

**IN THE INCOME TAX APPELLATE TRIBUNAL
(AGRA BENCH 'SMC' : AGRA)**

(THROUGH VIDEO CONFERENCE)

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.180/AGR/2019
(Assessment Year : 2011-12)**

Manoj Jayaswal,
Vilala Mill Ke Peeche,
Station Road,
Ashok Nagar – 473 331 (Madhya Pradesh).

vs.

ACIT (OSD),
Ashok Nagar (MP).

(PAN : AIZPJ4035F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Shailendra Srivastava, Sr. DR

Date of Hearing : 06.12.2023

Date of Order : 11.12.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id.

CIT (A), Gwalior dated 28.02.2019 for the Assessment Year 2011-12.

2. Grounds of appeal taken by the assessee read as under :-

“1. On the facts and circumstances of the case, the Id. CIT (Appeals), Gwalior has erred in confirming the addition of Rs.38,99,000/- being amount deposited in Saving Bank Account at our earlier saving in cash.

2. On the facts and circumstances of the case, the Id. CIT (Appeals), Gwalior has erred in confirming the addition without considering the facts the AO did not issue the copy of reasons recorded in absence of the same proceedings initiated u/s 148 of IT Act, 1961 are bad in law.”

3. Brief facts of the case are that as per the assessee, he is an advocate practicing since 2003 and earning his income from legal profession. However, the assessee had not filed his return of income for the year under consideration. This case was re-opened by issue of notice u/s 148 of the Income-tax Act, 1961 (for short ‘the Act’) on 21.03.2018 as per AIR information received about cash amount deposited Rs.38,99,000/- in his bank account. Notice was duly served upon the assessee by e-mail as well as by registered post. In compliance, assessee did not file his return of income within specified time nor he filed any written submission. Subsequently, information was called from ICICI Bank, Ashok Nagar relating to bank account of the assessee through issue a notice u/s 133(6) of Act. In response to this notice, bank account statement of the assessee having A/c No.143401500204 was received from ICICI Bank. On perusal of the same, it was found that assessee had deposited cash of Rs.38,99,000/- during the year under consideration in his bank account and earned interest of Rs.1,600/- from the deposit made in bank account maintained with ICICI Bank, Ashok Nagar. During the assessment proceedings, questionnaire and notice u/s 142(1) were issued from time to time but assessee failed to produce any explanation relating to source of

cash deposited nor filed any return of income. Considering the repeated non-compliance, AO issued show cause notice, fixing the date of hearing on 24.10.2018 which also remained uncomplished. Accordingly, AO made addition of Rs.38,99,000/- under section 69A of the Act as unexplained money and interest amount of Rs.1,600/- was also added under section 56 of the Act.

4. Against the above order, assessee appealed before the Id. CIT (A). Ld. CIT (A) considered the submissions of the assessee but was not convinced and he has held as under :-

“ As per appellant, he is an advocate and doing law practice since 2003 to till date. He stated that declared his total income in his income tax return (filed after passing of assessment order) and also stated that he opened his bank account in ICICI Bank, Ashoknagar on 07.04.2010 and deposited his past savings therein. Further, the assessee also stated that he had withdrawn cash from his bank accounts from time to time as per his needs. But as a matter of fact, the appellant has not submitted any evidence in support of his contention in this regard. Besides this, appellant has also claimed that withdrawals made from Bank account were also recycled and amount was re deposited. On this basis, appellant has prayed for deletion of entire addition made for cash deposit made in Bank account amounting to Rs.38,99,000/-. I have given my thoughtful consideration to the submission filed by the appellant inter alia facts of this case. At the outset, it is an admitted fact that the assessee neither filed return of income nor could explain the source of cash deposits or utilization of withdrawals made from Bank A/c. The appellant has neither provided details of his professional income, clients details, expenses incurred or income/expenditure pertaining to F.Y.2010-11 as well as past savings from legal profession. On perusal of Bank A/c, it is seen that the assessee has made regular deposits in bank account and that too by CASH. On perusal of Bank A/c it is also seen that against withdrawals,

narration in Bank Statement has been made as withdrawal "Self" and "Transfer to Sumit Rai". Appellant has failed to provide exact details of utilisation of withdrawals and purpose for which amount was transferred to Shri Sumit Rai. There is nothing brought on record to believe that source of cash deposit is out of 'past savings' from legal profession practised by the appellant. Onus to prove the source of cash deposit is on the assessee by adducing necessary evidences, which he failed to do so. Hon'ble Supreme Court in the case of CIT v/s K Chinnathamban 292 ITR 682 (SC) has held that cash deposits in Bank should be explained by the assessee, otherwise, it is unexplained income u/s 69 of the Act. Therefore, I donot find any infirmity in the decision of Id AO especially when assessee has failed to discharge his onus of proving the source of cash deposits by furnishing corroborative evidences in support of his contention.

6.3 So, I am of considered opinion that assessee is not entitled for any benefit for recycling & rotation of funds. It is trite law that onus to prove the cash deposited in Bank Account is on the assessee. I have no hesitation to say, that appellant has utterly failed to discharge his onus and failed to furnish any cogent evidence neither before A.O nor before me to satisfactorily explain the nature & source of cash deposited in Bank A/c to the tune of Rs.38,99,000/~. In view of above discussion, I have no hesitation to hold that since assessee failed to discharge his onus to prove nature arid source of cash found deposited in Bank Account, same need to be taxed as unexplained money and therefore rightly added to the total income. Similarly, there is no doubt that interest income of Rs.1,600/- deserves to be taxed in the hands of the assessee. So, I find no infirmity in the decision of Ld. A.O in making addition Rs.38,99,000/- as unexplained money and Rs.1,600/- as interest income.”

5. Against the above order, assessee is in appeal before us. We have heard Id. DR for the Revenue and perused the records. Despite several notices, none appeared on behalf of the assessee.

6. We note that assessee had deposited cash of Rs.38,99,000/- in his bank account. No cogent material for the cash deposited was produced before the authorities below. Assessee's submission was that there was rotation in the account and assessee had past savings, cannot be said to be cogent explanation in absence of any material produced by the assessee. Hence, we find that Id. CIT (A) passed a reasonable order rebutting the submissions of the assessee. Accordingly, we uphold the same.

7. In the result, assessee's appeal is dismissed.

Order pronounced in the open court on this 11th day of December, 2023.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 11th day of December, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Gwalior.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**