

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.314/Ind/2023
(Assessment Year: 2011-12)

Shweta Somani 111, M.G. Road Alirajpur Jhabua Madhya Pradesh (Appellant / Assessee)	Vs.	ITO Jhabua (Respondent/ Revenue)
PAN: BQKPS 1148C		
Assessee by	Shri Soumya Bumb, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	02.01.2024	
Date of Pronouncement	04.01.2024	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the Assessee is directed against the order dated 28.06.2023 of Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC) for A.Y.2011-12. The assessee has raised following grounds of appeal:

“1. On the facts and in The circumstances of the case and in law, the Ld. CIT (A) erred in upholding, the action of the Ld. AO in making an

*addition of Rs * 0.6, 1000 / (- t) * o the income of assessee on account of unexplained cash deposit."*

2. On the facts and in the circumstances of The case and in law, the CIT (A) erred in upholding the action of the Ld. AO in making addition of Rs. 60,01,000/- to the income of the assessee".

2. The AO in the assessment order framed u/s 143(3) r.w. section 147 has made the addition of Rs.60,01,000/- as unexplained cash deposit. The assessee challenged the action of the AO before the CIT(A) and also pleaded that peak credit should be taken instead of entire deposit in the bank account however, the assessee has not participated in the proceedings before the CIT(A) nor submitted any details or supporting evidence therefore, the appeal of the assessee was dismissed.

3. Before the Tribunal the Ld. AR of the assessee has submitted that the CIT(A) has dismissed the appeal of the assessee while passing the ex-parte order. He has pleaded that the assessee may be granted one more opportunity to present its case and file the relevant details and evidences for verification regarding the source of deposits in the bank account. Hence, he has submitted that the matter may be remanded to the record of the AO for fresh adjudication after verification of the necessary details and evidences to be filed by the assessee.

4. On the other hand, ld. DR has no objection if the matter is remanded to the record of the AO for fresh adjudication after

verification of the details and evidences to be produced by the assessee for explaining source of the deposit in the bank account.

5. We have considered rival submissions and carefully perused the impugned orders of the authorities below. The AO has made addition of Rs.60,01,000/- on account of unexplained deposit in the bank account as the assessee has not produced relevant details and evidences specifically asked by the AO while issuing notice u/s 142(1) of the Act. The AO has recorded this non-compliance on behalf of the assessee in para 6.2 as under:

“6.2 Non compliance of above notices u/s 142(1), vide notice u/s 142(1) dated 20.11.2018. the assessee was asked to explain as to why cash deposit of Rs. 62,86,000/- should not be added to the total income and also furnish the detail of notice u/s 142(1) dated 02.11.2018 copy of statement of commodity transaction, copy of ledger of broker as appearing in your books account & other necessary information. The assessee vide notice dated 20.11.2018 was asked to furnish the reply on 04.12.2018. Shri R.G. Joshi, AR of the assessee and assessee have attended and filed written submission on 04,12,2018, which are placed on record. The assessee fails to submit of his business details along with required information i.e. copy ledger of multi commodity transactions, details of sundry creditors, debtors, demat account etc. The assessee simply submit that she had earned income of Rs 3,78,304/- (details of which is given below) and which she had declared under Income Declare scheme u/s 183 of Finance Act 2016 and paid tax accordingly.

<i>(a) Commission</i>	<i>Rs 85,850/-</i>
<i>(b) Bank Interest</i>	<i>Rs 6854/-</i>
<i>(c) Income from tulip</i>	<i>Rs 500/-</i>
<i>(d) Investment in business from Bank account peak credit</i>	<i>Rs 2,85,000/-</i>

Total Rs 3,78,304/-

Declaration under Income Declare scheme u/s 183 of Finance Act 2016 doesn't provide immunity from all other un-disclosed income

which had not disclosed in the scheme. The assessee has failed to explain the source of cash deposit of Rs.62 ,86,000/- in his bank account. She had declared Rs.2 ,85,000/ cash deposit in bank under the scheme. Therefore credit of Rs. 2 ,85,000/ is provided to the assessee and balance Rs.60 ,01,000/ is added to the total income of the assessee.”

6. On appeal the Ld. CIT(A) has dismissed the appeal of the assessee in para 5.1 to 5.3 as under:

“5.1. As per AIR information available on record, it was noticed that the appellant had deposited cash of Rs. 1,25,72,000/- in his saving bank account maintained at State Bank of India, Alirajpur and having business of sale and purchase of multi commodity exchange trading of Rs. 13,75,01,660/- during the period 01.04.2010 to 31.03.2011, relevant to the AY 2011-12. The AO found that the appellant did not file her return of Income for the AY 2011-12. The case was reopened u/s 147 of the Act by issuing notice u/s 148 on 30.03.2018 after recording of the reasons u/s 148(2) of the IT Act. In response to the notice u/s 148 issued, the appellant did not file his return of Income within 30 days. The AO issued notice u/s 133(6) to State Bank of India, Alirajpur and the bank furnished the copy of statement of bank account of the appellant for the F.Y. 2010-11. The appellant had deposited total cash of Rs. 62,86,000/-in State Bank of India. In response to notices issued by the AO, the appellant explained she had earned income of Rs.3,78,304/-, which she had declared under Income Declaration scheme (IDS) u/s 183 of Finance Act 2016 and paid tax accordingly. The AO observed that declaration under IDS did not provide immunity from all other un-disclosed income which had not been disclosed in the scheme. The AO noted that the appellant failed to submit the details of the business along-with required information i.e. copy ledger of multi commodity transactions, details of sundry creditors, debtors, demat account etc. The AO concluded that the appellant failed to explain the source of cash deposit of Rs.62,86,000/- in her bank account she had declared only Rs 2,85,000/- cash deposit in bank under the IDS scheme. The AO gave credit of Rs.2,85,000/- to the appellant and added the balance amount of Rs 60,01,000/- to the total income of the appellant. Order u/s 143(3)/147 was passed on 12.12.2018, assessing the income at Rs.60,01,000/- after addition of Rs.60,01,000/- on account of Unexplained Cash Deposit.

5.2. *In the Grounds of appeal, the appellant has stated that the AO has made the additions to the tune of Rs.60,01,000/- on account of cash deposits in savings bank account without taking the peak credit.*

5.3. *The contention of the Appellant, Grounds of appeal and the assessment order have been considered. The appellant has given break- up of the income of Rs 3,78,304/- (declared under IDS) as under:*

<i>(a) Commission</i>	<i>Rs 85,850/-</i>
<i>(b) Bank Interest</i>	<i>Rs 6854/-</i>
<i>(c) Income from tulip</i>	<i>Rs 500/-</i>
<i>(d) Investment in business from Bank account peak credit</i>	<i>Rs 2,85,000/-</i>
<i>Total</i>	<i>Rs 3,78,304/-</i>

The appellant has stated that peak credit should be taken, however, the appellant has not filed any details, nor has the appellant given any working for the peak credit. I find no reason to interfere with the AO's order on this issue. Appeal on Ground Nos.1 & 2 are dismissed.”

7. Thus, the contention of the assessee regarding peak credit should be taken instead of entire deposit was not accepted by the CIT(A) for want of relevant details. Therefore, in the facts and circumstances of the case when the addition has been made by the AO and sustained by the CIT(A) for want of necessary details and supporting evidence we are of the considered view that in the interest of justice the assessee be granted one more opportunity to produce the necessary details and supporting evidence. Accordingly the impugned order of the CIT(A) is set aside and matter is remanded to the record of the AO for fresh adjudication after considering details and supporting evidences to be filed by the

assesse. Needless to say the assessee be given an appropriate opportunity of hearing before passing fresh order.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 04 .01.2024.

Sd/-
(MANISH BORAD)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 04 .01.2024

Patel/Sr. PS

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