

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

BEFORE,

**SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.7983/Del/2019
(ASSESSMENT YEAR 2014-15)**

Surjit Singh 23, West Avenue Road Punjabi Bagh New Delhi-110 026 PAN-BCSPS 1635Q (Appellant)	Vs.	Asst. CIT Circle-41(1) New Delhi (Respondent)
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Appellant by	Mr. G. S. Kohli, CA
Respondent by	Mr. Anuj Garg, Sr. DR
Date of Hearing	25/07/2023
Date of Pronouncement	08/08/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-14, New Delhi ["Ld. CIT(A)", for short], dated 29/08/2019 for Assessment Year 2014-15.

2. The Grounds taken in this appeal are as under:

"1. The Appellate Order framed by CIT(Appeal) are unlawful and are against the natural law of justice.

2. The learned CIT(Appeal) had failed to appreciate the facts placed on the record in regard to an addition held by A.O. for Rs.67,25,000/- and twisted in her own manner in sustaining the addition to the tune of Rs.35,00,000/-.

3. That in view of the aforesaid grounds the Appellate Order seems to be an enhancement and for that the CIT(Appeal) has not only discharged his liability in issuing the notice u/s 251(2) rather had also failed to discharge her moral obligation to enquire from A.O. before making an addition of Rs.35,00,000/- in the hands of the appellant.

4. That an addition/sustain of Rs.35,00,000/- is absolute not related to addition held by A.O.as it was related to rent and the learned A.O. after discussing the total rent received assessed the assessee accordingly.

5. The learned CIT(Appeal) was not justified in confirming/sustaining the addition of Rs.35,00,000/- in her own manner.

6. That the appellant craves their right to amend, delete or add any grounds of appeal at or before the time of hearing.”

3. Brief facts of the case are that, the assessee filed his return declaring total income of Rs. 23,97,940/-, the case was selected for scrutiny through CASS in order to examine the cash deposit in the saving bank account of the assessee. The Department had received AIR Information that the assessee had made cash deposits of Rs. 60, 00,000/- on scrutinizing the bank statement with the Indus land Bank, observed some more cash deposit of Rs. 7, 25,000/- in the account of the assessee. But in the absence of any explanation from the assessee, made addition of Rs. 67,25,000/- as deemed income of the assessee u/s 68 of the Act by way of assessment order dated 28/12/2016. Aggrieved by the said addition, the assessee preferred an appeal before the CIT(A). During the appellate proceedings the ld. CIT(A) found that there was no deposit of 60,00,000/- lakhs in the account of the assessee and the said finding has been arrived by the CIT(A) based on the information provided by the bank and also after verifying the materials. But the ld. CIT(A) made fresh addition of Rs.

32,25,000/- based on the information provided by the bank, wherein the assessee has deposited Rs. 35,00,000/- as per the physical voucher which are as under:-

<i>Date</i>	<i>Name of the depositor</i>	<i>Amount</i>
20.04.2013	Rahul Puri	10,00,000/-
20.04.2013	Harjeet Singh	5,00,000/-
20.04.2013	Rajeev Puri	10,00,000/
20.04.2013	Sumit Singh	10,00,000/

4. The Ld. CIT (A) confirmed/made fresh addition of Rs. 35, 00,000/- as unexplained cash deposit u/s 68 of the Act. Aggrieved by the order of the CIT(A) the assessee preferred the present appeal on the grounds mentioned above.

5. Ground No. 1 & 6 are general in nature which are dismissed. The Ld. Counsel for the assessee canvassing on the Ground No. 3, submitted that based on the clerical omission on the part of the bank a wrong information has been provided by the bank stating that Rs. 60,00,000/- has been deposited by the assessee by way of cash. The said bank namely State Bank of Travancore (now State bank of India) has furnished a confirmation to the effect that the information of cash deposit of Rs. 60,00,000/- was due to 'clerical omission'. Based on the statement of the bank and the material available the CIT(A) has concluded that there was no deposit of Rs. 60,00,000/- in the account of the assessee. However, the CIT(A) has made fresh addition of Rs. 35,00,000/- without providing a notice u/s 251(2), therefore, the order of the CIT(A) is liable to be quashed.

6. Per contra, the Ld. Departmental Representative submitted that the information collected by the CIT(A) regarding deposit of Rs. 35,00,000/- as per physical voucher has been given to the assessee by the CIT(A) vide order sheet entry dated 08/04/2019 and the assessee has made submissions on the cash deposit of Rs. 35,00,000/-, the addition/enhancement has been made by the CIT(A) on compliance of the provisions of Section 251(2) of the Act. Therefore, there is no violation of provisions of Section 251(2) of the Act.

7. We have heard both the parties and perused the material available on record. It is not in dispute that the Ld. A.O. has made addition of Rs. 60,00,000/- based on the information given by the State Bank of Travancore that an amount of Rs. 60,00,000/- has been deposited to the account of the assessee by way of cash, further the ld. CIT(A) on verifying the bank statement found that there is no entry of deposit of cash of Rs. 60,00,000/- in the account of the assessee, further the bank has also confirmed that the said information of depositing of Rs. 60,00,000/- into assessee's bank was given due to 'clerical omission' on the part of the bank and regretted for the mistakes. Therefore, the CIT(A) concluded that there was no cash deposit of Rs. 60,00,000/- in the account of the assessee. However, the Ld. CIT(A) based on the information provided by the Bank, observed that there was a deposit of Rs. 35,00,000/- as per the physical voucher and the details are as under:-

<i>Date</i>	<i>Name of the depositor</i>	<i>Amount</i>
20.04.2013	Rahul Puri	10,00,000/-
20.04.2013	Harjeet Singh	5,00,000/-
20.04.2013	Rajeev Puri	10,00,000/
20.04.2013	Sumit Singh	10,00,000/

8. Thus, vide order sheet dated 08/04/2019 the said information has been given to the assessee and asked to explain the cash deposit of Rs. 35,00,000/- in turn the assessee has submitted his explanation on the said amount of Rs. 35,00,000/, thus we do not find any non compliance of provision of Section 251(2) of the Act the order sheet entry dated 08/04/2019 wherein the said information regarding the deposit of Rs. 35,00,000/- has been given to the assessee and was asked to explain the cash deposit of Rs. 35,00,000/- the said addition of the CIT(A) amounts to the notice providing a reasonable opportunity of showing cause against the enhancement of the income of the assessee as stated in Section 251(2) of the Act, therefore, dismissed the Ground No. 3 of the assessee.

9. In so far as Ground No. 2, 4 & 5 are concerned which are on merit, the Ld. Counsel for the assessee vehemently submitted that the issue of Rs. 35,00,000/- is related to rent and security deposit as it was fully explained to the A.O. But the CIT(A) erroneously observed that the assessment was completed by the A.O. u/s 144 of the I.T. Act and inferred that no such explanations or discussion could have been carried out as there was no compliance by the assessee during the course of assessment proceedings. The

Ld. Counsel for the assessee has taken us through the paper book, wherein a tabular chart of conciliation of rental income declared with an amount appearing in 26AS which was filed before the A.O. and submitted that the entire information regarding Rs. 35,00,000/- has been disclosed before the A.O. and on satisfying with the submission of the assessee, the Ld. A.O. has not made any addition on the said count therefore, the CIT(A) committed an error in making the addition of Rs. 35,00,000/- in the Appeal filed by the assessee.

10. Per contra, the Ld. Departmental Representative relied on the findings of the CIT(A) and submitted that the Ground No. 2, 4 & 5 are liable to be dismissed.

11. We have heard both the parties and perused the material available on record. It is the specific case of the assessee that the tenant of the assessee Avtech Digital Equipments Pvt. Ltd. has deposited the said amount of Rs. 35,00,000/- as security deposit which was directly deposited to the bank account as the cheque issued by the tenant for Rs. 50,00,000/- was dishonored. In support of the said contention a confirmation from M/s Avtech Digital Equipments Pvt. Ltd. is also been produced wherein the tenant of the assessee stated that they had issued Cheque No. 549369 dated 13/04/2011 of Rs. 50,00,000/- drawn on Oriental bank of Commerce as advance rent and security of the assessee, since the cheque was dishonored they deposited

security deposit of Rs. 35,00,000/- in cash for fear of litigation and or vacation of the premises, further Rahul Puri and Rajiv Puri were the Directors of the Company while Sumit Singh is the employee of the Company and produced the bank statement. It is found that the ld. CIT(A) while disbelieving the version of the assessee and making the addition not made any enquiry from the Assessing Officer and further found that nothing has been mentioned regarding the cash deposit of Rs. 35,00,000/- in the remand report submitted by the A.O. and no remand has been called for by the CIT(A) on the said issue. The CIT(A) ought to have called for the remand report before making fresh addition that too when the assessee specifically contended that the said issue of cash deposit of Rs. 35,00,000/- has been discussed before the A.O. and consciously the A.O. has not made addition on the said ground. Therefore, in our considered opinion if the matter is remanded to the file of the A.O. for de-novo verification of addition of Rs. 35,00,000/-, the substantial justice would be rendered. Therefore, we remand the issue of 'cash deposit of Rs. 35,00,000/- in the Bank account of the assessee' to the file of the A.O. with a direction to provide adequate opportunity of being heard to the Assessee and decide afresh. Ordered accordingly.

Order pronounced in open Court on 08th August, 2023

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 08/08/2023
Pk/R.N, Sr. Ps

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI