

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC': NEW DELHI  
BEFORE,  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1370/Del/2024  
(ASSESSMENT YEAR 2011-12)**

**ITA No.1371/Del/2024  
(ASSESSMENT YEAR 2012-13)**

Smt. Satya Wati L/H of Late Sh. Radhay Lal 120, Sarai Jullena Okhla Road, New Delhi-110 025 PAN-AECPW 4676C	Vs.	Income Tax Officer Ward-37(3) New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Dr. Rakesh Gupta, Adv. and Shri Shrey Jain, Adv.
Respondent by	Shri Om Prakash, Sr. DR
Date of Hearing	24/06/2024
Date of Pronouncement	27/06/2024

**ORDER**

**PER S.RIFAUR RAHMAN,AM:**

1. The both appeals have been filed by the Assessee against the orders of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["Ld. CIT(A)", for short], dated 13/02/2024 for Assessment Years 2011-12 & 2012-13 respectively.

**2.** These two appeals are interconnected having common issues. Both these appeals are heard together and disposed off by this common order. We are taking ITA No.1371/Del/2024 for Assessment Year 2012-13 as a lead case.

**3.** Brief facts of the case are, based on the information received from AIR/CIB that assessee has deposited cash amounting to Rs.13,00,000/- and other credit of Rs.18,40,464/- during current Assessment Year in his saving bank account maintained with Oriental Bank of Commerce. Accordingly, the case of the assessee was reopened u/s 147 of the Income Tax Act, 1961 ('the Act' for short) after recording the reasons and after taking proper approval from Principal Commissioner of Income Tax-13, New Delhi. Notices u/s 148 was issued and served on the assessee through ITBA portal and notices u/s 142(1) were issued and served on the assessee. There was no response from the assessee. The assessment was completed u/s 144 of the Act by making the additions u/s 69 of the Act at Rs.31,40,464/- in Assessment Year 2012-13. Similarly, additions were also made in Assessment Year

2011-12 by completing the assessment u/s 144/147 of the Act and made an addition of Rs.11,90,201/- .

**4.** Aggrieved with the above order, the assessee preferred an appeal before the Ld. CIT(A) and filed detailed submissions. For the sake of clarity, the same is reproduced below:

*"1. 1. The appellant is an Agriculturist and has no income other than Interest on savings and term deposits in bank, during the previous relevant to assessment year under appeal.*

*2. The appellant had filed the return of income with total income of Rs.12,62,374/- and paid applicable taxes along with the interest thereon.*

*3. The Assessing Officer, however, completed the assessment under section 144/147 of the Act after making addition of Rs. 31,40,464/- on account of income as unexplained money u/s 69A of the Income Tax Act, 1961.*

*4. The appellant being aggrieved by the assessment order, submits that he has deposited cash of Rs. 13,00,000/- which is from cash withdrawal of more than Rs. 13,00,000/-. The assessee has earned Interest from Bank and there is no other Income during the year. As the assessee is the agriculturist and has neither knowledge of taxation terms and no intention of tax evasion. The Assessing Officer, however, added Rs. 13,00,000/- as concealed income on certain irrelevant grounds including on the ground that the cash deposit was Rs. 13,00,000/- is as unexplained money u/s 69A of the Income Tax Act, 1961.*

*5. During the previous year relevant to assessment year under appeal, there is a credit of Interest Income of Rs. 12,62,374/- instead of Rs. 18,40,464/-. Since the assessee is the agriculturist and has neither knowledge of taxation terms and no intention of tax evasion, has filed his Income Tax Return for the said assessment year (ie. AY 2012-13) via acknowledgement no. 283023590311219 dated 31.12.2019 and deposited the payment of applicable taxes and interest. The assessee has*

*filed the Income Tax Return with the Interest Income of Rs. 12,62,374/- and paid taxes and interest under section 234A/B/C thereon.*

*6. Further to this, assessee hereby submits that he had not received any notice in this regard but received a call on 23rd November, 2019 (Saturday) and his son had immediately without any delay visited to Income Tax Department on 25th November, 2019 (Monday) and received/collected in physical, the show cause notice (notice no. ITBA/AST/F/142(1)/2019- 20/1019570203(1)) dated 30.10.2019. The assessee was under process to understand the notice and was working on the bank statements to check the cash deposit and cash withdrawals.*

*7. Further a notice with PARTMENT notice no ITBA/AST/F/147(SCN)/2019- 20/1021023813(1) dated 25.11.2019 with hearing date 29.11.2019 was received by the assessee on 29.11.2019 @ 4:55 pm itself and was not able to attend the hearing on the date of receipt of notice."*

**5.** After considering the submissions of the assessee, the Ld. CIT(A) observed that assessee has not responded to various notices issued by the Assessing Officer and further he observed that as per the statement of facts submitted by the assessee, assessee has received the assessment order in 2020 but this claim of the assessee has not been substantiated in any manner. As per the assessment order, the assessee was duly served with the notice u/s 148 of the Act and furthermore, the address mentioned in Form-35 is the same as that mentioned in the demand notice and the assessment order. Therefore, the claim of the assessee that assessment order and the several notices were not received by

him was not substantiated in any manner. However, he observed that the impugned appeal is being admitted based on the unsubstantiated claim of the assessee in the interest of natural justice, without giving any finding on the factual claim of the assessee that assessment order and other details were received by him only on 25<sup>th</sup> February, 2020. Further, he observed that in Form-35, there is no request for filing of any documentary evidence under Rule 46A, even though no details were filed nor available before the Assessing Officer when he completed the assessment proceeding under Section 144 of the Act. In the statement of facts, the assessee has submitted that this amount of cash deposits was out of his cash withdrawals during the year and that he is an agriculturist. However, no proof regarding the assessee being an agriculturist, source of cash deposits in the impugned bank account of the assessee was submitted by the assessee despite repeated hearing opportunities being given to him. The Ld. CIT(A) after analyzing the issue on merit, he sustained the additions made by the Assessing Officer.

**6.** Aggrieved with the above order, the assessee is in appeal before us raising the following grounds of appeal:-

*“1. That having regard to the facts and circumstances of the case, assumption of jurisdiction in initiating the proceedings u/s 147 and passing the impugned order u/s 144/147 and that too without complying with mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961, is bad in law and against the facts and circumstances of the case.*

*2. That in any case and in any view of the matter, assumption of jurisdiction u/s 147 and passing the impugned order u/s 144/147, is illegal, bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.*

*3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 13,00,000/- on account of cash deposits by treating it as alleged unexplained money u/s 69A and that too by recording incorrect facts and findings and in violation of principles of natural justice and without appreciating/considering the submissions and evidences filed by assessee.*

*4. That in any case and in any view of the matter, action of L.d. CIT(A) in confirming the action of Ld. AO in making addition of Rs.13,00,000/- on account of cash deposits u/s 69A, is bad in law and against the facts and circumstances of the case.*

*5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.18,40,464/- on account of other credits by treating it as alleged unexplained money u/s 69A and that too by recording incorrect facts and findings and in violation of principles of natural justice and without appreciating/considering the submissions and evidences filed by assessee.*

*6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in treating the return filed by the assessee as 'non-est' and that too without any basis.*

*7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in making cut and paste error while*

*passing the impugned order and that too without applying independent application of mind.*

*8. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B and 234C of Income Tax Act, 1961.*

*9. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

**7.** At the time of hearing, the Ld. AR submitted that the assessee has passed away, therefore, this appeal is represented by her legal heir i.e., his wife Smt. Satya Wati. Accordingly, Form-36 was filed. Further, he submitted that late assessee being an agriculturist and he submitted that since assessee is no more, case is represented by his wife and she does not know any of the dealing of her husband. Further he submitted that late assessee being an agriculturist and he has maintained the bank account with the Oriental Bank of Commerce, Faridabad. He submitted that assessee has withdrawn cash of Rs.35 lakhs on 27/07/2011 and on 29/11/2011, 30/11/2011, 15/12/2011 and 08/01/2012, the assessee has made a deposit of Rs.13,00,000/- out of the above withdrawal. He submitted that the assessee has submitted the above said bank statement before the Ld. CIT(A), however, the Ld.

CIT(A) has not considered the above submissions and sustained the addition. He prayed that the cash deposit which is only out of cash withdrawals made by the assessee. In this regard, he relied on the decision of *ACIT vs. Baldev Raj Charla & Ors. [2009] 18 DTR 0413 (ITAT Delhi)*.

**8.** Further, he submitted that the assessee has not pressed ground Nos.1, 2 & 5 and further submitted that ground No. 6 to 9 are general in nature. The effective grounds pending for adjudication are 3 & 4 and he prayed that the cash deposit made by the assessee is only out of cash withdrawal.

**9.** With regard to Assessment Year 2011-12, he submitted that assessee has made cash deposit of Rs.8,00,000/- on 13/08/2010 and this cash deposit also from cash withdrawal made by the assessee on 03/08/2010. Since, the facts in this Assessment Year are similar to Assessment Year 2012-13 the cash was deposited within 10 days of cash withdrawal and he prayed that the addition made by the Assessing Officer may be deleted.

**10.** On the other hand, the Ld. DR objected to the submissions of the Ld. AR and submitted that in Assessment Year 2012-13, Ld.

CIT(A) has dealt with the issue of Assessment Year 2011-12, in this regard he brought to our notice findings of the Ld. CIT(A) where Ld. CIT(A) has dealt with the issue of cash deposit of 8 lacs and the assessee has made the cash deposit of 8 lacs in Assessment Year 2011-12 not in Assessment Year 2012-13, the assessee has made the cash deposit of Rs.13,00,000/- in Assessment Year 2012-13. He submitted that Ld. CIT(A) has proceeded to adjudicate the issue on wrong facts and prayed that the this issue may be remitted back to the file of Ld. CIT(A)/ Ld. AO. Further, he submitted that the assessee has not submitted nor represented before the Assessing Officer and the assessment was completed u/s 144 of the Act, therefore, this issue has to be remitted back to the lower authorities for proper verification.

**11.** Considered the rival submissions and material placed on record. First, we observed that the assessee is no more and the appeal is being represented by the late assessee's wife, who has no knowledge of the activities of the late assessee. We considered the option of remitting the issue back to the file of AO or Ld. CIT(A). However, the assessee has already filed the relevant bank

statements before the Ld. CIT(A) and none of the activities of late assessee are known to the assessee's wife, therefore, it will not serve any purpose to remit this issue back to the file of lower authorities. Considering the vulnerability of the wife of late assessee, we are inclined to deal with the case based on the information available on record.

**12.** With regard to appeal filed for Assessment Year 2012-13, it is brought to our notice that assessee has withdrawn cash of Rs. 35,00,000/- on 27<sup>th</sup> July, 2011 and deposited on 29/11/2011 Rs.480,000/- on 30/11/2011 Rs.370,000/- on 15/12/2011, Rs.350,000/- and on 08/01/2012 Rs.100,000/-, in his bank account, it is the claim of the assessee that the assessee has deposited the same cash withdrawn by him in 27<sup>th</sup> July, 2011. It is not clear from the record that why assessee has kept such huge cash after withdrawal from the bank. When there is a huge cash withdrawal and subsequently assessee makes certain deposits there is a possibility that excess cash may have been re-deposited by the assessee. We observed that in the case of Baldev Raj Charla

(supra), the Co-ordinate Bench has dealt with the similar issue and held as under:-

*“27. We have heard the rival submissions and perused the material available on record and have gone through the orders of the authorities below. We find that this explanation of the assessee was found correct that against these five deposits on dt. 14th June, 1996, Rs. 31,000; 21st July, 1997, Rs. 1,27,000, 18th Sept., 1997, Rs. 22,000; 4th Oct., 1997, Rs. 26,000 and on 7th Nov., 1997, Rs. 52,000 there were sufficient cash withdrawals from AWI and from SBI, Mayapuri, but this addition has been confirmed by learned CIT(A) on the basis that there is time gap between the assessee's withdrawals from his own partnership M/s AWI or from his own bank. There is finding recorded by the learned AO or by learned CIT(A) that apart from depositing these cash into bank as explained by the assessee, there was any other user by the assessee of these amounts and in the absence of that, simply because there was a time gap, the explanation of the assessee cannot be rejected and hence the addition confirmed by the learned CIT(A) is not correct. We, therefore, delete the same. This ground of the assessee is allowed.”*

**13.** Respectfully following the above decision, we are inclined to give the benefit of doubt to the assessee and time gap may be ignored. Accordingly, ground No.3 & 4 raised by the assessee are allowed.

**14.** In the result, the appeal filed by the assessee is partly allowed.

**15.** With regard to appeal filed by the assessee for Assessment Year 2011-12, the facts are exactly similar and in this Assessment Year assessee has withdrawn cash on 03/08/2010 and deposited the cash on 13/08/2010. In this year, there is direct link with the cash withdrawal and cash deposit, therefore, we are inclined to

allow the ground No.3 and 4 raised by the assessee. In this assessment year also, assessee has not pressed ground Nos.2,5,6,7 and 8. Accordingly, appeal filed by the assessee is partly allowed.

**16.** In the result, both the appeals filed by the assessee are partly allowed.

Order pronounced on 27<sup>th</sup> June, 2024.

Sd/-

**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 27/06/2024

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI