

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND  
SH. N.K CHOUDHRY, JUDICIAL MEMBER**

ITA No. 1058/Del/2021  
(Assessment Year: 2011-12)

Mukund Madhva Raichur B-25, Kalumal Estate, Opp Juhu Post Office, A B Nair Road, Juhu, Mumbai 400098  <b>PAN No. ADSPR 1591 G</b> <b>(APPELLANT)</b>	Vs.	NFAC Delhi     <b>(RESPONDENT)</b>
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Assessee by	Shri Manoj Kumar, CA
Revenue by	Shri Arvind Bansal, Sr. DR

Date of hearing:	15.03.2023
Date of Pronouncement:	31.03.2023

**ORDER**

**PER ANIL CHATURVEDI, AM :**

This appeal filed by the assessee is directed against the order dated 12.07.2021 of the NFAC-Delhi relating to Assessment Year 2011-12.

2. Brief facts of the case as culled out from the material on record are as under :-

3. The assessee is an individual stated to be an employee in Kotak Mahindra Bank Ltd. The assessee filed his return of income for A.Y. 2011-12 on 29.07.2011 declaring total income of Rs.

48,27,323/-. The return of income was initially processed u/s. 143(1) of the I.T Act 1961. Thereafter the case of the assessee was selected for scrutiny and accordingly notices u/s. 142(1) and 143(2) were issued and served on the assessee. AO has noted that the notices issued remained uncomplied by the assessee. Thereafter AO framed assessment u/s. 144, determining the total income at Rs. 1,23,87,323/- *inter alia* by making addition of Rs. 73,10,000/- on account of unexplained investments being the deposits made in the bank account and denial of claim of deduction under chapter VIA of Rs. 2,50,000/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 12.07.2021 in appeal no. ITBA/NFAC/S/250/2021-22/1034145843(1) granted partial relief to the assessee.

5. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:-

*GROUND NO.I - Addition of Rs.73,10,000 as unexplained investment*

*1. The National Faceless Appeal Centre (NFAC) ("the CIT(A)) erred in confirming the addition made by the learned AO amounting to Rs.73,10,000 as unexplained investment under section 69 on account of investment in fixed Deposit in bank by referring to AIR Information Report.*

*2. The CIT(A) erred in rejecting the explanation regarding nature and source of deposit in bank account and investment in fixed deposits merely for the sake of rejecting the same ignoring the legal purport of the documentary evidences and*

*on suspicion, irrelevant, factually incorrect and untenable grounds before erroneously confirming of section 69 .*

3. *He failed to appreciate and ought to have held that:*

a. *The Appellant had fully explained such investment by producing documentary evidence.*

b. *The Appellant has activated the Auto Sweep facility in his savings bank account wherein excess amount over an agreed minimum amount is automatically converted into fixed deposits and in case of need for withdrawal, the amount in the fixed deposits is redeemed and the surplus balance is again reconverted to fixed deposit.*

c. *All these deposits of Rs. 73,10,000 pertain to auto sweep transactions from savings bank account maintained with Kotak bank.*

4. *The Appellant prays that amount of Rs.73,10,000 is fully explained and provisions of section 69 being not applicable, the addition of Rs.73,10,000 be deleted.*

*GROUND NO.II - Invalid assessment u/s. 144 and in violation of principal of natural justice*

1. *The CIT(A) erred in not dealing/adjudicating the ground relating to jurisdiction confirming ex parte order u/S. 144 passed by AO*

2. *Without prejudice to the above, he failed to appreciate and ought to have held that order passed by AO u/s. 144 is void ab initio as it is passed in violation of the principle of natural justice in as much as no proper and reasonable opportunity being heard provided to the Appellant and non-consideration of the Appellant's submission.*

3. *Without prejudice the above, the CIT(A) appeal himself failed to adhere to the principles of natural justice and requirement of judicious of his duty before rejecting the explanation of the appellant on untenable grounds when all the supporting documents and evidences were furnished to him*

*4. The Appellant prays that entire proceeding before AO as well as CIT(A) is void ab initio and should be quashed.*

*The Appellant craves leave to add, amend, alter or delete any of the above grounds of appeal as may be advised in due course.*

6. Before us at the outset, Ld. AR submitted that though the assessee has raised various grounds but the sole controversy is with respect to the addition of Rs. 73,10,000/- made as unexplained investment.

7. AO has noted that as per the individual transactions statement it was noticed that assessee had deposited of Rs. 73,10,000/- on different dates during the FY 2010-11 relevant to A.Y. 2011-12 and the assessee was therefore asked to explain as to why the amount should not be added to the taxable income. AO has noted that no justification or explanation was furnished by the assessee. He therefore made the addition of Rs. 73,10,000/-.

8. Aggrieved by the order of AO, assessee carried the matter before CIT(A), who upheld the order of AO.

9. Aggrieved by the order of CIT(A), assessee is now in appeal before Tribunal.

10. Before us, Ld. AR reiterated the submissions made by AO and CIT(A) and further submitted that assessee is an employee of

Kotak Mahindra Bank Ltd. and maintains a saving bank account with Kotak Mahindra Bank at Ahmedabad Branch. The salary received by the assessee is credited in the aforesaid bank account. The assessee had given standing instructions to the bank that when the balance in his saving bank exceeded Rs. 25,000/-, the excess amount be swept out towards new fixed deposits and whenever the saving bank account is debited by more than Rs. 25,000/- on account of cheque being presented etc. the fixed deposit be prematurely broken and credited to the saving bank account. He thus submitted that assessee has opted for sweep in/sweep out facility with the bank. During the year under consideration assessee had kept fixed deposits of Rs. 92,80,000/- from the aforesaid saving bank account and the source of which was the savings out of salary income. He submitted that out of the total deposits of Rs. 92,80,000/- the AIR statement had picked up 20 deposits amounting to Rs. 73,10,000/-. He submitted that before CIT(A), assessee had furnished the entire bank statement of the Kotak Mahindra Bank and from that statement he had pointed to the deposits of salary account, the amount swept out as fixed deposit account and the same fixed deposit being credited back to the saving account on maturity or premature closure. He submitted that assessee has co-related the fixed deposit amount from the saving bank account and had also explained the source of investment but however CIT(A) have wrongly concluded that no evidence was furnished by the assessee to demonstrate that the fixed deposits are made out

of the salary income. Before us Ld. AR pointed to the copy of the bank statement placed at page 9 to 42 of the paper book and from those statements, he pointed to the amount being credited from his salary account the sweeping in and sweeping out of the fixed deposits and the maturity of the fixed deposits. He also pointed to the statement showing details of the fixed deposits of the assessee with Kotak Mahindra Bank and the copy of which is placed page 8 of the paper book. He therefore submitted that assessee has fully explained the source of the fixed deposits which was out of the savings and in such a situation the addition on account of unexplained investment is not warranted.

11. Learned DR on the other hand supported the order of lower authorities.

12. We have heard the rival submissions and perused the materials available on record. The issue before us for adjudication is about the addition made on account of unexplained investments. It is the case of the Revenue that the investments in fixed deposits have not been explained by the assessee and therefore the same were added as income. On the other hand it is the contention of the assessee that the fixed deposits made by the assessee with Kotak Mahindra Bank are out of the savings and salary income. Before us the Ld. AR has pointed to the bank statements of the bank and from those bank statement he has demonstrated the receipt of salary and has also co-related the

making of fixed deposits to be out of the salary received by him. Assessee has also demonstrated that the fixed deposits made are out of the salary income earned by the assessee. The copy of the bank statement filed by the assessee reveals that there are sweep in and sweep out of the deposits and the making of the fixed deposits from the saving bank account has also been certified by the bank. Before us Revenue has not pointed that the submissions of the assessee are false or incorrect. Considering the totality of the aforesaid facts, we are of the view that the AO was not justified in making the addition of Rs. 73,10,000/- as unexplained investment. We therefore direct the AO to delete the addition made. **Thus the grounds of the assessee are allowed.**

**13. In the result, appeal of the assessee is allowed**

**Order pronounced in the open court on 31.03.2023**

**Sd/-  
(N.K CHOUDHRY)  
JUDICIAL MEMBER**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 31.03.2023

NV

**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI