

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER

ITA No. 462/Ind/2024
Assessment Year:2017-18

Shailendra Singh Rajpoot, Shiv Motors, JJ Road, Bareli	<u>बनाम/</u> Vs.	ITO, Raisen
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AJWPR4011M		
Assessee by	Shri P.K. Jain, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	29.01.2025	
Date of Pronouncement	21.02.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 24.03.2024 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 26.12.2019 passed by learned ITO, Raisen ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal.

2. The background facts leading to present appeal are such that the assessee-individual furnished return of AY 2017-18 declaring a total income of Rs. 4,44,690/- and agricultural income of Rs. 4,00,000/-. The case of

assessee was taken for scrutiny under CASS and notices u/s 143(2)/142(1) were issued from time to time which were complied. Finally, the AO completed assessment vide order dated 26.12.2019 after making three additions, namely (i) addition of Rs. 11,90,000/- u/s 69A on account of unexplained deposits in bank a/c during demonetization period, (ii) addition of Rs. 4,00,000/- on account of bogus creditors, and (iii) addition of Rs. 4,00,000/- on account of unexplained agricultural income. Aggrieved, the assessee carried matter in first-appeal whereupon the CIT(A) granted part relief in this manner, namely (i) out of addition of Rs. 11,90,000/- on account of unexplained deposits in bank a/c, addition to the extent of Rs. 3,50,000/- was deleted and remaining addition of Rs. 8,40,000/- was upheld, (ii) the addition of Rs. 4,00,000/- on account of bogus creditors is upheld, and (iii) the addition of Rs. 4,00,000/- on account of agricultural income is deleted. Now, the assessee has come in next appeal before us.

Original Grounds:

3. Originally, the assessee raised following grounds in Form No. 36:

1. Learned Commissioner (Appeals) erred in confirming addition of Rs. 8,40,000/- made by assessing officer on account of cash deposited in bank account of the appellant, holding it to be unexplained money, invoking Section 69A. The addition made by the assessing officer and confirmed by learned Commissioner (Appeals) is arbitrary, baseless without appreciating facts of the case and is not justified.

2. In the facts and circumstances of the case and in law, the learned Commissioner (Appeals) has erred in passing an order on the basis of surmises and conjectures without even conducting an in-depth inquiry into the facts of the matter and concluding without giving a fair opportunity of hearing thereby grossly violating the principles of Natural Justice.

3. *The appellant reserves the right to amend, modify or add any of the ground/s of appeal.*

4. By means of these grounds, the assessee challenges the addition of Rs. 8,40,000/- upheld by CIT(A) out of addition of Rs. 11,90,000/- made by AO u/s 69A on account of unexplained deposit in bank a/c.

5. Ld. AR for assessee made a very lengthy submission qua this ground and we have heard him peacefully but the crux of the matter is very limited. The case of assessee was selected for scrutiny on account of large cash deposits during demonetization period and abnormal increase in sales with decrease in profitability as compared to preceding year. The assessee is engaged in trading business of spare parts of two wheelers, tyres, etc. During assessment-proceeding, when the AO asked assessee to explain the source of deposits made in Bank A/c during demonetisation period, the assessee filed details of various bank accounts held by him (Para 3.1 of assessment-order); submitted that most of business receipts are in cash; filed trends of such cash-receipts and also submitted that he has deposited Specified Bank Notes (SBNs) of Rs. 11.40 lakh during demonetization period (Para 3.2 of assessment-order). The AO called details of deposits in SBNs directly from bank u/s 133(6), in response to which the bank informed that a total deposit of Rs. 11,90,000/- was made in four tranches [Rs. 2,00,000 on 10.11.2016 + Rs. 1,00,000 on 11.11.2016 + Rs. 8,40,000 on 25.11.2016 + Rs. 50,000 on 08.12.2016]. The AO then asked the assessee to file Cash-Book to verify the status of cash availability but as per AO, the assessee

failed to produce Cash-Book (Para 4 of assessment-order). Finally, the AO concluded that the SBNs were no more legal tender since 09.11.2016 and the assessee was also not in a business where receipt in SBNs was permitted by Govt. Therefore, the SBNs of Rs. 11,90,000/-, which were deposited in Bank A/c, could not have been received from customers/cash sales. Therefore, the AO treated the entire deposit of Rs. 11,90,000/- in SBNs as unexplained money u/s 69A (Para 4.1 & 4.2 of assessment-order) and made addition.

6. During first-appeal, the CIT(A) firstly noted that the assessee failed to produce Cash-Book before AO (Para 7.2.1 of appeal-order). However, the assessee filed Cash-Book during first-appellate proceeding showing opening balance of Rs. 3,62,714/- as on the date of commencement of demonetization (08.11.2016). The CIT(A) further agreed with AO's observation that during demonetization period, the assessee's business was not permitted to receive SBNs. Accordingly, he gave benefit of opening balance of Rs. 3,62,714/- shown by Cash-Book accepting the same as source for deposits SBNs of Rs. 3,50,000/- [Rs. 2,00,000 + Rs. 1,00,000 + Rs. 50,000]. So far as the deposit of SBNs of Rs. 8,40,000/- made on 25.11.2016 is concerned, the CIT(A) made following adjudication and upheld addition to that extent:

*"7.2.3 It is however noted from the cash book that on 25.11.2016 the appellant has deposited cash of Rs 8,40,000/-, the source of which as shown in the cash book is '**To Capital for mini old seving**'. For the sake of convenience and ready reference scanned copy of this page is cash-book is pasted herein under:*

Shri Shailendra Singh Rajpoot
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25-11-2018 To Opening Balance		3,88,705.06
25-11-2016 By CENTRAL BANK OF INDIA CASH DEP	Contra	8,40,000.00
To Capital For mini old seving	Receipt	8,00,000.00
To SALE 14% CASH SALES	Receipt	41,548.00
By (As per details)	Payment	350.00
Shop E 290.00 Dr		
OFFICE 60.00 Dr		
CASH EXP		

	12,30,253.06	8,40,350.00
By Closing Balance		3,80,903.06

	12,30,253.06	12,30,253.06

The appellant failed to explain the narration "To Capital for mini old seving" or the nature and source of this cash deposits of Rs. 8,40,000/- Thus, the appellant failed to explain the nature and source of this cash deposits of Rs.8,40,000/- made or 25.11.2016 either during the course of assessment proceedings or even at the appellate stage. It was required on the part of the appellant to provide complete details and documentary evidence to explain the nature and source of cash of Rs 8,00,000/- received on 25.11.2016, which the appellant failed. Therefore, the cash deposit of Rs. 8,40,000/- remained unexplained (source of cash of Rs.40,000/- cannot be taken as out of cash sales made by the appellant during demonetization period for the reasons explained above) and hence same is required to brought to tax as unaccounted income of the appellant. The addition made by the AO. to the extent of Rs.8,40,000/- is upheld. The appellant's gets relief of Rs. 3,50,000/-. This ground of appeal raised by the appellant is partly allowed".

7. Thus, presently our adjudication has to be very limited i.e. qua the source of deposit of Rs. 8,40,000/- made by assessee in SBNs on 25.11.2016 and hence we repeatedly raised a pointed query to Ld. AR to explain the source of deposit of Rs. 8,40,000/- only. In response, the reply by Ld. AR is such that there were two sources available to assessee for making this deposit.

8. The *first source*, explained by Ld. AR, is a credit entry showing inflow of cash of Rs. 8,00,000/- in the Cash-Book of assessee's proprietary concern "M/s Shri Shiv Motors" (same cash-book is already extracted in the order of CIT(A) re-produced by us in foregoing para) on 25.11.2016 as "**To Capital - for mini old saving**". Ld. AR submitted that this credit entry represents the funds available from agricultural income of assessee and his family members. The details of the proceeds of agriculture received by assessee and family members are given by Ld. AR in Para 1.3.2 of his Written-Submission as under:

Sl. No.	Date	Receipt No.	Amount (Rs.)
1	18.04.2016	095	4,01,495
2	02.09.2016	086	3,45,587
3	03.09.2016	094	3,52,574
4	03.09.2016	098	3,23,191
5	31.10.2016	011	3,41,429
6	01.11.2016	029	3,21,710
7	02.11.2016	064	3,43,031
8	04.11.2016	062	3,38,280
	Total		27,67,397

8.1 Ld. AR drew us to the Paper-Book where the bills/vouchers of above receipts of agriculture are filed. He submitted that the assessee and his family members hold a total of 69.713 acres of agricultural land and hence the above receipts from agriculture are reasonable and acceptable. He, relying upon the decision of *ITAT, Ahmedabad in Appeal No. ITA/1239/AHD/2024 in case of Kamleshbhai Vinodbhai Patel Vs. ITO, order dated 24.10.2024*, submitted that the source from agricultural receipts of assessee and family members has to be accepted.

8.2 Per contra, Ld. DR for revenue made a very straightforward submission that there is a contradiction in assessee's stand. He submitted that before lower-authorities, the assessee nowhere claimed that the impugned deposit in Bank A/c was made from agricultural income of assessee and family members. He submitted that before AO, the assessee's attempt was to explain the impugned deposit from cash receipts of business but the AO rejected assessee's explanation for a very valid reason that the assessee's business was not permitted to receive SBNs during demonetization period. He submitted that the assessee is engaged in trading business of spare parts of two wheelers, tyres, etc. and this business carried by assessee was prohibited from receiving SBNs during demonetization period. Even the CIT(A) also confirmed AO's observation but the CIT(A) accepted that the opening balance as on 09.11.2016 could be in SBNs, accordingly the CIT(A) has already given sufficient benefit by deleting addition to the extent of Rs. 3,50,000/- to assessee for which the department is not against the order of CIT(A). Ld. DR submitted that the AO has categorically noted that the assessee did not produce Cash-Book but any way, the assessee has produced the same before CIT(A) during first-appeal. He submitted that the entry of Rs. 8,00,000/- credited in assessee's Cash-Book on 25.11.2016 showing inflow of cash under the heading "*To Capital - for mini old saving*" is validly rejected by CIT(A) in absence of any explanation by assessee. He contended that the assessee's stand before Tribunal claiming that the "mini old savings" of Rs. 8,00,000/- credited in

Cash-Book represents source from agriculture income of assessee and family members, is a totally new claim. He submitted that by making such a claim, the assessee is trying to put up a new case before ITAT and hence the claim must be outrightly rejected for this reason itself.

8.3 In rejoinder, Ld. AR for assessee firstly submitted that the finding given by AO that the Cash-Book was not produced is incorrect. He submitted that the accountant of assessee carried Cash-Book before AO and the AO examined the same. To strengthen his submission, he referred Para 3 and 5 of assessment-order wherein the AO has acknowledged the production of "accounts and documents". He submitted that the books were in fact shown to AO and seen by AO and he is making such an assertion in open court which is authentic. He submitted that the bills of agriculture were also submitted to AO as well as CIT(A). He submitted that the credit entry "*To Capital - mini old savings*" mentioned in Cash-Book truly represents the inflow from agriculture proceeds received by assessee and family members which must be accepted. Ld. AR also narrated that the assessee is located in a relatively smaller place where the accountants are less competent and do not mention sufficient details in books of accounts and that is why the accountant of assessee mentioned "old mini savings" in Cash-Book instead of narrating "agricultural proceeds of assessee and family members". Ld. AR also referred the provision of section 69A and submitted that the AO has not brought any evidence on record to show that

the assessee has not offered any explanation about the nature and source of cash deposits or that the explanation offered by the assessee was not satisfactory, therefore the action of AO in invoking section 69A is wrong.

8.4 We have considered rival submissions of both sides and carefully perused the orders of lower-authorities as also the documents held in Paper-Book. After a careful consideration, we find that the case of assessee was brought under the scanner of scrutiny to examine the deposits made by assessee in bank a/c during demonetization period and accordingly, the AO sought explanation from assessee regarding the source of such deposits. There were four deposits of Rs. 2,00,000 on 10.11.2016 + Rs. 1,00,000 on 11.11.2016 + Rs. 8,40,000 on 25.11.2016 + Rs. 50,000 on 08.12.2016, out of which the deposit of Rs. 8,40,000/- was the major item. However, the assessee nowhere explained to AO, the source of "old mini savings" of Rs. 8,00,000/- for making the impugned deposit of Rs. 8,40,000/-. If the source was really from agriculture proceed of assessee and family members, the assessee could very clearly explain the same to AO. Furthermore, if the agricultural proceed of family members was available to assessee, the assessee would be under further obligation to submit confirmatory evidences of family members. There is absolutely no such submission before AO. Now, the assessee is wrongly blaming the AO that no evidence was brought by him on record to show that the assessee has not given any explanation or that the explanation given by assessee was not satisfactory.

The assessee is simply trying to influence us by referring to the provision of section 69A and decision of ITAT, Ahmedabad that the source is explained and hence addition cannot be made. There is absolutely no letter of assessee filed to AO during assessment-proceeding or to CIT(A) during first appellate proceeding explaining that the agriculture proceeds and that too, a part of same belonging to family members, was a source. Therefore, Ld. DR for revenue is correct in contending that the assessee is trying to set up a new case before ITAT for the first time. However, in the interest of justice, we find that out of the receipts of agriculture produce tabulated earlier in Para 8, there are three receipts of Rs. 3,23,191/- on 03.09.2016, Rs. 3,43,031/- on 02.11.2016 and Rs. 3,38,280/- on 04.11.2016 at S.No. 4, 7 & 8, relating to assessee (other receipts relate to family members). These three receipts of assessee are before 08.11.2016 (date of demonetization) and aggregate to Rs. 10,04,502/-. These receipts are gross- receipts from which the assessee has shown net agricultural income of Rs. 4,00,000/-, obviously after deduction of expenses incurred for agriculture. Although the AO did not accept the agriculture income of Rs. 4,00,000/- declared by assessee in return but the CIT(A) has accepted and the revenue is not in appeal challenging the CIT(A)'s action. Hence, the net agriculture income of Rs. 4,00,000/- earned by assessee before 08.11.2016 can be said to be available with assessee in the form of "old mini savings". In that view of matter, we accept the availability of funds to the extent of Rs. 4,00,000/- as old savings with assessee.

9. The *second source*, for remaining deposit of Rs. 40,000/- out of deposit of Rs. 8,40,000/-, is a cash sale of Rs. 41,548/- made by assessee on 25.11.2016 as recorded in the very same Cash-Book chargeable @ 14% GST. While the assessee claims that the proceeds of this cash sale was received by way of SBNs and the same was utilized for making deposit of Rs. 40,000/- in bank, the lower-authorities are against such claim on the footing that the assessee's business was not permitted by Govt./RBI's notifications to receive SBNs during demonetization period. Ld. AR submitted that the ITAT, Bangalore in *Sri Bhageeratha Pattina Sahakara Sangha Niyamitha Vs. ITO, ITA No. 646/Bang/2021 order dated 18.02.2022*, has held that the contravention of Govt./RBI's notifications cannot attract provisions of section 68/69/69A. He further submitted that the AO has not excluded sales of Rs. 41,548/- from total sales of assessee for the relevant previous year and thus assessed the same as part of "disclosed income". Therefore, the deposit of Rs. 40,000/- made by assessee out of same, cannot be re-taxed as "undisclosed income". After a careful consideration, we agree to the contention that once the AO has already assessed the sale of Rs. 41,548/- as part of disclosed sales/business income of assessee, the AO cannot treat the deposit in bank a/c made by utilizing the very same money as undisclosed income u/s 68/69/69A. Needless to mention that the treatment given by AO has resulted in double taxation which cannot happen. Considering the small amount and issue of double taxation, we are inclined to accept that the source of Rs. 40,000/- stands explained from cash sale

and the same must be accepted. However, we note very clearly that this conclusion taken by us should not be treated as a precedent in any other case which shall be decided independently on the basis of then analysis of facts.

10. The above discussion brings us to conclude that the source of Rs. 4,40,000/- [Rs. 4,00,000/- from agricultural income of assessee + Rs. 40,000/- from cash sales of business] is established. Consequently, out of addition of Rs. 8,40,000/-, we delete addition to the extent of Rs. 4,40,000/- and uphold only excess addition of Rs. 4,00,000/-. The AO is directed to modify assessment-order accordingly. The assessee succeeds partly in these Grounds.

Additional Ground:

11. The assessee has raised following ground through a separate letter:

"That on the facts and in the circumstances of the case and in law, the learned Assessing Officer has erred in treating the Sundry Debtors as Sundry Creditors and disallowed/added to the appellants income Rs. 4,00,000/-out of total debtors of Rs 38,41,924 alleging item as fictitious Creditors."

12. Ld. AR submitted that the AO has made an addition of Rs. 4,00,000/- on account of bogus creditors and another addition of same amount of Rs. 4,00,000/- on account of unexplained agricultural income. The CIT(A) has, in Paras 8.1 to 9.2.1 / Page 7 of his order, accepted the agricultural income of assessee and deleted addition. However, due to mistake, perhaps because of identical amounts of Rs. 4,00,000/- in both additions, the CIT(A) did not

adjudicate the addition of Rs. 4,00,000/- on account of bogus creditors. Even the counsel of assessee who filed this appeal before ITAT could not take notice of this infirmity in the order of CIT(A) and could not raise a ground in Form No. 36 qua the addition of Rs. 4,00,000/- on account of bogus creditors. Hence, he has filed a separate letter to raise this ground. Ld. AR submitted that the Ground must be allowed and adjudicated. Ld. DR for revenue accepted. Therefore, we admit this ground and proceed to adjudicate.

13. Ld. AR next carried us to Para 5.1 of assessment-order wherein the AO has made this addition. The AO has noted that there were outstanding balances of sundry debtors at Rs. 38,41,924/- and Rs. 34,42,505/- respectively in the Balance-Sheets of assessee as on 31.03.2017 and 31.03.2016. Accordingly, the AO has taken arithmetical difference of two figures at Rs. 3,99,419/- and made addition of rounded off amount of Rs. 4,00,000/- as unexplained creditors u/s 68. Ld. AR carried us to the audited Balance-Sheets of assessee available in Paper-Book to show the figures picked by AO and successfully demonstrated that the impugned figures are of "sundry debtors" and not of "sundry creditors". Ld. AR submitted that the AO has mistakenly treated the figures of "sundry debtors" as of "sundry creditors" and made addition u/s 68 as unexplained cash credits but these were the figures of sundry debtors. Hence, the addition made by AO is absolutely invalid and not tenable. Ld. DR for

revenue is fair enough to accept this submission of Ld. AR. Faced with this situation, we delete the addition of Rs. 4,00,000/- made by AO on account of unexplained creditors. The assessee succeeds in this ground.

14. Resultantly, this appeal is partly allowed.

Order pronounced by putting on notice board
as per Rule 34 of ITAT Rules, 1963 on 21/02/2025

Sd/-

(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 21/02/2025

Dev/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore