

**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. 160/Ind/2023**  
**Assessment Year:2011-12**

Shri Akhilesh Shukla, 18/2, Rizwan Bagh, VIP Road, Bhopal (Assessee/Appellant)	<b>बनाम/ Vs.</b>	Income-tax Officer, 1(1), Bhopal (Revenue/Respondent)
<b>PAN: AFOPS5580E</b>		
Assessee by	Shri Ashish Goyal, CA and Shri N.D. Patwa, Adv.	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	16.01.2024	
Date of Pronouncement	22.02.2024	

**आदेश / O R D E R**

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

Feeling aggrieved by appeal-order dated 29.03.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"], which in turn arises out of assessment-order dated 28.02.2014 passed by learned ITO, 1(1), Bhopal ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2011-12, the assessee has filed this appeal on following effective grounds:

- (1) *That on the facts and in the circumstances of the case, a fair, proper and meaningful opportunity has not been allowed to the appellant to put up his defense on the issues raised by the Hon'ble CIT-Appeals, NFAC, Delhi in Appellate Order dated 28.02.2014.*

(2) *On the facts and in the circumstances of the case, the following addition made by the AO and sustained by the Hon'ble CIT Appeals-NFAC, Delhi, is arbitrary, contrary to facts on record and therefore unlawful:-*

*Addition on account of unexplained deposits u/s 69 Rs. 5,70,000/-*

(3) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not deciding the issue on merits and not deleting the additions made by ITO,1(1), Bhopal, of Rs. 5,70,000/-. The appellant prays that the additions made by the ITO-1(1), Bhopal are materially incorrect, bad on facts, baseless and, therefore, unsustainable in law and liable to be deleted.*

(4) *That the Ld. CIT(A)'s observations as to why assessee did not recall/submit the name of the person from whom he had taken an unsecured loan of Rs. 5.00 lakhs, at the time of assessment together with producing the details of Lender in the Appellate Proceedings is an afterthought and questioning why the Lender furnished an affidavit confirming the loan after many years are absolutely arbitrary, misleading and baseless ignoring the fact that the assessee does not maintain books of accounts and files his ITR us 44AD. Therefore, above observations may please be quashed."*

2. The background facts leading to present appeal are such that the assessee individual filed his return of income declaring a total income of Rs. 5,26,090/- which was selected for scrutiny and statutory notices u/s 143(2)/142(1) were issued. During scrutiny proceeding, the AO asked assessee to furnish entry-wise explanation of all bank accounts. In response the assessee filed details. However, the AO noted that there were two entries of deposits in bank account, namely (i) Rs. 5,00,000/- vide cheque No. 34583 on 02.12.2010 and (ii) Rs. 70,000/- vide transfer on 22.03.2011. The AO noted that the assessee claimed to have received the first deposit of Rs. 5,00,000/- from a family member but the name of family member was not mentioned. Further, the second deposit of ₹ 70,000 was claimed to have been received as rent-deposit of house-property but no evidence was

furnished. Therefore, the AO made an aggregate addition of Rs. 5,70,000 u/s 69 treating those entries as unexplained. Agreed by addition so made, the assessee carried matter in first appeal but could not succeed. Now the assessee has come in next appeal before us.

3. Ld. AR for assessee carried us to the Paper-Book Page 4-6 where copies of two letters dated 05.02.2014 and 28.02.2014 filed by assessee to the AO during assessment-proceeding are placed. Ld. AR submitted that it is true that in first letter dated 05.02.2014, the assessee furnished to AO that the receipt of Rs. 5,00,000/- was from a family member and Rs. 70,000/- was a rent-deposit but this submission was made so because the assessee was engaged in the business of civil construction and having immunity from maintaining books of account due to opting for presumption taxation u/s 44AD. Therefore, when the AO show-caused, the assessee could not furnish exact details but filed details on memory basis. However, the assessee continued efforts to collect details from bank and accordingly vide second letter dated 28.02.2014 informed to AO (i) that his submission was on memory basis since the relevant pay-in-slips used for depositing cheques into bank a/c were not available; (ii) that he was trying to ascertain from bank the exact particulars of deposits but it is likely to take some time; and (iii) a further request to AO to grant a fortnight's time-period for submitting exact details. But, however, the AO passed assessment-order on the very same day of 28.02.2014 ignoring the letter-cum-request of assessee. Ld. AR submitted that the AO passed assessment-order without taking any

cognizance of the letter dated 28.02.2014 filed by assessee and just quoting the earlier submission made by assessee in previous letter dated 05.02.2014.

4. Ld. AR went on submitting that during first-appeal, the assessee was having exact details supported by documents and therefore submitted those documents as additional evidences to CIT(A) in terms of Rule 46A of Income-tax Rules, 1962 whereupon the CIT(A) called a remand-report from AO. But the AO did not file any remand-report. Ultimately, vide Para No. 5.3.1, the CIT(A) admitted additional evidences. However, the CIT(A) did not believe assessee's submissions and treated them as a cooked-up after-thought story mainly for the reason that the assessee did not submit the facts evidenced by those documents before AO nor in the Statement of Facts/Grounds of Appeal filed before him.

5. Then, Ld. AR carried us to those very documents filed in the Paper-Book to explain the nature and source of those two entries:

Date	Cheque No.	Amount	Transaction	Paper-Book Page No. - Document filed
02.12.2010	34583	5,00,000	Loan taken from Sangeeta Dewani	23 - Bank A/c of lender showing debit entry on 02.12.2010 for clearing of cheque No. 34583 containing name of "Akhilesh Shukla", assessee
				24 to 25 - ITR of lender
				26 - PAN card of lender
				27 - Confirmation letter of lender

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				28 to 29 – Affidavit of lender
				34 - Bank A/c of assessee showing credit entry on 02.12.2010 of cheque No. 34583
22.03.2011	126941	70,000	Amount received from Pawan Awasthi for construction of boundary wall which is already include by assessee in turnover of business	21 - A confirmatory certificate of Shri Pawan Awasthi that the amount was paid by him for construction of boundary wall of his plot at Khastra No. 12-13, Near Hotel Neena Palace, Halalpura, Bhopal
				22 - A certificate dated 01.06.2016 issued by Dena Bank confirming that the credit entry of Rs. 70,000/- in assessee's a/c was through cheque No. 126941 from A/c of Pawan Awasthi. It is further mentioned that the certificate is issued on the request of customer for onward submission to Income-tax Department.
				35 - Bank A/c of assessee showing credit entry on 22.03.2011 of Rs. 70,000/-.

6. With the support of above documents, Ld. AR re-iterated what was already submitted to CIT(A), that the receipt of Rs. 5,00,000/- is by way of a loan taken from Sangeeta Dewani and the same is proved by all documents. Further, the receipt of Rs. 70,000/- was from Shri Pawan Awasthi for construction of a boundary wall and this receipt is also proved by all documents. Further, the receipt of Rs. 70,000/- is also a part of business turnover of Rs. 12,79,500/- declared by assessee for section 44AD in the return of income. Therefore, Ld. AR submitted that the two receipts are well-

evidenced by sufficient documents and the addition made by AO/upheld by CIT(A) deserves to be deleted.

7. Ld. DR for revenue dutifully supported the orders of lower-authorities but, however, left the matter to wisdom of Bench while expressing that the issue is petty and the documents are already on record.

8. We have considered rival submissions of both sides and also perused the orders of lower-authorities as well as the documents filed in the Paper-Book. At first, we find that the assessee filed a letter dated 28.02.2014 to AO requesting for a fortnight's time to enable him to file details of the impugned transactions. The assessee sought this time for the reason that he was trying to ascertain details from bank. However, the AO passed assessment-order on the very same day of 28.02.2014 without acceding to assessee's request and even without mentioning assessee's letter/request in assessment-order. The AO even did not call for details directly from bank which he could very well do under the provisions of the Act. Be that as it may, the assessee has subsequently brought on record all documentary evidences before CIT(A) and also filed in Paper-Book before us. We have already narrated the details of those documents in foregoing paragraph which we do not like to repeat for the sake of brevity. After a careful consideration of those documents as explained by Ld. AR in the open court in the presence of Ld. DR, we find that the assessee has successfully explained the nature and source of the impugned two receipts as required by tax authorities. Needless to mention that these documents are already

admitted by CIT(A) in terms of Rule 46A of Income-tax Rules, 1962 and the department has not challenged the action of CIT(A) by way of any cross-objection. Considering these aspects, we find no reason to treat the impugned receipts as unexplained. We are therefore inclined to delete the addition made/upheld by lower authorities. Ordered accordingly. The assessee succeeds in this appeal.

**9. Resultantly, this appeal is allowed.**

Order pronounced in the open court on 22.02.2024.

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

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

**Indore**

दिनांक /Dated : 22.02.2024.  
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