

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.5427/Del/2019
Assessment Year: 2010-11

Sh. Mahender Singh 702, VPO, Jharsa, Gurgaon Haryana -122001 PAN No.AQIPS2120H	Vs	ITO Ward- 2 (4) Gurgaon
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Pramod Singhal, CA
Respondent by	Sh. M. P. Dwivedi, Sr. DR

Date of hearing:	20/11/2023
Date of Pronouncement:	23/11/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-1, Gurgaon dated 11-03-2019 pertaining to A.Y.2010-11.

2. The grievance of the assessee read as under :-

“1. The Ld. AO and the Ld. CIT(A) have erred in fact, law and circumstances of the case in making an addition of Rs, 2687500/- based on wrong interpretation and application of the relevant provisions of the law and out of fixtures and surmises, therefore, the order of the Ld. AO and the Ld. CIT(A) is bad in law and needs to be annulled.

2. The Ld. AO and the Ld. CIT(A) have erred in fact, in law arid circumstances of the case by not considering the cash flow statement and summary of cashbook submitted by the appellant during the appeal proceedings.”

3. Briefly stated the facts of the case are that during the course of the scrutiny assessment proceedings the AO noticed that the assessee has deposited cash totaling to Rs.64,77,500/-. The assessee was asked to explain the source of the impugned cash deposit in the bank. In his reply the assessee explained that cash amounting to Rs.64,77,500/- has been deposited out of the cash drawn from the bank during F.Y. 2008-09 and 2009-10. The assessee filed the month wise details. After perusal of the details the AO was of the opinion that still there is excess deposit of Rs.26,87,500/-. The AO accordingly added the same alongwith the credit entries of Rs.32 lacs.

4. The assessee carried the matter before the CIT(A) and explained that the AO has not given the benefit of the opening cash in hand coming from earlier financial years and furnished complete details in respect of credit entries of Rs.32 lacs. The CIT(A) deleted the addition of Rs.32 lacs but confirmed the addition of Rs. 26,87,500/- claimed to be deposited out of the opening cash balance of Rs.5710274/-.

5. Before us the Counsel for the assessee reiterated that the benefit of opening cash in hand has not been given. It is the say of the Counsel that the excess cash deposit of Rs.26,87,5900/- is out of the opening cash in hand of Rs.57,10,274/- . The Counsel drew our attention to page-35 of the paper book and pointed out that the opening cash in hand in F.Y. 2009-10 was Rs.57,10.274/- in support of his contention the Counsel relied upon the various judicial decisions which are placed in the paper book.

6. Per contra the DR strongly supported the findings of the AO and read the operative part of the order of the CIT(A).

7. We have given a thoughtful consideration to the orders of the authorities below. We have perused the decisions relied upon by the Counsel. At the very outset, we have to make it clear that each decision is based upon the facts of its own case and cannot be relied blindly.

8. The peculiar facts of the case in hand is that as per page-35 of the paper book which is cash monthly summary for F.Y.2009-10 there is opening balance of Rs.57,10,274/-. The said cash in hand is coming from F.Y. 2008-09 wherein in the cash monthly summary at page-36 the closing balance has been shown as Rs.57,10,274/-. A perusal of the cash summary monthwise shows that inspite of having substantial cash in hand the assessee has withdrawn cash regularly. No prudent person would act in the manner in which the assessee has acted upon. No prudent person would keep substantial cash at home and still

keep on withdrawing cash. The act of the assessee is against the preponderance of probabilities as held by the Hon'ble Supreme Court in the case of Sumati Dayal 214 ITR 801 and Durga Prasad 82 ITR 540. For example since the assessee had huge cash balance as on 01.04.2009. We do not find any logic in withdrawal of Rs. 3 lacs on 09.04.2009. This shows that the cash in hand shown in the monthly summary statement is inflated and without any basis as the only income of the assessee is rental income and is not doing any business to justify the regular maintenance of the books of accounts.

9. Considering the peculiar facts of the case from all possible angles of human probabilities we do not find any merit/justification in holding such huge cash in hand when the assessee is not doing any business, therefore, we do not find any reason to interfere with the findings of the CIT(A).

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 23.11.2023.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

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

NEHA

Date:- .11.2023