

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 246/JP/2023  
निर्धारण वर्ष/Assessment Year : 2017-18

Shri Ghanshyam Gupta 8, Dashera Kothi, Govind Nagar Jaipur- 302 003	बनाम Vs.	The ITO Ward 5(1) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFZPG 9169 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Ms. Suhani Maharwal, CA  
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 24/08/2023  
उदघोषणा की तारीख / Date of Pronouncement: 20 /09/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the Id. CIT(A) dated 13-03-2023, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2017-18 wherein the assessee has raised the solitary ground of appeal.

“On the facts and in the circumstances of the case, the AO has erred in making addition of Rs.25,58,500/- which was sustained to Rs.23,58,500/- by Id. CIT(A) without considering the

material with them which is unjustified and liable to be deleted.’’

2.1 Brief facts of the case are that the assessee filed his e-return of income on 3-11-2017 declaring total income of Rs.4,11,960/- after deduction Chapter VIA. The AO noted that the assessee had deposited cash during the demonetization period and the case of the assessee was selected for Limited Scrutiny through CASS and notice u/s 143(2) of the Act was issued on 08-08-2018 which was duly served upon the assessee through Speed post & Mail. Thereafter notices u/s 142(1) issues alongwith questionnaire on 26-06-2019 which was duly served upon the assessee through Mail. In compliance of notices u/s 143(2) and 142(1) of the Act, the assessee furnished the reply from time to time and necessary details/ submissions/ information were submitted as to the queries before the AO through on line. The AO examined the information filed by the assessee and noticed that the assessee had deposited cash of Rs.25,58,500/- during the demonetization period from 9-11-2016 to 31-12-2016 in different banks as per details mentioned at page 2 of the assessment. To this effect, the AO asked the assessee to furnish the evidences of cash deposited and source of cash deposited and show cause notice was issued on 6-11-2019 fixing the date on or before 11-11-2019 to furnish the reply of explanation for such deposition of amount during demonetization period

the details. It is noted that the assessee had furnished reply before the AO mentioning therein as under:-0

“1. Copy of cash book for the period 01-04-2016 to 31-03-2017 is enclosed to prove the source of cash deposited into banking account.

2. Salary is received from SSB Wears Pvt. Ltd. having office at 2, Kakla Purohit ji Ka, Jaipur – PAN AACCS ,1819A.

3. No household expenses details are maintained by assessee although assessee has shown LIC, Tuition Fee, Investment in PPF and NSC separately. Rs.2,50,000/- were spent in household expenses than above.

4. Assessee lent money to various person and which have been received during the year and assessee deposited such cash in bank account.

It is also noted that the AO issued u/s 133 (6) to these 13 persons and the same is returned back as to the genuineness of the loan which could not be verified.

S.N.	Name of the person	Amount
1.	Satyanarain Sharma	1,39,750/-
2.	Mangal Meena	1,45,000/-
3.	Purshpendra Singh	1,40,000/-
4.	Hiralal	1,35,000/-
5.	Sita Ram	1,35,000/-
6.	Santosh Sharma	1,38,373/-
7.	Anil Pareek	1,23,625/-

8.	Santosh Devi	1,34,375/-
9.	Lalu Sharma	1,39,750/-
10.	Manoj Gupta	1,35,000/-
11.	Prasant Tinkar	1,39,750/-
12.	Balbir Singh	1,44,500/-
13.	Vishnu Dhokari	1,55,000/-

The AO noted that the assessee filed written submission vide dated 13-08-2019 in which he stated that source of cash deposited is his past savings and salary received from SSB Wears Pvt. Ltd. The AO thus examined the submission filed by the assessee but did not find tenable and noted that the assessee failed to give any genuine explanation about the nature and source of cash deposited and thus the cash deposited in various banks by the assessee was treated as unexplained money u/s 69A of the Act by the AO and added the same to the total income of the assessee. Thus according to the AO, total income assessed is taxable @60% u/s 115BBE of the Act.

2.2 In first appeal, the ld. CIT (A) sustained the addition of Rs.23,58,500/- by observing as under:-

“7.3 Ground of Appeal No. 2-Addition of Rs. 25,58,500/- u/s 69A of Act.

The gist of addition made is outlined in para 2a to 2d of this order. The undersigned has gone through the written

submissions filed and this Ground of Appeal is discussed and decided in subsequent paras of this order.

7.4 In the written submissions filed the Appellant has contended as under:

a) Source of cash deposit is as under:

Op. Cash in hand	Rs. 4,13,585/-
Gifts from mother and mother in law	Rs. 4,79,500/-
Cash withdrawals from banks	Rs.1,44,000/-
Repayment of advances given earlier	Rs. 15,21,415/
to various parties	Rs.25,58,500/-

b) Regular books of accounts are maintained where cash deposits are accounted for.

c) Source of opening cash in hand of Rs. 4,13,585/- is from savings from salary and interest.

d) To prove the gifts, Appellant filed affidavits from his mother and mother in law.

e) Copies of accounts with name and address provided of parties from whom repayments received in cash which was deposited before AO.

f) These receipts are not covered u/s 68 of Act.

g) Reliance was placed on judgement of Hon'ble ITAT, Bengaluru in Teena Bethala vs ITO dated 28.08.2019.

7.5 a) Repayment of advances/loans given in cash of Rs.15,21,415/-

Appellant claims that he filed copies of accounts with name and addresses of various parties to whom he had given loans/advances in cash and repayments were received in cash which was deposited in Appellants bank account during demonetization period. AO issued notices u/s 133(6) to these different-parties at names and addresses provided by the

Appellant. However, all these notices u/s 133(6) of Act were returned back without any service. This shows that entire transaction appears to be an afterthought and sham. Not even a single out of these 13 parties could be served the notice u/s 133(6) of Act at the names and addresses provided by Appellant. These names and addresses were taken by the AO from the copies of accounts of these parties filed before the AO. This shows that none of the 13 parties were available at the addresses provided by Appellant in copies of accounts of these 13 parties. Hence, the action of AO in adding this sum of Rs. 15,21,415/- u/s 69A is uphold and confirmed as source and nature of cash deposit of Rs. 15,21,415/- is not explained.

b) Opening cash in hand (Rs.4,13,585/-) and cash withdrawals from bank (Rs. 1,44,000/-)-Rs. 5.57,585/-

In AY 2017-18 the salary receipt of Appellant is Rs. 3,00,000/-, In the written submissions filed (as reproduced on page 3 of assessment order) it is stated that Rs. 2,50,000/- is spent annually on household expenses other than LIC, Tuition fees, PPF, NSC etc. These facts show that the savings in hands of Appellant are minimal. Apart from salary and interest the Appellant has no other source of income. In view of these minimal savings it cannot be said that Appellant had opening cash in hand of Rs. 4,13,585/- out of his cash savings. The sanctity of the cash book produced before the AO is not verifiable in view of the above facts. Further, the Appellant stated that it had made cash withdrawals of Rs. 1,44,000/- which remain unutilized and same was re-deposited in cash in his bank account. Appellant has not outlined the details and dates on which this cash was withdrawn, purpose of such cash withdrawal and why it was not utilized for the purpose for which it was withdrawn.

On the other hand as per Indian Customs there is habit of keeping cash savings for future needs, concept of Stree Dhan etc. Hence, the entire contention of the Appellant cannot be rejected out rightly. To be fair and reasonable it is hereby estimated that Appellant had opening cash in hand from his cash savings and cash withdrawals from bank made on earlier

dates to the extent of Rs. 2,00,000/- on 08.11.2016. Hence, the Appellant is allowed relief of Rs. 2,00,000/- and the balance addition made by the AO of Rs. 3,57,585/- (5,57,585-2,00,000) u/s 69A is hereby confirmed.

c) Gift from mother and mother in law - Rs. 4,79,500/- Appellant has filed affidavit from Kanta Devi aged 70 years (Appellant's mother in law) that she gave cash gift to Appellant of Rs. 2,41,500/- during the demonetization period and affidavit from Bhagwati Devi aged 88 years (Appellant mother) that she gave cash gift of Rs. 2,38,000/- to Appellant during demonetization period. Both these ladies are senior citizens and no source of income has been stated in the Affidavit nor has it been mentioned whether they have filed their ITR's or not. Both the Affidavits have identical content. Purpose of making gift to Appellant on identical facts during demonetization is not explained. Both these senior citizens have given almost 100% of their cash savings to Appellant as cash gift during demonetization is an after thought on part of Appellant to explain the source of cash deposits. These affidavits are an after thought on part of Appellant and is a self serving evidence only. Hence, this contention of Appellant is not acceptable and addition made by AO of Rs. 4,79,500/- u/s 69A is confirmed and upheld. 7.6 In view of above facts the Appellant is allowed relief of Rs. 2,00,000/- and addition made by AO of Rs. 23,58,500/- is confirmed. Ground of Appeal No. 2 is partly allowed.”

2.3 During the course of hearing, the ld.AR of the assessee filed following detailed written submission that the ld. CIT(A) has erred in confirming the action of the AO as to addition of Rs. 23,58,500/- which should be deleted.

“Assessee has been filing his return of income since many years under the head salary and income from other sources. For the assessment year 2017-18 return of income was filed u/s 139(1) of the I.T. Act 1961 on dated 3 Nov 2017. The year under consideration was taken for assessment u/s 143(3) of the I.T. Act 1961 and ld. AO

assessed by making an addition of Rs. 25,58,500/- in the total income under section 69A of I T Act 1961 as unexplained money. Before Ld.AO assessee explained the sources of Rs 25, 58,500/- is as under:-

S.N.	Particulars	Amount
1.	. Opening cash in hand	413585.00
2.	Gifts from mother and mother-in-law	479500.00
3.	Cash withdrawals from bank	144000.00
4.	Repayment of advances given to various parties in earlier period	1521415.00
	Total	2558500.00

Thereafter assessee filed appeal before Ld.CIT(A) (NFAC) who after hearing the contention of assessee accepted the opening cash balance of Rs 2,00,000/- out of the 4,13,585/-. Aggrieved by the order of Ld.CIT(A)(NFAC), this appeal was filed.

Ground of Appeal No. 1 Addition of Rs. 2358500 by NFAC under section 69A of I.T Act 1961

Assessee summarized the sources of cash deposits which are as under –

S.N.	Particulars	Amount
1.	. Opening cash in hand	413585.00
2.	Gifts from mother and mother-in-law	479500.00
3.	Cash withdrawals from bank	144000.00

4.	Repayment of advances given to various parties in earlier period	1521415.00
	Total	2558500.00

1-To prove the opening cash in hand, assessee submitted cash book to both the lower authorities .As I have said earlier that assessee has been filing his return of income since 25 years and he has regular sources of income from salary as well as interest and also he maintains regular books of accounts . Cash book enclosed herewith in page no 1-5 of paper book.

Also, AO did not at all rejected/doubted the correctness of the cash book and therefore, such an evidence produced before him was binding upon him.

It was submitted that in the non-business cases, submission and consideration of the cash book / cash flow statements to explain the source is not uncommon and even the Hon'ble Courts and Tribunals have taken cognizance and rather accepted such evidence and explanation based thereon is valid. Therefore, the AO could not have blindly ignored such cash book unless he could reject the same based on the contrary material to support. The said cash book shows opening cash in hand of Rs. 413585/- as on 01.04.2016 The assessee fully explained and established the source of this opening cash in his written submissions before the Id. CIT(A).Submission before CIT (A) is enclosed herewith on page no 6-10 of paper book.

Even the AO also did not dispute the claimed amount of the household expenditure. Also wife of assessee is filing her return of income from many years and earned income from business and other source. All the above contentions are sufficient to prove the cash balance available with the assessee. ITR of wife enclosed on page no 80-82 of paper book.

Here I want to rely on the case of Shri Sunil Mathur Vs. ITO Ward - 2(4) Kota ITA no 660/JP/2019 enclosed herewith on page no 11-23 of paper book.

2-To prove the gifts from mother and mother in law, assessee produced affidavit from both, which are duly signed and notarized before both the lower authorities and are again enclosed herewith on page no 24-25

of paper book. No contrary material brought before us by the revenue. Both the ladies are around 80 years old and as per Indian Custom there is concept of Stree Dhan . The affidavit was not rejected and therefore as per decision relied upon as given by Hon'ble S.C in case of S.P Jain Vs Union of India .

3. Repayment of advances given to various parties in earlier period, In this case it has been continuously argued by assessee with the filing of evidences that the amount deposited in cash into banking account were received from advances earlier given by assessee. Assessee aged around 50 years having filing his return of income from 30 years of age. He has income from salary as well as interest income from advances given to various persons. I am herewith enclosing computation of total income and ITR-V for the year under consideration and earlier two years. Page no 26-37 of paperbook.

Your honours, you may see here that assessee is earning interest income regularly and such interest was received from debtors during the year and such income was not at all disputed by Ld.AO. The amount was received out of repayment of such debtors, the repayment receipts from debtors is not come under the purview of cash credits u/s 68 this is the case where amount is received on account of outgoing of other assets. This is the similar to amount received from sale of property or sale of goods in either case the onus to prove the source of debtors or the buyer of property is not on the assessee. However assessee had enclosed the confirmation from debtors before both the lower authorities and also placed on page no 38-54 of paper book.

Here I want to rely of Kanchan (Widow) vs ITO (ITAT Jaipur) ITA No. 184/JP/2021. Placed on page no 55-70 of paper book.

“We have heard the rival contentions and persuaded the material available on record. The ld. AO in the second round of litigation admitted the fact that the appellant has made the sales supported by delivery challan and invoice and copy of party's ledger account. This sale since accepted and the receipt of the sales in cash cannot be considered as an amount of income under the provision of section 68 of the Act. As the credit in the books of account first is sales made as it is evident from the copy of the ledger filed by the assessee thus, the source of money received is clearly proved and there is no rejection of the books produced before the assessing officer. If the sales are accepted to have been made the related cash receipt recorded in the books of account arising out of the said sales is same receipt for which

source is sales made. Thus, the separate receipt of cash on account such sales after accepting the cash sales as genuine the receipt does not fall within the purview of section 68 and thus the addition of Rs. 3,19,380/- is required to be deleted In the result, appeal of the assessee is allowed.”

In addition to above your honours, I want to emphasise here that assessee has withdrawn from bank in cash out of deposits made earlier in banking accounts. I have already stated that the assessee has received and deposited Rs 1521415.00 from the repayments from loans and advances given earlier. During the same year the entire amount had been withdrawn. Your honours you may see the cash book page no 1-5 of paper book that in aggregating Rs. 1679533.00 were withdrawn by assessee from time to time. The withdrawals were used to again in lending to various persons on interest. In the subsequent year the interest income was also offered to tax. Please see the computation of total income of immediately succeeding year in which interest income was offered to tax.

Your honours it is undisputed fact that the regular books of accounts are being prepared and maintained by assessee. Assessee filled copy of complete cash book along with debtor's ledger, before both the lower authorities. Your honour when books of accounts are being maintained and deposits or investments are duly recorded in the books, the addition could have been only be made u/s 68 of I.T Act 1961, the addition under section 69A can only be made in three conditions:

- (i) Investments are made and no books of accounts are maintained.
- (ii) Investments is made but no recorded in books of accounts.
- (iii) Investments not fully recorded in the books of accounts.

Your honours here I want to rely on ITA No 1383 and 1384/Bang/2019 in case of Smt. Teena Bethala, Bengaluru vs Income Tax Officer, Ward –on 28 August,2019. Placed on page no 71-79 of paper book.

“On a reading of section 69A (supra), it is clear that the onus is upon the AO to find the assessee to be the owner of any money, bullion, jewellery or valuable article and such money, bullion,

jewellery or valuable article was not recorded in the books of account, if any, maintained by the assessee for any source of income. In these circumstances, the AO can resort to making an addition under section 69A of the Act only in respect of such monies / assets / articles or things which are not recorded in the assessee's books of account. In the case on hand, the cash deposits are recorded in the books of account and are reportedly made on the receipt from a creditor. Further, the PAN and address of the creditor as well as ledger account copies of the creditor in the assessee's books of account have also been filed before the AO. In these circumstances, it is evident that the AO has not made out a case calling for an addition under section 69A of the Act. Probably, an addition under section 68 of the Act could have been considered; but then that is not the case of the AO. The assessee, apart from raising several other grounds, has challenged the legality of the addition being made under section 69A of the Act. In support of the assessee's books contentions, the learned AR placed reliance on the decision of the ITAT -Mumbai Bench in the case of DCIT Vs. Karthik Construction Co. in ITA No.2292/Mum/2016 dated 23.02.2018, wherein the Bench at para 6 thereof has held that addition under section 69A of the Act cannot be made in respect of those assets / monies / entries which are recorded in the assessee's books of account. In my considered view, the aforesaid decision of the ITAT – Mumbai Bench (supra) is squarely applicable to the facts of the case on hand, where the entries are recorded in the assessee's books of account. In this view of the matter, I am of the opinion that the addition of Rs.33,23,425/- made under section 69A of the Act is bad in law ITA Nos.1383 and 1384/Bang/2019 in the facts and circumstances of the case on hand and therefore delete the addition of Rs. 33,23,425/- made thereunder. The AO is accordingly directed.”

2.4 On the other hand, the Id. DR supported the orders of the lower authorities.

2.5 The Bench has heard both the parties and perused the materials available on record. In this case, the AO during assessment proceedings examined the submissions of the assessee and not found considerable on account of the assessee

is salaried person and his salary receipt for the A.Y. 2017-18 is Rs.3,00,000/- which is very low in comparison to past savings of the assessee Rs.25,58,500/- and genuineness of the loan given to above persons were not verified. According to the AO, the assessee failed to give any genuine explanation about the nature and source of cash deposits, hence the cash deposits of Rs.25,58,500/- in the various bank account of the assessee is deemed as unexplained money u/s 69A of the Act and thus the AO added the same to the total income of the assessee and total income of assessee is taxed u/s 115BBE of the Act @ 60% which in first appeal the Id. CIT(A) has confirmed the addition of Rs.23,58,500/-. It is noted that the assessee before the AO explained the source of Rs.25,58,500/- as under:-

S.N.	Particulars	Amount
1.	. Opening cash in hand	413585.00
2.	Gifts from mother and mother-in-law	479500.00
3.	Cash withdrawals from bank	144000.00
4.	Repayment of advances given to various parties in earlier period	1521415.00
	Total	2558500.00

It is also noted that the assessee has submitted the details of opening cash in hand amounting to Rs.4,13,585/- at pages 1 to 5 of the paper book. It is also noted that

the assessee had filed the affidavit of his mother in law and mother at pages 24 and 25 who had given the amount of Rs.2,41,500/- and Rs.2,38,000/- totaling to Rs.4,79,500/- and such amount was deposited by the assessee in his bank account. The assessee has filed the summary of details of cash withdrawal from bank amounting to Rs14,40,000/-. It is also noted that the assessee had given the details of repayment of advances amounting to Rs. 15,21,415/-given to various parties in earlier period. It is also observed that it is undisputed facts that the regular books of accounts are being prepared and maintained by the assessee and the assessee filed copy of complete cash book alongwith the debtor's ledger before the lower authorities and thus deposits or investments are duly recorded in the books of the assessee. It is further observed that the assessee had received and deposited Rs.15,21,415/- from the repayments from loans and advances given earlier and thus during the same year the entire amount had been withdrawn. The withdrawals were used again in lending to various persons on interest. The assessee submitted that in the subsequent year the interest income was also offered to tax. The Bench has taken into considerations the submissions of the assessee and case laws cited (supra) and found that the submissions produced by the assessee has merit and in this view of the matter, the addition sustained by the Id. CIT(A) amounting to Rs.23,58,500/- deserves to be deleted. Thus the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed

Order pronounced in the open court on 20 / 09/2023.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 20 / 09/2023

\*Mishra

आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Shri Ghanshyam Gupta, Jaipur
2. प्रत्यर्था / The Respondent- The ITO, Ward 5(1), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 246/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar