

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 394/JP/2023
निर्धारण वर्ष / Assessment Years : 2011-12

Deen Dayal Sharma A-135, Govindpura Kardhani Kalwar Road, Jaipur	बनाम Vs.	Income Tax Officer, Ward 3(1), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANRPS 4586 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S. L. Poddar (Adv.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 06/09/2023
उदघोषणा की तारीख / Date of Pronouncement : 21/09/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 31/05/2023 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2011-12 which in turn arise from the order dated 10.12.2018 passed under section 147 r.w.s. 143(3) of the Income Tax Act, by ITO, Ward -3(1), Jaipur.

2. The assessee has marched this appeal on the following

grounds:-

“1. In the facts and circumstances of the case, the learned CIT(A) has erred in confirming the action of the learned AO in reopening the assessment and completing the assessment without jurisdiction and on illegal grounds.

2. In the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs. 1,38,334/- out of Rs. 1,53,534/- on account of short term capital gain.

3. In the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs. 30,70,000/- on account of cash deposit/unexplained deposits in the bank account.

4. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.”

3. The fact as culled out from the records is that in the case of the assessee a letter u/s. 133(6) of the act was issued on 07.03.2018 calling for the information from the assessee. But the assessee did not respond to this letter. Therefore, on the basis of information available notice u/s 148 of the Income-tax Act, 1961 dated 27.03.2018 was issued after taking prior approval from the Pr. Commissioner of Income-tax, Jaipur-1, Jaipur and served to the assessee through speed post. As the Id.AO has reason to believe that the assessee sold an immovable property at P.No. A-15, Kardhani Residential Scheme, Govindpura, Kalwar Road Jaipur relevant to the year under consideration for the sale consideration of Rs. 20,95,000/- and value of the said property for stamp duty

purpose was assessed at Rs 31,93,200/- escaped to the assessment. In response to the notice the assessee filed return of income declaring income of Rs 2,53,880 after claiming deduction of ₹1,00,000 under chapter VIA. The assessee was engaged in the business of job work activity of building construction.

3.1 The learned assessing officer issued notices to the assessee and in response to the notices the assessee filed sale deed of property cost of acquisition of property bank statement of the assessee's bank account. From the bank statement of the assessee Id. AO noted that the assessee has deposited a sum of Rs. 30,70,000/- in his bank account. The assessee was asked to explain the source of the cash deposited into the bank account. The assessee submitted that the same is out of earlier withdrawal. But the Id. AO noted that the assessee has shown turnover of Rs. 51,20,635/- and presumptive income u/s. 44AD of Rs. 4,80,000/- was disclosed. The Id. AO based on this information noted that the assessee made expenditure of Rs. 46,40,635/-. Based on this observation the Id. AO added a sum of Rs. 30,70,000/- as income of the assessee. The Id. AO also made an addition of Rs. 1,53,534/- as short term capital gain of the assessee.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. A propose to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“12. I have considered the order of AO, written submission of the appellant, remand report of the AO, rejoinder of the appellant in detail. Ground Nos. 1 and 2 are regarding jurisdiction issue, there was no objection during the proceedings u/s 148 and return of income was claimed to be filed on 24.04.2018. Further, after several notices, which remained uncomplied with, the AR attended and furnished part details on subsequent hearings.

13. In the case of Lakshman Prasad Aggarwal vs. UOI - 140 taxmann.com 15 (Cal.) (2022) (HC) - the Assessee complied with 148 and not file objection - it was held that the AO rightly proceeded with reopening. Further, also keeping in view of comments of AO in remand report detailed above in para 5, the contention of the appellant regarding the issue of jurisdiction is rejected. Hence, this ground of appeal is dismissed.

14. Regarding the computation of short term capital gain arrived at Rs.1,53,534/-, the AO was quite reasonable in allowing various expenses. However, the AO is directed to allow further expenses of Rs.15,200/- on account of advocate fee as part of registry expenses after verifying that the same were incurred as per record. Hence, this issue is allowed for statistical purposes.

15. Regarding the addition of Rs.30,70,000/- on account of undisclosed cash deposits in bank and converted into time deposits in Urban Cooperative Bank, despite show cause the appellant could not satisfactorily explain the source of such deposits before the AO. The appellant is not correct in requesting for admitting additional evidence as per Rule 46A on plea that counsel did not care to attend the proceedings, as appellant and AR are one party to the Department and AR appeared before the AO but did not file such relevant details and no cogent reasons have been provided to justify non submission of evidences during the assessment / appeal. Further, AO in remand report has observed that cash was withdrawn 1-2 months before re-deposit and these was no prudence for re-deposit as he was engaged in building construction/Job work activity. The appellant is not giving any supporting documentary evidence to support his grounds of appeal. Reliance is placed on rationale held in the case of :

1. The Hon'ble Supreme Court in the case of Roshan Di Hatti v. CIT [1992] 2 SCC 378 wherein it has been held that if the assessee fails to discharge the onus by producing cogent evidence and explanation, the AO would be justified in making the additions back into the income of the assessee.

16. Further, the appellant has not been able to link and substantiate its claim of redeposit of withdrawals made earlier. Reliance is placed on rationale held in the case of -

1. Kavita Chandra Vs CIT [2017] 81 taxmann.com 317 (Punjab & Haryana)/[2017] 248 Taxman 358 (Punjab & Haryana) [2017] 398 ITR 641 (Punjab & Haryana)

2. Karan Bhalla vs. ITO (ITA No. 4862/Del/2014) dated 09.06.2017 by ITAT-Delhi.

3. Silverdale Inn (P) Ltd. vs. ITO 127 taxmann.com 679 (Gujarat High Court) (2021)

17. Further, reliance is placed on rationale in the case of Shri Mohammed Sharaq vs. ITO ITA 1818/Bang/2019 of ITAT Bangalore SMC Bench that availability of earlier withdrawal of cash for the subsequent deposit must be established by the appellant to the satisfaction of the AO and in the absence of such evidence, the benefit of earlier withdrawal cannot be given. Similarly, reliance is also placed in the case of Leela Devi vs. ITO. In the case of Praveen GArg vs. ITO, 132 taxamann.com 142 (Delhi ITAT) (2021) enhancement was made, where AO did not make such addition of unexplained cash deposit in bank accounts of the assessee in the absence of any evidence on record. Further, there is no substantial reason to withdraw cash for expenses when the previous cash withdrawals remained unrelinquished. Accordingly, considering the above discussion, the addition made by the AO of Rs.30,70,000/- is upheld and the ground of appeal No. 5 is dismissed.

18. Ground No. 6 relates to charging of interest, which is consequential in nature. Hence, dismissed.

19. Ground No. 7 is general in nature.

20. In the result, the appellant is partly allowed.”

5. As the assessee did not find any favour from the order of the Id. CIT(A). The assessee has preferred the present appeal as per the grounds raised in para 2 above. A propose to the grounds so raised the Id. AR of the assessee, he has relied upon the following written submission:

“The assessee is an individual. Return was filed on 24.04.2018 declaring total income at Rs. 2,53,880/- in response to notice u/s 148 dated 27.03.2018. Copy of return is available on paper book page no. 1 to 4. The Learned Assessing Officer has completed the assessment u/s 147/143(3) of the IT Act 1961 on 10/12/2018 determining the total income at Rs. 34,77,414- by making the following additions –

- (i) Addition of Rs. 1,53,534/- on account of short-term capital gain.
- (ii) Addition of Rs. 30,70,000/- on account of cash deposit/unexplained deposits in the bank account.

Aggrieved with the order of the Learned Assessing Officer the assessee has preferred appeal before the Learned CIT(A). The Learned CIT(A) as sustained the following additions –

- (i) Addition of Rs. 1,38,334/- out of Rs. 1,53,534/- on account of short-term capital gain.
- (ii) Addition of Rs. 30,70,000/- on account of cash deposit/unexplained deposits in the bank account.

Aggrieved with the order of the Learned CIT(A) the assessee has preferred appeal before your honour. With this background the individual grounds of appeal are as under: -

Ground No. 1:-

In the facts and circumstances of the case, the learned CIT(A) has erred in confirming the action of the learned AO in reopening the assessment and completing the assessment without jurisdiction and on illegal grounds.

The Learned Assessing Officer has mentioned on the first page of the assessment order that in the case of the assessee proceedings u/s 148 were initiated because there was information that assessee had sold immovable property for apparent consideration of Rs. 29,95,000/- whereas the Sub-registrar took the value of the same at Rs.

31,93,200/- meaning thereby more by Rs. 198200/- (3193200-2995000). In terms of percentage the same works out to 6.21%. It is submitted that Finance Act 2018, came up with a remedial measure by providing a tolerance band of 5% in respect of the difference in Stamp Duty Value & the actual consideration which was further increased to 10% by Finance Act 2020. Parliament has introduced third proviso in section 50C(1) of the Act, as per which the difference in stamp duty valuation and actual consideration should be ignored, if it is less than 5%/10%. The tolerance of 10% if given in the case of the assessee, there would be left no case for taking action u/s 148. In the following cases the Hon'ble Benches of Tribunal have held that benefit of tolerance of 10% has to be given since the inception of provision of section 50C i.e. w.e.f. 01.04.2003. This being the position no action would lie in the case of the assessee u/s 148 as the difference between the apparent consideration and that taken by the sub-registrar is only 6.21%. In view of this it is requested that the initiation of proceedings u/s 148 may kindly be quashed. The following case laws are quoted in support –

AMRAPALI CINEMA vs. ASSISTANT COMMISSIONER OF INCOME TAX (ITAT DELHI BENCH) ITA No. 282/Del/2017 dt. Apr 28, (2021) 190 ITD 0036 (Delhi-Trib) Asst. Year 2012-13

Capital gains—special provision for full value of consideration in certain cases—Case of assessee was selected for scrutiny assessment—Assessing Officer observed that assessee had discontinued its business of cinema hall and sold entire immovable property—Assessee declared long term capital gains amounting to Rs.4,57,09,500—Assessing Officer declined claim of assessee for indexation, as on 01.04.1981 and computed long term capital gain at Rs.8,67,93,779—CIT(A) allowed claim of assessee regarding indexation of fair market value at 01.04.1981—However, in respect of fair market value—CIT(A) observed that as per stamp valuation of property, value was found at Rs.9,38,45,440/- and assessee claimed sale consideration at Rs.8,78,00,000—Matter was referred to DVO who determined fair market value at Rs.8,89,63,168—CIT(A) adopted same—Held, there is no dispute with regard to fact that fair market value determined by DVO at Rs. 8,89,63,168/- against actual sale consideration of Rs.8,78,00,000/- as disclosed in Sale Deed—Resulting difference is Rs.11,63,168/- which is 1.02%—Co-ordinate Bench of this Tribunal in case of Maria Fernandes Cheryl vs ITO has held that it is a case of a curative amendment to take care of unintended consequences of scheme of Section 50C—It makes perfect sense, and truly reflects a very pragmatic approach full of compassion and fairness, that just because there is a small variation between stated sale consideration of a property and stamp duty valuation of same property, one cannot proceed to draw an inference against assessee, and subject assessee to practically prove his being truthful in stating sale consideration—Clearly, therefore, this insertion of third proviso to Section 50C(1) is in

nature of a remedial measure to address a bonafide situation where there is little justification for invoking an anti-avoidance provision— Even if valuation of a property, for purpose of stamp duty valuation, is 10% more than stated sale consideration, stated sale consideration will be accepted at face value and anti-avoidance provisions under section 50C will not be invoked—Once legislature very graciously accepts, by introducing legal amendments in question, that there were lacunas in provisions of Section 50 C in sense that even in cases of genuine variations between stated consideration and stamp duty valuation, anti-avoidance provisions under section 50C could be pressed into service, and thus remedied law, there is no escape from holding that these amendments are effective with effect from date on which related provision, i.e., Section 50C, itself was introduced—These amendments are thus held to be retrospective in effect—Provisions of third proviso to Section 50C (1), as they stand now, must be held to be effective with effect from 1st April 2003—Respectfully following same, Assessing Officer is directed to delete addition—Assessee's appeal allowed.

Case Name : Sri Sandeep Patil Vs. ITO (ITAT Bangalore) Appeal Number : ITA No. 924/Bang/2019 Date of Judgement/Order : 09/09/2020 Related Assessment Year : 2016-2017

Parliament has introduced third proviso in section 50C(1) of the Act, as per which the difference in stamp duty valuation and actual consideration should be ignored, if it is less than 5%/10%. Even though the said provision has come into effect from 1.4.2019/1.4.2021, we notice that the Kolkata Bench of Tribunal has held it to be curative in nature in the case of CHANDRA PRAKASH JHUNJHUNWALA vs. DEPUTY COMMISSIONER OF INCOME TAX in ITA No. 2351/Kol/2017 dt. Aug 9, 2019 (2020) 181 ITD 0185 (Kolkata-Trib), (2019) 201 TTJ 0831 (Kol) and accordingly held that the proviso shall apply since the date of insertion of sec. 50C of the Act. Accordingly, the above said reasoning given by the Kolkata bench of ITAT also supports the contentions of the assessee.

CHANDRA PRAKASH JHUNJHUNWALA vs. DEPUTY COMMISSIONER OF INCOME TAX in ITA No. 2351/Kol/2017 dt. Aug 9, 2019 (2020) 181 ITD 0185 (Kolkata-Trib), (2019) 201 TTJ 0831 (Kol)

The proviso shall apply since the date of insertion of sec. 50C of the Act. Accordingly, the above said reasoning given by the Kolkata bench of ITAT also supports the contentions of the assessee.

In view of the aforesaid decisions the ratio of which is fully applicable to the facts of the case, the initiating of proceedings u/s 148 deserves to be dropped.

Ground No. 2 –

In the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs. 1,38,334/- out of Rs. 1,53,534/- on account of short-term capital gain.

During the year under consideration the assessee has sold plot no. A-15, Kardhani Residential Scheme, Govindpura, Kalwar Road, Jaipur on 18.11.2010 for as consideration of Rs. 29,95,000/- and Stamp Duty Authority has taken the value of Rs. 31,93,200/- on the basis of which the Learned Assessing Officer has reopened the case for the assessee. During the course of assessment the assessee has submitted the purchase deed of above property. Copy of sale deed is available on paper book page no. 4 to 14.

The property was purchased for a consideration of Rs. 15,00,000/- on 23.05.2008 on which the assessee has also paid registry expense of Rs. 1,31,170 (Rs. 115170/- registry expenses and Rs. 16000/- typing and other charges). Copy purchase deed is available on paper book page no. 15 to 25. During the course of assessment proceedings the assessee has also submitted bill/vouches regarding cost of construction i.e. of Rs. 14,23,696/-. The Learned Assessing Officer has also accepted the same. Copy of reply submitted before the Learned Assessing Officer along with bills for construction is available on paper book page no. 26 to 57.

But the Stamp Duty Authority has taken the value of Rs. 31,93,200/- instead of Rs. 29,95,000/-. The variation is only 6.21% between the apparent consideration and taken by the sub-registrar. In view of the aforesaid decisions quoted against ground no. 1 the Learned Assessing Officer is required to ignore the difference being below 10% and thus no addition was called for in the case. The addition made by the Learned Assessing Officer deserves to be deleted.

Ground No. 3 –

In the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs. 30,70,000/- on account of cash deposit/unexplained deposits in the bank account.

This addition has been made by the Learned on the basis of cash deposited in the bank account of the assessee ignoring the plea of the assessee that deposits in the bank accounts were made out of withdrawals made earlier from the bank accounts itself. The position of withdrawal and deposits in the bank accounts is as under: -

S.N.	Date of deposit	Account No.	Amount	Account from which withdrawal	Date on withdrawal	Amount
1	28.07.2010	81001001463	450000	0061101002638	04.06.2010	400000

2	03.08.2010	81001001463	490000	Out of sale of plot	Sale of plot	490000
3	17.09.2010	151101000082	350000	29570100003679	17.08.2010	500000
4	13.09.2010	151101000082	400000	29570100003679	17.08.2010	200000
5	14.09.2010	151101000082	450000	29570100003679	18.08.2010	500000
6	29.10.2010	00061101002638	930000	00151101000082	09.10.2010	490000
		00061101002638		00151101000082	29.10.2010	480000
	Total		3070000			3060000

Copies of above bank accounts are available on paper book page no. 58 to 87.

The perusal of the above bank accounts reveals that there are withdrawal of Rs. 30,60,000/- which precede the deposits in the bank accounts. Therefore, there was no reason to treat the deposits in bank accounts as unexplained. It is further submitted that the Learned CIT(A) had called for a remand report from the Learned Assessing Officer. The Learned Assessing Officer submitted the remand report under letter No. ITO/ward-3(1)/JPR/2019-20/1421 dated 17.02.2020. In this remand report the Learned Assessing Officer has not disputed the facts of withdrawal from the bank account. It has been stated in the remand report that the withdrawals happen just one or two months before the re-deposits. However, the Learned Assessing Officer has assumed and presumed that these withdrawal might have been used for business. In this regard it is submitted that assumption, presumption and suspicion, however strong cannot take the place of evidence. Therefore, the action of the Learned CIT(A) in confirming the additions made the Learned Assessing Officer deserve to be deleted. The following decisions are quoted in support –

- (i) *Uma Charan Shaw & Brothers 37 ITR 271 (SC)*
- (ii) *CIT vs. Anupam Kapoor 299 ITR 179 (P&H)*
- (iii) *CIT vs. Dhiraj Lal Girdhari Lal 26 OTR 736*
- (iv) *Dhakeshwari Cotton Mills 26 ITR 775 (SC)*
- (v) *State vs. Gulzari Lal Tondon 1979 AIR 1382 (SC)*
- (vi) *J.A. Naidu vs. State of Maharastra 1979 AIR 1537 (SC)*

In view of the aforesaid facts and circumstances the addition made by the Learned Assessing Officer deserves to be deleted.

Ground No. 4:-

The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.

Not pressed.

Your Honors are requested to decide the appeal in favour of the assessee by considering the above submission and oblige.”

5.1 The Id. AR of the assessee in addition to the written submission vehemently argued that the addition of Rs. 1,53,534/- made by the Id. AO sustained by the Id. CIT(A) is not without appreciation of the fact that the addition made by the Id. AO ignoring the actual value of consideration of sale of property at Rs. 29,95,000/- and substituting the value as per stamp duty value purpose amount at Rs. 31,93,200/-. Thus, difference of Rs. 1,98,200 was considered for addition and Rs. 15,200/- claimed as expenses was disbelieved. Thus, as against the loss of Rs. 59,866/- declared by the assessee the addition of Rs. 1,53,534/- was made[$1,98,200+15,200-59,866=1,53,534/-$]. The Id. AR of the assessee thus, submitted that the substitution of the stamp duty value and the actual value is less than 10 % [here in this case the difference is @ 6.21 %]. As the Finance Act, 2018, came up with a remedial measure by providing a tolerance band of 5 % which has been further revised to 10 % and the said amendment in the law be considered even retrospective and for that contention he has relied upon the case laws in his written submission.

5.2 As regards the contention of cash deposit and its source the Id. AR of the assessee submitted that in the appellate proceeding before the Id. CIT(A) as certain additional evidence were submitted the Id. AO was directed to submit the remand report to the Id. CIT(A). The Id. AO submitted his remand report dated 17.02.2020. In this remand report the Id. AO did not dispute the contention of the assessee that the assessee has sufficient cash withdrawal as per the table made in the written submission. The Id. AO thus made the following observation in his remand report:

Perusal of bank account statements reveals that the cash has been withdrawn around 1-2 months before re-deposit. Assessee has claimed that these amount was kept with him for business purposes and cash withdrawal was redeposited in his bank account. The assessee has himself claimed that he was engaged in the business of Job work activity of building construction so cash withdrawal amount could have been used for business purposes. The issue may kindly be decided on merits accordingly.

Therefore, the even the cash deposit made by the assessee stands explained and prayed based on the various case laws that the addition made by deleted.

6. The Id DR is heard who has relied on the findings of the lower authorities on both the grounds on merits raised by the assessee.

7. We have heard the rival contentions and perused the material placed on record. The bench noted that the so far as the ground no. 2 is concerned the Id. CIT(A) has granted the benefit of cost of Rs. 15,200 and the assessee has disputed only the difference between the actual consideration and the amount considered for payment of stamp duty. The bench also noted that the difference between the actual consideration and the amount adopted for stem duty purpose is for an amount of Rs. 1,38,334/-. We also note that the difference between the actual consideration and the amount considered for stability purpose is 6.21 %. This issue has already been considered by the coordinate bench of Bangalore ITAT in the case of Sri Sandeep Patil Vs. ITO in ITA No. 924/Bang/2019. The operative part of the finding on the issue by the coordinate bench is as under :

10. We also notice that the Parliament has introduced third proviso in section 50C(1) of the Act, as per which the difference in stamp duty valuation and actual consideration should be ignored, if it is less than 5%/10%. Even though the said provision has come into effect from 1.4.2019/1.4.2021, we notice that the Kolkata Bench of Tribunal has held it to be curative in nature in the case of Chandra Prakash Jhunjhunwala (supra) and accordingly held that the proviso shall apply since the date of insertion of sec.50C of the Act. Accordingly, the above said reasoning given by the Kolkata bench of ITAT also supports the contentions of the assessee.

11. In view of the foregoing discussions we find merit in the prayer of the assessee. We notice that the addition of Rs.15,92,800/- sustained by Ld CIT(A) works out to less than 10% of the actual consideration of Rs.2,33,00,000/- paid by the assessee. Accordingly, we modify the

order passed by Ld. CIT(A) and direct the A.O. to ignore the difference between fair market value determined by CIT(A) and the actual consideration as the same is less than 10% of the actual consideration.

On this issue we note that there is a merit in the arguments of the Id. AR of the assessee and revenue could not bring to service any contra judgment we respectfully following the findings of the coordinate bench judgment considered the arguments and direct the Id. AO to delete the addition of Rs. 1,38,334/-. In terms of this observation ground no. 2 raised by the assessee is allowed.

7.1 As regards the ground no. 3 raised by the assessee for an amount of Rs. 30,70,000/- being the amount of cash deposited into the bank account of the assessee, the bench noted that the Id. CIT(A) based on the submission made by the assessee forwarded the evidences and submission of the assessee for the comments of the Id. AO. The Id. AO based on the evidence so produced observed as under :

“The assessee was asked to furnish the source of these huge cash deposits in his bank account but he did not file any documentary evidence in this regard during assessment proceedings. As per ITR assessee has shown total turnover of Rs. 51,20,635/- and declared presumptive income u/s 44AD of Rs. 4,80,000/-. Therefore, expenditure of Rs. 46,40,635/- was made by the assessee. Whereas he was made cash deposit in bank of Rs. 30,70,000/- and converted in time deposits in urban cooperative bank. The assessee was asked vide above show cause that why the income of Rs. 30,70,000/- should not added in you total income as undisclosed income but he did not file any

reply/evidence in this regard. Therefore, the deposits of Rs. 30,70,000/- added to the total income of the assessee as income from other source.

During the course of appellant proceedings it is noticed that the assessee has filed the additional evidence i.e. copy of various bank accounts details and cash book statement and also stated that the assessee was withdrawn the cash and after some days deposit the same. The dates of cash withdrawal supporting for cash deposit as under:-

S.No.	Date of deposit	Account No.	Amount	Account from which withdrawal	Date on withdrawal	Amount
1	28/07/2010	81001001463	4,50,000/-	0061101002638	04/06/2010	4,00,000/-
2	03/08/2010	81001001463	4,90,000/-	Out of sale	According cash book	-
3	17/09/2010	151101000082	3,50,000/-	29570100003679	17/08/2010	5,00,000/-
4	13/09/2010	151101000082	4,00,000/- 5	29570100003679	17/08/2010	2,00,000/-
	14/09/2010	151101000082	4,50,000/-	29570100003679	18/08/2010	5,00,000/-
6	29.10.2010	0061101002638	9,30,000/-	151101000082	9/10/2010 & 29/10/2010	9,70,000/-
		Total	30,70,000/-			25,70,000/-

Perusal of bank account statements reveals that cash has been withdrawn around 1-2 month before re-deposit. Assessee has claimed that this amount was kept with him for business purposes and cash withdrawn was re-deposited in his bank account. The assessee has himself claimed that he was engaged in the business of job work activity of building construction so cash withdrawal amount could have been used for business purpose. The issue may kindly be decided on merits, accordingly.”

Based on the above remand report and submission of the assessee the Id. CIT(A) has dismissed this ground of the assessee merely relying on the judgment held that availability of earlier withdrawal of cash for the subsequent deposit must be established by the appellant to the satisfaction of the AO and in the absence of such evidence, the benefit of earlier withdrawal cannot be given. The CIT(A) further noted that there is no substantial reason to withdraw cash for expenses when the previous cash withdrawals remained unrelinquished. On this issue we note that both the lower authority did not doubt the cash withdrawal by the assessee. We also note that the lower authority also did not raise a question that if the cash repositied is considered the assessee is left with no cash for meeting the expenditure as alleged in the assessment order for claiming the presumptive income. The Id. AO or in that case the Id. CIT(A) did not dispute the availability of cash for redeposit to the assessee and there is an acceptance of the Id. AO as reproduced here in below :

Perusal of bank account statements reveals that the cash has been withdrawn around 1-2 months before re-deposit. Assessee has claimed that these amount was kept with him for business purposes and cash withdrawal was redeposited in his bank account. The assessee has himself claimed that he was engaged in the business of Job work activity of building construction so cash withdrawal amount could have been used for business purposes. The issue may kindly be decided on merits accordingly.

The revenue did not bring anything contrary to the submission of the assessee and when the lower authority categorically admitting the sufficient amount of cash withdrawal and the Id. AO through the Id. DR did not bring anything on record that the assessee has considered this cash for their other business use. Thus in the absence of this evidence we are of the considered view that once the assessee has established the source of cash deposited into the bank account, the lower authority erred in making / confirming the addition of Rs. 30,70,000/- merely based on the premise that the assessee might have used it for other purpose but that averments are not based on any evidence against the chart of withdrawal and deposit submitted by the assessee. Based on these observations the ground no. 3 raised by the assessee is allowed.

7.2 Ground no. 4 being general in nature does not require any adjudication by us.

7.3 The ground no. 1 raised by the assessee for challenging the re-opening proceeding since we have considered the appeal of the

assessee on merits this ground becomes educative in nature and therefore, the same is not adjudicated.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 21/09/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 21/09/2023

*Ganesh Kumar, PS

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

1. अपीलार्थी / The Appellant- Deen Dayal Sharma, Jaipur
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Ward-3(1), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 394/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar