

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर

IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिकसदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHA LAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 988/JP/2024

निर्धारणवर्ष/AssessmentYear :2015-16

Shri Shambhu Dayal 98-99, Adarsh Nagar, Kunhadi Kota – 324008 (Raj)	बनाम Vs.	The ITO Ward 2(2) Kota
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ABLPY0096L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Vinod Kumar Gupta, CA
राजस्व की ओरसे / Revenue by: Shri Anup Singh, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 12/11/2024
उदघोषणा की तारीख / Date of Pronouncement: 22 /11/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM:

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 29-05-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2015-16 raising therein following grounds of appeal.

"1. Under the facts and circumstances of the case, the impugned assessment order passed u/s 147 r.w.s 144B is bad in law and on facts being against the principal of natural justice and for many more statutory reasons.

2. Under the facts and circumstances of the case, the Ld. CIT(A) has erred by sustaining the initiation of proceeding u/s 147 of the Income Tax Act, 1961. The initiation of proceeding is illegal and unjustified.

3. Under the facts and circumstances of the case, the learned CIT(A) has erred in confirming addition of Rs. 45,75,900/- alleging unexplained money u/s 69A of the Income Tax Act, 1961 based upon surmises, presumptions and without appreciation of facts. Thus, the addition is contrary to the provisions of law, unjustified or excessive and finding is contradictory.

4. Under the facts and circumstances of the case, the learned CIT(A) has erred in confirming the invocation of section 69A of Income Tax Act for making addition of INR 45,75,900/- for cash deposited during demonetization out of cash withdrawals and cash savings. Thus, the action is bad in law, thus order deserves to be quashed.

5. Under the facts and circumstances, Ld. CIT(A) has erred by sustaining the demand of Rs. 81,678/- as salary income without considering FORM GA-55A.

6. Under the facts and circumstances, Ld. CIT(A) has erred by allowing the deduction of Rs. 1,50,000/-u/s 80C of the Income Tax Act

7. Under the facts and circumstances, the Ld. A.O. has erred by initiating penalty proceeding under section 271(1)(c) of the Income Tax Act, 1961.”

2.1 Brief facts of the case are that the assessee is an individual who was serving in Rajasthan Police as a sub-inspector during the year under consideration. The assessee had not filed his return of income u/s 139 of the Act for the A.Y. 2015-16 for which the AO issued Notice u/s 148A(b) of the Income Tax Act on 16.03.2022. Thereafter, notice u/s 148 of the Act was issued to the assessee on 26.03.2022 which was served upon the assessee. It is noticed that in spite of the notices issued by the AO as mentioned in the assessment order, the assessee had not responded to any of the notices. Thereafter Show Cause Notice was sent on 17-02-2023.

In response to that, the assessee had filed his return of income on 23-02-2023 declaring total income of Rs.5,31,914/-. Consequently, the AO assessed the income of the assessee at Rs. 51,89,492/- vide assessment order dated 18.03.2023, passed u/s 147 r.w.s. 144B of the Act. Hence, the AO made addition of Rs. 45,75,900/- for alleged unexplained money u/s 69A and of Rs. 81,678/ under salary head.

2.2 Aggrieved with the order of AO, the assessee filed an appeal before the CIT(A) who confirmed the addition made by the AO.

2.3 Being aggrieved by the order of the Id.CIT(A), the assessee carried the matter before this Bench with the prayer to delete the addition as per the grounds of appeal mentioned hereinabove.

3.1 Apropos Ground No. 2 & 3 of the assessee, it is noticed that the AO made an addition of Rs.45,75,900/- u/s 69A of the Act for the reason that the assessee had failed to substantiate the original source of money and the submission so made by the assessee before the AO was not acceptable to him. The crux of view point of the AO as made by him in the assessment order for disallowance of an amount of Rs.45,75,900/- is as under:-

Finding of Ld. AO:

(1) *Cash saving of past 34 years out of salary income: Rs. 13,60,000/-. It is not understood as to why assessee was keeping so much cash during all these years in spite of having so many bank accounts. It can happen only in rarest occasions that one would accumulate so much cash for such a long period of time in spite of having multiple bank accounts. Moreover, salary in government departments are not paid in cash. Such an explanation of the assessee is just an afterthought. It defies the principles of human probability. It is also vague. 20 years back the annual salary of the assessee may not be more than Rs. 40,000/ So to assume that there was average saving of Rs. 40,000/ and that to in the form of cash over a period of 34 years, is preposterous.*

Hence, the assessee has failed to substantiate its submission that it had accumulated cash of Rs. 13,60,000/- out of its last 34 years of service.

(2) *Amount withdrawn from other bank accounts and deposited in the said (account with the Central bank of India 32,15,900/- Assessee has submitted that it has withdrawn cash from its other accounts and deposited it in its said account sath the Central Bank Of India. The submissions of the assessee in this regard is not acceptable. If assessee says that deposit in Bank Account Y came from Bank account X. assessee has to substantiate the source of deposits in the Bank Account X. Merely stating that deposit in one account has come from another account is not acceptable. Whether it is in Bank account X or in Bank account Y, it is ultimately assessee's money. When assessee is found to be in possession of money, it has to prove the genuineness of its source irrespective of the accounts where it is held.....”*

3.2 The Id. CIT(A) has dismissed this ground of appeal. However, the relevant findings as made by the Id. CIT(A) as to the case in his order is reproduced as under:-

Finding of Ld. CIT(A):

A. With regard to the salary savings of Rs. 13,60,000/- [Refer point 8.3 at page 26 of CIT(A) Order):

1. No supporting credible documentary evidence was submitted to verify the genuineness of the contentions raised,

2 Explanation, to have salary savings of Rs. 13,60,000/- in cash, is vague

3. No evidence proving that the appellant was working in the department since 1980 and saving 40,000/- per year viz cash withdrawals, income particulars, reasons for keeping the savings in cash etc. has been produced before the appellate authority,

4. It is pertinent to mention that the appellant has claimed savings since year 1980 at Rs. 40,000/ However, the gross salary for the year 1980 would not have been more than Rs. 40,000/-

5. The appellant also has not produced any reasons why he had been keeping cash with him in spite of having several bank accounts under his name.

B. Cash deposits of Rs. 13,08,200/- are from past withdrawals (Refer point 8.3.1. at page 27 of CIT(A) Order):

1. In most of the occasions, the cash withdrawals are made after cash deposits;
2. The appellant also has not provided any reasons why he had been withdrawing the money when he already had huge cash in hand.
3. The appellant had clearly failed the test of human probabilities
4. The appellant has failed to prove the nexus between cash deposits and withdrawals by providing cash flow statement.
5. No proper evidence was submitted by the appellant in support of cash deposits in bank account either before the Assessing Officer or the first appellate authority

C. Remaining Cash deposits are from cash withdrawals made during the year (Refer point 8.3.2. at page 27 of CIT(A) Order):

1. Most of the cash withdrawals are from axis bank account and cash deposits are into central bank of India. However, the appellant has not furnished any explanation as to why he had deposited money in one account by withdrawing from another
2. The opening cash balance as on 01/04/2014 is Rs. 32,68,200/- However, no such huge cash deposits has been done by the appellant. at once during the entire year. The appellant also has not stated any reasons as to why the cash deposits are done on various dates throughout the year when he had all the cash available with him at once
3. The submission of the cash book by the appellant seems to be afterthought.
4. The appellant has not pointed out entry wise explanation.

5. In the absence of the reasons furnished to prove that the nexus between cash deposits and cash withdrawals, the claim of the appellant cannot be considered genuine and hence not accepted.

3.3 During the course of hearing, the Id. AR of the assessee has reiterated the same arguments and written submission as made before the Id. CIT(A) and thus submitted that the addition so confirmed by the Id.CIT(A) deserves to be deleted. To justify the deletion of addition, the Id.AR of the assessee has relied upon the following decisions.

1. Smt. Vinatha Madhusudan Reddy vs ACIT, Circle 3(2)(1), Bangalore (ITA No. 257/Bang. 2015 , A.Y. 2014-15 dated 24-08-2018.
2. DCIT vs. Smt. Veena Awasthi (ITA No. 215/LKW/2016, A.Y. 2011-12 dated 30-11-2018.
3. Abhilasha Jain vs DCIT, Circle (Intl.Tax), Jaipur [IT(IT)A No. 05/JP/2022 , A.Y. 2017-18 dated 07-07-2022]

It is also noted that the assessee had filed copy of cash flow statement for the period 01-04-2013 to 31-03-2015 containing 1 to 5 pages and further filed copies of bank statements containing pages 6 to 18. The Id. AR also certified that the above mentioned documents were placed before the AO and the Id. CIT(A) for their perusal and consideration.

3.4 On the other hand, the Id.DR supported the order of the Id.CIT(A) and also filed the AO's Report as to the case of the assessee which is reproduced as under:-

Para-wise comments/reply of the Department on the synopsis of arguments raised by the petitioner in the case of ShambhuDayalVs ITO Ward 2(2), Kota, PAN :ABLPY0096L (A.Y. 2015-16) in Appeal No. ITA988/JPR/2024.

Point No.	Issues raised by the petitioner	Para Wise Comments of the respondent
1	Appellant is an individual and was serving in Rajasthan Police as a sub-inspector during the year under consideration. The appellant had not filed his return of income u/s 139 of the Act for the A.Y. 2015-16	No comment is required
2.	Notice u/s 148A(b) of the Income Tax Act was issued on 16.03.2022. Thereafter, notice u/s 148 was issued to the appellant on 26.03.2022 and appellant filed his return of income on 23.02.2023 declaring total income of Rs. 5,31,914/-.	No comment is required
3.	Consequently, the Ld. AO assessed the income of the appellant at Rs. 51,89,492/- vide order dated 18.03.2023, passed u/s 147 r.w.s. 144B of the Act. The Ld. AO made addition of Rs. 45,75,900/- for alleged unexplained money u/s 69A and of Rs. 81,678/- under salary head.	The order is self explanatory
4.	Aggrieved with the order of Ld. AO, appellant filed an appeal before the CIT(A), wherein worthy CIT(A) confirmed the addition made by the Ld. AO.	No Comments
5.	Aggrieved with the order of CIT(A) for confirming the additions, Appellant filed appeal before the Hon'ble Bench.	No Comments
6.	Ground of Appeal 1. Under the facts and circumstances of the case, the impugned assessment order passed u/s 147 r.w.s. 144B is bad in law and on facts being against the principal of natural justice and for many more statutory reasons. 2. Under the facts and circumstances of the case, the Ld. CIT(A) has erred by sustaining the initiation of proceeding u/s 147 of the Income Tax Act, 1961. The initiation of proceeding is illegal and unjustified.	The assessment order was passed as per Act. No Comments

7.	<p>Submission:</p> <p>A. Validity of initiation of proceedings u/s 148 of the Act:</p> <p>1. In terms of Section 149(1)(b) of the Act, the proceedings u/s 148 of the Act could be initiated, after the lapse of three years from the end of the relevant assessment year, only when the total amount of the alleged income <u>represented in the form of asset</u> which is said to have escaped assessment is more than Rs. 50 lakhs.</p>	<p>As per information available with this office, the assessee was deposited cash of Rs. 51,75,900/- in his bank account maintained with Central Bank of India and the bank also deducted TDS of Rs. 92,748/- during the year but the assessee has not filed return of Income u/s 139 and not declared the above transactions for the A.Y. 2015-16.</p> <p>It is pertinent to mention here that the transaction made by the assessee covered under the definition of asset laid down in Explanation to Section 149 of the Act. Further, the transaction made by the assessee was more than fifty lakh rupees. Thus the condition laid down in Section 149(1)(b) of the I.T. Act, 1961 were fulfilled in his case for the said A.Y. In this case total income of Rs. 52,66,648/- was escaped tge assessment within the meaning of provision of section 147 of the I.T. Act, 1961 for the A.Y. 2015-16.</p>
	<p>2.It is relevant to refer to the provision contained in section 149(1)(b) of the Act, which is reproduced herein as below:- “149. Time Limit for notice,- (1) No notice under section 148 shall be issued for the relevant assessment year,- (a)** ** ** (b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, <u>represented in the form of-</u> (i) an asset; (ii) expenditure in respect of a transaction or in relation to an event or occasion; or (iii) an entry or entries in books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more”</p>	No Comments
	3. Therefore, before initiating the	The AO has an information that the

	<p>assessment/reassessment u/s 147 by using the extended period of 10 years, as enumerated in section 149(1)(b), the AO must be in possession of books of accounts or other documents or evidence which would reveal that (i) there is an income (ii) income is chargeable to tax (iii) such income chargeable to tax has escaped assessment and (iv) such income chargeable to tax which has escaped assessment is more than 50 lakhs. More importantly such income must be represented in the form of an asset, or expenditure or an entry in the books of accounts. Accordingly, if the income chargeable to tax is not represented in the form of an asset, or expenditure or an entry in the books of accounts, extended period of 10 year cannot be resorted to the by AO.</p>	<p>assessee was deposited cash of Rs. 51,75,900/- in his bank account maintained with Central Bank of India and the bank also deducted TDS of Rs. 92,748/-. The transaction made by the assessee covered under the definition of asset laid down in Explanation to Section 149 of the Act. Further, the transaction made by the assessee was more than fifty lakh rupees. Thus the condition laid down in Section 149(1)(b) of the I.T. Act, 1961 were fulfilled in his case for the said A.Y. In this case total income of Rs. 52,66,648/- was escaped the assessment within the meaning of provision of section 147 of the I.T. Act, 1961 for the A.Y. 2015-16.</p>
	<p>4. In the present case, the Ld. AO directly jumped to the conclusion that the income has escaped assessment and the extended period of 10 years is applicable since the appellant had deposited Rs. 51,75,900/- in his bank account without analysis whether such amount represents any income and further whether such alleged income represent an asset, or expenditure or an entry in the books of accounts or not.</p>	<p>The transaction made by the assessee covered under the definition of asset laid down in Explanation to Section 149 of the Act as the AO had information that the assessee was deposited more than 50 lakhs in his bank account. Thus the condition laid down in Section 149(1)(b) of the I.T. Act, 1961 were fulfilled in his case for the said A.Y. In this case total income of Rs. 52,66,648/- was escaped the assessment for the A.Y. 2015-16.</p>
	<p>5. Section 149(1)(b) makes it mandatory on the part of the AO to determine the applicability of the said section after verifying the books of accounts or other documents or evidence, however in the present case, the Ld. had issued the notice without going through the required documents or evidence. The Ld. AO could have obtained the bank statement and analyzed the same before deciding whether the current case falls u/s 149(1)(b) or not. It is well settled principle of interpretation that the taxing statute is required to be construed strictly which is not followed under the current case.</p>	<p>There was sufficient information which clearly suggests that income in the form of an asset of Rs. 52,68,648/- chargeable to tax has escaped the assessment in the case of above assessee. Show cause notice u/s 148A(b) of the I.T. Act, 1961 was issued after taking prior approval of Pr. CIT.</p>
	<p>6. In the instant case, firstly there is no</p>	<p>The contention of the appellant is not</p>

	income, Secondly, without any admission, income is not represented in the form of an asset, or expenditure since mere cash rotation between banks does not represent any asset or expenditure.	correct. The transaction made by the assessee covered under the definition of asset laid down in Explanation to Section 149 of the Act.
	7. Under the facts and circumstances, the Ld. AO failed to fulfill the mandatory requirement of the law to reopen the case. Therefore, since the current case relates to A.Y. 2015-16 and there is no income chargeable to tax much less represented in the form of asset or expenditure, the notice could have been issued within 3 years from the end of A.Y. 2015-16 i.e. till 31.03.2019 and extended period of 10 years is not valid in the current case.	<p>The argument of the assessee is not correct. The AO has fulfill the mandatory requirement of the law to reopen the case.</p> <p>The assessee had not filed the ITR for A.Y. 2015-16 u/s 139 of the IT Act, 1961. This office had certain information which was flagged by DIT(Systems), CBDT in accordance with the risk management strategy formulated by the Board as per the provisions clause (i) of Explanation 1 to Section 148 of the Income Tax Act, 1961. As per information flagged, the assessee was made cash deposits of Rs. 51,75,900/- in his bank account maintain with Union Bank of India. The AO was issued notice u/s 148A(b) of the I.T. Act, 1961 with prior approval of Pr. CIT to show cause as to why a notice under section 148 of the Income Tax Act, 1961 should not be issued on the basis of information available with this office but the assessee had not made any compliance on fixed date. After that notice u/s 148 was issued after obtaining prior approval of the competent authority. Notice u/s 148 was issued to the assessee on 26.03.2022 which was duly served but no response was made by the assessee. Since, the AO was fulfilled all the mandatory conditions.</p> <p>Further, Since the escape assessment amount was more than 50 lakhs, hence reassessment was made within 10 years from the end of relevant assessment year.</p>
	Grounds of Appeal No. 3	
	Under the facts and circumstances of the case, the learned CIT(A) has erred in confirming addition of Rs. 45,75,900/- alleging unexplained money u/s 69A of the Income Tax Act, 1961 based upon	No comments as the appeal order issself explanatory.

	surmises, presumptions and without appreciation of facts. Thus, the addition is contrary to the provisions of law, unjustified or excessive and finding is contradictory.	
	<p>Grounds of Appeal No. 4</p> <p>Under the facts and circumstances of the case, the learned CIT(A) has erred in confirming the invocation of section 69A of the Income Tax Act for making addition of INR 45,75,900/- for cash deposited out of cash withdrawals and cash savings. Thus, the action is bad in law, thus order deserves to be quashed.</p>	No Comments.
	Submission (at page no. 7 of synopsis)	
	1.In the present case, the appellant had deposited Rs. 51,75,900/-, in cash, in his bank account maintained in Central Bank of India, during the P.Y. 2014-15.	No Comments
	2.The appellant was enquired, vide notice(s) u/s 142(1)/letters, to explain the source of income/nature of receipts and to submit specified details with respect to cash deposited. However, the appellant could not reply to the said notices since the same were not received by him.	Notice u/s 142(1) of the I.T. Act, 1961 was issued to the assessee vide DIN ITBA/AST/F/142(1)/2022-23/1048500075(1) dated 06/01/2023 through registered mail and same was delivered.
	<p>3. On receipt of show cause notice dated 17.02.2023, the appellant submitted his response, before the Ld. AO, vide letter dated 25.02.2023. The appellant submitted all the required details along with the fact that the cash was deposited out of past saving, cash withdrawals from bank account and sale of immovable property.</p> <p>4. The appellant had also submitted cash book containing cash inflows and outflows for the period 01.04.2014 to 31.03.2015, details of cash deposited in difference bank accounts during F.Y. 2013-14 and 2014-15, details of cash withdrawal during F.Y. 2014-15, copy of sale deed of immovable property, copy of computation of Income for A.Y. 2015-16, Copy of FORM GA-55A for the F.Y. 2014-15. The Ld. AO admitted the explanation of the appellant with respect to cash of Rs. 6,00,000/- generated from sale of immovable property during F.Y. 2011-12,</p>	<p>Genuineness of source of cash not proved by the assessee during the assessment proceedings.</p> <p>Unexplained cash was taxable u/s 69A of the I.T. Act, 1961.</p>

	however made addition of Rs. 45,75,900/- u/s 69A of the Act.	
	Submission of appellant (page no 8 of synopsis) a. Cash deposits were from cash withdrawals made during F.Y. 2013-14 and F.Y. 2014-15:	Genuineness of source of cash not proved by the assessee.
i.	It is undisputed fact that the appellant has worked in the police department at various position ranging from constable to sub-inspector till 31.03.2024. Accordingly, since he was working there, it is obvious that he was also receiving salary for his work on monthly basis. Further, the appellant and his wife had a heart condition and both needs medical attention from time to time. Cash was also required to meet day to day expenses. Therefore, as and when the need arises the appellant use to withdraw the amount from the bank or deposit the same in the bank account and keep cash at his disposal all the time to meet any kind of emergency or day to day expenses. It is also submitted that the culture of Indian lower/ middle-class family, with respect to saving money, can also not be ignored where people save money on periodic basis and keeps such money at home even after having bank accounts. Therefore, the appellant contention that one of the source of cash deposits was his past saving is not something abnormal. If we go by the theory of the Ld. CIT(A) then cash can only be kept by persons not having any bank account keep cash with him/ her. Therefore, in view of the above, these past saving of the appellant should be considered reasonable in the present case.	Decision of CIT(A) is self explanatory. No counter submission is required.
(ii)	Without prejudice to anything stated in point (i) above and without any admission, even if we, for the sake of argument, ignore the past savings under the current case, then also it is evident from the cash flow statement (PBP: 1 to 5) and bank	Decision of CIT(A) is self explanatory. No counter submission is required

	<p>statement (PBP:6 to 18) that the cash deposit of Rs. were made from the cash withdrawals and available cash in hand. In this regard, it is humbly submitted that it is an undisputed fact that the appellant was having 6,00,000/- in cash as on 01.04.2013 which resulted due to sale of immovable property made during F.Y. 2011-12 and the same is admitted by the Ld. AO also (refer para 6.2.2 at page 8 of assessment order). Further, it is also admitted position that the appellant had deposited 72,52,200/- and withdrew Rs. 76,70,900/- during F.Y. 2014-15 respectively and there was no negative balance at any time during the F.Y. 2013-14 and F.Y. 2014-15. All these cash withdrawals and cash deposits can be verified by the bank statement submitted. Further, such cash withdrawals and cash deposits were never disputed either by the Ld. AO during the assessment proceedings or by the Ld. CIT(A) during first appellate proceedings. So, there is no adverse findings by both the Ld. AO and Ld. CIT(A) as far as cash withdrawals and deposition is concerned.</p>	
(iii)	<p>Furthermore, it is a settled legal position that if the deposit of money in the bank account, then the source is preceded by withdrawal of money from the bank account, then the source of funds is prima facie demonstrated or explained. In the present case also, the cash deposits are preceded by cash withdrawals and accordingly, the source of cash to the extent of Rs. 45,75,900/- is fully explained. To support this legal position, we would like to draw attention of your good-self to the judgment of the Hon'ble ITAT, Bangalore in the case of Smt. VinathaMadhusudan Reddy Vs. ACIT [ITA No. 257/Bang/2018] wherein the hon'ble after referring the judgement of the Hon'ble Karnataka High Court in the case of S.R. VenkataRatnamVs CIT, Karnataka-I &</p>	<p>Decision of CIT(A) is self explanatory. No counter submission is required</p>

	<p>Others 127 ITR 807 has held as under:- 7. We have carefully considered the rival submissions. It is seen that the cash deposits in the bank account are preceded by withdrawal from the very same bank account. The cash flow statement filed by the Assessee explaining availability of cash on the various dates of deposit of cash in the bank account has not been disbelieved by the Revenue authorities. They have proceeded on the basis that since there was sufficient time lag between the dates of withdrawal of cash from the bank account and the dates of deposits, the availability of cash cannot be believed. The legal position in this regard is that if the deposit of money in the bank account is preceded by withdrawal of money from the very same bank account then the source of funds is prima facie demonstrated or explained by the Assessee. The Hon'ble Karnataka High Court in the case of S.R. VentakaratnamVs CIT, Karnataka-I & Others 127 ITR 807 has held that once the Assessee discloses the source as having come from the withdrawals made on a given date from a given bank. It was not open to the revenue to examine as to what the Assessee did with that money and cannot chose to disbelieve the plea of the Assessee merely on the surmise</p>	
(iv)	<p>Perusal of bank statement shows that there is mere rotation of cash withdrawal from one bank account and deposition thereof in another bank account. Moreover, there is only few credit entries other than cash rotation i.e. in bank account no. 163302739 amount received from LIC of Rs. 7,75,962/- and Rs. 1,10,510/- on 07.10.2013 and 21.10.2013 respectively which shows there is no formation of asset and it is case of rotation of cash between banks.</p>	<p>Decision of CIT(A) is self explanatory. No counter submission is required</p>
v.	<p>Additionally, the argument that the cash withdrawals were used only for subsequent deposits in the bank also get support from the fact that the said amount was utilized</p>	<p>--</p>

	<p>for purpose other than being deposited in the bank by the appellant. Here, it is opposite to state that there can be 2 possibilities with the cash lying with the appellant;(i) either the said cash was deposited in the bank or (ii) the said cash was utilized in any other purpose by the appellant. With regard to the first possibility, the appellant submitted cash flow statement along with bank statement to prove that cash was deposited and discharged his onus. However, for the second possibility, the onus was on the Ld. CIT(A) that the said cash was not deposited in bank i.e. utilized for other purpose since he found the explanation of the appellant not satisfactory. In this regard, we rely on the judgement of Hon'ble Gujarat High Court in the case of the ManojIndravadanChokshi [(2019)] TaxPub(DT)2356] wherein it was held as under:</p>	
	<p>"...The contention of the assessee is that the amount was kept as cash in hand. The authorities have doubted about the explanation furnished by the assessee. The authorities below have doubted the source of the cash deposits, however, the contention of the Id. Counsel for the assessee is that he had withdrawn the amount from his bank account and there is no finding by the authorities below that the cash withdrawn by the assessee was utilized for any other purpose. In the absence of such finding, addition is not justified. We find merit into the contention of the Id. Counsel for the assessee that there is no dispute that the amount which was withdrawn by the assessee on various dates during the year 2006 was available with him for making deposits. In the absence of finding that the amount which was previously withdrawn by the assessee had been utilized for any other purpose merely on the basis of conjecture that the amount might have been utilized for any</p>	<p>No comments required.</p>

	<p>other purpose and was not available with the assessee for making the deposits, we are unable to accept the reasoning of the authorities below. In our considered view, when the assessee has demonstrated that he had withdrawn cash from the bank and there is no finding by the authorities below that this cash available with the assessee was invested or utilized for any other purpose, in that event, it is not open to the authority to make the addition on the basis that the assessee failed to explain the source of deposits. Moreover, the authorities below have not disputed the fact that the assessee had withdrawn amount of Rs. 9,10,000/- before the deposits made on various dates during the FY 2007-08. Therefore, the orders of the authorities below are set aside and the AO is directed to delete the addition. Thus, ground raised in the assessee's appeal is allowed".</p>	
vi.	<p>The appellant also submits with regard to the objection of the Ld. CIT(A) in para 8.3.1 of the order where the Ld. CIT(A) stated that 'the appellant had not provided any reason why he had been withdrawing the money when he already had huge cash in hand' and in para 8.3.2; "the appellant had not furnished any explanation as to why he had deposited money in one account by withdrawing from another". In this regard, the appellant wants to submit that it is not illegal either to withdraw money even after having huge cash or deposit money in one account by withdrawing from another". In this regard, the appellant wants to submit that it is not illegal either to withdraw money even after having huge cash or deposit money in one account by withdrawing from another. As and when the need arises the appellant use to withdraw the amount from the bank or deposit the same in the bank account. Therefore, confirming addition on this ground is purely addition on the basis of suspicion or presumption. We find force in this regard from the judgement of</p>	<p>Decision of CIT(A) is self explanatory. No counter submission is required.</p>

Hon'ble ITAT, Lucknow in the case of DCIT Vs Smt. VeenaAwasthi [ITA No. 215/LKW/2016] dated 30.11.2018 wherein it was held as under:

"7. Ld. A.R. of the assessee per contra placed reliance on the order of Id. CIT(A) and reiterated the submissions as made before the subordinate authorities emphasizing that entire bank statements and source of cash withdrawal/deposits have been furnished before the Department. Nowhere Assessing Officer has come out with the finding that withdrawal of cash by the assessee was utilized to procure any asset or has been invested else where and that cash deposit in the account was from other sources. Assessing Officer has simply doubted behavioural patter accepting the fact that assessee was having her own cash which has been frequently deposited and withdrawn from her bank account. At threshold, submissions of the Id. A.R. of the assessee, therefore, was that the order of Id. CIT(A) may be upheld and relief granted may be sustained.

8. We have perused the case record and heard the rival contentions. We find that addition has been made by the Assessing Officer, as is evident from his order, on the ground that he has come to the conclusion that cash deposits were from some other source of income which is not disclosed to the Revenue. Assessing Officer nowhere in his order has brought out any material on record to show that assessee is having any additional source of income other than that disclosed in the return nor Assessing Officer could spell out in his order that cash deposits made by the assessee was from some undisclosed source. All throughout Assessing Officer has raised suspicion on the behavioral pattern of frequent withdrawal and deposits by the assessee.

	<p>There is no law in the country which prevents citizens to frequently withdraw and deposit his own money. Documentary evidences furnished before the Revenue clearly clarifies that on each occasion at the time of deposit in her bank account, assessee had sufficient availability of cash which is also not disputed by the Revenue. Entire transaction of withdrawals and deposits are duly reflected in the bank account of the assessee and are verifiable from relevant records. Assessing Officer himself admitted that assessee had sufficient cash balance on each occasion at the time of deposit in her bank account on different dates during the assessment year under consideration. We have also examined the order of Id. CIT(A) and we find that his decision is based on facts on record and is supported by adequate reasoning and, therefore, we do not want to interfere with the order of Id. CIT(A) and accordingly we uphold the findings of the Id. CIT(A) sustaining relief granted to the assessee”.</p>	
Vii	<p>The appellant wants to further submit that the whole foundation of making addition u/s 69A of the Act and the confirmation thereof by the Ld. CIT(A) is the “Theory of Human Probability” and no ground work with respect to invocation of section 69A of the Act with actual evidence has been done either by the Id. AO or the Ld. CIT(A). It should be noted that Theory of Human Probability is a concept which comes into picture in a situation where there is absence of conclusive evidence to prove a case and in the present case, the reference of Theory of Human Probability in the orders itself proves that there were lack/absence of evidence/material with the Ld. AO and the Ld. CIT(A) to refute the explanation of the appellant. Further, it would not be appropriate to decide the matter by applying the principle of Human</p>	<p>Decision of CIT(A) is self explanatory. No counter submission is required</p>

	Probability and disregard the explanation and documentary evidences available on record.	
viii.	It was the observation of the Ld. CIT(A) (refer para 8.3.1 of the CIT(A) order) that details of cash withdrawal submitted by the appellant are contra entries. In this regard, please note that as per accounting principle any transaction which affect cash account and bank account are termed as 'contra entries'. In the present cash since in all the transactions (withdrawal and deposit) both cash account and bank account were involved, the same were categorized as 'contra entries' which in spite of giving support to the explanation of the appellant observed as an adverse finding by the Ld. CIT(A).	Decision of CIT(A) is self explanatory. No counter submission is required
ix.	As evident from forgoing discussion, the entire addition is based upon surmises or suspicion. Whereas it is settled legal position that no addition can be made based upon the surmises or suspicion, how so ever it may strong. In this regard, we place our reliance on following case law:- ---The Hon'ble Supreme Court in the case of LalchandBhagatAmbicalVs CIT[1959 AIR 1295] dismissed the appeal of the revenue and held as under: "In arriving at the above decision the High Court referred to the cases of Mehta Parikh & Co. v. Commissioner of Income-tax, Bombay (1) and ChunilalTicamchand Coal Co., Ltd. v. Commissioner of Income Tax, Bihar and Orissa (2). It is, therefore, clear that the Tribunal in arriving at the conclusion it did in the present case indulged in suspicions, conjectures and surmises and acted without any evidence or upon a view of the facts which could not reasonable be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, or the finding was, in other words, perverse and this Court is entitled to interfere.	No comments

We are therefore of opinion that the High Court was clearly in error in answering the referred question in the affirmative. The proper answer should have been in the negative having regard to all the circumstances of the case which we have adverted to above”.

---The Hon'ble ITAT, Bench 'B', Hyderabad in the case of ITO(IT-1) vs Shri M. Prabhakar, Hyderabad [ITA No. 1727/Hyd/2014] dismissed the appeal of the revenue and held as under:

“Considered the rival submissions and perused the material facts on record. The assessee has deposited Rs. 34.70 lakhs during this AY and there is sufficient cash available in his possession as per the cash book and Wealth Tax return submitted by the assessee. The mute question before us is whether the cash deposited was coming out of the cash available with the assessee, which was kept by him for last two years. It was not brought on record why he has withdrawn so much of money and what made the assessee to keep such huge money in hand. But, on record, submitted by the assessee, we find that he had sufficient money. Even the AO could not bring any proof that the assessee has in fact utilized or applied the cash withdrawn two years back; except making a remark that there is no possibility of keeping such amount by the assessee being a NRI. He has not brought on record, why he cannot keep so much of cash in hand and no contrary findings were given by him against the submissions of assessee. AO has made the addition merely on conjectures/surmises/suspicion and no proper reasons were given why he cannot keep the cash in hand except the remark of being an NRI. In our view, the Hon'ble Supreme Court in the case of Dhakeswari Cotton Mills Ltd. (supra) has held that the AO cannot complete the assessment purely on guess and without any reference to

	<p>evidence or any material at all. Also in the case of Umacharan Shaw & Brothers (supra), the Apex Court has held that AO cannot complete the assessment merely on suspicion which cannot take the place of proof in these matters. Respectfully following the ratio laid down by the Hon'ble Supreme Court in the said cases, we hold that the AO made the assessment merely on suspicion and without bringing any cogent material on record to establish that assessee cannot keep the cash in his hand being a NRI. Accordingly, we uphold the order of the CIT(A) in deleting the addition of Rs. 34,70,000/- made by the AO and dismiss the grounds raised by the revenue in this regard".</p> <p>---The Hon'ble ITAT, Jaipur Bench "B", Jaipur in the case of Abhilasha Jain Vs DCIT, Circle [Intl Tax], Jaipur [ITA No. 05/JP/2022] by relying on the judgement of the ITAT, Hyderabad 9supra0 allowed the appeal of the appellant and held as under: "In the above judgement the Coordinate Bench decided that the addition made by the AO merely on suspicion and without bringing any cogent material on record to establish that assessee cannot be keep the cash on hand being a non-resident of India. It has been observed from the record that the assessee as meticulously given case flow statement giving different date wise cash available is supported by the bank statement placed on record. The assessee has also placed on record the affidavit of his mother supported by the withdrawal made by her mother from her bank accounts all these evidences, the Revenue failed to establish any fault or contrary finding to this bulk of papers and merely the addition sustained on account of suspicious reasons."</p>	
x.	Therefore, in view of the above submission and jurisprudence, it is clear that the source of cash deposits was the cash withdrawals	During the assessment proceedings, assessee failed to explain source of cash deposit in his bank account

	and accordingly, the source of cash deposition is fully explained. Thus, the invocation of section 69A for making addition deserves to be deleted in full.	therefore, the A.O. had made addition u/s 69A of the I.T. Act.
	Grounds of Appeal No. 5 Under the facts and circumstances, Ld. CIT(A) has erred by sustaining the demand of Rs. 81,678/- as salary income without considering FORM GA-55A.	No comments
	Grounds of Appeal No. 6 Under the facts and circumstances, Ld. CIT(A) has erred by allowing the deduction of Rs. 1,50,000/- u/s 80C of the Income Tax Act.	No comments
	Submissions: (page no 19 of synopsis)	
	<p>1. At the outset, the appellant wants to attract your honour's attention to the two tables referred by the Ld. AO with regard to the alleged salary received by the appellant. The first table is at page 3 of the order where as per TDS statement generated in pursuance of details furnished by SP, Kota city, the amount credited is Rs. 92,748/-. However, as per the second table which is referred at page 4 of the assessment, the amount credited as per TDS statement generated in pursuance of details furnished by SP, Kota City was Rs. 5,20,844/-. Further, at the time of drawing conclusion in para 6.1 at page 7 of the order, the Ld. AO assessed salary at Rs. 6,13,592/- in the hands of appellant. This gross salary of Rs. 6,13,592/- is the sum total of Rs. 92,748 and 5,20,844/- meaning thereby that the Ld. AO added the amount of Rs. 92,748/- twice while assessing the income under the head salary since the said amount is already included in the amount of Rs. 5,20,844 which pertains to the whole F.Y. 2014-15. The Ld. CIT(A) has also overlooked the said mistake and confirm the addition.</p> <p>2. Under the present case, the Return of income for the A.Y. 2015-16 was filed by the appellant for A.Y. 2015-16 with the</p>	Decision of CIT(A) is self explanatory. No counter submission is required

	gross salary of Rs. 5,73,612/-. The addition of Rs. 81,678/- is the difference between the gross salary of Rs. 6,13,592/- and 5,73,612/- which is based on wrong facts. In the instant case, the declared Gross salary of Rs. 5,73,612/- is higher than the amount of Rs. 5,20,844/-. Accordingly, there is no escapement of income under the head salary by the appellant and the addition has been made on wrong facts and without application of mind.	
	<p>Grounds of Appeal No. 7</p> <p>Under the facts and circumstances, the Ld. A.O. has erred by initiating penalty proceeding under section 271(1)(c) of the Income Tax Act, 1961.</p> <p>Submission: Consequential in nature.</p>	<p>The AO was initiated penalty proceeding u/s 271(1)(c) as per I.T. Act, 1961.</p>

3.5 We have heard both the parties and perused the materials available on record. In this ground of appeal, it is noted that the AO made an addition of Rs.45,75,900/- u/s 69A of the Act which has been confirmed by the Id.CIT(A). From the case of the record, it is noted that the assessee had deposited Rs. 51,75,900/-, in cash, in his bank account maintained in Central Bank of India, during the F.Y. 2014-15. The assessee was enquired, vide notice(s) u/s 142(1)/ letters, to explain the source of income/ nature of receipts and to submit specified details with respect to cash deposited. However, the appellant could not reply to the said notices since the same were not received by him. On receipt of show cause notice dated 17.02 2023, the assessee submitted his response, before the AO, vide

letter dated 25.02.2023. The assessee submitted all the required details along with the fact that the cash was deposited out of past saving, cash withdrawals from bank account and sale of immovable property. It is noted that the assessee had also submitted cash book containing cash inflows and outflows for the period 01.04.2014 to 31.03.2015, details of cash deposited in difference bank accounts during FY 2013-14 and 2014-15, details of cash withdrawal during FY 2014-15, copy of sale deed of immovable property, copy of computation of Income for AY 2015-16. Copy of FORM GA-55A for the PY 2014-15. The AO admitted the explanation of the assessee with respect to cash of Rs. 6,00,000/- generated from sale of immovable property during FY 2011-12, however made addition of Rs. 45,75,900/-u/s 69A of the Act. It is noted that the Cash deposits were from cash withdrawals made during F.Y. 2013-14 and F.Y. 2014-15. It is pertinent to mention that assessee worked in the police department at various position ranging from constable to sub inspector till 31.03.2014. Accordingly, since he was working there, it is obvious that he was also receiving salary for his work on monthly basis. Further, the assessee and his wife had a heart condition and both needs medical attention from time to time. The cash was also required to meet day to day expenses. Therefore, as and when the need arises the assessee used to withdraw

the amount from the bank or deposit the same in the bank account and keep cash at his disposal all the time to meet any kind of emergency or day to day expenses. It is also notable that that the culture of Indian lower/middle-class family, with respect to saving money, can also not be ignored where people save money on periodic basis and keeps such money at home even after having bank accounts. Therefore, the assessee's contention that one of the source of cash deposits was his past saving is not something abnormal. If we go by the theory of the Ld. CIT(A) then cash can only be kept by persons not having any bank account and any person who has a bank account cannot keep cash with him/her Therefore, in view of the above, these past saving of the assessee can be considered reasonable in the present case. it is evident from the cash flow statement (PBP: 1 to 5) and bank Statement (PBP: 6 to 18) that the cash deposit of Rs. 45,75,900/- during the FY 2014-15 were made from the cash withdrawals and available cash in hand. It is an undisputed fact that the assessee was having 6,00,000/-in cash as on 01.04.2013 which resulted due to sale of immovable property made during FY. 2011-12 and the same is admitted by the AO also (refer para 6.2.2 ad page 8 of assessment order). Further, it is also admitted position that the assessee had deposited 72,50,200/- and withdrew Rs. 76,70,900/- during FY. 2013-14 and F.Y.

2014-15 respectively and there was no negative balance at any time during the PY 2013-14 and FY 2014-15. All these cash withdrawals and cash deposits is verifiable by the bank statement submitted. Further, such cash withdrawals and cash deposits were never disputed either by the AO during the assessment proceedings or by the Ld. CIT(A) during first appellate proceedings. Hence, there is no adverse findings by both the AO and Ld. CIT(A) as far as cash withdrawals and deposition is concerned. Furthermore, it is a settled legal position that if the deposit of money in the bank account is preceded by withdrawal of money from the bank account, then the source of funds is prima facie demonstrated or explained. In the present case also, the cash deposits are preceded by cash withdrawals and accordingly, the source of cash to the extent of Rs. 45,75,900/- is fully explained. To support this legal position, we draw strength from the order of ITAT Bangalore Bench in the case of Smt. Vinatha Madhusudan Reddy Vs. ACIT [ITA No. 257/Bang/2018] wherein the hon'ble after referring the judgement of the Hon'ble Karnataka High Court in the case of S.R. Venkata Ratnam Vs CIT, Karnataka-1 & Others 127 ITR 807 has held as under:-

7. We have carefully considered the rival submissions. It is seen that the cash deposits in the bank account are preceded by withdrawal from the very same bank account. The cash flow statement filed by the Assessee explaining availability of cash on the various dates of deposit of cash in the bank account has not been disbelieved by the Revenue authorities. They have proceeded on the basis that since there was sufficient time lag between the dates of withdrawal of cash from

the bank account and the dates of deposits, the availability of cash cannot be believed. The legal position in this regard is that if the deposit of money in the bank account is preceded by withdrawal of money from the very same bank account then the source of funds is prima facie demonstrated or explained by the Assessee. The Hon'ble Karnataka High Court in the case of S.R. Ventakaratnam Vs CIT, Karnataka-I & Others 127 ITR 807 has held that once the Assessee discloses the source as having come from the withdrawals made on a given date from a given bank, it was not open to the revenue to examine as to what the Assessee did with that money and cannot chose to disbelieve the plea of the Assessee merely on the surmise that it would not be probable for the Assessee to keep the money unutilized. We are of the view that the ratio laid down in the aforesaid judgment will apply to the facts of the present case. If the revenue wants to disbelieve the plea of the Assessee then it must show that the previous withdrawal of cash would not have been available with the Assessee on the date of deposit of cash in the bank account. The AO and CIT(A) have proceeded purely on assumption and surmises that cash would not be lying idle with the Assessee for such a long time. In our view, the Assessee has satisfactorily explained the source of funds out of which deposit of cash was made in the bank account. We therefore delete the addition made in this regard.”

The Perusal of bank statement shows that there is mere rotation of cash withdrawal from one bank account and deposition thereof in another bank account. Moreover, there is only few credit entries other than cash rotation i.e. in bank account no. 1633027391 amount received from LIC of Rs. 7,75,962/ and Rs. 1,10,510/ on 07.10.2013 and 21.10.2013 respectively which shows there is no formation of asset and it is case of rotation of cash between banks. Additionally, the argument of the Id. AR was that the cash withdrawals were used only for subsequent deposits in the bank also get support from the fact that neither the AO nor the Ld. CIT(A) has brought on record any material to prove that the said amount was utilized for purpose other than being deposited in the bank by the appellant. Here, it is apposite

to state that there can be 2 possibilities with the cash lying with the assessee : (i) either the said cash was deposited in the bank or (ii) the said cash was utilized in any other purpose by the assessee. With regard to the first possibility, the assessee submitted cash flow statement along with bank statement to prove that cash was deposited and discharged his onus. However, for the second possibility, the onus was on the Ld. CIT(A) that the said cash was not deposited in bank i.e. utilized for other purpose since he found the explanation of the assessee not satisfactory. In this regard, we draw strength from the judgement of Hon'ble Gujarat High Court in the case of the Manoj Indravadan Chokshi (2019) TaxPub(DT) 2356] wherein it was held as under:-

"....The contention of the assessee is that the amount was kept as cash in hand. The authorities have doubted about the explanation furnished by the assessee. The authorities below have doubted the source of the cash deposits, however, the contention of the Id. counsel for the assessee is that he had withdrawn the amount from his bank account and there is no finding by the authorities below that the cash withdrawn by the assessee was utilized for any other purpose. In the absence of such finding addition is not justified. We find merit into the contention of the counsel for the assessee that there is no dispute that the amount which was withdrawn by the assessee on various dates during the year 2006 was available with him for making deposits. In the absence of finding that the amount which was previously withdrawn by the assessee had been utilized for any other purpose merely on the basis of conjecture that the amount might have been utilized for any other purpose and was not available with the assessee for making the deposits, we are unable to accept the reasoning of the authorities below. In our considered view, when the assessee has demonstrated that he had withdrawn cash from the bank and there is no finding by the authorities below that this cash available with the assessee was invested or utilized for any other purpose, in that event, it is not open to the authority to make the addition on the basis that the assessee failed to explain the source of deposits, Moreover, the authorities below have not disputed the fact that the assessee had withdrawn amount of Rs. 9,10,000/ before the

deposits made on various dates during the FY 2007-08. Therefore the orders of the authorities below are set aside and the AO is directed to delete the addition. Thus, ground raised in the assessee's appeal is allowed"

With regard to the objection of the Ld. CIT(A) in para 8.3.1 of the order where the Ld. CIT(A) stated that "the appellant had not provided any reason why he had been withdrawing the money when he already had huge cash in hand" and in para 8.3.2 the appellant had not furnished any explanation as to why he had deposited money in one account by withdrawing from another. To this effect, the Id.AR of the assessee submitted that it is not illegal either to withdraw money even after having huge cash or deposit money in one account by withdrawing from another. As and when the need arises the assessee used to withdraw the amount from the bank or deposit the same in the bank account. Therefore, confirming addition on this ground is purely addition on the basis of suspicion or presumption. In this regard, we find force from the judgement of Hon'ble ITAT, Lucknow in the case of DCIT Vs Smt. Veena Awasthi [ITA No. 215/LKW/2016) dated 30.11.2018 wherein it was held as under:

"7.Ld. A.R. of the assessee per contra placed reliance on the order of Id. CIT(A) and reiterated the submissions as made before the subordinate authorities emphasizing that entire bank statements and source of cash withdrawal/deposits have been furnished before the Department. Nowhere Assessing Officer has come out with the finding that withdrawal of cash by the assessee was utilized to procure any asset or has been invested elsewhere and that cash deposit in the account

was from other sources. Assessing Officer has simply doubted behavioral pattern accepting the fact that assessee was having her own cash which has been frequently deposited and withdrawn from her bank account. At threshold, submissions of the Id. A.R. of the assessee, therefore, was that the order of Id. CIT(A) may be upheld and relief granted may be sustained.

8. We have perused the case record and heard the rival contentions. We find that addition has been made by the Assessing Officer, as is evident from his order, on the ground that he has come to the conclusion that cash deposits were from some other source of income which is not disclosed to the Revenue. Assessing Officer nowhere in his order has brought out any material on record to show that assessee is having any additional source of income other than that disclosed in the return nor Assessing Officer could spell out in his order that cash deposits made by the assessee was from some undisclosed source. All throughout Assessing Officer has raised suspicion on the behavioral pattern of frequent withdrawal and deposits by the assessee. There is no law in the country which prevents citizens to frequently withdraw and deposit his own money. Documentary evidences furnished before the Revenue clearly clarify that on each occasion at the time of deposit in her bank account, assessee had sufficient availability of cash which is also not disputed by the Revenue. Entire transaction of withdrawals and deposits are duly reflected in the bank account of the assessee and are verifiable from relevant records. Assessing Officer himself admitted that assessee had sufficient cash balance on each occasion at the time of deposit in her bank account on different dates during the assessment year under consideration. We have also examined the order of Id. CIT(A) and we find that his decision is based on facts on record and is supported by adequate reasoning and, therefore, we do not want to interfere with the order of Id. CIT(A) and accordingly we uphold the findings of the Id. CIT(A) sustaining relief granted to the assessee"

It is noted that the whole foundation of making addition u/s 69A of the Act and the confirmation thereof by the Ld. CIT(A) is the Theory of Human Probability and no ground work with respect to invocation of section 69A of the Act with actual evidence has been done either by the AO or the Ld. CIT(A). It should be noted that Theory of Human Probability is a concept which comes into picture in a situation where there is absence of

conclusive evidence to prove a case and in the present case, the reference of Theory of Human Probability in the orders itself proves that there were lack absence of evidence/ material with the AO and the Ld. CIT(A) to refute the explanation of the assessee. Further, it would not be appropriate to decide the matter by applying the principle of Human Probability and disregard the explanation and documentary evidences available on record. It is noted from the observation of the Ld. CIT(A) (refer para 8.3.1 of the CIT(A) order) that details of cash withdrawal submitted by the assessee are contra entries. We feel in this regard that as per accounting principle any transaction which affect cash account and bank account are termed as 'contra entries'. In the present case since in all the transactions (withdrawal and deposit) both cash account and bank account were involved, the same were categorized as 'contra entries' which in spite of giving support to the explanation of the assessee observed as an adverse finding by the Ld. CIT(A). It is evident from forgoing discussion that the entire addition is based upon surmises or suspicion whereas it is settled legal position that no addition can be made based upon the surmises or suspicion for which we place reliance on following case law:-

- 1. The Hon'ble Supreme Court in the case of Lalchand Bhagat Ambical Vs CIT [1959 AIR 1295] dismissed the appeal of the revenue and held as under:**

"In arriving at the above decision the High Court referred to the cases of Mehta Parikh & Co. v. Commissioner of Income tax Bombay (1) and Chunilal Ticamchand Coal Co., Ltd. Commissioner of Incometax, Bihar and Onssa (2) in therefore, clear that the Tribunal in arriving at the conclusion it did in the present case indulged in suspicions, conjectures and surmises and acted without any evidence or upon a sies of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, or the finding was, in other words, perverse and this Court is entitled to interfere

We are therefore of opinion that the High Court was clearly in error in answering the referred question in the affirmative. The proper answer should have been in the negative having regard to all the circumstances of the case which see have adverted to above."

2. The Hon'ble ITAT, Bench "B", Hyderabad in the case of ITO(IT-1) vs Shri M. Prabhakar, Hyderabad [ITA No. 1727/Hyd/2014] dismissed the appeal of the revenue and held as under:

"Considered the rival submissions and perused the material facts on record. The assessee has deposited Rs. 34.70 lakhs during this AY and there is sufficient cash available in his possession as per the cash book and Wealth Tax return submitted by the assessee. The mute question before us is whether the cash deposited was coming out of the cash available with the assessee, which was kept by him for last two years. It was not brought on record why he has withdrawn so much of money and what made the assessee to keep such huge money in hand. But, on record, submitted by the assessee, we find that he had sufficient money. Even the AO could not bring any proof that the assessee has in fact utilized or applied the cash withdrawn two years back, except making a remark that there is no possibility of keeping such amount by the assessee being a NRI. He has not brought on record, why he cannot keep so much of cash in hand and no contrary findings were given by him against the submissions of assessee. AO has made the addition merely on conjectures/surmises/suspicion and no proper reasons were given why he cannot keep the cash in hand except the remark of being an NRI In our view, the Hon'ble Supreme Court in the case of Dhakeswari Cotton Mills Ltd. (supra) has held that the AO cannot complete the assessment purely on guess and without any reference to evidence or any material at all. Also in the case of Umacharan Shaw & Brothers (supra), the Apex Court has held that AO cannot complete the assessment merely on suspicion which cannot take the place of proof in these matters. Respectfully following the ratio laid down by the Hon'ble Supreme Court in the said cases, we hold that the AO made the assessment merely on suspicion and without bringing any cogent material on record to establish that assessee cannot keep the cash in his hand being a NRI Accordingly, we uphold the order of

the CIT(A) in deleting the addition of Rs. 34,70,000/- made by the AO and dismiss the grounds raised by the revenue in this regard"

3. The Hon'ble ITAT, Jaipur Bench "B", Jaipur in the case of Abhilasha Jain Vs DCIT, Circle (Intl Tax), Jaipur [ITA No. 05/JP/2022] by relying on the judgement of the ITAT, Hyderabad(supra) allowed the appeal of the appellant and held as under:

"In the above judgment the Coordinate Bench decided that the addition made by the AO merely on suspicion and without bringing any cogent material on record to establish that assessee cannot be keep the cash on hand being a non resident of India. It has been observed from the record that the assessee as meticulously given case flow statement giving different date wise cash available is supported by the bank statement placed on record. The assessee has also placed on record the affidavit of his mother supported by the withdrawal made by her mother from her bank accounts all these evidences, the Revenue failed to establish any fault or contrary finding to this bulk of papers and merely the addition sustained on account of suspicious reasons."

Hence in view of the above facts, circumstances and the case laws relied upon (supra), it is clear that the source of cash deposits was the cash withdrawals and accordingly, the source of cash deposition is fully explained. Thus, the invocation of section 69A for making addition deserves to be deleted.

4.1 In Ground No. 2 & 3, the assessee is aggrieved that the Id. CIT(A) has erred in sustaining the demand of Rs.81,678/- as salary income without considering the Form GA-55A and also erred in allowing the deduction of Rs.1,50,000/- u/s 80C of the Income Tax Act, 1961. It is noted from the

assessment order wherein the AO added the short fall of Rs.81,678/- to the total income of the assessee under the head 'salaries by giving following finding at para 6.1 of his order.

"6.1 Salary Income of Rs. 6,13,592/ As per the data uploaded by the employer, which is available in the insight portal, assessee has earned salary income of Rs. 6,13,592/ In the Show Cause Notice also it was mentioned that assessee had earned salary income of Rs 6,13,592/- and it was proposed to consider the same as the salary income of the assessee. However, assessee filed the return of income declaring total income of Rs. 5,31,914/ only. There is a shortfall of Rs. 81,678/-under the head salaries in the returned income of the assessee. Neither has the assessee reconciled the difference nor has he explained why he was returning income which is less than the data uploaded by the deductors. Hence, the short fall of Rs 81,678/ is added to the total income of the assessee under the head salaries."

It is noted that the AO initiated consequential penalty u/s 271(1)© of the Act for concealment of particulars of income.

4.2 In first appeal, the Id. CIT(A) has confirmed the action of the AO by observing as under:-

Findings of the Ld. CIT(A)

"7.1. The appellant's submission has been considered and found not to be acceptable. It is seen that the appellant has not furnished the reconciliation statement showing as to why salary income was declared less than the details uploaded by the employer. The appellant's contention that there is error in data uploaded by the employer, cannot be considered in the absence of furnishing confirmation certificate by the employer in this regard. Further, the Form no GA-55A has been perused and it is seen that total allowances are shown at Rs. 5,73,612/ It is pertinent to mention that all the pay items are not included in the Form no GA-55A and some pay items like special pay, Fees, Honorarium etc. would not be reflected in the Form no GA 55A. In the absence of breakup of salary, reconciliation statement and certificate from employer, the genuineness of the claim of the appellant in this regard cannot be ascertained. As such, the addition made by the AO as per the data uploaded by the employer of the

appellant is justified and the same is upheld. Hence, the Ground No. 1 of the appeal is dismissed.”

4.3 During the course of hearing, the Id. AR of the assessee reiterated the same arguments as made before the Id. CIT(A) and withdrew our attention to the two tables referred by the AO with regard to the alleged salary received by the assessee. The first table is at page 3 of the assessment order whereas as per TDS statement generated in pursuance of details furnished by SP. Kota City, the amount credited is Rs. 92,748/-. However, as per the second table which is referred at page 4 of the assessment, the amount credited as per TDS statement generated in pursuance of details furnished by SP, Kota city was Rs. 5,20,844/-. Further, at the time of drawing conclusion in para 6.1 at page 7 of the order, the AO assessed salary at Rs. 6,13,592/- in the hands of assessee. This gross salary of Rs. 6,13,592/- is the sum total of Rs. 92,748 and 5,20,844/- meaning thereby that the AO added the amount of Rs. 92,748/- twice while assessing the income under the head salary since the said amount is already included in the amount of Rs. 5,20,844/- which pertains to the whole F.Y. 2014-15. The Ld. CIT(A) has also overlooked the said mistake and confirmed the addition.

4.4 On the other hand, the Id. DR supported the order of the Id.CIT(A)

4.5 We have heard both the parties and perused the materials available on record. The Bench in the present case noted that the Return of income for the A.Y. 2015-16 was filed by the assessee for A.Y 2015-16 with the gross salary of Rs 5,73,612/-. The addition of Rs. 81,678/ is the difference between the gross salary of Rs. 6,13,592/- and 5,73,612/- which is based on wrong facts. In the instant case, the declared Gross salary of Rs. 5,73,612/- is higher than the amount of Rs. 5,20,844/. Accordingly, there is no escapement of income under the head salary by the assessee and addition has been made without application of mind and consideration of the data produced by the assessee before the lower authorities. In this situation, the Bench does not concur with the findings of the Id.CIT(A). Thus both the grounds of appeal No.5 & 6 are allowed.

5.1 As regards the ground No. 1 and 2 of the assessee (supra), the Bench noted that it is purely legal and technical grounds and the Bench feels that it is an academic ground and does not require an adjudication since the addition so confirmed by the Id.CIT(A) has been deleted. Thus Ground No. 1 & 2 remains opened being education in nature.

6.1 As regards the Ground No. 7 of the assessee for initiation of penalty proceedings by the AO u/s 271(1)(c) of the Act, the Bench feels that it is mandatory and consequential in nature and the AO will act accordingly.

7.0 In the result, the appeal of the assessee is allowed as indicated hereinabove.

Order pronounced in the open court on 22 /11/2024.

Sd/-

(डॉ.एस.सीतालक्ष्मी)

(Dr. S. Seethalashmi)

न्यायिकसदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)

(RATHOD KAMLESH JAYANT BHAI)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:-

22/11/2024

***Mishra**

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Shambhu Dayal, Jaipur
2. प्रत्यर्था / The Respondent- The ITO, Ward 2(2), Jaipur
3. आयकरआयुक्त / The Id CIT
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 988/JP/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar