

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

**BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT  
and  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.415/DEL/2019  
(Assessment Year: 2010-11)**

Balwan Singh,  
S/o Shri Kanwar Bhan,  
VPO Bapoli,  
Panipat – 132 103 (Haryana).

vs.

ITO, Ward 3,  
Panipat.

**(PAN : CSGPS9068A)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Satyam Aneja, Advocate  
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 01.08.2024  
Date of Order : 04.10.2024

**ORDER**

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

This appeal has been filed by the assessee against the order of Id. Commissioner of Income Tax (Appeals), Karnal [“Id. CIT(A)”, for short] dated 26.11.2018 for the Assessment Year 2010-11.

2. Brief facts of the case are, as per the information received by the Assessing Officer, the assessee has deposited Rs.34,00,000/- in its saving bank account during FY 2009-10 relevant to AY 2010-11. In order to verify the source of cash deposit made in his saving bank account maintained with Sarva

Haryana Gramin Bank, Vill. Bapoli, Panipat, the proceedings u/s 147 of the Income-tax Act, 1961 (for short 'the Act') was initiated after getting approval from the PCIT, Karnal and notice u/s 148 of the Act was issued and served on the assessee. The relevant reasons recorded for reopening the assessment was reproduced at page 1 of the assessment order. In response, assessee had filed his return of income on 29.05.2017 declaring net taxable income at Rs.1,40,250/-. Accordingly, notices u/s 143(2) & 142(1) were issued and served on the assessee. In response, ld. AR for the assessee attended and submitted the information as called for.

3. During the assessment proceedings, the Assessing Officer observed that assessee has made cash deposit of Rs.54,00,000/- instead of Rs.34,00,000/- in his saving bank account during the year under consideration. The assessee has submitted that cash deposited in his saving bank account relates to Smt. Lali, wife of Shri Main Pal. It was submitted that Smt. Lali deposited the above said amount out of her funds from sale of agricultural land at Bapoli, since she had no bank account in her own name at that point of time. On 04.07.2017, assessee produced Smt. Lali before the Assessing Officer and her statement was recorded. Further, the assessee was issued a show-cause notice on 27.07.2017 with the acknowledgement of submissions made by the assessee before the Assessing Officer and acknowledging the affidavit of Smt. Lali, filing of copy of bank account and copy of sale deed of land of Smt. Lali. In response to

show-cause notice dated 27.07.2017, assessee filed its reply before the Assessing Officer. For the sake of clarity, it is reproduced below :-

*“i. “Regarding amount return back to Smt. Lali (The actual Owner of money) and utilised by Smt. Lali. It is stated that the amount of Smt. Lali, who used the bank of assessee to return the amount for few days, was returned back to her within one month on different dates as and when withdrawn from the bank by the assessee. After receiving back the amount Smt. Lali utilized her amount in purchasing the Agriculture Land/plot and on construction/renovation of their residential house at VPO Bapoli.*

*ii. That the bank account of the assessee was used by Smt. Lali as pipe line, and no other matter. The assessee has no concern with the amount Rs. 54,00,000/- deposited in his account by Smt. Lali and taken back for her use. This fact is supported by his statement taken on oath by your office. Moreover, copies of agriculture land/plot purchased by Smt. Lali from the funds received back from the assessee are enclosed herewith.”*

4. After considering the above submission, Assessing Officer rejected the same with the following observations :-

*“6. Smt. Lali W/o Sh. Main Pal, VPO Bapoli, Panipat stated in her statement that she had deposited cash amounting to Rs. 54 lacs in the bank account of the assessee received from sale consideration of her land as she has no bank account at Bapoli. From the statement of Smt. Lali, it is observed that Shri Main Pal, her husband was having bank account at Panipat. The distance between Vill. Bapoli and Panipat city is hardly 2-3 KM. The purchasers belongs to Distt. Sonapat and to reach Vill. Bapoli purchaser the have to cross the Panipat City. Suit. Lali could request the purchaser to handover the cash at the bank premises where her husband had the account and she could easily deposit the amount in his bank account. The statement given by Smt. Lali that she had deposited the amount in bank account of Sh. Balwan Singh is totally baseless. The conduct of the assessee is against the human probabilities and apparently the said story has been concocted by the assessee to explain the cash deposits in his bank account.*

7. *From the submissions made by the assessee and statement given by Smt Lali, it is observed that the assessee has failed to discharge the onus to prove the genuineness and credit worthiness of cash deposits made by him in his saving bank account. Hence the amount of cash deposits made by him is treated the money from undisclosed sources. Therefore, the addition of Rs. 54,00,000/- is made u/s 69A of the Income Tax Act, 1961 to the taxable income of the assessee. However, I am satisfied that the assessee has furnished inaccurate particulars of his income to the extent of Rs.54,00,000/-, therefore, penalty proceedings u/s 271(l)(c) of the Act are initiated.”*

5. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A) and raised grounds of appeal and filed detailed written submissions.

After considering the submissions and assessment order, Id. CIT (A) dismissed the appeal filed by the assessee with the following observations :-

*“From the above, it is seen that the assessee has been unable to counter the A.O.'s findings that when the said lady Smt. Lali's husband already has a bank account at Panipat, it is difficult to understand why the assessee's account was used. Even if the distance between village Bapoli and Panipat City, according to the appellant is 15 Kilometres and not 2 to 3 kilometres as held by the assessee, there is no logic in depositing the said cash in the assessee's account for even 15 kilometers is not such a long distance. Moreover, even the act of reopening the case by issue of notice u/s 148 of the I.T. Act as objected to by the assessee is not acceptable as no return was being filed by the assessee. In the circumstances, I confirm the addition made by the A.O.. These grounds of appeal are dismissed.”*

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

*“1. That on the facts and circumstances of the case, notice issued u/s 148 of I.T. Act, 1961 is without jurisdiction and against the natural justice. To issue notice u/s 148 of I T Act, 1961 without applying mind is bad in the eyes of law to reopen the case.*

*Mere deposits into bank cannot be treated as income for sec 147/148 of I T Act. There can be nos. of source of cash deposits by assessee unless and until it is brought out in the reasons. All receipts are not income and all incomes are not taxable as held by Hon'ble ITAT-Delhi in case of Shri Mahavir Parsad, Narnaul vs ITO, Rewari. ITA No.924/Del/2015.*

2. *That on the facts and circumstances of the case the, id CIT(A) has erred in confirming the order of the Ld AO without going into the merits of the case.*

3. *That on the facts and circumstances of the case, the order of the Id CIT(A) is against the natural justice not appreciating the facts and statements, affidavit of real owner of amount, whereas the actual owner claimed the amount in her statement given before the Ld AO.*

4. *That on the facts and circumstances of the case, the order of the Id CIT(A) confirming the addition made by the Ld AO, is unjustified and wrong on legality not touching the issue of legality of notice u/s 148 of I.T. Act, 1961, where the appellant specially challenged the notice issued u/s 148 of I T Act in appeal.*

5. *That on the facts and circumstance of the case, the Id CIT(A) is wrong on facts confirming the addition made by the Ld AO on account of amount which do not relates to appellant, but the appellant being friend of the husband of actual owner of amount, merely acted as conduit without any right in money, hence no addition can be made in the income of appellant as held in case of M/s Bhagwati Motors vs ITO-Chd (ITAT Chd) ITA No 1084/CH D/2008.*

6. *That on the facts and circumstance of the case, both the authorities below have erred in making/confirming addition of Rs.5400000/- which is not the income of appellant.*

*In the light of above stated facts, it is humbly prayed to accept the appeal, delete the addition made by the Id A O and confirmed by the Id CIT(A) and the orders of the lower authorities be quashed.*

*It is prayed accordingly.”*

7. At the time of hearing, ld. AR for the assessee submitted that the assessee is not the owner of the cash deposited by the assessee in his bank account. He

submitted that as per the provisions of section 69A of the Act, it is referred about the owner of the money whereas in this case, assessee is a conduit, carrier of the cash holding on behalf of another person. He submitted that Id. CIT (A) has not analysed the submissions made by the assessee, however he simply sustained the addition made by the Assessing Officer merely reproducing the assessment order in the order. He brought to our notice findings of the Assessing Officer and submitted that cash belongs to Smt. Lali. He brought to our notice affidavit filed before Assessing Officer by Smt. Lali which is placed at page 8 of the paper book. Further, he submitted that Assessing Officer has proceeded to make the addition holding that the cash belongs to the assessee whereas he submitted that assessee has brought on record the source of cash. Therefore, assessee established the ownership of the cash and subsequently, the relevant cash was returned to the owner. Therefore, he submitted that ingredients of section 69A of the Act are not available in this case. In this regard, he relied on the following decisions :-

- (i) *CIT vs. Anoop Jain – (2020) 424 ITR 115 (Delhi);*
- (ii) *Dharmraj Prasad Bibhuti vs. ITAT Patna (2019) 109 Taxmann.com 388;*
- (iii) *M/s. Bhagwati Motors vs. ITO – ITA No.1084/Chd/2008;*
- (iv) *Deepak B. Shah vs. ACIT 16 (2), Mumbai (2018) 100 taxmann.com 43; and*
- (v) *CIT vs. Smt. P.K. Noorjahan (1999) 103 taxman 382 (SC).*

He heavily relied on the decision of Anoop Jain (supra).

8. On the other hand, ld. DR for the Revenue brought to our notice detailed findings of the Assessing Officer and submitted that assessee has made a submission before the Assessing Officer that cash is received from unrelated party. He submitted that husband of Smt. Lali was also having a separate bank account and he wondered what is the necessity for her to use assessee's bank account. There is a deficit of credentials of this transaction. He relied on the findings of Assessing Officer and submitted that Assessing Officer has rightly recorded the statements and also found mistakes in the affidavit. Therefore, claim of deposit is non-genuine and accordingly, invocation of the provisions of section 69A of the Act is proper.

9. Considered the rival submissions and material placed on record. We observed that the Assessing Officer has received certain information that assessee has deposited Rs.34,00,000/- and not filed any return of income. In response, assessee has submitted that assessee has in fact received Rs.54,00,000/- during the year and the above cash belongs to Smt. Lali who has sold her agricultural land for the same value and the assessee has helped her to encash the cash since Smt. Lali had no bank account. The assessee also brought Smt. Lali before the Assessing Officer and Assessing Officer has recorded her statement in which she has accepted to have used the bank account of the assessee. It is a fact on record that the exact amount of cash deposited in the

bank account of the assessee was matching with the statement recorded by Smt. Lali.

10. Further, Smt. Lali also filed an affidavit acknowledging the abovesaid transaction that she has deposited the money in assessee's bank account and subsequently received back the same and also submitted a sale agreement which confirms the abovesaid transaction.

11. The Assessing Officer has not made any verification apart from statement and affidavit submitted by Smt. Lali. Merely because the account of the assessee was utilised by Smt. Lali and the same was acknowledged by her in the form of affidavit clearly shows that the cash deposited in the bank account is not belongs to assessee. Merely because the assessee has deposited the cash and subsequently withdrawn the same and also brought on record the owner of the source of such cash before the authorities, hence, the same cannot be rejected at the face value particularly when a proper affidavit is filed by a person of sound mind. We observed that in the case of Anoop Jain (supra), the Hon'ble Delhi High Court held as under :-

*“43. As rightly noted by the CIT (A) there was no evidence to show that the 24 cheques stated to have been issued by the Assessee on behalf of Mr. Chaturvedi were utilised by the Assessee and were meant for the benefit of the Assessee.*

*44. In other words, there was nothing to show that the Assessee had benefited in any way from any of the above transactions. As regards the test of human probabilities if there was no evidence whatsoever to the contrary it could have been resorted to draw certain inference.*

*45. However, in the present case there appears to be overwhelming evidence to show the involvement of Mr. Chaturvedi acting on behalf of Mrs. Sneh Pathak for SMI. The CBI also did not choose to proceed against the Assessee and that*

*discounts the case of any collusion between the Assessee and Mr. Chaturvedi along with Mr. Pathak. It does appear that the Assessee was at the highest used as a conduit by the other parties and did not himself substantially gain from these transactions.*

46. *In that view of the matter, the concurrent view of both the CIT (A) and the ITAT that the addition of the aforementioned sum to the income of the Assessee was not warranted, does not call for interference. The question of law framed is accordingly answered in the affirmative i.e. in favour of the Assessee and against the Revenue. The appeal is accordingly dismissed.”*

12. Respectfully following the above decision, we are also of the view that the assessee has merely deposited the cash of Smt. Lali and subsequently paid the same to her. Even, in this case, we can only consider that the assessee is a conduit and has not benefited from such transaction. Therefore, by considering the statement recorded by Smt. Lali having sound mind before the Assessing Officer and the affidavit placed on record, we are of the view that assessee is not benefited anyway out of this transaction and even the Assessing Officer has not brought on record any other source of income through which assessee would have earned abovesaid income. Therefore, we are inclined to allow the grounds raised by the assessee.

13. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open court on this 4<sup>th</sup> day of October, 2024.**

**Sd/-  
(SAKTIJIT DEY)  
VICE PRESIDENT**

**sd/-  
(S.RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Dated: 04.10.2024  
TS**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI