

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

BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER

**ITA No.1564/DEL/2024
(Assessment Year: 2011-12)**

Rakesh Sardana,
H.No.509, Jarnailly Colony,
Karnal – 132 001 (Haryana).

vs.

ITO, Ward 5,
Karnal.

(PAN : APQPS4520Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Somil Aggarwal, Advocate
Shri Shrey Jain, Advocate
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 26.06.2024
Date of Order : 30.08.2024

ORDER

The assessee has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals), Delhi [“Ld. CIT(A)”, for short]/National Faceless Appeal Centre (NFAC) dated 21.02.2024 for the Assessment Year 2011-12.

2. Brief facts of the case are, the case of the assessee was reopened under section 147 of the Income-tax Act, 1961 (for short ‘the Act’) by issue of notice under section 148 of the Act after obtaining prior approval of the Pr. CIT of Income-tax, Karnal. The AO observed that section 148 notice was returned back due to incomplete address. Thereafter, notice under section 142(1) of the

Act was issued asking the assessee to furnish ITR for assessment year 2011-12, details of bank accounts along with statements thereof and source of cash deposits with the supporting evidences. Since no compliance from the assessee's side AO issued 144 notice. Since no response from the assessee's side was received AO completed the assessment under section 144 of the Act and added the cash deposit of Rs.17,82,000/- as income of the assessee.

3. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A) and raised several grounds of appeal and in response to notices by the Id. CIT (A), assessee has filed submissions which were not filed before the AO. Accordingly, a remand report was called for from the AO on 16.11.2023 and no response from the AO side. With regard to issue raised by the assessee i.e. assessment is bad in law, the assessee has submitted before the Id. CIT (A) that assessee has regularly filed return of income with ITO, Ward 5, Karnal and the notices of assessment were not served to the assessee and during December 2018 to 04.01.2019, assessee was out of India. In support of the same, a copy of the passport was enclosed and further submitted that assessee may be permitted to file the document under Rule 46 of the Income-tax Rules, 1962 as in relation to cash deposit of Rs.17.82 lacs, there is cash withdrawal of Rs.20 lacs during the year. After considering the submissions of the assessee, Id. CIT (A) after analysing the information submitted by the assessee partly allowed the appeal filed by the assessee and sustained the addition under section 69A of the

Act to the extent of Rs.14,57,996/- and proceeded to sustain the addition by adopting peak credit.

4. Aggrieved with the above order, assessee is in appeal before me by raising following grounds of appeal :-

“1. That the order of Commissioner of Income Tax (Appeal) is arbitrary, illegal and against the fact.

2. The order passed by the ld. CIT is void ab-initio as no notice under section 148 is served on the applicant for initiation of proceedings u/1 148.

3. That the ld. Commission of Income tax (appeal) erred in law in passing the order as the ITR filed by the appellant has not been considered while framing the assessment.

4. That the ld. CIT (Appeal) erred in law in confirming the addition of Rs.14,57,996.00 as the deposit has been made out of cash withdrawal.

5. That the learned CIT (Appeal) erred in law in covering the deposit under section 69A of the Income Tax Act.

6. That the reasons recorded by the A.O. are against facts as no notice has been taken of returned filed by the assessee on 11.07.2011 resulting in initiating proceedings u/s 148 bad in law.”

5. At the time of hearing, ld. AR for the assessee submitted that the assessee has made cash deposits in bank account on various dates and he submitted that these deposits were made out of cash withdrawals made by the assessee. In support of the same, he brought to our notice page 6 of the paper book which is bank statement. He highlighted that the assessee has withdrawn cash and subsequently deposited the amount in his bank account and he highlighted that

subsequent to withdrawal, deposits were made in his bank account. He objected to the findings of the Id. CIT(A) who has proceeded to sustain the addition by adopting peak credit. He also brought to our notice findings of the Id. CIT (A) and Id. CIT(A) has observed that assessee has no source of income.

In this regard, he submitted as under :-

“In this regard it is submitted that during the AY 2011-12 assessee had withdrawn cash amounting to Rs.20,00,000/- and deposited cash of Rs.17,82,000/- in his account maintained with Punjab National Bank, Prem Nagar, Kamal (PB 5-7) detail of which is as follows:-

Date of withdrawal	Withdrawal	Deposits	Date of deposit
		10,000.00	31-May-10
		5,000.00	18-Jun-10
		1,000.00	21-Jun-10
5-Oct-10	100,000.00	200,000.00	28-Oct-10
6-Oct-10	500,000.00	150,000.00	29-Oct-10
7-Oct-10	100,000.00	15,000.00	29-Oct-10
8-Oct-10	600,000.00	100,000.00	8-Nov-10
20-Oct-10	200,000.00	49,000.00	9-Nov-10
21-Oct-10	100,000.00	49,000.00	10-Nov-10
25-Oct-10	300,000.00	49,000.00	11-Nov-10
27-Oct-10	100,000.00	49,000.00	12-Nov-10
		100,000.00	13-Nov-10
		220,000.00	15-Nov-10
		49,000.00	3-Dec-10
		49,000.00	8-Dec-10
		49,000.00	19-Feb-11
		49,000.00	22-Feb-11
		49,000.00	23-Feb-11
		49,000.00	1-Mar-11
		49,000.00	3-Mar-11
		2,000.00	3-Mar-11
		50,000.00	3-Mar-11
		40,000.00	4-Mar-11
		350,000.00	15-Mar-11
TOTAL	2,000,000.00	17,82,000.00	

PB 2-4 is the copy of detailed written submission before Ld. CIT(A) wherein assessee explained that cash deposit in bank is from cash

withdrawn from his bank account in October 2010, detail of which was submitted by him at PB 3-4.

Further it is submitted that till 27-10-10 assessee has withdrawn Rs.20,00,000/- and the same was deposited by him during the months of October 2010 to March 2011 and the same is evident from the bank statement of Punjab National Bank, Prem Nagar, Kamal (PB 5-7).”

In this regard, reliance is placed on the decision of Hon'ble Delhi Income Tax Appellate Tribunal in the case of ACIT vs. Baldev Raj Charla & Ors., (2009) 121 TTJ 0366 and Moongipa Investment Ltd vs. ITO, (2013) 30 taxmann.com 113 wherein it has been held that in the absence of any contrary evidences of the use of cash withdrawn, the explanation that the cash deposited is out of the cash withdrawn from the bank on earlier occasions cannot be brushed aside.

Further reliance is placed on the decision of Hon 'ble Delhi High Court in the case of Jaya Aggarwal vs. ITO, (2018) 302 CTR 0241.

Therefore, in view of the above, it is respectfully submitted that the cash deposited by assessee in his bank has duly been substantiated by him and therefore, the addition made by Ld. AO could not have been made and since may please be deleted.

The order passed by the Ld. CIT(A) is based on only one adverse observation which is met as under:

1. At para 5.3.2, page 9 of the appeal order, Ld. CIT(A) has alleged that cash withdrawal started on 05.10.2010 on which date there was a transfer of amount of Rs.13,64,000/- into the appellant's bank account which resulted in peak credit of Rs.14,57,996/- for the appellant. This credit entry that resulted in the balance from which the chain of deposits and withdrawals started is not explained.

In this regard it is respectfully submitted that assessee has explained the source of cash which are being withdrawn from the bank as mentioned at PB 3-4 of written submission and herein also. Further, it is stated that as per the details of the bank account there are regular deposit and withdrawals and therefore, it is requested that considering only peak credit by Ld. CIT(A) is incorrect and deserves to be deleted.”

6. On the other hand, ld. DR for the Revenue relied on the findings of the lower authorities and specifically, he relied on para 5.3.3 of the order of CIT(A). Further, he submitted that assessee has also not filed his return of income.

7. In the rejoinder, ld. AR for the assessee submitted that assessee has filed its return of income which is placed at page 1 of the paper book.

8. Considered the rival submissions and material placed on record. I observed that the case of the assessee was reopened under section 147 of the Act based on the information that assessee has made deposit of Rs.17.82 lakhs during the current assessment year. Since there was no response from the assessee the AO completed the assessment under section 144 of the Act. In appeal, the assessee has submitted the relevant information before ld. CIT(A) and ld. CIT (A), without there being any assistance from AO, has analysed the submissions of the assessee and sustained the addition to the extent of Rs.14,57,996/- under section 69A of the Act by adopting peak credit method. However, before me, ld. AR of the assessee submitted that the assessee has made cash deposits which is nothing but cash withdrawal made by the assessee during the year. He submitted a chart highlighting that the assessee has withdrawn cash from 05.10.2010 to 27.10.2010 which is withdrawal of Rs.20 lakh during this period and the same was redeposited on 28.10.2010 and in subsequent dates. He submitted that cash deposits are out of cash withdrawals.

In this regard, I observed the case of ACIT vs. Baldev Raj Charla & Ors. (2009)

121 TTJ 0366 wherein it was 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.”

9. After considering the facts on record, in my view, assessee has already demonstrated that assessee has withdrawn Rs.20 lakhs in the month of October and the same cash withdrawals were with the assessee to make the deposits from 28.10.2010 to 15.03.2011. Therefore, the assessee has established the source of cash with him. Accordingly, we are inclined to allow the grounds raised by the assessee.

10. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on this 30th day of August, 2024.

Sd/-

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

Dated: 30.08.2024

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI