

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.222/Ind/2024
(Assessment Year: 2017-18)**

| | | |
|--|---------------------------|----------------------------|
| Husain Kohawala, Saifiya Marg Bohra Mohalla, Near Macchi Darwaza, Kukshi, Dhar | Vs. | CIT (A), NFAC, Delhi |
| (Appellant / Assessee) | | (Respondent/ Revenue) |
| PAN: BKRPK6392P | | |
| Assessee by | Shri Parag Jain, AR | |
| Revenue by | Shri Ashish Porwal, Sr.DR | |
| Date of Hearing | 09.10.2024 | |
| Date of Pronouncement | 11.10.2024 | |

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 19.01.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC), Delhi for A.Y.2017-18.

2. The assessee is an individual and engaged in the business of Idea Cellular for selling recharge coupons and service provider of MP Online and railway ticket bookings. The assessee filed its return of income on 14.03.2018 declaring total income of Rs.2,37,880/-. The case of the assessee was selected for limited scrutiny on the issue of cash deposited during the year. The Assessing Officer completed the scrutiny assessment u/s 143(3) of the Act vide order dated 18.12.2019 whereby made an addition of Rs.74,16,206/- on account of unexplained cash deposit in the bank account during the year u/s 69A of the Act. The assessee challenged the action of the Assessing Officer before CIT(A) and explained the source of deposit in the bank account as business transaction from sale of mobile recharge vouchers. The assessee produced the bank account statements as well as other details before CIT(A). The submission of the assessee as well as relevant details were forwarded to the Assessing Officer for his comments. The Assessing Officer has submitted the remand report dated 08.01.2024 wherein the contention of the assessee was rejected by the Assessing Officer on the ground that the assessee does not fulfill the conditions of Rule 46A of IT Rules, 1962. The CIT(A) after considering the Form

No.26AS as well as other details and records filed by the assessee including bank account statement has deleted the addition made by the Assessing Officer in respect of the cash deposited in the two bank accounts of the assessee with State Bank of India however, the CIT(A) has enhanced the assessment by making an addition of Rs.6,78,258/- in respect of the deposit made in the bank account of the assessee with Madhya Pradesh Gramin Bank, Khattali earlier known as "Narmada Gramin Bank". Aggrieved by the said enhancement of assessment the assessee filed the present appeal and raised following grounds:-

"1. The Assessing Officer while assessing the Taxpayer had passed order under section 143(3) making addition us 69A as unexplained cash deposits of Rs. 7416206 (All Credits including Transfers are considered as cash deposits). The Total addition was made considering two Bank Account i.e. SBI- Alirajpur Branch (Addition of Rs. 6348785) and SBI-Anandganj Mandi Branch (Addition of Rs. 1067421).

2. CIT(A) while making his observation regarding the Grounds of Appeal found that there was a third account of the Assessee in Madhya Pradesh Gramin Bank having Total Credits of Rs. 742158 the details of which were already available with the Assessing Officer before passing his order. It was a settled proposition that it was not open to the CIT(A) to travel outside the record of Assessment while enhancing the income.

3. Also, CIT(A) had accepted the submissions of the Assessee and recorded in Point 5.3 page 11 of 14 of the order that "Perusal of the Bank Statement reveals that the submission made by the appellant has merits. It is apparent that the appellant is engaged in the business of Recharge of mobile, ticket booking etc. The reason for non-filing of submission during

the assessment proceedings have been considered and the Appellant is given the benefit of doubt"

4. Point 5.5 Page 12 of 14 of your Order states that "Verification of the Return reveals that the appellant has disclosed commission income in the return of income". The Above Pointers thus proves that CIT(A) has accepted the Credits in Bank Accounts as Deposits against Gross Sales of Mobile Recharge Vouchers, Railway and Bus Tickets, MP Online works etc. which were transferred to the respective authorities for which commission was earned by the Assessee (which was Properly Disclosed in ITR).

5. Thus Considering the above whole addition of Rs. 7416206 made by the Assessing Officer shall be allowed as relief instead of Rs. 6737948 since MP Gramin Bank Account was neither the Subject matter of:

(a) Notice issued us 148 of the act,

(b) Subsequent Return filed by the Assessee and

(c) The Assessment Order passed by the Assessing Officer and as accepted by you that Appellant has merits in your order the demand should be quashed."

3. Ld. AR of the assessee has submitted that the CIT(A) has enhanced the assessment without giving the show cause notice to the assessee required u/s 251(2) of the Act. The Ld. AR has further submitted that even otherwise when the assessee explained the source of deposits in the bank accounts as business receipts of the assessee which is also supported by the ledger account of the assessee in the books of Idea Cellular as well as the commission income declared by the assessee and also reflected in Form 26AS, then making the addition by the CIT(A) is not justified and same is liable to the deleted.

4. On the other hand Ld. Departmental Representative relied upon the order of CIT(A) and submitted that in para 5.6 of the impugned order the CIT(A) has specifically given the reasons that the assessee has not explained the cash deposit of Rs.2,66,000/- and credit of Rs.4,12,258/- totaling Rs.6,78,258/- in the bank account with Madhya Pradesh Gramin Bank as the assessee has not furnished any documentary evidence to show that the said amount is duly considered in the income declared by the assessee.

5. We have considered the rival submissions as well as the relevant material on record. The Assessing Officer has made the addition on account of unexplained cash deposited in two bank accounts maintained with State Bank of India totaling to Rs.74,16,206/-. Before CIT(A) the assessee has furnished the bank account statement along with the other details of evidences to show that the source of deposits in the three bank accounts maintained by the assessee including the account with Madhya Pradesh Gramin Bank, Khattali earlier known as "Narmada Gramin Bank" and submitted that the source of deposits in these bank accounts

are the business receipts of the assessee. The assessee explained that he is mainly engaged in the business of sale of recharge of Idea mobile vouchers as an agent apart from railway ticket booking and payment to NSDL. The CIT(A) has considered the additional evidence filed by the assessee and deleted the addition as well as enhanced the assessment in para 5.4 to 5.6 of the CIT(A) order is as under:

"5.4 Perusal of the submission reveals that the appellant is genuinely involved in the below mentioned activity:

(a) Recharge of IDEA mobile vouchers,

(b) Railway ticket booking etc

(c) Payment to NSDL (may be pertaining to PAN card activity)

Perusal of the Form 26AS reveals the payment of the appellant are as under -

| <i>Sr. No.</i> | <i>Name of the Company</i> | <i>Commission Income</i> | <i>TDS</i> |
|----------------|------------------------------|--------------------------|-----------------|
| <i>1</i> | <i>Vodafone Idea Limited</i> | <i>1,72,841.35/-</i> | <i>10,468/-</i> |
| <i>2</i> | <i>M. P Online Limited</i> | <i>6,956.84/-</i> | <i>349/-</i> |
| | <i>Total</i> | <i>1,79,798.19/-</i> | <i>10,817/-</i> |

5.5 Verification of the return reveals that the appellant has disclosed his commission income in the return of income. Further, analysis of bank account, reveals that cash deposits during demonetization period as under-

| <i>Sr. No.</i> | <i>Bank Name</i> | <i>A/c. No</i> | <i>Amount deposited during demonetization period</i> |
|----------------|----------------------------|--------------------|--|
| <i>1</i> | <i>State Bank of India</i> | <i>20059507398</i> | <i>40,000/-</i> |
| <i>2</i> | <i>State Bank of India</i> | <i>32122550812</i> | <i>7,43,130/-</i> |

| | | | |
|---|--|-----------------|------------|
| 3 | Madhya Pradesh Gramin Bank Khattali | 501920110000004 | Nil |
| | Total | | 7,83,130/- |

The AO has not made any adverse comments regarding the cash deposits during demonetization period either in the assessment order or during the remand proceedings. Since there is nothing on record regarding deposit of cash in Specified Bank Notes, no adverse view is taken.

5.6 However, it is seen that the bank account with Madhya Pradesh Gramin Bank Khattali the appellant has total credits of Rs.7,42,158/- which includes cash deposits of Rs.3,29,900/-. Since the appellant has not furnished any documentary evidences regarding sources of total credits of Rs.7,42,158/- in the bank account including cash deposits to the tune of Rs.3,29,900/-, the same remains unexplained. Perusal of the cash deposits reveals that the cash withdrawals to the tune of Rs. 1,02,000/- and the peak of the cash deposit is Rs.2,66,000/-. Therefore, the peak cash deposit in bank account no. 501920110000004 is treated as unexplained. The credits in the bank account to the tune of Rs. 4,12,258/- also have not been explained (Total credits Rs.7,42,158 Cash deposits Rs.3,29,900). It is observed that the amount is transferred to various person through RTGS/ NEFT Since the appellant has not furnished any explanation for this amount Rs.4,12,258/- remains unexplained. In respect of account no.20059507398832122550812, it is seen that there are various transactions pertaining to AIR ticket bookings, Railway bookings and other transactions. The income from these transactions has not been quantified. However, it is seen that the appellant has shown business receipts of Rs.2,37,877/- The details of the Income Tax Return is tabulated hereunder: -

| A.Y | ITR Form | Sale of services | Cash-in-hand | Income from Business | Total Income |
|---------|----------|-----------------------------------|--------------|----------------------|--------------|
| 2015-16 | TR-4 | 1,88,483/- | 11,320/- | 1,79,733/- | 1,79,730/- |
| 2016-17 | ITR-4 | 75,090 + 2,04,171 (Commission) | 3,15,867/- | 2,24,400/- | 2,24,400/- |
| 2017-18 | ITR-3 | 2,76,330+ 1,79,799(Commission) | 1,41,002/- | 2,37,877/- | 2,37,880/- |

| | | | | | |
|---------|--------|-------------|------------|------------|------------|
| 2018-19 | ITR-4S | 27,95,705/- | 15,260/- | 2,85,690/- | 2,85,690/- |
| 2019-20 | ITR-4S | 54,89,040/- | 1,25,600/- | 4,24,000/- | 3,95,870/- |

The appellant has not furnished any documentary evidence for the working of income for the year under consideration. In view of the discussion made above the unexplained cash deposits of Rs.2,66,000/- and credits of Rs.4,12,258/- totaling to Rs 6,78,258/- (Madhya Pradesh Gramin Bank Khattali, A/c. No. 501920110000004) is treated as unexplained money of the appellant. This amount includes undisclosed income element from other bank account. To sum up the addition of Rs. 74,16,206/- is restricted to Rs.6,78,258/-. The appellant gets relief of Rs. 67,37,948/-"

5.1 Thus, so far as the source of deposits in the two bank accounts maintained with State Bank of India is concerned the CIT(A) has accepted the same as business receipts by considering the commission income received from Idea Cellular which is also reflected in Form 26AS. However, the CIT(A) has proceeded to enhance the assessment by making addition on account of deposit and credits in the bank account of the assessee maintained with Madhya Pradesh Gramin Bank, Khattali. It is manifested from the impugned order of CIT(A) that the said addition was made on the ground that the assessee has not furnished any documentary evidence for earning of income for the year under consideration.

But the assessee was not given any show cause notice prior to making this addition which is in the nature of enhancement of assessment. The provisions of Section 251(2) clearly put a condition that the CIT(A) shall not enhance the assessment unless the appellant has had a reasonable opportunity of show cause against such enhancement. For ready reference Sub Section 2 of Section 251 is reproduced as under:

“(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.”

Explanation.—In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

5.2 Therefore, it is a mandatory condition to issue a show cause notice to the assessee before proceeding to enhance the assessment. Accordingly in the facts and circumstances of the case the addition made by the CIT(A) in the nature of enhancement of assessment without issuing show cause notice mandated u/s 251(2) of the Act is not sustainable and the same is deleted.

6. The appeal of the assessee is allowed.

Order pronounced in the open court on 11.10.2024.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 11.10.2024

Dev/Sr. PS

Sd/-

(VIJAY PAL RAO)
Judicial Member

*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*