

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1080/DEL/2024
Assessment Year: 2012-13

Sukhpal Singh, E-26, DELTA-1, Greater Noida, Gautam Budh Nagar-201308.	<u>Vs</u>	Income-tax Officer, Ward 5(3)(5), Gautam Budh Nagar
PAN- DCIPS 2301 K		
APPELLANT		RESPONDENT
Appellant by	Shri Raghuraj Singh, Adv.	
Respondent by	Shri Sanjay Kumar, Sr. DR	
Date of hearing	20.08.2024	
Date of pronouncement	29.08.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 23.01.2024, pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:

“1. That the impugned Assessment order passed by the Hon'ble CIT (A) is bad in law, wrong on facts and against the Principal of natural justices hence is unsustainable.

2. That The notice u/s 148 not delivered during assessment period and passed order u/s 144 of the Income tax act 1961, that is mandatory requirement and not procedural; hence assessment order has to be quashed.

3. That on facts and circumstances of the case and in Law, the assessing officer had erred in assessing the income tax of the appellant at Rs 22,09,970, please be deleted

4. That the Ld Assessing Officer had erred on facts and circumstances of the case and in law in making an addition on account of cash Deposit by the Assessee of Rs. 30,66,000.00, being wholly based on conjecture and surmises and being untrue, the same must be deleted.

5. The addition made by the A.O. is devoid of any merits and is away from the factual matrix. The Submission is not made by the Assessee during Assessment period. The Cash deposited against earlier cash withdrawal from the assessee and Assessee's wife account. The Assessee's wife received compulsory land compensation. Therefore, there cannot be any tax liability and the said cash deposited explained as u/s 68 of Income tax act 1961.

6. That the impugned Assessment order passed by Ld. Assessing Officer Noida is a clear cut case of misunderstanding and wrong interpretation of Law.

7. That the appellant crave leave to add, alter, amend, delete or modify any or more of the ground of appeal before or at the time of hearing.”

2. Facts of the case, in brief, are that as per AIR information the AO noticed that during F.Y. 2011-12 relevant to A.Y. 2012-13 the assessee had deposited cash of Rs. 30,66,000 in his saving bank account with Canara Bank, Dankaur. In absence of PAN, information regarding filing of the return for the A.Y 2012-13

and declaration of source of cash deposits in the saving bank account could not be ascertained, therefore, treating the cash deposits of Rs. 30,66,000/- in saving bank account as escaped income for A. Y. 2012-13, the AO initiated reopening proceeding u/s 147 of the IT Act, 1961. The assessee did not respond to the statutory notices issued by the AO. Therefore, the AO completed the assessment u/s 144/147 of the Act at Rs. 30,66,000/- by treating cash deposits of Rs. 30,66,000/- as unexplained money and added the same to the income of the assessee. Aggrieved against it assessee preferred appeal before learned CIT(Appeals), who partly allowed the appeal with following directions:

- *“The AO can consider the cash withdrawals as source of cash deposits if the time gap between the cash withdrawal and cash deposit is less than 30 days duration.*
- *The bank account statement of spouse is submitted by the appellant without any proper explanation the need of uploading the same. However, it is felt appropriate if the cash withdrawals made in the bank account of the spouse of the assessee within the short period of 15 days, the same can be considered as source of cash deposit in the bank account of the assessee. And*
- *Care must be taken by the AO that no benefit of sources of cash deposits in the assessee's bank account can be given if the cash withdrawal in spouse's bank account was followed by cash deposits made in the spouse's bank account. The double benefit of source of cash in spouse and assessee's bank account must be avoided.”*

Still feeling aggrieved, the assessee has come in appeal before this Tribunal.

3. Learned counsel for the assessee reiterated the submissions as made in the written submissions and submitted that the authorities below were not justified in treating cash deposits of Rs. 30,66,000/- as unexplained income of the assessee u/s 69 of the Income-tax Act, 1961 (the "Act"). For the sake of clarity the written submissions filed on behalf of the assessee are reproduced as below:

"The Appellant has preferred the present appeal u/s 250 of the income Tax Act, 1961, against the order dated 23.01.2024, passed by the Hon'ble Ld.CIT (Appeal-I) NFAC under section 250 of the Income Tax Act, 1961 for the assessment Year 2012-13 in the case of the appellant and as per the information, details and explanation given by him, submit before your Honour as under:

Statement of Facts of the Case:-

The brief facts of the case are submitted before your Honor as under:-

- i. That the Assessee is a Resident of Vill-Aurangpur, Dankor Greater Noida, Tahsil Dankor Gautom Buddh Nagar and presently at E-26, Delta-I, Greater Noida GBN*
- ii. That The Assessee is a Farmer and does not have any taxable income during AY 2012-13 except Agriculture only.*
- iii. That The Assessee wife had received compulsory land compensation from Noida Authority for Rs 54.92 Lac on dated 18/05/2009 during AY 2010-11.*
- iv. That The Assessee had deposited of Rs. 30.66 LAC/ Cash in Bank of Canara Bank. The Assessee had also submitted his reply two times on dated 18/06/2019 & 25/06/2019 but The Ld AO did not take on records and made Ex parte order u/s 144 of the Income Tax Act 1961.*
- v. That The Assessee father Shri lajjaram had received compulsory land compensation from Noida Authority for 2,00,26,400.00 (Rs 2.026 Cr. on*

dated 11/02/2009 during AY 2010-11. The Received amount of exempted u/s 10(37) of Income Tax Act 1961 and received of inheritance agriculture land as notified by UP Government. The Nakha -11 copy is also attached for kind reference.

vi. That The Assessee had deposited of Rs. 30.66 LAC/ Cash in Bank of Canara Bank The payment deposited against the cash withdrawal. The Bank statement is self explanatory

Cash Flow Chart: Cash Deposit and cash withdrawal are explained as under.

<i>DATE</i>	<i>Cash Withdrawal</i>	<i>Deposit</i>	<i>Balance</i>	<i>Remarks if any</i>
<i>02/05/11</i>	<i>300000</i>		<i>(-)300000</i>	<i>Cash Withdrawal</i>
<i>09/05/11</i>	<i>100000</i>		<i>(-)400000</i>	<i>Cash Withdrawal</i>
<i>12/05/11</i>	<i>10000</i>		<i>(-)410000</i>	<i>Cash Withdrawal</i>
<i>19/05/11</i>	<i>400000</i>		<i>(-)810000</i>	<i>Cash Withdrawal</i>
<i>04/06/2011</i>	<i>500000</i>		<i>(-)1310000</i>	<i>Cash Withdrawal</i>
<i>11/06/2011</i>		<i>445000</i>	<i>(-)865000</i>	<i>Deposited against Cash Withdrawal</i>
<i>14/06/2011</i>	<i>450000</i>		<i>(-)1315000</i>	<i>Cash Withdrawal</i>
<i>17/06/2011</i>		<i>450000</i>	<i>(-)865000</i>	<i>Deposited against Cash Withdrawal</i>
<i>02/07/2011</i>	<i>25000</i>		<i>(-)890000</i>	<i>Cash Withdrawal</i>
<i>14/07/2011</i>	<i>90000</i>		<i>(-)980000</i>	<i>Cash Withdrawal</i>
<i>20/10/2011</i>		<i>140000</i>	<i>(-)840000</i>	<i>Deposited against Cash Withdrawal</i>
<i>08/11/2011</i>		<i>86000</i>	<i>(-)754000</i>	<i>Deposited against Cash Withdrawal</i>
<i>11/11/2011</i>		<i>1200000</i>	<i>(+)446000</i>	<i>Cash Deposited</i>
<i>17/11/2011</i>		<i>200000</i>	<i>(+)646000</i>	<i>Cash Deposited</i>
<i>21/11/2011</i>		<i>165000</i>	<i>(+)811000</i>	<i>Cash Deposited</i>
<i>01/12/2011</i>		<i>5000</i>	<i>(+)816000</i>	<i>Cash Deposited</i>
<i>16/01/2012</i>		<i>240000</i>	<i>(+)1056000</i>	<i>Cash Deposited (Peak Credit of Rs 10.56 Lac)</i>
<i>03/02/2012</i>	<i>23000</i>		<i>(-)23000</i>	<i>Cash Withdrawal</i>

01/03/2012		135000	(+)112000	Cash Deposited (Peak Credit of Rs 01.12 Lac)
05/03/2012	5000		(-)5000	Cash Withdrawal
10/03/2012	2000		(-)7000	Cash Withdrawal
27/03/2012	8000		(-)15000	Cash Withdrawal
Total	Rs 19.13 Lac Cash Withdrawal	Rs 30.66 Lac Cash Deposit		

I also would like to submit that the Assessee had withdrawn of Rs 19.13 Lakhs and deposited of Rs 30.36/-Lac Cash for the AY 2012-13 as per above sheet. (Bank statement copy is attached for reference). The payment deposited against the cash withdrawal. The cash flow chart is self explanatory

vii. That the Assessee Apart from this, the wife of the Assessee also received compulsory compensation for the agriculture land of Rs 54.92 Lac, which the Assessee's wife withdrew from her account and kept at home for a few days and after that the Assessee deposited the same money in his account. The Assessee's wife's bank statement copy and withdrawal proof are also attached.

viii. That the Assessee, Apart from this, the Assessee had 50 bigha agricultural land, the income of which used to come from time to time. He used to deposit the money at home and when he collected some money, he used to deposit it in his account. A copy of the account khatauni of the agricultural land is enclosed

ix. Thus, once again I am briefly explaining the withdrawal Amount of Assessee wife during AY 2012-13 as Cash Flow Chart which is as follows:

DATE	Cash Withdrawal	Deposit	Balance	Remarks If Any
26/09/11	75000		(-)75000	Cash Withdrawal
01/10/11	335000		(-)400000	Cash Withdrawal
21/10/11	200000		(-)410000	Cash Withdrawal
03/11/11		200000	(-)810000	Deposited against Cash Withdrawal

24/11/11	20000		(-)1310000	Cash Withdrawal
17/12/11	490000		(-)865000	Deposited against Cash Withdrawal
Total	11,20,000/-	2,00,000/		

Sir, I would also like to inform you that it is proved by facts and bank statement The Assessee's wife (Smt Suman w/o Shri Sukhpal)) withdrew of Rs 11,20,000/-(11.20 Lac) between 26/09/2011 to 17/12/2011 and kept it at home. Out of that she deposited back of Rs 2,00,000/- (02 Lac) in cash back in her account and the rest of the payment was deposited by her husband (Assessee) in his account from time to time which can be seen on checking the amount deposited in Assessee 's account. Bank statement copy and cash flow chart are enclosed as evidence.

Sir, Apart from this, I would also like to apprise that the Assessee 's father used to live with the Assessee and the Assessee 's father had also received(2.02 Cr) two crore rupees as compensation for land in the past as above details. The Assessee 's father had withdrawn of Rs 6,00,000/- from his account in 09/05/2011 and kept it at his home from the ancestral property and later gave the same money to the Assessee to deposit in his account because the Assessee was living with the Assessee 's father and depositing it together is very practical. Details of Cash withdrawal of Shri Lajjaram (Assessee Father) Account no 2161108015636 on dated 09/05/2011 for Rs 600000/- (Six Lac).

<i>Sr No</i>	<i>Dated</i>	<i>Cash Withdrawal Amount</i>	<i>Remarks</i>
<i>01</i>	<i>09.05.2011</i>	<i>6,00,000.00</i>	<i>The Assessee's father withdrew the money from his account and kept it with himself and later gave it to his son on 11/11/2011 because the Assessee deposited the money taken from his father on the same day in his account and his wife's withdrawal money in the bank account amounting to Rs. 12 lakhs one time</i>
<i>Total</i>		<i>6,00,000.00</i>	

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Peak Credit of Rs Payment of 11.68 Lac: Sir I would like to share with you a true fact that during period as per the cash flow chart, of Rs 11.68 Lac peak credit in the Assessee's account as Peak credit. In his as evidence, the Assessee had kept of Rs 9,20,000/- from his wife's account and Rs 6,00,000/- from his father's account kept at home. Which total was of Rs 15.20 Lac Out of that, he deposited of Rs 11.68 Lac in his account from time to time, which is visible on the cash flow chart and bank statement of Assessee.

The lack of this clarity AO had made impugned assessment order and the same was partly allowed by Hon'ble CIT (Appeal) NFAC without considering the merit on the case. Aggrieved against the above order, assessee is before this judicious authority in search of justice.

The lack of this clarity AO had made impugned assessment order u/s 144/147. The Ld. AO for the said AY 2008-09 had added his income as unexplained cash deposited u/s 69A of Income Tax Act 1961 as unexplained income as under:

<i>Returned Income</i>	<i>Rs Nil</i>
<i>Addition:</i>	<i>Rs. 30,66,000/-</i>
<i>Total Income as above =</i>	<i>Rs 30,66,000/</i>
<i>Tax Demand</i>	<i>Rs 22,09,970/-</i>

Without prejudice to the legal position, facts and circumstances of the case as placed above, the aforesaid impugned additions were made by the Id. AO in most mechanical and arbiter manner, without any basis, without application of mind and with an acute prejudiced view. The facts and circumstances of the case do not warrant any additions with regards thereto.

Grounds of Appeal:-

Aggrieved from the unlawful, arbitrary, perverse and unjustified impugned action of the Ld. AO), the Assessee has preferred the present appeal before your honour and has taken following ground of appeal in form No. 36, which are reproduced here under for ready reference of your honor:-

GROUND OF APPEAL :-

1. *That the impugned Assessment order passed by the Hon'ble CIT (A) is bad in law, wrong on facts and against the Principal of natural justices hence is unsustainable.*
2. *That The notice u/s 148 not delivered during assessment period and passed order u/s 144 of the Income tax act 1961, that is mandatory requirement and not procedural; hence assessment order has to be quashed.*
3. *That on facts and circumstances of the case and in Law, the assessing officer had erred in assessing the income tax of the appellant at Rs. 22,09,970, please be deleted.*
4. *That the Ld. Assessing Officer had erred on facts and circumstances of the case and in law in making an addition on account of cash Deposit by the Assessee of Rs. 30,66,000.00, being wholly based on conjecture and surmises and being untrue, the same must be deleted.*
5. *The addition made by the A.O. is devoid of any merits and is away from the factual matrix. The Submission is made by the Assessee during Assessment period but not taken on Record. The Cash deposited against earlier cash withdrawal from the assessee and Assessee's wife account. The Assessee's wife received compulsory land compensation. Therefore, there cannot be any tax liability and the said cash deposited explained as u/s 68 of Income tax act 1961.*
6. *That the impugned Assessment order passed by Ld. Assessing Officer, Noida is a clear cut case of misunderstanding and wrong interpretation of Law.*
7. *That the appellant crave leave to add, alter, amend, delete or modify any or more of the ground of appeal before or at the time of hearing.*

Reply of Ground No 5(On Merit Basis).

The Assessee wife had received compulsory land compensation from Noida Authority for Rs 54.92 Lac on dated 18/05/2009 during AY 2010-11. The Assessee had deposited of Rs. 30.66 LAC/ Cash in Bank of Canara Bank. The Assessee had also submitted his reply two times on dated 18/06/2019 & 25/06/2019 but The Ld AO did not Take on records and made Ex parte order u/s 144 of the Income Tax Act 1961.

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Peak Credit of Rs Payment of 11.68 Lac: Sir I would like to share with you a true fact that during period as per the cash flow chart, of Rs 11.68 Lac used to be generated in the Assessee's account as Peak credit. In his as evidence, the Assessee had kept of Rs 9,20,000/- from his wife's account and Rs 6,00,000/- from his father's account kept at home. Which total was of Rs 15.20 Lac Out of that, he deposited of Rs 11.68 Lac in his account from time to time, which is visible on the cash flow chart and bank statement of Assessee

As per aforesaid grounds, order passed u/s 144/147 of IT Act, 1961 itself is illegal and liable to be quashed hence prayed for the same and as an alternative without diluting the above prayer all the additions are illegal & bad in law, hence requested to delete TOTO.

Appellant's Submissions:

With Regards to these Ground, the Assessee hereby submit before your honor as under:

- 1. Copy of Assesses Bank statement from 01.04.2011 to 31.03.2012 is attached with Cash withdraw statements in reply paper book.*
- 2. A Copy of Assesses Bank statement from 01.04.2009 to 31.03.2012 is attached with Cash withdraw statements in reply paper book.*
- 3. A Copy of Assesses Father Bank statement from 01.04.2009 to 31.03.2012 is attached with Cash withdraw statements in reply paper book.*

4. Copy of Nakhs-11 for compensation of compulsory land proof of Assessee wife Suman Devi.

ITO Vs. Deepali Sehgal: Explanation of assessee that cash deposits in bank was from cash withdrawals made in the past cannot be rejected by AO simply without establishing the fact that cash withdrawn was utilized by assessee for other purpose and not hold by assessee. Addition made only on the basis of Presumption "No doubt it is true that The received amount is exempted as above explanation, the assessing officer must consider the same, and to that extent he must make a guess: but the estimate must be related to some evidence or material and it must be something more than mere suspicion." It is horrible and strange that ITO added to the income entire cash deposited without any cogent evidence, without applying the mind, without acknowledging and without looking at the complete bank statement.

Being a farmer, The Assessee believes in transactions by withdrawing his payment in cash and due to this the Assessee exchanged the payment from one account to another and from the second account to the first account and this issue came up before you but it is true that the Assessee has a source of exempted income which he had received and the Assessee has no such intention to evade tax through which he has done his transaction, keeping these facts in mind, Request you to kindly consider the same.

The Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram v. CIT (1959) 37 ITR 288 (SC) held that assessment could not be based on background of suspicion and in absence of any evidence to support the same. Human Probability test is one of the important test laid down by the highest court of India in order to check genuineness of the transactions entered into the books of account of the assesses. The Human Probability Test were laid down for the first time in the case of CIT v. Durga Prasad More (1971) 82 ITR 540 (SC) and followed in the case of Sumati Dayal v. CIT (1995) 214 ITR 801 (SC). Further it was also applied thereafter in numerous cases by the various courts. In the instant case the appellant being an agriculturalist the practice of withdrawing money from the bank and retained at house for all practical purposes qualifies the Human Probability Test. Hence the addition made by the AO without any legal and justified reasons and only based on assumptions and suspicion is bad in law. keeping these facts in mind, Request you to kindly consider the same

Prayer

Hon'ble Sir,, In view of the totality of the above facts, circumstances and legal position as explained above, it is prayed before your honour to kindly give relief to the appellant by quashed impugned assessment order dated 28.11.2019, passed u/s 144 to ld, AO for reassessment of the Income Tax Act, 1961, and accordingly the impugned additions of Rs.22.09,970/- made for the captioned assessment year, be kindly deleted in full by allowing the present appeal and oblige.”

4. On the other hand learned DR relied on the orders of authorities below and submitted that the learned First Appellate Authority has been fair enough to direct the Assessing Officer to recompute the impugned addition.

5. I have heard rival submissions and perused the material available on record. The stand of the assessee is that he is an agriculturist and during A.Y. 2012-13 he did not have any taxable income except exempt agriculture income and therefore he was not required to file his income tax return. Regarding cash deposit of Rs. 30.66 lakh it is submitted that during F.Y. 2011-12 relevant to A.Y. 2012-13 the assessee had cash withdrawal of Rs. 19.13 lakhs and the payment was deposited against cash withdrawal. It is also submitted that assessee's wife and his father had received huge amount compensation on acquisition of their agricultural land which was exempt from income-tax, out of which assessee's wife had kept cash of Rs. 9,20,000/- with him and assessee's father had given cash of Rs. 6,00,000/-, which was deposited by the assessee in his bank account from time to time. In support,

the assessee has filed copies of bank account of self, wife and his father. No material to the contrary has been brought on record by the authorities below. Therefore, considering the totality of facts of the present case, in my considered opinion the assessee has successfully proved the source of cash deposit in his bank account. Accordingly, assessment order passed u/s 144/147 of the Act is quashed. Grounds of appeal are allowed.

6. In the result, assessee's appeal is allowed.

Order pronounced in open court on 29th August, 2024.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI