

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE SMC BENCH, INDORE

**BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER**

ITA No.249/Ind/2024  
(Assessment Year: 2015-16)

Smt. Mariam Bai (Through Legal Heir Shri Abdul Razak Chara), 12, Daulaganj, Indore	Vs.	Income Tax Officer 4(3), Indore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: ADVPC5505A</b>		
Assessee by	Shri S.N. Agrawal, AR	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	05.08.2024	
Date of Pronouncement	06.08.2024	

**ORDER**

This appeal by the assessee is directed against the order dated 13.02.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi for A.Y.2015-16 which is arising from the assessment order u/s 147 r.w.s. 144 of the Act dated 22.11.2021 framed by ITO Ward 4(3), Indore.

2. Assessee has raised following grounds of appeal:

*"1. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deciding the appeal ex-parte without giving proper opportunity of being heard to the appellant.*

*2. That on the facts and in the circumstances of the case and in law, the Ld. Assessing Officer erred in initiating reassessment proceedings under section 147 of the Income-Tax Act, 1961 even when notice under section 148 of the Act was not served to the appellant.*

*3. That on the facts and in the circumstances of the case and in law, the Ld. Assessing Officer erred in initiating reassessment proceedings under section 147 of the Income-Tax Act, 1961 merely for verification of cash deposit in the bank account of the appellant even when no income chargeable to tax had escaped from assessment and in absence of any tangible material and live link of concealment of income merely on the basis of borrowed opinion without independent application of mind.*

*4. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of Rs. 14,90,000/- made to the total income of the appellant on account of cash deposit in bank account of the appellant by treating it as unexplained income under section 69A of the Income-tax Act, 1961 without properly appreciating the facts of the case even when the said amount of cash deposit was made out of cash withdrawals from the bank account of the appellant on prior occasions only.*

*5. The appellant reserves the right to add, alter and modify the grounds of appeal as taken by him."*

3. At the outset Ld. Counsel for the assessee requested for not pressing Ground No. 2 & 3 challenging the reassessment proceedings. Accordingly Ground No.2 & 3 are dismissed as NOT PRESSED.

4. The only effective issue which remains to be dealt on merit is against the finding of Ld. CIT(A) confirming the addition made by

the Ld.A.O towards unexplained cash deposit u/s 69A of the Act at Rs.14,90,000/-.

5. At the outset Ld. Counsel for the assessee referring to the relevant pages of the paper book submitted that the assessee has sold immovable property during the financial year 2013-14 and during the year under consideration Rs.2.06 crores was received by account payee cheque on 15.5.2015. Subsequently out of the available bank balance in Bank of India S.B. account Rs.1 crore was transferred to another bank account of assessee held with Axis Bank. Thereafter when the assessee was required to deposit in the capital gain scheme account before 31.7.2014, it fall short of the funds in S.B. account of Bank of India by approximate by Rs.15 lakhs. To meet out the same, assessee withdrew cash of Rs.1 crores on 26.7.2014 from her Axis Bank account and out of this cash amount the alleged sum of Rs.14,90,000/- was deposited in the bank account held with Bank of India on the very same day. Therefore he submitted that since the source of alleged cash deposit is explained, no addition is called for u/s 69A of the Act.

6. On the other hand Ld. Departmental Representative though supported the orders of lower authorities but failed to controvert the contentions made by the Ld. Counsel for the assessee.

7. I have heard rival contentions and perused the records placed before me. The issue for my consideration is whether Ld. CIT(A) erred in confirming the addition of Rs.14, 90,000/- made by the Ld. A.O for unexplained cash deposit. I observe that the assessee is an individual and she furnished her Income Tax Return for Assessment Year 2015-16 on 31.3.2017 declaring income of Rs.9,48,510/-. On the basis of the information that there is a cash deposit of Rs.14,90,000/- in the bank account of the assessee held with Bank of India, notice u/s 148 of the Act issued to carry out the reassessment proceedings and for explaining the source of alleged cash deposit. However even after giving sufficient opportunity there was no compliance leaving no option with the Ld.A.O except to frame the best judgment assessment. He accordingly proceeded and made addition of Rs.14,90,000/- as unexplained income u/s 69A of the Act. The assessee challenged the impugned addition before Ld. CIT(A) but failed to get any success. Before me Ld. Counsel for the assessee has referred to relevant pages of the paper

book containing 95 pages. From going through the same I note that in the preceding Financial Year 2013-14 assessee along with other co-owners sold a residential house. Out of the total sale consideration assessee received some payment during the Financial Year 2014-15 and as per paper book at page 47 assessee received cheque No. 000019 dated 10.4.2014 of Rs.2.06 crores. This cheque was deposited by the assessee in her bank account held with Bank of India. Assessee also owns the bank account with Axis Bank. After receiving the credit of Rs.2.06 crores on 15.5.2014 she transferred Rs.1 crore into her Axis Bank S.B. account by Cheque No. 14256 dated 29.5.2014. Further from the perusal of page 39 of the paper book where the copy of bank statement of Bank of India is placed, I note that on 26.7.2014 the alleged cash of Rs.14,90,000/- is deposited and on the very same day Rs.1,25,90,000/- has been transferred to capital gain account scheme in order to fulfill the condition for claiming exemption from capital gain tax arising from sale of residential house. As stated by the Ld. Counsel for the assessee that the dead line for depositing the amount in capital gain scheme account was approaching and the assessee had to pay Rs.1,25,90,000/- from Bank of India but

the available bank balance on 25.7.2014 was only Rs.1,11,01,974.25 which was not sufficient to clear the cheque No.14262 for Capital Gain scheme account. To mitigate the short fall assessee withdrew cash from her Axis Bank account on 26.7.2014 at Rs.1 crore and out of the available cash in hand on the very same day she deposited Rs.14,90,000/- in her Bank of India saving bank account and on the very same day the cheque issued for the capital gain scheme account bearing No.14262 was cleared.

7.1 The above stated facts remains uncontroverted by Ld. Departmental Representative except for his doubt that when only Rs.14,90,000/- was required to be deposited then why the assessee withdrew Rs.1 crores from another bank account. I however fail to find any merit in the said submission of Ld. Departmental Representative because once the assessee has complete explanation about the source of funds received in her bank account of Rs.2.06 crores on 15.5.2014 and all the further transactions are having direct nexus with the credit of Rs.2.06 crores then it is upon the assessee to utilize the funds at her disposal and she is free to withdraw cash from her declared bank account. Thus there

remains no doubt that the assessee had sufficient explanation as well as source for alleged cash deposit of Rs.14,90,000/-. Though Ld. Counsel for the assessee has placed plethora of decisions of ITAT in his paper book but considering that there is no ambiguity in the facts of the case and they in itself are sufficient to explain the source of alleged cash deposit, therefore in my considered view both the lower authorities grossly erred in confirming the addition for unexplained money/income u/s 69A of the Act. Thus the finding of Ld. CIT(A) is set aside and the impugned addition of Rs.14,90,000/- made u/s 69A of the Act is hereby deleted. Ground No.4 raised by the assessee is allowed.

8. Remaining grounds being general in nature needs no **adjudication**.

9. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 06.08.2024.

**Sd/-**

**(MANISH BORAD)**  
Accountant Member

Indore, \_ 06.08.2024  
Dev/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*