

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 9686/DEL/2019 [A.Y. 2014-15]

Shri Jitender
S/o Ishwar Singh
H.N. 51B, VPO
Daulatpur, Hisar

Vs.

The Income tax Officer
Ward - 5
Hisar

PAN - AKKPJ 1568 N

(Applicant)

(Respondent)

Assessee By : Shri Gautam Jain, Adv

Department By : Shri Anuj Garg, Sr. DR

Date of Hearing : 21.03.2023
Date of Pronouncement : 23 .03.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 5, Ludhiana dated 12.09.2019 pertaining to Assessment
Year 2014-15.

2. The assessee has raised the following grounds of appeal:

“1. That the learned Commissioner of Income Tax (Appeals)-5, Ludhiana has erred both in law and on facts in upholding an addition of Rs. 21,28,284/- representing alleged unexplained cash deposits in the bank account maintained by the appellant for the instant assessment year.

1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that cash deposit was duly explained by the cash flow statement and therefore the addition made and confirmed is not in accordance with law.

2. erred both in law and on facts in not accepting the cash deposit inter-alia was explained out of gifts received of Rs. 9,50,000/- and Rs. 4,00,000/- from Sh. Ishwar Singh, father of the appellant and Sh. Dharminder brother of the appellant respectively.

2.1 That the finding that identity or source of income of the donors have not been established and also genuineness of the transaction is not established is not based on correct appreciation of facts and record and therefore untenable.

2.2 That further finding that "overall analysis of the pattern of the cash deposit and withdrawals, the cash flow statement filed by the AR is not found convincing" is factually incorrect, legally misconceived and wholly untenable

Prayer lit is therefore, prayed that, addition made and sustained of Rs.21,28,284/- by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the appellant be allowed.”

3. Briefly stated, the facts of the case are that the assessee filed his return of income on 16.09.2014 declaring total income amounting to Rs. 1,97,866/- and agricultural income of Rs. 5.50 lakhs. Return was selected for scrutiny assessment through CASS and accordingly, statutory notices were issued and served upon the assessee. The assessee was required to furnish the source of cash deposits amounting to Rs. 52,19,274/-, being Rs. 10,28,200/- in IDBI Bank and Rs. 41,91,074/- in Axis Bank.

4. On receiving no plausible reply, the Assessing Officer made addition of Rs. 52,19,274/-.

5. The assessee strongly agitated the matter before the Id. CIT(A) and explained the source of cash deposits in the two bank accounts.

6. After considering the facts and submissions, the Id. CIT(A) partly accepted the source of cash deposits amounting to Rs. 33,90,990/-, and after reducing the expenses on account of household expenses, granted relief of Rs. 30,90,990/-.

7. Before us, the ld. counsel for the assessee reiterated the source of cash deposits and vehemently stated that the ld. CIT(A) ought to have accepted the entire deposits found in the bank accounts as explained.

8. Per contra, the ld. DR strongly supported the findings of the assessee Assessing Officer and read the relevant part of the assessment order.

9. We have given thoughtful consideration to the orders of the authorities below. The assessee explained that Rs. 5,15,600/- was out of cash withdrawal from partnership firm M/s Fly Road Bar & Restaurant. The said withdrawal is also evidenced from copy of ledger account exhibited at page 32 of the Paper Book.

10. We find that the withdrawals from the firm has not been accepted by the ld. CIT(A) by observing that there is also deposit of Rs. 7,03,357/- and, therefore, no cash is available with the assessee. This observation is factually incorrect because, as per Exhibit 32, though the withdrawals are in cash, but all the impugned deposits are through

cheques. Therefore, it cannot be said that the cash withdrawn was deposited in the account.

11. Explanation to the extent of Rs. 5,15,600/- stands accepted.
12. Deposit of Rs. 9,50,000/- has been explained to be out of gifts from parents/relatives, for which the assessee has furnished copy of sale deeds of agricultural lands for Rs. 22.12 lakhs, Rs. 1.17 crores, Rs. 4,90,000/- and Rs. 18.50 lakhs/-.
13. Gifts have been given by relatives out of sale proceeds of agricultural land and no adverse inference has been drawn by the Assessing Officer, nor by the first appellate authority. Therefore, the source to the extent of Rs. 9.50 lakhs also stands explained.
14. Interestingly, in the remand report, which is placed at pages 9 to 14 of the Paper Book, the Assessing Officer, while objecting for admission of additional evidences, concluded as under:

“On going through the documents submitted it is seen that the cash deposited in the bank accounts during the year under consideration may be out of these explained sources as per the papers submitted by the assessee before your honour.”

15. Even the Joint CIT, while forwarding the remand report of the Assessing Officer, has observed as under:

“The report of the Assessing Officer shows that the assessee has been provided number of opportunities during the assessment proceedings. The assessee has submitted evidence before your good self during the course of appeal.....However, submissions of the assessee seem acceptable. The appeal may, accordingly, be decided on merits.”

16. The aforementioned remand report clearly shows that both, the Assessing Officer and the Id. Joint CIT, were *ad adem*, in so far as the sources of cash deposits in two bank accounts are concerned. Yet, the same has not been accepted by the Id. CIT(A), which makes the finding of the Id. CIT(A) erroneous and against the facts of the case.

17. In fact, the Id. CIT(A), at page 3(iv) of his order, has accepted that the assessee has net agricultural income of Rs. 5.50 lakhs, which is gross agricultural income Rs. 13,22,562/- less agriculture and household expenses Rs. 7,72,562/-, duly shown in the return of income during the year under consideration.

18. Having accepted this fact, the Id. CIT(A) erred in further deducting Rs. 3 lakhs for household expenses. Considering the facts of the case in totality, in light of the discussion hereinabove, we are of the considered view that the assessee has successfully explained the source of cash deposits in its bank account with IDBI and AXIS Bank and the Id. CIT(A) ought to have accepted the entire cash deposits as explained.

19. We, therefore, do not find any merit in the addition sustained by the Id. CIT(A). The Assessing Officer is directed to delete the entire addition of Rs. 52,19,724/-

20. In the result, the appeal of the assessee in ITA No. 9686/DEL/2019 is allowed.

The order is pronounced in the open court on 23.03.2023.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 23rd March, 2023.

VL/

Copy forwarded to:

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

Asst. 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	
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