

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**
**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI. RAMIT KOCHAR, ACCOUNTANT MEMBER**
ITA No.70/ALLD/2019
Assessment Year: 2007-08

Vijay Vaish, 86, Bairahana, Allahabad PAN-ABSPV1338F	v.	Asstt. Commissioner of Income Tax, Central Circle, Allahabad
(Appellant)		(Respondent)
Department by:		None
Respondent by:		Sh. Rabin Chaudhari, CIT DR
Date of hearing:		01.02.2023
Date of pronouncement:		24.02.2023

ORDER

SHRI VIJAY PAL RAO, J.M.:

This appeal by the assessee is directed against the order dated 19th March, 2019 of CIT(A) for the assessment year 2007-08.

2. None has appeared on behalf of the assessee when this appeal was called for hearing. It transpires from the record that for the last three occasions, nobody is appearing on behalf of the assessee but application for adjournment has been filed and finally when the appeal was adjourned to 1st February, 2023 neither anybody appeared on behalf of the assessee nor any application for adjournment is filed. Accordingly, the Bench proposes to hear and dispose of this appeal *ex parte*.

3. The assessee has raised the following grounds of appeal as under:-

"1- That in any view of the matter assessment order dated 30.03.2013 framed u/s 153A r.w.s. 143(3) of the IT Act by the assessing officer and vide such order income as determined at Rs.1,02,66,970/- arbitrarily and his action as partly confirmed by the Commissioner of Income Tax (Appeal)

both are bad on the facts and in law and therefore the same liable to be declared illegal and invalid in the facts and circumstances of the case.

2- That in any view of the matter the addition of Rs. 11,32,397/- as made and maintained by alleging unexplained investment by the two lower authorities without appreciating the correct facts is highly unjustified and illegal hence the same is liable to be deleted in the facts and circumstances of the case.

3-That in any view of the matter the addition of Rs. 11,32,397/- was made and confirmed by the two lower authorities in haphazard manner ignoring the evidences and correct facts without bringing any positive material on record which is wrong and illegal hence the same is liable to be deleted in all fairness.

4-That in any view of the matter findings and observations of the two lower authorities in their order for making and maintaining the aforesaid additions ignoring the correct facts are totally unjustified, wrong, illegal and contrary to the actual facts of the case hence the same are liable to be sponged off in all fairness and interest of justice.

5- That in any view of the matter the interest as charged under different sections of the IT Act is highly unjustified.

6- That in any view of the matter the appellant reserves his right to take any fresh ground before hearing of the appeal.”

4. The solitary issue arises in this appeal of the assessee is regarding the addition of Rs. 11,32,397/- made by the AO as unexplained investment which has been confirmed by the CIT(A). The assessee is an individual and derives income from various sources. The assessee filed his return of income under section 139 of the Income Tax Act on 31st March, 2008, declaring total income of Rs. 1,24,230/- thereafter, there was a search and seizure action under section 132 of the Income Tax Act carried out on 3rd February, 2011 at the residential and business premises of Vaish Group of cases. The assessee was covered under the search and seizure action. Pursuant to search and seizure action, the AO issued notice under section 153A on 17.7.2012, in response to the said notice, the assessee filed return of income on 21st August, 2012 declaring the same income as in the return of income filed under section 139 of Income Tax Act. Smt. Babita Vaish w/o Sh. Vijay Vaish issued three cheques

total amounting to Rs. 11,32,397/- in favour of Allahabad Development Authority from the joint bank account in the name of assessee and Smt. Babita Vaish. The details of the cheques are as under:-

SL. No.	Date	AMOUNT with cheque no.	Beneficiary of the cheques
1.	18.05.2006	5,00,000 (024776)	Allahabad Development Authority
2.	18.05.2006	558597 (024777)	Allahabad Development Authority
3.	18.05.2006	73800 (024778)	Allahabad Development Authority

5. In the assessment of Smt. Babita Vaish, the AO made an addition of Rs. 11,32,397/- as unexplained investment and the same amount was also added by the AO in the hand of the assessee on protective basis.

6. On appeal, the CIT(A) deleted the addition made by the AO in the hand of Ms. Babita Vaish but confirmed the addition of Rs. 11,32,397/- in the hands of the assessee on substantive basis. The assessee even otherwise not disputed the fact that the amount in the joint bank account owns by the assessee and not by his wife. Since, nobody has appeared on behalf of the assessee therefore, we have considered the written submissions of the assessee as reproduced by the CIT(A) in para 31 of the impugned order as under:-

"The Assessing Officer has discussed the fact in para 2.3 (1) & 2.3 (11) for Rs. 1132397+900000=2032397 the said two paras are reproduced as under 2.3 (1) "In view of the discussion held in the case of Babita Vaish for the year AY 2007-08 the amount of three cheques amounting to Rs. 1132397/- is treated as unexplained investment and the same is been added substantively in the income of Smt. Babita Vaish and protectively in the hands of Sri Vijay Vaish" and 2.3 (ii) "In view of the discussion held in the case of Babita Vaish for the year AY 2007-08 the amount of Rs. 3,70,000+ 5,30,000 total 9,00,000/- is treated as unexplained cash deposit of Sri Vijay Vaish and added to his income protectively."

That with regard to para 2.3 (1) as mentioned above the Assessing Officer discussed the fact only in 3 lines. No doubt three cheques amounting to Rs. 11,32,397.00 were issued by Smt. Babita Vaish wife of the assessee from a joint bank account, in which the first name is of Vijay Vaish and 2nd name is Babita Vaish. The details of cheques are as under-

<i>SL. No.</i>	<i>Date</i>	<i>AMOUNT with cheque no.</i>	<i>Beneficiary of the cheques</i>
<i>1.</i>	<i>18.05.2006</i>	<i>5,00,000 (024776)</i>	<i>Allahabad Development Authority</i>
<i>2.</i>	<i>18.05.2006</i>	<i>558597 (024777)</i>	<i>Allahabad Development Authority</i>
<i>3.</i>	<i>18.05.2006</i>	<i>73800 (024778)</i>	<i>Allahabad Development Authority</i>

That the above three cheques were issued by the assessee from his joint bank account in favor of Allahabad Development Authority. On the date of issue sufficient fund was available in the respective bank account which was generated from definite sources and in this regard cash flow statement is enclosed and from cash flow statement it will appear that amount was transferred in bank from definite sources. Sir during the year the assessee also received gifts from family members and friends who are regularly assessed to tax, copy of gift deed duly filled along with the original return filled U/s 139 (1). Those documents were brought on record which shows that the gift deed & gift amount duly disclosed to the department in original return. So the point in issue is out of block assessment. The Assessing Officer examined the documents in original proceedings. So it is a disclosed transaction hence out of the preview of block assessment. Thus the Assessing Officer is taxing sources of fund as well as debit entries of the bank account. In this regard copy of bank statement is enclosed herewith. The addition made in arbitrary manner by adapting arbitrary approach hence liable to be deleted. The interest income from the said bank account duly disclosed in the returns in earlier year as well as during the year. Hence it is not correct to say that it is undisclosed bank account. Sir it is a disclosed bank account. to the department year after year. Therefore out of the purview of 153A. In this regard for your convinces a cash flow chart is enclosed herewith and from the cash flow chart it will appear that out of the withdrawals from bank and out of the withdrawals from disclosed income, the deposits were made in this way the deposit in bank is fully covered by cash flow statement. Hence addition is unwarranted.

Thus in nut shell the addition made in the hands of assessee is totally incorrect, unjustified and illegal in the facts and circumstances of the case.

That it is further submitted that the deposits in the bank account were from definite sources and not from any undisclosed income. That from the above finding it will appear that the Assessing Officer failed to apply his mind and in a very casual and general manner added the amount and enhanced the income to justify search assessment though no positive material was found in the course of search hence the sanctity of the original assessment framed by considering the return filed Under Section 139(1) of the Act should not be disturbed and therefore the Order framed Under Section 153(C) r.w.s. 153A r.w.s. 143(3) of the Income Tax Act dated 30.03.2013 is illegal and liable to be cancelled.

That it is a search matter and it is an undisputed fact that no incriminating material was found hence question of disturbing the sanctity of the original return does not arise. Even the addition so made without any search material is unwarranted and illegal in the facts and circumstances of the case, therefore the same is liable to be deleted in all fairness and interest of justice."

7. On the other hand, learned DR has submitted that the assessee has failed to explain the source of deposits made in the bank account from where the three cheques total amounting to Rs. 11,32,397/- have been issued in favour of the Allahabad Development Authority. Accordingly, the CIT(A) has confirmed the addition on substantive basis. He has relied upon the orders of the authorities below.

8. We have considered the rival submissions as well as relevant material on record. The AO has made the addition of total amount of Rs. 20,32,397/- comprising of Rs. 11,32,397/- representing the three cheques issued by Smt. Babita Vaish wife of the assessee in favour of Allahabad Development Authority from the joint account in the name of the assessee and second holder is Smt. Babita Vaish and Rs. 9 lac as an unexplained cash deposit in the said joint account in para 2.3(1) and 2.3(ii) of the assessment order which reads as under:-

"2.3 (1) In view of the discussion held in the case of Babita Vaish for the AY 2007-08 the amount of three cheques amounting to Rs. 1132397/- is treated as unexplained investment and the same is added substantively in the income of Smt Babita Vaish and protectively in the hands of Sri Vijay Vaish.

Addition: Rs. 1132397.00

2.3 (ii) In view of the discussion held in the case of Babita Vaish for the AY 2007-08 the amount of Rs. 3,70,000+5,30,000 total 9,00,000/- is treated as unexplained cash deposit of Shri Vijay Vaish and added to his income protectively.

Addition: Rs. 9,00,000.00"

9. The CIT(A) after noting the facts that the AO has made the double addition to the extent of Rs. 9 lac by treating the same as unexplained cash deposit whereas an addition of Rs. 11,32,397/- was also made on account of a cheque issued from the joint bank account utilizing the fund in the bank account including of Rs. 9 lac. The relevant finding of the CIT(A) in para 32 to 40 reads as under:-

"32. I have examined the facts and circumstances of the case. I have considered the finding of the AO in the assessment order and submission of the appellant made during appellate proceeding The AO has noted that in the case of Ms. Babita Vaish for A.Y. 2007-08, the amount of 3 cheques amounting to Rs. 11,32,397/-, is treated as unexplained investment and the same is added substantively in the income of Smt. Babita Vaish and protectively in the hands of Shri Vijay Vaish as under:

"In view of the discussion held in the case of Babita Vaish for the year AY 2007-08 the amount of three cheques amounting to Rs. 1132397/- is treated as unexplained Investment and the same is been added substantively in the income of Smt. Babita Vaish anf protectively in the hands of Sri Vijay Vaish" and 2.3 (1) "In view of the discussion held in the case of Babita Vaish for the year AY 2007-08 the amount of Rs. 3,70,000+ 5.30,000 total 9,00,000/- is treated as unexplained cash deposit of Sri Vijay Vaish and added to his income protectively."

33. It is to be noted that in the case of Smt. Babita Vaish for A.Y. 2007-8 the undersigned vide order A.No. 87/568/ACIT/CC/Allah/CIT(A)-III/Lko/14-15, dated 18/03/2019 has held that the transactions of Rs. 11,32,397/- relates to Vijay Vaish and source thereof is to be examined in the hands of the appellant as under:

13.1 have examined the facts and circumstances of the case. I have considered the finding of the AO in the assessment order and submission of the appellant made during appellate proceeding. The AO has noted that the appellant had issued 3 cheques to Allahabad Develop Authority, the source of which was not satisfactorily explained. Hence an amount of Rs. 11,32,397/- was treated as unexplained investment and added substantively in the hands of the appellant and protectively in the hands of Shri Vijay Vaish.

14. The appellant has contended that cheques have been issued from Bank A/c No. 10289846028 with SBI, Civil Lines, Allahabad, which is a joint account of Shri Vijay Vaish and the appellant. The appellant is the second holder in the above account. The transaction in the said bank account have been duly disclosed by Vijay Vaish in his return of income. Further Shri Vijay Vaish has given a confirmation with regard to the transaction in the said bank accounts and has taken the onus on him.

15. On examination, I find that account No. 10289846028 with SBI, Civil Lines, Allahabad as a joint bank account of Shri Vijay Vaish (first holder) with Babita Vaish being the second joint holder. Considering the fact that Shri Vijay Vaish is the first holder of the account and has furnished a confirmation wherein it has been stated that the entire transaction in the said bank account belong to him, I find that the transaction of Rs. 11,32,397/- made by the AO in the hand of the appellant is held to be unjustified and is hereby deleted.”

34. The appellant has contended that the cheques have been issued by the appellant from his joint bank account in favour of Allahabad Development Authority and on the date of issue sufficient fund was available in the bank account which was generated from definite sources and in this regard cash flow statement is enclosed and from cash flow statement it will appear that amount was transferred in bank from definite sources.

35. On examination, I find that the AO has categorically stated that no personal books or cash flow have been produced by the Appellant. It is noted that in the cash flow statement the appellant has shown gifts received from family members. I find that the source and genuineness of the gifts have not been examined by the AO, therefore, the cash flow submitted at the appellate stage looks to be an afterthought and not found acceptable.

36. Considering the above mentioned facts, I find that it is a settled legal presumption that primary onus is on the appellant to explain the source of transaction of Rs. 11,33,397/-, which has not been discharged. In view thereof addition of Rs. 11,32,397/-, made by the AO is hereby upheld.

ii) Addition of Rs. 9,00,000/-

37. I have examined the facts and circumstances of the case. I have considered the finding of the AO in the assessment order and submission of the appellant made

during appellate proceeding. I find that the AO has noted that in view of discussion held in the case of Ms. Babita Vaish for A.Y. 2007-08, the amount of Rs. 3,70,000+ 5,30,000/- totaling to Rs. 9,00,000/- is treated as unexplained cash deposit of Vijay Vaish and added protectively, and the same is added substantively in the income of Smt. Babita Vaish and protectively in the hands of Shri Vijay Vaish as under:

3 (ii) "In view of the discussion held in the case of Babita Vaish for the year AY 2007-08 the amount of Rs. 3,70,000+ 5,30,000 total 9,00,000/-is treated as unexplained cash deposit of Sri Vijay Vaish and added to his Income protectively."

38. It is to be noted that in the case of Smt. Babita Vaish for A.Y. 2007-8 the undersigned vide order A.No. 87/568/ACIT/CC/Allah/CIT(A)-III/Lko/14-15, dated 18/03/2019 has held that the transactions of Rs. 11,32,397/- relates to Vijay Vaish and source thereof is to be examined in the hands of the appellant as under:

I have examined the facts and circumstances of the case, I have considered the finding of the AO in the assessment order and submission of the appellant made during appellate proceeding. The AO has noted that the appellant has deposited Rs. 3,70,000/- on 16/05/2006 and Rs. 5,30,000/- on 22/05/2006, the source of which was not satisfactorily explained. Hence an amount of Rs. 9,00,000/- was treated as unexplained investment and added substantively in the hands of the appellant and protectively in the hands of Shri Vijay Vaish.

19. The appellant has contended that the said account is a joint account of Shri Vijay Vaish and the appellant. The appellant is the second holder in the above account. The transaction in the said bank account have been duly disclosed by Vijay Vaish in his return of income. Further Shri Vijay Vaish has given a confirmation with regard to the transaction in the said bank accounts and has taken the onus on him.

20. On examination, I find that account No. 10289846028 with SBI, Civil Lines, Allahabad as a joint bank account of Shri Vijay Vaish (first holder) with Babita Vaish being the second joint holder. Considering the fact that Shri Vijay Vaish is the first holder of the account and has furnished a confirmation wherein it has been stated that the entire transaction in the said bank account belongs to him, I find that the transaction of Rs. 9,00,000/- made by the AO in the hand of the appellant is held to be unjustified and is hereby deleted.

39. The appellant has contended that it had opening balance of Rs. 2,64,478/- as on 01/04/2006. The appellant further deposited Rs. 3,70,000/- on 16/05/2006 and Rs. 5,30,000/- on 22/05/2006 which is duly reflected in the cash flow attached. Thus the AO is taxing source of fund as well as debit entries of the bank account.

40. On examination, I find that the Rs. 3,70,000/- & Rs. 5,30,000/- has been deposited by the appellant in the bank account subsequently 3 cheques have been issued to Allahabad Development Authority, amounting to Rs. 11,32,397/-. Since the source of funds of Rs. 11,32,397/- have not been explained, I have upheld the addition of Rs. 11,32,397/- in para 36 of this order, therefore addition of Rs. 3,70,000/- and Rs. 5,30,000/-separately on account of cash deposit in the aforesaid bank account will amount to adding the same amount twice. Hence the addition of Rs. 9,00,000/- made by the AO is not found to be sustainable and is hereby deleted.

Ground no. 11,12 and 13 are routine and general in nature hence not adjudicated.

Ground No. 14 is related to the interest charged under the different sections. The AO is directed to charge the interest as per law and after verify the records."

10. Thus, there is no dispute that once the addition of Rs. 11,32,397/- was made by the AO representing the three cheques issued from the joint bank account then a separate addition of Rs. 9 lac on account of unexplained deposit in the same bank is nothing but a double addition as the said amount of Rs. 9 lac was utilized by the assessee and his wife for issuing three cheques total amounting to Rs. 11,32,397/-. The CIT(A) has confirmed the addition of Rs. 11,32,397/- on the ground that the assessee did not produce any personal cash book or cash flow before the AO and the cash flow statement filed before the CIT(A) shown the gift received from the family members was not acceptable as the genuineness of the gifts have not been examined by the AO. Since, the entire claim of the assessee explaining the source of deposit in the bank account from where the three cheques were issued in favour of the Allahabad Development Authority is based on the cash flow statement and certain gifts claimed to have been received from the family members and friends therefore, without verifying the correctness of the claim of gifts as well as the availability of the fund including the opening balance, if any, the issue cannot be decided conclusively. The assessee since beginning has owned the amount deposited in the bank account in joint name of the assessee and his wife and therefore, there is no grievance of the assessee regarding the addition, if any, on this account in

the hand of the assessee on substantive basis. The claim of the assessee regarding the gift received from the family members and friends as well as the other source of availability of fund as shown in the cash flow statement has remained unverified and unexamined. Hence, in the facts and circumstances of the case, where the addition has made on the basis of the entries in the bank account of the assessee and not something which is first time detected during the search and the assessee has shown interest income from this bank account in the return of income filed under section 139 of the Income Tax Act then the claim of the assessee regarding the source of the deposit in the bank account is required to be verified by conducting a proper enquiry at the level of the AO. Accordingly, in the interest of justice, we set aside the impugned order of the CIT(A) *qua* this issue and remand the matter to the record of the AO for re-adjudication of the same after verification and examination of the relevant record to be produced by the assessee in support of the claim of source of deposits in bank account in the joint name of the assessee and his wife.

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

Order pronounced on 24.02.2023 at Allahabad, U.P. under Rule 34(4) of ITAT Rules, 1963.

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

Dated: 24/02/2023

Allahabad

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Copy forwarded to:

1. Appellant-
2. Respondent-
3. CIT(A), Allahabad
4. CIT
5. DR

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

By order
Sr. P.S.