

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.166/Ind/2024**  
**(Assessment Year: 2016-17)**

Manish Goyal G-2, Plot No.110 G-2, Plot No.110 Kolar Road, Sarvadam Colony, Bhopal (Appellant / Assessee)	vs.	ACIT 2(1) Bhopal (Respondent/ Revenue)
<b>PAN: AEFPG 2251J</b>		
Assessee by	Shri S.S. Deshpande, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	07.05.2024	
Date of Pronouncement	30.05.2024	

**O R D E R**

**Per Vijay Pal Rao, JM :**

This appeal by assessee is directed against the order dated 19.02.2024 of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for A.Y.2016-17. The assessee has raised following grounds of appeal:

*“1. On the facts and in the circumstances of the case of the assessee the learned CIT(A) was not justified in confirming the*

*addition of Rs 1,66,23,142.00 treating the opening Balance of capital as unexplained.”*

2. The assessee is an individual and filed his return of income on 14.10.2016 declaring total income of Rs.18,90,040/-. The case was selected under CASS for limited scrutiny with the reason “substantial increase in capital” during the year. During the scrutiny assessment proceedings the AO issued a notice u/s 142(1) and asked the assessee to explain the substantial increase in the capital account balance as on 31<sup>st</sup> March 2016. In reply the assessee has given the details of the capital account balance which includes opening balance as on 01.04.2015 of Rs.1,72,99,367/- income tax refund received during the year and profit during the year. The assessee also filed the details of Income Tax TDS and drawing during the year and then reconciled balance as on 31.03.2016. The AO did not accept this explanation of the assessee and observed that the assessee introduced of Rs.1,86,31,763/- and no supporting evidence was submitted by the assessee. Accordingly the AO has made addition of Rs.1,66,23,142/- on account of unexplained increase in the capital account. The assessee challenged the action of the AO before the CIT(A) and given the details of corresponding assets against the opening balance of capital as on 01.04.2015 at Rs.1,72,99,367/-. However, the CIT(A) has confirmed the addition made by the AO on the ground that the assessee has declared income since the assessment year 2008-09 till 2015-16 of Rs.42,64,678/- and further the assessee has also not maintained the books of accounts. Thus, the CIT(A) has held

that the assessee has failed to explain the source of acquiring the alleged assets.

3. Before the Tribunal Ld. AR of the assessee has reiterated the contentions as raised before the CIT(A) and submitted that the assessee has produced copies of ITR acknowledgement, computation of income, balance sheet, profit and loss account along with details of the balance. He has further submitted that the assessee has produced invoices of various assets including Honda city and indica car, copy of purchase deed of plots & flats, copy of bank certificate and statement of FDR, copy of bank account statements and ledger account of security deposit, copy of ledger account of advance given. All these details substantiate the opening balance as on 01.04.2015 of Rs. Rs.1,72,99,367/-. Ld. AR has pointed out that the assessee has produced all relevant records regarding Honda City car purchased by the assessee on 26.11.2010 for Rs.9,23,352/- and the same was incorporated in the books and shown at a value of Rs.8,64,321/- as on 01.04.2015. The copy of invoice is also produced in the paper book at page no.26 & 27 of the paper book. He has then referred to the details and invoices of Indica Car value of which is shown in the books as on 01.04.2015 at Rs.4,05,835/-. Similarly a house purchased in June 2008 for a consideration of Rs.6,11,090/- and plot of land purchased in the year 2013-14 for Rs.37,93,770/- vide sale deed dated 17.02.2014 placed at page no.48 to 58 of the paper book. Ld. AR has further submitted that the assessee is in the business of civil contractors for last over a decade therefore, various machineries are

also part of the assets showing in the books of account including centering material of Rs.1,75,200/-, mixer and vibrator of Rs.1,12,000/- as on 01.04.2015. The assessee was having opening stock of Rs.50,800/- and cash of Rs.50,620/- as on 01.04.2015. Further the assessee was having bank balance of Rs.98,30,594/- in the shape of FDR and sweep (MOD) account. He has referred to the bank account statement to show that these amounts were available in the bank account of the assessee prior to 01.04.2015 and therefore, the assessee has explained the corresponding assets representing the opening capital balance as on 01.04.2015 to the tune of Rs.1,72,99,367/-. Thus, the Ld. AR has submitted that when all the assets representing this opening capital balance were acquired by the assessee prior to 01.04.2015 then the addition made by the AO and sustained by CIT(A) is not justified and the same is liable to be deleted.

4. On the other hand, Ld. DR has submitted that nothing was filed by the assessee before the AO and consequently the AO has made an addition on the account of substantial increase in the capital account. The claim of opening balance of capital account is not supported by any evidence as the assessee was not maintaining any books of account. The bank certificate produced by the assessee was issued in the year 2020 and therefore, the assessee failed to produce supporting evidence before the AO. He has relied upon orders of the authorities below.

7. We have considered rival submissions as well as relevant material on record. The AO has reproduced the details and submission of the assessee in response to notice u/s 142(1) in para 4 of the assessment order as under:

*“4. In response to the above said notices the assessee submitted his written submission through his authorized representative Shri Manoj Nema alongwith Balance sheet, profit and loss account, copies of bankbook etc. Relevant portion of assessee's submission is reproduced as under:*

<i>"Capital account of Manish Goel as under:-</i>	
<i>Opening balance as on 01.04.2015:</i>	<i>Rs. 1,72,99,367.00</i>
<i>Add:-</i>	
<i>Income Tax refund received during the year:</i>	<i>Rs. 1,54,331.00</i>
<i>Profit during the year:</i>	<i>Rs. 20,40,035.31</i>
	<i>Rs. 1,94,93,733.31</i>
<i>Less:- Income Tax TDS</i>	<i>Rs.4,14,162.00</i>
<i>Drawing during the year</i>	<i>Rs. 4,47,808.00</i>
<i>Balance as on 31<sup>st</sup> March 2016</i>	<i>Rs.1,86,31,763.31</i>

7.1 Thus, the assessee has explained the balance of capital account as on 31.03.2016 comprising opening balance as on 01.04.2015 at Rs.1,72,99,367/- and the other items of increase on

account of Income Tax refund during the year and profit from the year under consideration. The assessee has also reduced the amount on account of TDS and drawing during the year from the total of Rs.1,86,31,763/-. The AO has allowed only the amount of profit during the year and made an addition of Rs.1,66,23,142/-. Before the CIT(A) the assessee has explained the source of opening balance of capital as on 01.04.2015 by referring various assets acquired by the assessee in the preceding years the reply of the assessee is reproduced by the CIT(A) at page no.3 to 5 as under:

*“a. The assessee has prepared a detail of all the known assets and liabilities as on 01.04.2015 and have incorporated the same as opening balances in the books prepared for A.Y 2016-17. The difference between the assets and liabilities as on 31.03.2015, was recorded as capital of the assessee as on 01.04.2015. The assessee is enclosing herewith his trail balance for F.Y 2015-16, showing the details of assets and liabilities considered as opening balances, the summary of transactions done during the year and closing balances as on 31.03.2016.*

*b. The details of the asset considered as opening balance as on 01.04.2015 are explained herein below:*

*iCar Honda City Rs. 8,64,321/- The said car was purchased by the assessee on 26.11.2010 for Rs. 9,23,352/- exclusive of the expenses on road tax, first insurance and accessories. The same was incorporated in the books on 01.04.2015 at a value of Rs. 8,64,321/-. Copy of invoice is enclosed.*

*1. Car Indica Rs. 4,05,835/- The said car was purchased by the assessee on 07.05.13 for invoice value of Rs. 3,93,335/-, exclusive of the expenses on road tax, first insurance and accessories. The same was incorporated in the books on 01.04.2015 at a value of Rs.4,05,835/-. Copy of invoice is enclosed.*

2. House Rs. 6,11,090/- The assessee had purchased a flat at Sarwdharm Colony in June 2008 for a consideration of Rs. 3,50,000/-. The assessee had purchased one flat in September 2006 for Rs. 1,90,000/-. Both the flats inclusive of stamp duty and other charges incurred was incorporated in the books on 01.04.2015 at a value of Rs.6,11,090/-. Copy of purchase deeds are enclosed.

3. Plot Purchased Rs. 37,93,770/- The assessee had purchased one plot at Danish Kunj in 2013-14 for Rs. 35,10,000/-. The said plot inclusive of stamp duty and other charges incurred was incorporated in the books on 01.04.2015 at a value of Rs.37,93,770/-. Copy of purchase deed is enclosed.

4. Centering Material Rs. 1,75,200/-, Mixer & Vibrator Rs. 1,12,000/-The assessee in the business of civil contractors for last over a decade. As an integral part of the business he had been purchasing centering material and other machines for his business. The available machines and material as on 01.04.2015 were incorporated in the books on the stated value.

Opening stock Rs. 50,800/- & Cash in Hand Rs. 50,620/-

The assessee in the business of civil contractors for last over a decade. As an integral part of the business he had been holding some stocks and yr cash in hand. The available cash in hand as available in his hand and stock of material on estimated basis as on 01.04.2015 were incorporated in the books on the stated value.

vi Deposits Rs. 98,30,594/- The assessee was having balances with bankin the shape of FDR and Sweep (MOD) a / c as on 31.03.2015. These FDRs have been given to various departments from time to time as to application of interest. SD/EMD and have accumulated in value due to application of interest.

a. The value of such FDR as on 31.03.2015 was Rs. 70,92,176/-, Copy of certificated dated 16.03.2020 obtained from the bank is enclosed.

b. The value of MOD balance in account No 51023935406 with State Bank of Bikaner & Jaipur as on 31.03.2015 was Rs. , 49

,440/-, Copy of bank statement for the period 1.4.14 to 31.3.15 is enclosed. The total of the above FDR/Mod was recorded in the books as on 01.04.2015 at Rs. 91,91,616/- on an estimated basis as on that date. It may be mentioned that detailed certificate from the bank was obtained subsequently on 16.03.2020 to be presented during appeal proceedings, however at the time of preparation of books the amount was calculated as per the internal calculations/details available with the assessee.

c. As per the business practice all government departments generally deduct five percent from the bills of contractors and retain such balance as security deposit which is refunded to the contractor after satisfactory completion of the work. The said Security Deposit was incorporated in the books as on 01.04.2015 at Rs. 6.38,9781/- on the basis of information available with the assessee.

vii Bank account Rs. 48,450/- The balance in the bank account of the assessee as on 31.03.2015 as reflected in the bank statement of the assessee was incorporated in the books as opening balance as on 01.04.2015. copy of bank statement is enclosed.]

ix Loans and advances Rs. 14,25,000/-. The assessee had given loans and advances to its staff and suppliers during past years, which were incorporated in its balance sheet as on 31.03.2015 based on the personal records maintained by the assessee. Copy of ledger accounts of persons to whom such advance was given is enclosed.

It would be appreciated that all the assets/liabilities as detailed above were acquired prior to the period of 01.04.2015 and no addition could have been made during the year for investments made in these assets,

The AO had not made any mention of the section or provisions under which the addition is made. However presumably, provisions of section 68 have been applied by him which is applicable in case where any sum is found credited in the books of an assessee and the assessee offers no satisfactory explanation of the source thereof. However, in the case of the

*assessee all the assets are established to be acquired in previous years, the corresponding balancing figure of Rs. 1,72,99,367/- recorded as opening capital will also be treated as pertaining to prior year.*

*Further the capital balance appearing as opening balance is in the nature of a journal entry wherein various assets have been debited, liabilities have been credited and the balance is credited to capital account. The capital balance shown have not resulted in any inflow of funds during the year and accordingly section 68 will have no applicability. Reference in this regard may be made to the under noted judgments:*

*INCOMETANDEDART i. Suresh Maheswari v ACIT ITA 3915/De1/2010 wherein the ITAT in Para 11 of its order have held that:*

*-Coming to the merit of the issue, we find that the amount of Rs.7,59,712/- which has been deleted by the CIT(A), is mere a journal entry transferred to the assessee's capital account and there was no actual amount received by the assessee which has been added to the assessee's capital account. This factual position has been fully considered by the learned CIT(A) in his order. In the light of the factual finding recorded by the CIT(A), we do not find any reason to interfere with his order in deleting the addition of Rs. 7,59,712/-. Hence, ground raised by the revenue is rejected".*

7.2 The assessee has produced the books of account including profit and loss account as well as balance sheet along with audit report u/s 44AB of the Act in form 44 CB & CD. As per trial balance and balance sheet the assessee has shown opening capital balance of Rs.1,72,99,367/- and also produced assets details and their dates of acquisition, it is pertinent to note that neither the AO nor the CIT(A) has disputed the factum of acquisition, of these assets which includes the Honda city car, Indica Car, flat at Sarwdharm Colony, plot at Danish Kunj, centering material mixer

& vibrator as part of the business assets of the assessee opening stock and cash in hands. The assessee has also produced the bank certificate showing the deposit in the bank account to the tune of Rs.98,30,594/- as on 31.03.2015. Though the certificate was issued on 16.03.2020 but the factum of balance in the bank account of the assessee as on 31.03.2015 cannot be disputed. This balance includes FDR as well as deposits under MOD(Multy operational Deposit). When all these assets representing the opening balance as on 1<sup>st</sup> April 2015 are duly exist on that date being acquired much prior to 01.04.2015 then disputing opening capital balance as on 01.04.2015 is unjustified and contrary to the facts and record available before the AO as well as CIT(A). Though the AO has stated in the order that the assessee has not produced the evidence however, it is matter of record that the assessee produced all these details before the authorities below and without pointing out any defect or doubting genuineness of these facts and record the AO has made the addition. Once the opening balance of capital account as on 01.04.2015 is duly substantiated by corresponding tangible assets acquired during the preceding years then the AO is not justified in doubting the genuineness of the opening balance of capital account. The records of the bank account statement, FDR and certificate issued by the bank is not an evidence created by the assessee but these are independent evidence therefore, ignoring all these evidences including purchase deeds of plot of land and house as well as invoices of purchase of cars in the preceding years is highly arbitrary on the part of the AO

as well as the CIT(A). Hence in the facts and circumstances of the case when the assessee has produced all the supporting evidence to explain the opening balance of capital as on 01.04.2015 at Rs.1,72,99,367/- and further additions on account of income tax refund which is matter of record as well as profit during the year then the addition made by the AO and sustainable by the CIT(A) not sustainable and the same is deleted.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 30 .05.2024.

**Sd/**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 30.05.2024**

**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*