

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

ITA No.298/Ind/2024
Assessment Year:2017-18

Kusumlata Garg 8/2 new Palasia Indore	<u>बनाम/</u> <u>Vs.</u>	DCIT/ACIT 3(1) Indore
(Assessee/Appellant)		(Revenue/Respondent)
PAN: ACHPG3210H		
Assessee by	Shri S.S. Solanki, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	09.01.2025	
Date of Pronouncement	26.03.2025	

आदेश / O R D E R

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

Feeling aggrieved by order of first appeal dated 06.03.2024 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 17.12.2019 passed by learned DCIT/ACIT, 3(1), Indore ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on following grounds:

"1. That the learned CIT (A) erred in maintaining addition of Rs.39,26,015/- made by the AO out of cash deposit by treating the same as unexplained cash u/s 69A of the IT Act. The addition so maintained by learned CIT(A) is illegal and wrong, the same may, very kindly be deleted.

2. That the learned CIT(A) erred in maintaining addition of Rs.6,39,120/- made by the AO by alleging that the rental income was not offered in ITR. The addition so maintained being illegal and wrong, the same may very kindly be deleted."

2. The background facts leading to present appeal are such that the assessee filed her return for AY 2017-18 declaring a total income of Rs. 64,33,630/-. The case was selected for scrutiny and the AO issued statutory notices u/s 143(2)/142(1). Finally, the AO completed assessment after making two additions, namely (i) addition of Rs. 39,26,015/- u/s 69A on account of unexplained cash deposit in bank a/c, and (ii) addition of Rs. 6,39,120/- on account of rental income not offered for taxation. Aggrieved, the assessee carried matter in first-appeal but did not get any success. Now, the assessee has come before us in next appeal assailing the orders of lower authorities.

Ground No. 1:

3. This ground relates to the addition of Rs. 39,26,015/- u/s 69A on account of unexplained cash deposited in Bank A/c.

4. The AO has made this addition in Para 4 of assessment-order. The AO has noted that the assessee deposited total cash of Rs. 72,49,500/- in different bank a/cs during demonetization period. When the AO asked assessee to explain source of such deposits, the assessee submitted that she was holding sufficient cash for making deposits. The assessee filed a Cash-Book to AO to show the availability of funds. However, the AO made his

analysis of assessee's pattern of cash holding and cash deposits/withdrawals into/from bank a/c and rejected assessee's Cash-Book. Finally, the AO estimated the availability of cash with assessee at Rs. 33,23,485/- taking into account the average cash held by assessee prior to demonetization and considered excess deposit of Rs. 39,26,015/- [Rs. 72,49,500 (-) Rs. 33,23,485] as unexplained and made addition to that extent.

5. During first-appeal, the CIT(A) upheld AO's order by passing following order:

"Ground No.1

In this ground the appellant has contested that That the learned AO erred in adding Rs. 39,26,015/- out of cash deposit by treating the same as unexplained cash u/s 69 A of the IT Act. That the assessee regularly maintains cash book and the same was produced before the AO reflecting cash deposit. The AO however, chose to ignore the same. The addition so made being illegal and wrong. The same therefore require to be deleted.

With regard to the above, the Assessment order is carefully perused and it is found that the Assessing Officer has made a comparative study of figures of the cash balance in preceding year to that of the year under consideration. It is found that there has been substantial increase in the average cash balance during the FY 2016-17 from that of the FY 2015-16 and based on this study the Assessing Officer has arrived at the conclusion. During the course of the appellate proceedings the appellant submitted only a written explanation in support of her grounds of appeal and chart of cash book month wise. Apart from these details the appellant has not furnished any other documentary evidence in support of her claim. On perusal of ITR filed for the AY 2017-18, it is found that the appellant has also shown income from business and profession and nature of business mentioned in the ITR is '0404-Builders-Others'. However, during the appellate proceedings, neither the details of nature of business nor any financials in that regard are not furnished before this office. From the chart of cash book produced before this office it is noticed that opening cash in hand as on 01.04.2016, shown by the appellant is Rs. 99,95,140/-However, on perusal of the ITR for the AY 2016-17, it is seen that the cash in hand shown as Rs. 24,42,059/- only.

Kusumlata Garg
Cash book

Month Wise	Op. Cash in hand	Cash Deposited in bank	Withdrawal from the bank	Closing cash In hand
April' 2015	424843	896650	2132200	1660393
May' 2015	1660393	14000	265000	1911393
June, 2015	1911393	214000	1013200	2710593
July, 2015	2710593	64000	560000	3206593
August, 2015	3206593	95616	520000	3630977
September' 2015	3630977	64000	370000	3936977
October' 2015	3936977	14000	540000	4462977
November'2015	4462977	139000	1694023	6018000
December'2015	6018000	229000	375000	6164000
Jan'2016	6164000	114000	200000	6250000
February'2016	6250000	150000	2385000	8485000
March'2016	8485000	683250	2193390	9995140
April' 2016	9995140	50000	705000	10650140

Schedule AL		Asset and Liability at the end of the year (Applicable in a case where total income exceeds Rs. 50 lakh)	
DETAILS OF ASSET AND LIABILITY	A	Particulars of Asset	Amount (Cost)(Rs.)
	1	Immovable Assets	
	a	Land	
	b	Building	4948254
	2	Movable Asset	29318395
	a	Cash in hand	
	b	Jewellery, bullion etc.	2442059
	c	Vehicles, yachts, boats and aircrafts	125691
	3	Total	0
	B	Liability in relation to Assets at A	2567750
		15233089	

In view of the above, it is clear that opening balance shown in the chart of the cash book does not match with the cash in hand in the end of the FY 2015-16. Therefore, it is clear the cash book produced before this office is not genuine and thus not reliable. Further, the appellant has not produced any bills/invoice/voucher to substantiate the business receipt during the year. No bank statements have been produced before this office. Thus, it is clear that the appellant has not produced complete documents in support of her claim. Also, the appellant has not satisfactorily rebutted the findings of the Assessing Officer during the assessment proceedings as well as during the appellate proceedings. The appellant's claim with regard to the source of cash deposit out of withdrawals does not stand as it does not make sense that the withdrawals are made only to deposit the same during the demonetization period keeping the huge cash throughout the year with occurring any expenses. In view of the above findings and the facts

discussed above, the claim of the appellant cannot be accepted and thus, the ground no.1 raised by the appellant in this regard is hereby dismissed."

6. Before us, Ld. AR for assessee filed following Written-Submission and made oral arguments on the same line:

"3.1 That the assessee regularly maintained cash book and the same was produced before the AO for verification. The AO without pointing out any specific defect in the cash book simply made an addition.

3.2 From the chart below it is abundantly clear that keeping a sufficient amount of cash with her is regular practice of the assessee:-

Financial Year	Opening Balance	Deposited during the year	Withdrawal during the year	Closing balance
2015-16	4,24,843/-	26,77,516/-	1,22,47,813/-	99,95,140/-
2016-17	99,95,140/-	1,71,21,493/-	1,00,09,800/-	28,83,447/-
2017-18	28,83,447/-	93,58,365/-	1,36,64,101/-	71,89,172/-

3.3 Not only this she is a income tax assessee and file return of income regularly showing a handsome Total Income. Details of Total Income returned by her in 3 years is as under:

Asst Year	Total Income
2016-17	Rs. 64,75,940/-
2017-18	Rs. 64,33,630/-
2018-19	Rs. 71,73,020/-

3.4 That due to typographical error while filing the return of income, the closing balance of A.Y.2016-17 was punched at Rs. 24,42,059/- as against correct figure of Rs. 99,95,140/-

3.5 Even the opening cash in hand with the assessee was Rs. 99,95,140/- which is more than the deposit of Rs. 72,49,500/-. It is a settled law that no addition can be made out of opening balances and that every assessment

year is different and no addition of another assessment year can be made in this year. For this proposition reliance is placed on following decisions:-

- (i) Hon'ble ITAT Bench "C" Bangalore in the case of M/s KNR Roofing Pvt Ltd vs. ACIT reported in ITA No.3125 of 2018 (Bang).
- (ii) Hon'ble High Court of Delhi in the case of Commissioner of Income Tax vs. Usha Stud Agricultural Farms Ltd.
- (iii) Hon'ble ITAT Bench "A" Kolkata in the case of ACIT vs. Siddhartha Bhargava reported in ITA No.2508/Kol/2017.
- (iv) Hon'ble High Court of Punjab & Haryana in the case of Commissioner of Income Tax vs. Shri V.P. Singh reported in ITA No.194 of 2002 (Chandigarh).
- (v) Hon'ble ITAT Bench "A" Chennai in the case of M/s. Sooraj Leathers vs. ITO reported in ITA No.305/Mds/2016.

3.5 That the comparison of cash deposit made between Nov-Dec 2015 & Nov-Dec 2016 is also baseless as the assessee was having no choice but to deposit old currency as after 31.12.2016 that currency would be simply a piece of paper. The deposit was to be made because of policy decision taken by Central Govt. So to compare this with earlier year when there was no demonetisation is not only baseless but also shows the mental level of the AO.

3.6 That the assessee was keeping cash in hand more than the amount deposited throughout the year. Even the opening cash in hand was more than the cash deposited during demonetisation period. It cannot be by any stretch of imagination be concluded that any amount out of cash deposited of Rs.72,49,500/- is unexplained.

3.7 The addition made by AO on his whims and fancies, on the basis of a fantastic story, on the basis of incomparable comparisons, on the basis of illegal rejection of books, even when opening cash balance was higher than the amount deposited is illegal and wrong.

3.8 Further the assessee is an old lady. Her father who was ill since long also lives with her. She was having a habit of keeping sufficient cash balance in hand for any type of eventualities. We are giving monthwise chart from previous year which will prove beyond doubt that deposit of cash of Rs.72,49,500/- is out of her regular cash balance maintained."

[Emphasis supplied]

7. Per contra, Ld. DR for revenue orders of lower-authorities.

8. We have considered rival contentions of both sides and perused the case record including the orders of lower-authorities. The controversy in present case relates to the source of deposits of Rs. 72,49,500/- made by assessee in bank a/cs during demonetization period (09.11.2016 to 31.12.2016). The assessee's contention is that she was having sufficient cash for making deposit. While contending so, the assessee is relying upon Cash-Book filed by her to AO. The said Cash-Book was also filed to CIT(A). The Cash-Book shows closing cash balance of Rs. 99,95,140/- as on 31.03.2016 and the same balance is carried to next year as opening cash balance on 01.04.2016. This cash balance of Rs. 99,95,140/- as on 01.04.2016 is being claimed by assessee as the source for making impugned deposits during demonetization period. However, on perusal of impugned order passed by CIT(A) (re-produced above), we find that the CIT(A) has rejected this opening cash balance on the premise that the assessee reported cash in hand of Rs. 24,42,059/- only in the Income-tax Return of AY 2016-17 filed to department. Based on this vital observation, the CIT(A) has treated the Cash-Book of assessee as non-genuine and ultimately upheld the addition made by AO. We, however, find that the CIT(A) has not confronted the assessee before adopting the above premise. Further, in Para 3.4 of Written-Submission (re-produced above), Ld. AR of assessee has contended that due to typographical error while filing the return of income, the closing balance of AY 2016-17 was punched at Rs. 24,42,059/- as against correct figure of Rs. 99,95,140/-. This contention of assessee/Ld.

AR needs to be looked into by lower-authorities. Therefore, in the present case, we think it appropriate to re-store this entire issue at the level of CIT(A) for adjudication afresh. We direct the CIT(A) to confront the assessee qua the entire issue of addition of Rs. 39,26,015/- including the premise taken by him i.e. the inconsistency in closing/opening cash balance as on 31.03.2016/01.04.2016 reflected by Cash-Book and the cash in hand reported in Income-tax Return of AY 2016-17 and consider assessee's submissions. Further, the CIT(A) shall also be at liberty to seek remand-report/comments from AO in this regard. The assessee shall also have liberty to make all submissions before CIT(A) for a proper disposition of issue. It is made clear that the CIT(A) shall pass a judicious order without being influenced by his previous order in any manner. Ordered accordingly.

Ground No. 2:

9. This ground relates to the addition of Rs. 6,39,120/- made by AO on account of rental income not offered by assessee for taxation.

10. The AO has made this addition in Para 5 of assessment-order. Precisely, the AO has observed that the assessee has not offered rental income of Rs. 6,39,120/- from her tenant named "ICON Education Society" though TDS deducted by tenant gets reflected in 26AS of assessee for which the assessee has claimed credit also.

11. During first-appeal, the CIT(A) has passed following order:

“Ground No.2

In this ground the appellant has contested that "That the learned AO erred in adding Rs.6,39,120/- by alleging that the rental income was not offered in ITR. That there was litigation between the parties and the documents were also produced before the AO. The AO however went on to make the addition by solely relying on Form No. 26AS. The addition so made being illegal and wrong, the same require to be deleted.

*With regard to the above, the assessment order, Form 26AS and ITR for the relevant AY is perused carefully and it is found that during the year the appellant has offered income from house property to the tune of Rs. 56,60,390/- as Gross Rent. However, on perusal of 26AS consolidated income received in that category is shown as Rs. 61,99,560/- and TDS were deducted on each. The appellant in this regard has stated that the amount of Rs. 6,39,120/- due as a rent has not been received from one of her renter ICON Education Society. The appellant has further stated that there was litigation between the appellant and the party mentioned and the documents were produced before the Assessing Officer. In this regard, it is noticed from the ITR that the appellant has opted mercantile basis as method of accounting. Therefore, if the income accrued irrespective of the receipt has to be shown in the ITR for the relevant year. Since, the TDS has been deducted and deposited on the amount Rs.6,39,120/-is reflected, it cannot be denied that the amount has not been received by the appellant. **Further, the appellant has not produced any evidence that shows the particular rent has not been realised. No evidence regarding lawsuit filed by the appellant against the said party is produced before this office.** In view of the above discussion, the contention of the appellant cannot be accepted and thus, ground no.2 is hereby dismissed.*

[Emphasis supplied]

12. Before us, Ld. AR submitted that there was a litigation going between assessee and her tenant "ICON Education Society" due to which the rent was not realized. He submitted that deduction of TDS was made by tenant to make the compliance of income-tax provisions but the fact is such that the tenant is not paying rent to assessee. He submitted that as per Explanation to section 23(1) of Income-tax Act, 1961, the amount of unrealized rent is not taxable if the conditions prescribed in Rule 4 of Income-tax Rules, 1962 are satisfied. Ld. AR submitted that the assessee

has filed documents of litigation prevailing between assessee and its tenant in the Paper-Book from which it can be discerned that the conditions of Rule 4 are satisfied and the lower-authorities were not correct in taxing the rent which was not realized by assessee.

13. Per contra, Ld. DR for revenue submitted that the documents showing litigation between assessee and tenant were not before lower-authorities. He submitted that the CIT(A) has categorically mentioned *“Further, the appellant has not produced any evidence that shows the particular rent has not been realized. No evidence regarding lawsuit filed by the appellant against the said party is produced before this office”*. Therefore, the assessee's claim of non-taxability of unrealized rent needs to be examined by lower-authorities.

14. We have considered rival submissions of both sides. After careful consideration, we find it more appropriate to remand this issue also to the file of CIT(A) for consideration afresh after considering the evidences of assessee for fulfillment of conditions prescribed in Rule 4 of Income-tax Rules, 1962 so as to give benefit of non-taxability of impugned rent, more particularly “unrealized rent”, as per Explanation to section 23(1). We direct the CIT(A) to decide this issue afresh after giving necessary opportunities to assessee and considering the submissions of assessee. Ordered accordingly.

15. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 26/03/2025

Sd/-

(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 26/03/2025

Patel/Sr. PS

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