusal of the bank account statement shows that the first withdrawal in cash was on 03.10.2013 of Rs. 32,00,000/-, but there are six entries of cash deposits of Rs. 5,00,000/-, Rs. 9,00,000/-, Rs. 9,00,000/-, Rs. 9,00,000/-, Rs. 9,00,000/- and Rs. 9,00,000/- (total Rs. 50,00,000/-) on 26.09.2013 which cannot be explained by the cash withdrawal which was made on a subsequent date. Accordingly, the cash withdrawal of Rs. 32,00,000/- on 03.10.2013, Rs. 4,00,000/- on 05.11.2013, Rs. 3,00,000/- on 07.11.2013 and Rs. 11,00,000/- on 13.01.2014 can explain only the cash deposits made subsequently on 06.03.2014 (Rs. 5,00,000/-) and on 10.03.2014 (Rs. 7,00,000/- & Rs. 9,00,000/-). However, the withdrawals from the bank account cannot be the source of cash deposits of total Rs. 50,00,000/- made upto 26 09 2013 which is a date prior to even the first withdrawal of Rs. 32,00,000/- made on 03,10.2013. Further, it is also a fact that the assessee even during the assessment proceedings before the AO, filed the copies of J-Form' in support of source of cash deposit in the bank account, the details of which are tabulated by the AO at page no. 3 & 4 of the*

assessment order. From the details, it is seen that some 'J-Forms' are in respect of sale of Cotton and Paddy, which are Kharif Crops and these were sold after a date subsequent to the cash deposits made on 26.09.2013, hence cannot be claimed as source of the deposit of Rs. 50 lacs. Only the sale proceeds of Wheat and Guar which are Rabi crops can be said to be available to explain the cash deposit made on 26.09.2013, since these were sold before this date. The total of such receipts as per table on page no.3 of the assessment order is Rs. 13,95,153/- and only this much amount can be said to be available with the assessee as agriculture receipts which can be claimed as source of cash deposited in the bank account on 26.09.2013 and the balance Rs. 36,04,847/- (Rs. 50,00,000 - Rs. 13,95,153/-) still remains unexplained. It is also observed that the sale proceeds claimed to be source of cash deposits in the bank account of the assessee will be taken as agriculture income of the assessee for the year under consideration and will be included by the AO for rate purposes in the income of the assessee in the year under consideration since the assessee has not declared any such income in the return filed by him.

To sum-up, the deposits of Rs. 21 lacs only (i.e. Rs. 5 lacs, Rs. 7 lacs & Rs. 9 lacs on 06.03.2014 & 10.03.2014) is accepted as explained out of withdrawals of Rs. 32 lacs, Rs. 4 lacs, Rs. 3 lacs and Rs. 11 lacs made on 03.10.2013, 05.11.2013, 07.11.2013 and 13.01.2014 respectively. Out of total cash deposits of Rs. 50 lacs on 26.09.2013 a sum of Rs. 13,95,153/- only can be accepted as explained out of culture receipts and the addition to the extent of balance Rs. 36,04,847/- is confirmed being unexplained cash deposits. The AO will include agriculture income for rate purposes for the year under consideration.

Accordingly, this ground of appeal is partly allowed.

**3.2 Ground of Appeal No. 2** relates to addition of Rs. 57,694/-. The AO has mentioned that in the sundry creditors (loans & advances), name of Sh. Sushant appeared at serial number 39 and the credit balance is shown at Rs. 2,47,493/- whereas the confirmed copy placed on record shows credit balance of Rs. 3,05,187/-. The difference of Rs. 57,694/- was treated as income from other sources u/s 69 of the Income Tax Act, 1961.

The facts of the case, the basis of addition made by the AO and the arguments of the AR during the course of appellate proceedings have been considered. The AR has mentioned that as per the copy of the account of Sh. Sushant Kumar, the balance is Rs. 2,47,493/- which is same as per the list and the AR argued that the addition is wrongly made. It is however relevant to mention that the addition has been on account of difference in the balance appearing in the books of accounts of the assessee and the balance as per the confirmed copy submitted by the creditor, which was on the assessment record, as per which the balance was Rs. 3,05,187/-. Thus, there was a difference of Rs. 57,694/- between the amounts appearing in the books of the assessee and the amount confirmed by the creditors. The addition has been

*made on the basis of discrepancy noticed in the documents of the record and hence the same is confirmed.”*

5. Dissatisfied, the assessee is in appeal before the Tribunal and all the grounds of appeal relate thereto.

6. The Ld. AR submitted that during assessment and appellate proceedings all the requisite details and documents were filed/produced before the Ld. AO and the Ld. CIT(A). However, neither the Ld. AO nor the Ld. CIT(A) examined the details submitted and documents produced before them. Lack of appreciation of the case of the assessee resulted in part disallowance out of cash deposit in bank account. Further, it was contended by the Ld. AR that as per the copy of the account of Shri Sushant Kumar, the balance is Rs. 247,493/- which is same as per the list available in the records. Therefore, the addition of Rs. 57,694/- is also not justified.

7. The Ld. DR placed reliance on the orders of the Ld. AO/CIT(A).

8. However both the parties agreed that the matter be restored to the file of the Ld. AO for verification/examination of details/documents and decision afresh.

9. We have considered the submission of the parties and perused the records. The opening para of the assessment order mentions that requisite information/ documents have been furnished. Books of account have been produced. Information asked for have been furnished and placed on record making it integral part of the assessment record. Despite all that as stated earlier the Ld. AO did not consider the explanation offered by the assessee vide his reply dated 08.12.2016 as to the source of the cash deposits in the bank account. No opportunity appears to have been given by the Ld. AO to the assessee to explain the alleged discrepancy in the credit balance appearing in books in the name of Shri Sushant and the confirmed copy of account placed on record. In this backdrop, we deem it fit to set aside the order of the Ld. CIT(A) and restore the matter back to the file of the Ld. AO to verify the details filed by the assessee and examine the documents

brought by the assessee on the records and arrive at decision afresh. Need not to emphasise that the Ld. AO shall allow reasonable opportunity of hearing to the assessee. We order accordingly.

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

**Order pronounced in the open court on 31<sup>st</sup> January, 2023.**

**sd/-**  
**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

**sd/-**  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMEBR**

Dated: 31/01/2023

Copy forwarded to-

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	