

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 1553/Mum/2022 (A.Y. 2010-11)

Ranjeet Lalchandji Jain

Zohra Manjil, 35 Memonwada Road,

Mumbai-400003.

PAN: AEUPJ4255Q

..... Appellant

Vs.

ITO-17(3)(1),

Mumbai-400020

..... Respondent

Appellant by	:	Sh. Vimal Jain, AR
Respondent by	:	Sh. Purnesh Gururani, Sr.DR
Date of hearing	:	10/10/2022
Date of pronouncement	:	06/01/2023

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of National Faceless Appeal Centre (for short 'NFAC') dated 25.04.2022 under section 250 of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2010-11. The assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Learned CIT(A) erred in confirming the order of ITO, wherein ITO treated Balance sheet item of cash on hand of Rs. 12,75,600/- as on 31.3.09 as revenue income of Rs. 11,64,700/- for the year ended 31.3.10. And accordingly levied tax and interest for the year ended 31.3.10, after adding Rs.11,64,700/-in income of Rs.89,160/-

for which return was filed on 27.7.10 when both Balance Sheets as at 31.3.09 & 31.3.10 were given to learned 1.TO, cash on hand of Rs. 12,75,600/- was clearly shown in the Balance Sheet as at 31.3.09.

2. On the facts & circumstance of the case and in law, the learned CIT(A), erred in not appreciating the averment of assessee that the amount of Rs.12,75,600/- cash on hand as at 31.3.09, was kept separate for buying the house. The search for the house was going on for 5 to 6 years but purchase of house was materialized only in November 2009 for Rs.11,66,000/- pertaining to AY 2010-11 and therefore cash was not deposited in bank, so cash on hand was maintained for few years right from December 2004 onwards.

3. On the facts and circumstances of the case and in law, the learned CIT erred in not appreciating that cash on hand as on 31.3.09 of Rs.12,75,600/- was carried forward out of earlier cash on hand. These cash balance was arising out of gifts given by parents and wife in earlier years and all gift deed and ITR are filed with the learned CIT (A).

4. On the facts and circumstances of the case and in law, the learned CIT (A) erred in stating that no ITR was filed for AY 2010-11, thereby alleging the assessee and not appreciated that assessee on the contrary was filing ITR's right from 1993 onwards for more than 20 years regularly and not a single year is lapsed without filing the return. Even when there was no tax payable the return was filed. The learned ITO erred in stating that no ITR was filed for AY 2010-2011, whereas two specific letters were written to learned ITO only for informing that all ITR are filed.

5. Cash on hand cannot be doubted where full accounts are shown and capital account and balance sheet are provided along with ITR's filed to the learned CIT (A) irrespective of the amount. Once income statement along with bank summary, capital account and ITR filed are available on record, cash on hand in Balance sheet cannot be doubted irrespective of the amount. Therefore, Learned CIT(A) has erred in not appreciating the above without providing any material on record and rejecting outright all records of assessee.

6. The Appellant craves leave to add, alter, amend, classify, reclassify or delete any of above ground of appeal and requests to consider each of above grounds without prejudice to one another.

RELIEF CLAIMED:

The arbitrary addition of Rs 11,64,700/-in income for the year ended 31 3.10 done by the Learned ITO be deleted and accordingly tax and interest levied on above be deleted. Penalty if any levied be deleted.”

2. Brief facts of the case are that the assessee deposited cash of Rs. 11, 64,700/- in DCB Bank. The ITD system of department shown that no return of income was filed by the assessee. Against this cash deposit AO received AIR in the case of assessee. A notice u/s148 of the act was issued in the case of assessee on 31-02-2017. In response to the notice assessee filed return of income on 28-08-2017 declaring income of Rs. 89,160/-.

3. During the assessment proceedings assessee was asked to furnish the source of cash deposit amounting to Rs. 11,64,700/-. Assessee submitted its ITR and balance-sheet for AY 2009-10 and 2010-11. In his submission assessee submitted that cash deposits made in DCB bank were out of opening cash balance of Rs.12,75,600/-. AO was not satisfied with various submissions and explanations submitted by the assessee and this amount of Rs. 11, 64,700/- he added back to the total income of the assessee as unexplained cash deposit. Aggrieved with this order of AO assessee preferred an appeal before the Ld.CIT(A). Before the forum of first appellate authority also, order of AO was sustained. Thereafter assessee approached ITAT through this appeal against the order of Ld.CIT(A).

4. We have gone through the order of AO, Ld.CIT(A) and various submissions of the assessee along with the paper-book. It is observed vide page no. 59 to 79 of the paper -book that the assessee regularly file his returns of income from AY 2003-04 To 2006-07, vide page no.1 to 4 for AY 2009-10 and 2010-11 vide page no. 1 to 4 of additional paper-book for AY 2009-10 and 2010-11 respectively. It is

further observed that assessee have very meagre source of income and income disclosed for AY 2009-10 was Rs 46,775/- and Rs. 89,162/- for AY 2010-11.

5. Vide page no. 71 assessee submitted a table disclosing its capital account from 1992-1993 to 2009-10. In this table we have gone through the amount of income, interest income, withdrawals and gift received during the FY 2004-05 and 2005-06 amounting to Rs. 7.5 lakhs and Rs 6 lakhs respectively. Assessee submitted 3 gift deeds from father, mother and wife against the gifts received.

6. We have gone through the balance-sheets of the assessee wherein the assessee shown cash in hand figures. It is here pertinent to mention that disclosing cash-in hand in the balance-sheet, practice started from AY 2009-10 only. In earlier years no cash in hand balance ever disclose along with returns filed. Moreover, figure of cash in hand assessee disclosed in balance-sheet were not supported by any regular cash book maintained by the assessee.

7. In totality of the facts it can be reasonably concluded that the figure of cash in hand vis a vis the annual income of the assessee it is beyond our understanding that how a person of such a meagre income can maintain such a big amount of cash in hand which is almost 10-12 times of his income. It is further noted that amount of gift received as mentioned supra from various relations were also in cash. In this case assessee being beneficiary of the amounts deposited in bank account, onus is on the assessee to authenticate the source of cash accumulated over the period along with his capacity to have this cash balance. simply because in AY 2009-10 assessee filed balance-sheet with ITR disclosing an amount of cash in hand, will not absolve the assessee from his onus to satisfactorily explain the source of cash.

8. In all the probabilities on the given set of facts it can't be accepted that assessee was maintaining such a huge cash balance at his home in the guise of search of a house. Assessee looks to be a prudent man the way he presented the his books of accounts and filing ITR regularly, this fact goes against the fact that a person like assessee is maintaining such a huge cash balance with him. We further observe in AY 2010-11 assessee not only invested in residential premises but also bought FD with companies that shows that the assessee is least interested in keeping cash balance with him. During the assessment proceedings assessee did not substantiate the source of income of three donors as mentioned supra. As a huge amount of gift amounting to Rs 13.5 lakhs were given by them during the FY 2004-05 and 2005-06.

9. On the given set of facts, we don't hesitate in applying the principle of substance over form and preponderance of probability. Explanations and submissions of the assessee are not found to be sufficient to discharge the onus and correlate the amount of cash deposit with so called opening balance of cash - in-hand, which is actually never disclosed with ITR prior to AY 2009-10. In the result we are not inclined to interfere in the orders of the authorities below.

10. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 6th day of January, 2023.

Sd/-

(SANDEEP SINGH KARHAIL)

JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 06/01/2023

SK, Sr.PS

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) /The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy. /Asstt.Registrar)
ITAT, Mumbai