

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.267/Ind/2023
Assessment Year: 2013-14

Rahul Maheshwari, 111/1, Pathan Toli, Jaora, Ratlam (Assessee/Appellant)	<u>बनाम/</u> <u>Vs.</u>	ITO, Ward 1, Ratlam (Revenue/Respondent)
PAN: ATWPM4233A		
Assessee by	Shri Sakar Sharma, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	04.01.2024	
Date of Pronouncement	15.01.2024	

अदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 30.05.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi, ["CIT(A)"], which in turn arises out of assessment-order dated 30.03.2022 passed by learned NFAC, Delhi ["AO"] u/s 147 read with section 144B of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2013-14, the assessee has filed this appeal on following grounds:

- 1. The Ld. CIT(A)-NFAC erred on facts and in law in upholding the order of the AO even though the proceedings u/s 147 r.w.s. 148, 149, 151 and 153 of the Act had already been barred by limitation and there was no compliance of statutory provisions.*
- 2. The Ld. CIT(A)-NFAC erred on facts and in law in confirming action of AO invoking provisions of section 69A of the Act with reference to transactions already recorded in the books and without disputing the correctness of books u/s 145 of the Act.*

3. *The Ld. CIT(A)-NFAC erred on facts and in law in confirming addition of Rs. 16,18,317/- u/s 69A in respect of cash deposited in the regular bank accounts.*

2. The background facts leading to present appeal, as culled out from orders of lower-authorities, are such that the assessee-individual is engaged in the business of retail trading and commission agent of mobile recharge vouchers. For the AY 2013-14 under consideration, the assessee filed original return u/s 139(1) on 22.09.2013 declaring a total income of Rs. 2,17,660/-, turnover of Rs. 64,87,256/- from business and commission of Rs. 1,38,564/- from mobile recharge vouchers of Vodafone. Subsequently, the AO, on receipt of an information from DDIT (Inv.) Ujjain vide letter dated 13.02.2020 showing that the assessee has made unexplained deposits of Rs. 16,18,317/- in bank a/cs with HDFC Bank, Ratlam and ICICI Bank, Ratlam, re-opened assessment u/s 147 through notice u/s 148. The AO also issued statutory notices u/s 143(2)/142(1) asking the assessee to explain the sources of cash deposits having been made in bank accounts. In response, the assessee made submission and furnished copy of bank book, cash book, audited accounts and a/c statements of banks. The assessee also filed Cash Flow Statement (Para 3 of assessment-order). However, the AO still observed that the assessee could not furnish explanation regarding source of deposits of Rs. 16,18,317/- in bank accounts. Accordingly, the AO made addition u/s 69A. Aggrieved, the assessee went in first appeal and challenged the legality of proceeding done by AO u/s 147 as well as the impugned addition made by AO on merit. Before CIT(A), the assessee made a detailed submission which is re-produced in Para 4 of order of first-appeal passed by CIT(A). However, the CIT(A) rejected assessee's all arguments and dismissed appeal. Still aggrieved, the assessee has come in next appeal before us.

3. Before us, Ld. AR for assessee submitted that although he does not have copy of the reasons recorded by AO for re-opening assessment but the 'Annexure' attached to notice dated 29.06.2021 u/s 142(1) issued by AO (Copy at Page No. 20 of Paper-Book) reads as under:

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ANNEXURE

1. As per information received from office of the Deputy Director of Income Tax (Inv.), Ujjain vide letter F.No. DDIT/Ujjain/STR-10083980/2019-20/421 Dated 13.02.2020 that you have maintaining an account bearing A/c 17758730000027 of HDFC Bank, Jaora Branch, Ratlam and another A/c no. 186005500057 of ICICI Bank, Jaora Branch, Ratlam. On perusal of the account statement, it was observed that you have received huge credit through Cash and transfer in his bank accounts and proceeds were withdrawn in cash and transfer to others. Bank account of HDFC Bank, was opened on 30.04.2012 and Bank account of ICICI Bank was opened on May, 2013. On perusal of HDFC Bank, it is found that in F.Y. 2012-13, total amount of Rs. 1,45,38,211/- was credited in the account and out of this, Rs. 1,02,08,860/- was credited in cash. In F.Y. 2013-14, total amount of Rs. 36,44,236/- was credited and out of this amount Rs. 21,56,600/- was credited in cash. Further on perusal of account statement of ICICI Bank amount of Rs. 1,70,93,643/- was credited in F.Y. 2013-14 through cheque, transfer and in cash also. It is also seen that huge amount was transferred to the Vodafone Sappcetel Ltd. Through transfer by both the amounts in F.Y. 2012-13 & 2013-14. On perusal of the return for A.Y. 2013-14, it is seen that you have shown total receipt of Rs. 64,87,256/- from business activities and Rs. 1,38,564/- from commission as indirect income. It can be seen from above that total receipt in both the bank accounts is far more than shown by you in his ITR. You were asked regarding huge credit in bank account through cash as well as cheque/transfer and gross receipt shown in audit report of F.Y. 2012-13. You could not explain the excess credit of Rs. 16,18,317/- in his bank account. You were asked regarding cash credit by the DIT (Inv.), Ujjain through letter but You did not make a valid explanation of above transaction which was made in his bank account. Please justify with furnish the supporting documents.

2. Please furnish the copy of all bank accounts for the period 01/04/2012 to 31/03/2013.

SIYARAM MEENA
ITO-1, RATLAM

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)



This document is digitally signed 

4. Ld. AR submitted that the reason of re-opening is clearly discernible from noting made by AO in the above re-produced 'Annexure' to notice u/s 142(1), according to which the AO received information from DDIT, Ujjain that the assessee had made deposits in two bank a/cs viz. (i) HDFC Bank A/c No. 17758730000027, Ratlam opened on 30.04.2012 and (ii) ICICI Bank A/c No. 186005500057, Ratlam opened in May, 2013. The AO next noted that during financial year 2012-13, the total credits in HDFC A/c were Rs. 1,45,38,211/- out of which Rs. 1,02,08,860/- was made in cash. Further, in ICICI Bank, the total deposits during financial year 2013-14 were Rs. 1,70,93,643/-. It is further mentioned that huge amount was transferred to Vodafone. Thereafter, the AO noted that the assessee had shown only receipts of Rs. 64,87,256/- from business and Rs. 1,38,564/- from commission but the credits in bank accounts were far more than the turnover and commission disclosed by assessee. The AO also noted that in response to the enquiry conducted by DDIT, Ujjain, the assessee could not explain source of excess credit of Rs. 16,18,317/- in bank accounts. Ld. AR submitted that these facts noted by AO are also corroborated from the notings made by AO in Para No. 2 and 4 of assessment-order. Therefore, even in absence of the copy of reasons with assessee, it can be safely discerned that the only reason of re-opening assessee's case was the AO's belief that the excess deposits of 16,18,317/- were not explained by assessee and the same had escapement.

5. Having explained thus, Ld. AR carried us to various documents filed in the Paper-Book. *Firstly*, he carried us to the audited financial statements of M/s Gayal Traders (proprietorship concern of assessee) filed by assessee to Income-tax Department with return of income, copy at Page No. 4-17 of Paper-Book. Ld. AR referred Page No. 16 where a schedule of the audited financial statements titled "Cash and Bank" is filed by assessee to AO, which shows bank balance of Rs. 1,27,669/- as on 31.03.2013 (last date of the financial year 2012-13 relevant to AY 2013-14 under consideration). Ld. AR carried us to the a/c statements of different banks filed by assessee to lower-authorities and also placed in the Paper-Book, to show the break-up of the balance of Rs. 1,27,669/-:

Paper Book Page No.	Bank A/c	Balance
66-83	HDFC Bank, Ratlam, A/c No. 17758730000027	74,529.05
84-85	State Bank of India, Ratlam, A/c No. 63051714144	844.00
86-89	HDFC Bank, Ratlam, A/c No. 04751930001271	52,296.34
Total		1,27,669.39

6. Thus, Ld. AR submitted that the HDFC Bank A/cs were already included in assessee's regular books of account and their closing balances reflected in the Schedule of "Cash & Bank" of audited accounts also tally with the balances shown by bank statements. Ld. AR submitted that the books of assessee were duly audited and the auditors have not reported any

infirmity. Even the AO has not found any mistake or incorrectness of assessee's accounts, therefore not rejected books of assessee u/s 145(3). So far as the deposits in ICICI Bank A/c No. 186005500057 is concerned, Ld. AR submitted that the said a/c was opened in May, 2013 and this fact is clearly mentioned by AO himself in the Annexure to the notice u/s 142(1) re-produced above. Therefore, the deposits in ICICI Bank A/c were falling within the financial year 2013-14 relevant to AY 2014-15 and were irrelevant to AY 2013-14 under consideration before us.

7. Then, Ld. AR submitted that during assessment-proceeding, the assessee has filed a complete reply to AO on 05.03.2022 which is evident from e-filing acknowledgement downloaded from departmental website, copy at Page No. 26 of paper-Book. Further, the assessee has also filed a proper submission to CIT(A), copy at Page No. 61 of Paper-Book, making a sincere effort to explain the source of deposit of Rs. 16,18,247/- which is basically re-deposit of withdrawals from same bank a/c. Ld. AR submitted that the CIT(A) has, however, merely upheld AO's order, relied upon certain judicial rulings which were related to demonetization period and thereby dismissed assessee's first-appeal which is not correct.

8. With this submission, Ld. AR concluded that the impugned HDFC Bank A/c was already included in assessee's accounts and therefore the transactions of deposits made therein were duly incorporated in assessee's books. And the ICICI Bank A/c was not related at all to AY 2013-14 under consideration. Therefore, not only the re-opening done by AO on the basis of

borrowed information received from DDIT, Ujjain is bad but the addition made by AO is also bad on merit.

9. Per contra, Ld. DR for revenue strongly supported the orders of lower-authorities and opposed submission of assessee. Ld. DR submitted that the Annexure to the notice u/s 142(1) dated 29.06.2021 referred by Ld. AR cannot be said to be the 'reason' actually recorded by AO. Without prejudice, he submitted that there is no bar in receiving information from DDIT, Ujjain and thereafter initiating action u/s 148 by AO so long the AO has considered the information and thereafter decided this case to be fit for re-opening. Hence, the assessee's pleading of illegality in AO's action in undertaking proceeding u/s 147 must be rejected and the AO's action of re-opening must be upheld. On merit of addition, Ld. DR only submitted that the CIT(A) has not given any finding on factual issue in his order, therefore he relies upon the order of AO to contend that the addition made by AO is in order. Ld. AR urged to uphold the addition made by AO on merit also.

10. In rejoinder, Ld. AR replied that the AO has made addition u/s 69A but section 69A is attracted only when the money, etc. found in possession of assessee is not recorded in books of account. Ld. AR submitted that in the present case, the impugned bank a/cs for which the AO has made addition is already recorded in audited books of assessee, then how the section 69A can apply? Ld. AR submitted that the AO has wrongly applied section 69A which is not at all applicable to assessee's case.

11. We have considered rival contentions of both sides and perused the orders of lower-authorities as well as the documents held in Paper-Book to which our attention has been drawn. The assessee's claims in present-appeal are two-fold, namely (i) the AO's action to re-open assessment u/s 147 is invalid; and (ii) the AO's action to make addition of Rs. 16,18,317/- u/s 69A is also bad. So far as claim (i) is concerned, we agree with Ld. DR's submission that the AO can very well receive information from DDIT, Ujjain and after consideration of such information, the AO could validly re-open assessment if he has reason to believe that any income has escaped assessment. In the present case, the AO has received information from DDIT indicating that the assessee could not explain sources of deposit in bank a/c, this information duly considered by AO could be sufficient to form a belief that there was escapement of income. The assessee is neither having copy of exact reasons recorded by AO nor able to demonstrate in any manner that the AO did not give his own thought to the information received from DDIT, Ujjain before or at the time of recording reasons. The assessee is merely speculating the absence of AO's consideration. Therefore, we do not find any worth in the claim of assessee, the same remains unsubstantiated and hence rejected. We may further add here that although in ground No. 1, the assessee has also mentioned that the AO's action was time-barred but during hearing, both sides were *ad idem* that the time-limitation was extended by Taxation and Other Laws (Relaxation of Certain Provisions)

Ordinance, 2020 dated 31.03.2020 ["TOLA"]. Therefore, limitation point is also rejected.

12. Now, we are concerned with claim (ii) of assessee which is on the merit of addition of Rs. 16,18,317/-. The assessee's stand is such that the HDFC Bank A/c and all entries of deposits therein are already recorded in regular books of account maintained by him; those books of account have been duly audited by auditors and the auditors have not reported any infirmity; that the year-end balance also tallies with bank statement; and that the AO has also not rejected assessee's books u/s 145(3) which means there is nothing incorrect in assessee's books. The assessee also claims that when the impugned bank a/c is already recorded in books, how can the AO apply section 69A which is applicable only when the money, etc. "are not recorded in books"? So far as the ICICI Bank A/c is concerned, Ld. AR is very much right in submitting that the said bank a/c was opened in May, 2013 which is a fact noted by AO himself in the Annexure to notice u/s 142(1) itself; therefore ICICI Bank A/c is not relevant to AY 2013-14 under consideration. We find sufficient strength in these submissions. Ld. AR has also shown by referring to Paper-Book that the assessee has submitted relevant details/documents in the shape of bank book, cash book, audited accounts and a/c statements of banks to AO and yet again made a sincere effort to explain the source of deposits to CIT(A). The revenue is not able to rebut, controvert or dispute the details and documents submitted by assessee before lower authorities. Looking into all these aspects, we are of the considered view

that in the present case, the addition made by AO is not sustainable. We are therefore inclined to delete the same. Accepted and ordered accordingly.

14. Thus, the assessee challenge to the AO's action of re-opening assessment is rejected. But the addition made by AO is deleted on merit.

15. Resultantly, this appeal is partly allowed.

Order pronounced in the open court on 15.01.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated :15.01.2024

CPU/Sr. PS

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

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore