

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.209 & 210/Ind/2023
(Assessment Year:2008-09)

Amit Ashok Agrawal 201, Devki Apts, E-27/28, Saket Indore	Vs.	ITO -2(2) Indore
(Appellant / Assessee)		(Revenue)
PAN: ADVPA1904F		
Assessee by	Assessee in person	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	26.10.2023	
Date of Pronouncement	31.10.2023	

ORDER

Per Vijay Pal Rao, JM:

These two appeals by the assessee are directed against the separate order of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi both dated 27.03.2023 arising from assessment order passed u/s 144 and penalty levied u/s 271A of the Act respectively . In the quantum appeal in ITANo.209/Ind/2023 assessee has raised following grounds of appeal:

"1.The Assessee had withdrawn more than Rs.15,00,000/- from Bank A/c's held with various banks including the overdraft limit account of Karnataka Bank wherein, the OD limit was of Rs.74 lacs, out of which, the deposits in cash were made in Citibank A/c as follows:

26/04/07	₹ 100,000.00	Old Cash-in-Hand of Rs.48,212/- + Rs.30,000/- w/d from Citibank between 05/04/07 to 26/04/07 + Rs.22,000/- borrowed from father, Late Shri Ashok R. Agrawal
07/05/07	₹ 120,000.00	Rs.20,000/- w/d from Citibank on 28/04/07 & 04/05/07 + Income from business of Rs.1,00,000/- on various instances in part
08/06/07	₹ 80,000.00	Out of Rs.99,500/- w/d from SCB on 31/05/07
27/06/07	₹ 22,000.00	Out of balance of SCB w/d of Rs.19,500/- + Rs.17,000/- w/d from Citibank on 11/05/07 & 04/06/07
27/08/07	₹ 50,000.00	Out of balance of above w/d of Rs.14,500/- + Rs.2,45,000/- w/d from SCB on 10/08/2007
03/09/07	₹ 25,000.00	
03/09/07	₹ 49,000.00	
05/09/07	₹ 25,000.00	
10/09/07	₹ 500,000.00	Out of balance of above w/d of Rs.1,10,500/- + Rs.1,25,000/- w/d from Citibank between 13/06/07 to 18/08/07 + Rs.2,90,000/- w/d from Karnataka Bank between 28/06/07 to 03/08/07
29/01/08	₹ 42,000.00	Out of Rs.1,35,000/- w/d from Citibank between 03/01/08 to 24/01/08
11/03/08	₹ 20,000.00	Out of Rs.80,000/- w/d from Karnataka Bank on 17/03/08

Hence, the Assessee had the sources of funds deposited by him in Cash in his A/c with Citibank. Also, as per the Remand Report of Income Tax Officer – 2(3), Indore dated 0809.2016, the Ld. AO has verified the contents of the table with regards to the Date of Cash Deposit, Amount and Source of Cash, as explained by the Assessee through various bank accounts as stated in remand report. **Hence, deletion of Rs.10,33,000/- is warranted here.**

2.The Assessee has utilized the funds in banks as follows:

A. KARNATAKA BANK

Usage of Funds majorly are as follows:

Repayment of Old Limit	₹ 4,062,419.00
AASK Technologies Limited	₹ 2,400,000.00

<i>Interest Payment on Loan & Bank Charges</i>	₹	700,531.50
<i>Trading of Shares payment</i>	₹	857,000.00
<i>Repayment of funds received in Citibank</i>	₹	420,000.00
<i>Cash-in-Hand withdrawn</i>	₹	320,000.00
<i>Fixed Deposit</i>	₹	300,000.00
<i>Misc Bills Paid</i>	₹	59,256.50
TOTAL	₹	9,119,207.00

B.

CITIBANK

Usage of Funds majorly are as follows:

<i>AASK Technologies Limited & Ors.</i>	₹	2,042,000.00
<i>Interest Payment on Loan & Bank Charges</i>	₹	194,465.80
<i>Trading of Shares payment</i>	₹	100,000.00
<i>Cash-in-Hand withdrawn (Citibank)</i>	₹	1,033,000.00
<i>Credit Card Bills Paid</i>	₹	266,820.40
<i>LIC Paid (For Self & Family Members)</i>	₹	739,161.00
<i>College Fees of Sister</i>	₹	75,000.00
<i>Mutual Funds Subscribed</i>	₹	345,000.00
<i>Misc Expenses</i>	₹	163,098.67
TOTAL	₹	4,958,545.87

It would be clear from perusal of the above tables that the Assessee has majorly withdrawn funds for the following:

- a. For repayment of old overdraft loans of Rs.40,62,419/-;*
- b. For transferring to own Companies of Rs.44,42,000/-;*
- c. For payment of interest on loan/ overdraft and bank charges of Rs.8,94,997.30;*

- d. For payment of credit cards bills & Misc. Bills of Rs.4,89,175.57;
- e. For payment of LIC for self & other family members of Rs.7,39,161/-;
- f. For share trading of Rs.9,57,000/-;
- g. For repayment of hand loan from uncle of Rs.5,00,000/-;
- h. For FDR with Karnataka Bank of Rs.3,00,000/-;
- i. For college fees of sister of Rs.75,000/-;
- j. For Mutual Funds subscribed Rs.3,45,000/-;
- k. For Cash-in-Hand withdrawn of Rs.10,70,000/-.

In this manner, maximum withdrawals are for old loan repayment, LIC, Interest etc. and the only business use is of Rs.9.57 lacs transferred to Share Trading houses wherein, the Assessee suffered huge losses. Complete list of transaction details of both the banks is enclosed. **Hence, deletion of Rs.7,03,838/- is warranted here.**

2. The Assessee had invested money in two mutual funds as follows:

- a. Rs.2,00,000/- in Fidelity Special Situations Fund on 30.05.2007 through Citibank A/c (Online Txn) which was redeemed on 06.07.2007 in two parts, i.e., Rs.1,41,835/- and Rs.63,276.45 = Rs.2,05,111.45 thereby, earning a growth of Rs.5,111.45;
- b. Rs.1,00,000/- in Merrill Lynch Equity Fund on 30.05.2007 through Citibank A/c (Online Txn) which was redeemed on 06.07.2007 of Rs.1,01,929.81 thereby, earning a growth of Rs.1,929.81;

In this manner, the total growth on Mutual Fund is of Rs.7,041/- and not of Rs.57,040/- as added by Ld. AO. **Hence, deletion of Rs.50,000/- is warranted here.**

3. The Complete transaction of trading of shares if explained as follows to depict that instead of any profit, there was loss booked in the year under dispute, mentioning the transactions of all the trading houses as follows:

<u>Trading House</u>	<u>Net Profit / (Loss) as per our Books</u>
Indira Securities (F&O)	(Rs.5,94,007.63)
Indira Securities (Cash-NSE)	Rs.2,25,596.20
Sanjay Baxi Securities (BSE)	Rs.1,71,627.03
Angel Broking (NSE, BSE, F&O)	(Rs.84,110.47)
Reliance Securities (NSE, BSE, F&O)	Rs.1,06,782.82
Profit / (Loss)	(Rs.70,602.34)

<i>STT Paid</i>	<i>(Rs.69,638.00)</i>
<i>Net Profit / (Loss)</i>	<i>(Rs.1,40,240.34)</i>

2. Ground no.1 is regarding addition of Rs.10,33,000/- on account of unexplained cash deposit in the bank account u/s 68 of the Act. The AO received AIR information revealing the cash deposit of Rs.10,33,000/- in his saving bank account with CITI Bank and investment in mutual funds of Rs. 2,00,000/-. The AO issued notice u/s 148 on 18.03.2013. The assessee did not file any return of income in response to the notice u/s 148 of the Act. The AO also issued notices u/s 142(1) but there was no response on behalf of the assessee to these notices or any attendance on behalf of the assessee in assessment proceedings. Accordingly the AO made the addition of Rs.10,33,000/- on account of unexplained cash deposit u/s 68 of the Act. Before the Ld. CIT(A) the assessee explained the source of deposit in the bank account. A remand report was called from the AO by the CIT(A) after considering explanation of the assessee. The AO submitted the remand report dated 08.09.2016 wherein the source of the funds explained by the assessee was not accepted by the AO for want of documentary evidences of business income, bills and vouchers etc. The CIT(A) accepted the stands of the AO and confirmed the addition on this account.

3. Before the Tribunal the assessee in person appeared and submitted that the remand report of the AO as well as finding of the CIT(A) are contrary to the record. He has referred to the remand report and submitted that the assessee has duly explained the source of deposit and also produced the relevant record including bank account statements of the assessee to show the withdrawal from SCB, CITI, Bank and Karnataka Bank. Thus, the Ld. AR has submitted that the assessee has explained the source with supporting evidence for the deposit of Rs.10,33,000/- was made by the assessee as withdrawal from other banks. He has further submitted that the assessee was having OD facility of Rs.74,00,000/- from

Karnataka Bank ltd. and has withdrawn substantial amount of the OD limit which was utilized for repayment of the earlier OD facility to the tune of Rs.40,62,419/- and other funds available with the assessee with bank of Karnataka was utilized for payment to the assessee's own company and other payments. The assessee has referred to the transactions of withdrawal and deposit in the bank account and submitted that this deposit of cash of Rs.10,33,000/- is nothing but represents the withdrawal from various banks of the assessee. The statements of all the bank accounts were produced before the AO during the remand proceedings. He has submitted that the AO has accepted this fact in the remand report that the assessee has explained the withdrawal of Rs.15 lac on various dates from his various bank accounts during the year which was verified by the AO but AO did not accept the said explanation only for the reason that the assessee could not explain the purpose for such huge cash withdrawn from various bank accounts. Once the assessee's explanation was found to be correct disallowance made by the AO and confirmed by the CIT(A) is contrary to the documentary evidence produced by the assessee. He has reiterated his reply filed before the Ld. CIT(A).

4. On the other hand, Ld. DR has submitted that the assessee has not filed return of income and also not maintain books of account therefore, the explanation of the assessee cannot be verified from the record so far as the business income of the assessee as well as the utilization of the funds withdrawn from the banks. He has further submitted that the assessee is having various bank accounts and claimed to have withdrawn from one bank account and deposited to other bank account but the assessee has not explained the reason as why the assessee has opted for withdrawal of cash and then deposited in other bank account instead of transfer from one bank to another bank. Thus, the explanation of the assessee on the face of it is not acceptable. He has further submitted that the assessee even did not bother to file his return of income in response to the notice u/s 148 of the Act. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. The assessment was framed by the AO u/s 144 of the Act as the assessee did not participate in the assessment proceedings initiated by the AO by issuing notice u/s 148 of the Act. There is no dispute that assessee did not file any return of income either u/s 139 of the Act or in response to notice u/s 148. Therefore, for want of any explanation the AO has made the addition of the cash deposit in the bank account of Rs.10,33,000/-. The relevant part of the assessment order is as under:

“Copy of assessee's bank account was called for from the bank that has been supplied by the bank through his letter dated 05/02/2014. Perusal of the bank account shows that the assessee has deposited in cash in his saving bank account 1033000/- during F.Y. 2007-08 on following dates:-

<i>Date</i>	<i>Amount</i>
26/04/2007	Rs. 100000/-
07/05/2007	Rs. 120000/-
08/06/2007	Rs. 80000/-
27/06/2007	Rs. 22000/-
27/08/2007	Rs. 50000/-
03/09/2007	Rs. 25000/-
03/09/2007	Rs.49000/-
05/09/2007	Rs.25000/-
10/09/2007	Rs.500000/-
29/01/2008	Rs.42000/-
21/03/2008	Rs.20000/-
<i>Total</i>	<i>Rs. 1033000/-</i>

Since the assessee is reluctant in furnishing his return of income and any submission in respect above cash deposited in his saving bank account with Citi Bank, Indore; therefore I have no any option except to treat the amount of cash deposited in the bank account as undisclosed income of the assessee u/s 68 of IT Act. Penalty proceedings u/s 271(1)(c) are initiated for concealment of income.”

5.1. Thus, the AO made the addition on account of cash deposit of Rs.10,33,000/- in the saving bank account with CITI Bank, Indore. Before the CIT(A) the assessee claimed that the deposit made in the bank account was from the source of withdrawal from other bank account of the assessee as well as opening cash balance of the assessee. Since the assessment order was passed u/s 144 therefore, the CIT(A) called for a remand report

from the AO. The AO in the remand report dated 8th September 2016 has dealt with this issue in para 1 as under:

“As per IT Database and records available, the assessee had not filed his return of income for the A.Y. 2008-09. During the period under consideration the assessee had deposited cash to the tune of Rs. 10,33,000/- in his saving bank account on various dates. During the course of assessment proceedings the assessee was asked to furnish the source of cash which was deposited in his bank account. The assessee despite of numerous opportunities never attended the proceedings and the source of the aforementioned cash remained unexplained. Accordingly, the AO made addition of Rs. 10,33,000/- in the hands of the assessee u/s 68 of the Income tax Act, 1961. During the course of appellate proceedings, the assessee was again asked to explain the source of cash deposited in his bank, the assessee in response contended that that he withdrew Rs. 15 Lacs on various dates from his various bank accounts during the F.Y. 2007-08.

The details of cash deposited and withdrawal by the assessee as submitted by him is tabulated as under:

Date of cash deposit	Amount	Source of cash as explained by the assessee
26/04/07	₹ 100,000.00	Old Cash-in-Hand of Rs.48,212/- Withdrawal + Rs.30,000/- w/d from Citibank between 05/04/07 to 26/04/07 + Rs.22,000/-
07/05/07	₹ 120,000.00	Rs.20,000/- w/d from Citibank on 28/04/07 & 04/05/07 + Income from business of Rs.1,00,000/- on various instances in part
08/06/07	₹ 80,000.00	Out of Rs.99,500/- w/d from SCB on 31/05/07
27/06/07	₹ 22,000.00	Out of balance of SCB w/d of Rs.19,500/- + Rs.17,000/- w/d from Citibank on 11/05/07 & 04/06/07
27/08/07	₹ 50,000.00	Out of balance of above w/d of Rs.14,500/-
03/09/07	₹ 25,000.00	

03/09/07	₹ 49,000.00	+ Rs.2,45,000/- w/d
05/09/07	₹ 25,000.00	from SCB on 10/08/2007
10/09/07	₹ 500,000.00	Out of balance of above w/d of Rs.1,10,500/- + Rs.1,25,000/- w/d from Citibank between 13/06/07 to 18/08/07 + Rs.2,90,000/- w/d from Karnataka Bank between 28/06/07 to 03/08/07
29/01/08	₹ 42,000.00	Withdrawal from Citibank between 03/01/08 to 24/01/08 Rs.1,35,000/-
11/03/08	₹ 20,000.00	Withdrawal from Karnataka Bank on 17/03/08 Rs.80,000/-

The contention of the assessee was verified from the various bank accounts and it was found correct but the assessee could not explain the purposes of such huge cash withdrawals from his various bank accounts, Further, the source of funds in the bank account of the assessee is not verifiable because the assessee had not submitted confirmations, etc of those persons from whose account the account of the assessee got credited. It is also pertinent to mention here that regarding the source of cash of Rs. 1,20,000/- which was deposited on 07.05.2007, the assessee had claimed that Rs. 1,00,000/- was out of his facome but in support of this business income the assessee was failed to furnish any documentary evidence like bills, vouchers, etc. Moreover, the assessee has also not filed return of income against such business income This issue of unexplained cash deposit may kindly be decided on the merits of the case.”

5.2. The AO has given the details as explained by the assessee in the remand report in the tabular form and thereafter the AO accepted the details given by the assessee regarding withdrawal of the cash from various bank accounts as found to be correct. However, there is no whisper about the availability of the funds in the bank account from where the assessee has withdrawn the alleged cash. Though the transactions of withdrawal are found to be correct but the source of the funds available with other bank account of the assessee was still not explained properly. The CIT(A) after considering the remand report has confirmed the addition in para 6 to 6.5 as under:

“6.1. I have gone through the order of the learned AC, submission of appellant the ground wise adjudication of appeal is as under-

Ground 1

6.2. Ground 1 relates to addition made by the learned AO on cash deposited of Rs. 10,33,000/- under section 63 of the Income Tax Act.

6.3. The learned AO did not receive any submission from the appellant and on failure of the appellant to prove the genuineness of the transaction he disallowed the entire amount as income from undisclosed sources under section 68 of the income tax act.

6.4. The appellant has now submitted that it has received business income and transfers from other banks of self. However, the appellant was not able to prove the same on the basis of cashbook and details of cash sales, etc. The remand report also states that the claim made by the appellant cannot be verified.

6.5. In view of the above, I am of the considerate opinion that the appellant was not able to establish the genuineness of the transaction.

6.6. Accordingly, ground 1 of the appellant is dismissed.”

5.3. The only reason cited by the CIT(A) for not accepting the explanation is that the assessee has claimed business income but no supporting evidence of business income was produced by the assessee. It is pertinent to note that the assessee has claimed business income of Rs.1 lac and therefore, if the assessee has failed to submit documentary evidence in support of the business then the source to the extent of Rs.1 lac can be refused but not the entire deposit without proper verification of the source of funds available in the bank account of the assessee. Accordingly in the facts and circumstances of the case we are of the considered opinion that this issue requires a proper verification and examination at the level of the AO to verify the source of the funds available with the bank account of the assessee. The assessee has claimed the withdrawal of cash which was deposited in another bank account namely CITI Bank, Indore but there is no explanation of the source of fund which was withdrawn from bank. Accordingly we set aside the impugned order of the CIT(A) qua this issue and remand this issue to the record of the AO for re-adjudication after

proper examination of relevant records and details produced by the assessee. Needless to say before passing fresh order the assessee be given an appropriate opportunity of hearing.

6. Ground no.2 is regarding the addition of Rs.7,03,838/- made by the AO on account of estimation of net profit @ 5% on the transactions of withdrawal from the bank account treated as turnover of the assessee. During the assessment proceeding the AO taken total transactions done by the assessee with bank account of the assessee at Rs.1,40,76,752/- and then applied net profit @ 5% to workout business income of the assessee from undisclosed business. Consequently the AO has made an addition of Rs.7,03,838/- as undisclosed business income of the assessee. During the remand proceeding the assessee has explained utilization of the funds withdrawn from the bank total amounting to Rs.1,40,76,752/- but the AO did not accept the said explanation for want of bank account statements despite various notices issued by the AO asking the assessee to furnish the bank account statements. By considering the remand report the CIT(A) has confirmed the addition made by the AO on this account.

6.1 Before the Tribunal the assessee has submitted that the assessee has explained utilization of withdrawal made from his bank account which is duly reproduced by the AO in the remand report as well as the assessee's reply to the remand report as reproduced by the CIT(A) in the impugned order. Thus, he has submitted that once the assessee has explained the utilization of the withdrawal made from the bank account then treating these entire withdrawals from the bank account as turnover of the assessee is without any basis and highly arbitrary. He has further contended that the AO has refused to accept the explanation of the assessee on the ground that the assessee has not furnished bank account statements whereas during the assessment proceedings the AO has obtained copies of the bank account of the assessee from the banks. Therefore, it is self-contradictory stand of the AO in refusing the explanation of the assessee. The assessee has further submitted that all the bank statements were before the AO and assessee has explained

utilization of funds withdrawn from the banks then in the absence of any mistake found in the details furnished by the assessee treatment of the entire withdrawal as turnover of the assessee is illegal and unjustified.

7. On the other hand, Ld. DR has relied upon the order of the authorities below and submitted that the assessee is showing the utilization of the funds as repayment of old overdraft loans, transfer to own companies, payment of interest on loan/overdraft, payment of credit card bills and misc. bills, LIC premium payment, share trading, repayment of hand loan, making FDR, subscription in mutual funds, transfers to self and cash in hand. Most of these transactions explained by the assessee are with the same bank account, therefore, there was no need to withdraw for making the payment when the repayment of old overdraft could be made within the bank only by transactions of transfer. Further the assessee has not able to produce any evidence to show that the withdrawal made by the assessee was actually used for these payments and expenses.

8. We have considered the rival submissions as well as relevant material on record. The AO in ex-parte assessment u/s 144 of the Act as made an addition on account of undisclosed business income as under:

“Assessee also has an OD account with Karnataka Bank Ltd., this fact has been disclosed by the assessee himself on 19/03/2014/ while he attended the hearing and sought adjournment for 20/03/2014. Assessee did not attend the proceedings on 20/03/2014 even has not filed any explanation. Hence copy of the bank statement was called from the Karnataka Bank. Ferasal of the said copy of bank account show that assessee has withdrawn Rs. 91,19,207/- from 27/06/2007 to 31/03/2008 assessee has not furnished any explanation regarding the withdrawals and its utilization. Therefore the above amount is treated as turnover of the assessee. Assessee has also done total transactions of Rs. 4957545/- through the saving bank account with Citi Bank that amount is also adopted as turnover of the assessee thus total turnover is adopted at Rs. 14076752/-(91,19,207+4957545) and net profit @5% is worked out that comes at Rs. 70,3,838/- the same is assessed as business income of the assessee from undisclosed business. Penalty proceedings u/s 271(1)(c) are initiated for concealment of income, u/s 271A for failure to maintain books of

accounts, documents etc and u/s 271B for failure to submit the audit report u/s 44AB.

(Addition Rs. 7,03,838/-)

8.1 Thus, the AO has made this addition on the basis of presumption and assumption and without having any tangible material to indicate that the withdrawal made from the bank account was either utilized for business purpose or representing the business receipts of the assessee. Even the AO has not able to find out what business the assessee has done apart from the share trading already explained by the assessee. In the remand report the assessee has explained the utilization of the funds which is reproduced by the AO in the remand report in para 2 as under:

“During the course of the assessment proceedings, the AO observed that the assessee had made debit transactions of Rs. 91,19,2017/- from his bank account with Kamatka bank and debit transactions of Rs. 49,57,545/- from his bank account with Citi Bank. The assessee was asked for explanation regarding withdrawals and its utilization but assessee didn't finished any explanation in this regard. The assessing officer in absence of any explanation and documentary evidence took the aforementioned withdrawals as his turnover added Rs. 7,03,833/- in the hands of the assessee as business income after taking net profit at 5%. After the receipt of letter from your good office, the assessee was again asked to furnish the nature and utilization of withdrawals made from his bank account, the reply of the assessee is as under-

a For repayment of old overdraft loans of Rs. 40,62,419/-

b. For transferring to own companies of Rs. 44,42,000/-

C For payment of interest on loan/overdraft and bank charges of Rs. 8,94,997.30.

d. For payment of credit card bills & Misc. Bills of Rs. 5,59,675.57.

e. For payment of LIC for self & other family members of Rs. 7,39,161/-

f. For share trading of Rs. 9,57,000/-

g. For repayment of hand loun from uncle of Rs. 5,00,000/-

h. For FDR with Karnatka Bank of Rs. 3,00,000/-

I. For college fees of sister of Rs 75,000/-

j For mutual funds subscribed Rs. 3,45,000/-

k. For transfers to self of Rs. 5,56,000/-

l. For Cash-in-Hand withdrawan of Rs. 10,70,000/-

The assessee was many times asked to furnish the bank account statement in support of his contention but the assessee failed to do so. Finally a notice dated 10.08.2016 was also issued to the assessee asking to furnish the bank account statement so that his contention may be verified but the assessee never attended the proceedings and has not furnished any bills, vouchers, etc in support of his claim. This issue may kindly be decided on the merits of the case.”

8.2 The AO has denied these explanations of the assessee only on the ground that the assessee was asked many times to furnish bank account statement in support of his contention but he failed to do so. It is pertinent to note that in the assessment order itself the AO has stated that copy of the bank account statement called from the Karnataka Bank. Perusal of the said copy shows withdrawal of Rs.91,19,207/-. Further there was a withdrawal from the CITI Bank to the tune of Rs.49,57,545/- which makes it clear that the AO was having bank account statements of the assessee at the time of assessment order. Further the assessee has produced the bank account statements before us and submitted that these were also available before the AO and therefore, the refusal of the explanation of the AO is contrary to the documentary evidences. The CIT(A) has accepted the stand of the AO and confirmed the addition in para 6.7 to 6.11 as under:

“6.7. Ground 2 relates to addition made by the learned AO at the rate of 5% of the withdrawals made by the appellant from Citibank and Karnataka bank.

6.8. The learned AO has made the contention that in absence of sufficient supporting evidence the withdrawals will be considered as turnover and 5% of the profit is added to the total income of the appellant.

6.9. The appellant has made the contention that most of the transactions have been with the share trading houses and has provided a statement to that extent with ledgers. However, the appellant has not provided any explanation as to how all the cash

withdrawals correspond to the investment activities carried out by the appellant. The appellant has also not provided for bills, vouchers for the amount of disallowances as by the learned AO.

6.10. In view of the above, I am of the considerate opinion that the appellant has not provided sufficient and supporting evidences to prove the genuineness of the transaction. Therefore addition made by the learned AO is upheld.

6.11. Accordingly, Ground 2 of the appellant is dismissed.”

8.3 Thus, without verifying the record the CIT(A) has accepted the AO's comments in the remand report. Accordingly in the facts and circumstances of the case as discussed above, we find that even if the assessee has failed to explain the utilization of funds withdrawn from the bank accounts the same cannot be treated as turnover of the assessee. Further there is no basis of estimation of the net income of the assessee @ 5% when the AO was not having any clue of the nature of business if any done by the assessee. Accordingly the adoption/treatment of the turnover and estimation of the net profit on the part of the AO is highly unjustified and without any basis. Treatment of the withdrawal from the bank as business turnover is highly hypothetical on the part of the AO without any fact or material on record. Hence addition made by the AO on this account is deleted.

9. Ground no.3 is regarding the addition of Rs.57,040/- as capital gain on redemption of mutual funds. The AO on perusal of the bank account statements of CITI bank noted that the assessee received a total amount of Rs.3,07,040/- on redemption of mutual funds. The AO estimated the investment in the mutual funds at Rs.2,50,000/- and the difference of Rs.57,040/- is assessed at income of the assessee. During the remand proceedings the assessee has explained that the assessee has invested Rs.2 lac in Fidelity Special Situation Mutual Fund through his bank account with CITI bank and Rs.1 lac in Meryll Lynch Equity Fund total investment in mutual funds amounting to Rs.3 lac. Subsequently the assessee redeemed these mutual funds and gained Rs.7,041/-. The AO

has not disputed these facts and details in the remand report and only requested the CIT(A) to decide the issue on merits. The CIT(A) has confirmed the addition in para 6.17 to 6.21 as under:

“6.17. Ground 4 relates to addition made by the learned AO on account of redemption of mutual funds reflecting in the bank statements of the appellant to the extent of Rs.3,07,040/-. ME TAX DEPAR

6.18. The learned AO has made the contention that mutual funds are invested in round figures and took an investment amount of Rs.2,50,000 on ad hoc basis and added the difference of Rs.57,040/- in the hands of the appellant.

6.19. The appellant has made the contention that it has invested a sum of Rs.2,00,000/- and Rs.1,00,000/-and only gained Rs.7040/-.

6.20. The contention made by the appellant is not verifiable with supporting evidences. In view of the above. Therefore, the addition made by the learned AO is upheld.

6.21. Accordingly, ground 4 of the appellant is dismissed.”

10. We have heard the assessee as well as Ld. DR and considered the relevant material on record. The AO has dealt with this issue in assessment order as under:

“Besides above perusal of the copy of bank statement of Citi Bank shows that the assessee got Rs. 101929/- 63276/- and Rs. 141835 on 06/07/2007 totaling Rs.307040/-. The investment in MF is generally made in round figure therefore investment of the Assessee is treated at Rs. 2,50,000/- and the difference amount of Rs.57040/- is assessed as income of the assessee. Penalty proceedings u/s 271(1)(c) initiated for concealment of income.

(Addition Rs. 57040/-)”

10.1 Thus, the AO has made addition of Rs.57,040/- by taking imaginary figure of Rs.2,50,000/- as investment made by the assessee. In the remand report the AO has reproduced the explanation of the assessee and his comments in para 4 as under:

“4. During the course of assessment proceedings, the AO also observed that the Citi Bank account of the assessee was with Rs.

1,01,929/-, 63,276/- and Rs. 1,41,835/- to totaling to Rs. 3,07,040/- through redemption of mutual funds. The assessee was asked about these credits but the assessee provided no details regarding these redemption of mutual funds. In absence of any evidence or information, the AO assumed that the investments in mutual funds are generally made in round figures and took the investment amount at Rs. 2,50,000/- and added the difference of Rs. 57,040/- in the hands of the assessee. During the appellate proceedings, the assessee was again asked about this investment, in response assessee contended that he invested Rs. 2,00,000/- in Fidelity Special Situation Mutual Fund on 30.05.2007 through Citi Bank and redeemed the same in two parts i.e. 1.41.835/- and Rs. 63,276 45 totalling to Rs. 2,05,111.45. He also contended that he also invested Rs. 1,00,000 in Meryll Lynch Equity Fund on 30.05.2007 and the same redeemed on 06.07.2007 for Rs. 1,01,929.81. Thus in this way the assessee claimed that he gained Rs. 7,041/- on these investment in mutual fund. In support of his claim the assessee has furnished bank account statement of account with Citi Bank. The contention of the assessee was not verifiable as the assessee had not furnished any documentary evidences like bills, vouchers, etc in support of his claim. This issue may also be decided on the merits of the case.

10.2 Thus, it is clear that the assessee has given all the details of investment made in two mutual funds total amounting to Rs.3 lac and thereafter on redemption of these mutual funds assessee received total sum of Rs.3,07,040/-. These details and evidence produced by the assessee are basically reflected in the bank account statements of the assessee showing the investment in the mutual funds and the amounts credited on redemption of these mutual funds. The AO has just denied this explanation by giving the reasons that the contention of the assessee was not verifiable and assessee has not furnished any documentary evidence like bills, vouchers etc. It is pertinent to note that by making investment in mutual funds directly from the bank account of the assessee does not require any supporting evidence of bills and vouchers but the transactions of payments from the bank account itself are undisputed evidence. We have gone through the bank account statements of the assessee and noted that the details furnished by the assessee before the AO in the remand proceedings are duly reflected in the bank account of the assessee. Therefore, once the assessee has furnished correct details

which are supported by the bank account transactions then the refusal of the explanation is not justified. Accordingly the addition on this account is restricted to Rs.7,041/- and the balance of Rs.50,000/- is deleted.

11. In penalty Appeal in ITANo.210/Ind/2023 the assessee has raised following grounds of appeal:

“1. That, in the assessment year under dispute, the Assessee had submitted the copy of books of accounts to the Ld. AO but the Ld. AO has not even mentioned the submissions of the Appellant in his order but has simply passed the impugned order without assigning any just and probable reasons. Hence, the Ld. ITO has not stated a single reason as to why the contention of Appellant is not acceptable whereas, the Appellant had submitted every single document relating to all the transactions done in that assessment year by him. For this reason, the impugned order of penalty proceedings deserves to be set-aside.”

12. We have heard assessee as well as Ld. DR and considered the relevant material on record. The AO has levied penalty u/s 271A due to the default on the part of the assessee not maintaining the books of account as the AO has estimated turnover of Rs.1,40,76,752/-. In view of our finding in the quantum appeal on the issue of addition made by the AO based on adopting turnover and estimation of net profit the penalty levied u/s 271A would not survive and the same is deleted.

13. In the result, the quantum appeal of assessee is partly allowed for statistical purposes and penalty appeal of assessee is allowed.

Order pronounced in the open court on 31 .10.2023

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 31.10.2023

Patel/Sr. PS

Sd/-

(VIJAY PAL RAO)
Judicial Member

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore