

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 4399/Mum/2023
(Assessment Year: 2015-16)**

M/s Sanjay Seksaria, 31, Seventh Floor, Maheshwar Niketan, Deshmukh Marg, Peddar Road, Mumbai-400026. PAN: AAKPS6974P	Vs.	ITO-Ward-19(3)(1), Matru Mandir, Tardeo, Grand Road, Mumbai-400007.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Devendra Jain, Advocate

Revenue / Respondent by : Shri Rajesh Sakhardande, Sr. DR

Date of Hearing : 06.05.2025

Date of Pronouncement : 22.05.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre, (NFAC) Delhi [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 06.10.2023 for AY 2015-16. The assessee raised the following grounds of appeal:

“1. The Ld. Commissioner of Income-tax (Appeal), NFAC, erred in upholding/confirming the action of Ld. ITO in making addition of Rs.57,91,770/- on account of cash deposit as unexplained cash credit u/s. 68.

2. The Ld. Commissioner of Income-tax (Appeal), NFAC, erred in taking wrong amount of cash deposit in HDFC Bank Account.

3. The Ld. Commissioner of Income-tax (Appeal), NFAC, erred in relying upon some documents and judgment without affording an opportunity to the Appellant to rebut the same. Thus, the impugned order of the Ld. CIT(A) is in violation of natural justice.

4. The Ld. Commissioner of Income-tax (Appeal), NFAC, erred in not granting opportunity of being heard personally despite specific request. Thus, the impugned order of the Ld. CIT(A) is in violation of natural justice

5. The Ld. ITO has erred in levying interest u/s 234B of the Act.

6. The grounds of appeal raised are independent and without prejudice to each other.”

2. The assessee is an individual and filed the return of income for AY 2015-16 on 31.08.2015 declaring a total income of Rs. 1,86,070/-. The case was selected for scrutiny and statutory notices were duly served on the assessee. The Assessing Officer (AO) noticed that during the year under consideration the assessee has deposited cash to the tune of Rs. 57,91,770/- into the bank account during the year under consideration. The AO in this regard called on the assessee to furnish the necessary details. The assessee submitted the cashbook and bank statement before the AO. The assessee further submitted that the mother and brother-in-law of the assessee were not keeping well and therefore the assessee has been periodically withdrawing cash for their treatment purposes. The assessee also submitted that the cash deposit of Rs. 57,91,770/- were made out of the earlier cash withdrawals. Accordingly, the assessee submitted that the cash deposit cannot be treated as unexplained. The AO however did not accept the submissions of the assessee and made an addition of the entire cash deposit as unexplained. The relevant observations of the AO in this regard are extracted below:

“a. On perusal of the cash book, it is observed that the opening cash balance for the year under consideration is Rs. 46,38,383/-. Further, on perusal of the Balance Sheets for 3 preceding assessment years, it can be observed that the

closing cash balance has drastically increased, the details of which are as under:

Assessment Year	Closing Cash Balance (Amount in Rs.)
2012-13	45,188
2013-14	25,88,583
2014-15	46,38,383

However, the assessee has failed to explain the ailment or treatment of the brother in law, which would require the assessee to maintain such a huge cash balance with him.

b. Further, vide letter dated 28.09.2017, the assessee mentioned that he is enclosing the Wealth Tax Returns filed for A.Y. 2012-13, 2013-14 and 2014-15. However, the Wealth Tax Return for A.Y. 2012-13 was only enclosed, without the acknowledge copy of return filed. Since, for the subsequent years i.e. A.Y. 2013-14 and 2014-15, the closing cash balance of the assessee exceeds Rs. 50,000/-, it was liable to file Wealth Tax Return. However, the assessee has conveniently escaped and avoided fling the acknowledge copy of the Wealth Tax Return for A.Y. 2013-14 and 2014-15 to substantiate the closing cash balance for the respective assessment years in spite of mentioning in the submission.

c. During the course of assessment proceedings, the assessee submitted that the cash withdrawn for the medical expenses of his mother and brother-in-law was subsequently deposited during the year under consideration. However, the said argument is not acceptable, for the reason that no documentary evidences whatsoever have been submitted to prove that the brother-in-law was under-going any medical treatment. No other details are also provided, such as where does he stay, whether he is dependent on the assessee, what is his earnings, ailment or treatment details, etc. Even, the fact that he has now recovered or not, is not brought on record.

e. On further perusal of the same, it has been observed that the assessee has withdrawn small amounts on many occasions. If the assessee would have withdrawn cash for contingency of the medical treatment of his brother-in-law, the withdrawals would have been for larger amounts and on few occasions. Withdrawal of smaller amounts denotes that the assessee must have withdrawn the money for spending and the subsequent small amount was withdrawn, when the last withdrawn amount was spent. This is unlikely that a

normal person will withdraw Rs. 25,000 to Rs. 75,000 on numerous occasions to keep the same as cash in hand for medical treatment of brother in law.

f. In view of the aforesaid, it can be inferred that the assessee has merely cooked a story to cover up the undisclosed sources of cash and deposited in the bank account. The assessee is merely misguiding this office to evade taxes on the undisclosed income. Thus, I am of the considered view that cash deposited of Rs. 57,91,770/- is nothing but income received by the assessee from undisclosed sources and is hereby added u/s. 68 of the Act as unexplained cash credit. The said addition is sustainable u/s. 68 of the Act as the cash deposited is found credited in the cash book of the assessee. Penalty proceedings u/s. 271(1)(c) of the I.T. Act, 1961 are separately initiated for concealment of particulars of income.”

3. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) upheld the addition made by the AO by holding that the assessee has not discharged the onus of providing correct and genuine details of deposits into the bank account by providing relevant documents. The CIT(A) in his findings has also recorded that as per the AIR Information the cash deposited by the assessee is Rs. 77,91,770/-. The assessee is in appeal before the Tribunal against the order of the CIT(A).

4. The ld. AR submitted that the source for the cash deposited into the bank account is the previous withdrawals which are substantiated by the bank statement. The ld. AR drew our attention to the return of income filed for the AY 2013-14 and 2014-15 where the closing balance of cash in hand stood at Rs. 25,88,583/- and Rs. 46,38,384/- (page 13 and 38 of PB). The ld. AR also drew our attention to the cash-book (page 110 of PB) where the various cash deposits and the withdrawals in HDFC Bank are reflected. The ld. AR submitted that the entries in the cash-book are supported by the corresponding entries in HDFC Bank (page 113 to 177 of PB). Accordingly, the ld. AR submitted that when the source for deposit is explained as the previous withdrawals which are substantiated by the bank statements, the AO is not correct in treating the cash deposits as unexplained. The ld. AR further

submitted that the CIT(A) has given an incorrect finding that the assessee has deposited Rs. 77,91,770/- by incorrectly adding a transaction amount reflected in the AIR as cash deposited. Our attention in this regard is drawn to the findings of the CIT(A) in page 7 & 8 of CIT(A) order.

5. The ld. DR on the other hand vehemently supported the orders of the lower authorities. The ld. DR argued that the claim of the assessee that the cash withdrawals were for the purpose of medical treatment of the relatives is not supported by any documentary evidence and that the reason for holding such a huge amount of cash is not satisfactory.

6. We heard the parties and perused the material on record. The AO during the course of assessment noticed that the assessee has deposited a sum of Rs. 57,91,770/- into the bank account. The AO did not accept the claim of the assessee that the source for the deposits is from previous withdrawals and the AO also did not accept the reason for holding huge cash in hand. Accordingly the AO treated the cash deposit as unexplained and made addition towards the same. The CIT(A) upheld the addition made by the AO. On perusal of the findings of the CIT(A), we see merit in the submission that the CIT(A) has incorrectly considered as transaction amounting to Rs. 20,00,000/- as cash deposit. Further from the perusal of the return of income filed by the assessee for AY 2013-14 and 2014-15 we notice that the assessee has an opening cash balance of Rs. 46,38,384/- as on 01.04.2015 and the same is reflected in the cash-book submitted by the assessee before the lower authorities. With regard to the balance amount of cash deposit we notice from the perusal of the cash-book and the bank statement that the assessee has made various deposits and withdrawals of cash during the year which are reflected in both the cash-book as well as the bank statements of HDFC Bank. The reason as stated by

the AO for rejecting the previous withdrawals as a source is that the assessee has made small withdrawals but has made a huge deposit. The AO has further held that the assessee has not justified the reason for withdrawals i.e. medical treatment of the relative. We notice that the AO has not doubted the genuineness of the transactions in the Bank Account of the assessee from where the cash is withdrawn and re-deposited and that the AO has not brought anything on record to show that the cash withdrawn from the bank account has been utilized by the assessee for any other purpose such as making investment or for incurring personal/ other expenditure. Given that as may be, from the assessee's end the reason for the cash withdrawals and holding huge cash balance being the medical treatment of the relative is not properly substantiated. Further there is also merit in the argument of the Id DR that requirement to make payments to hospital in cash is no longer prevalent given the evolution of e-payments. We also notice from the perusal of the cash book that the same reflects only a cash withdrawal/cash deposit and do not reflect any other spending in cash by the assessee. In our considered view, though there are judicial precedences to say that the earlier withdrawals are proper source for subsequent deposit of cash, the onus is on the assessee to provide proper explanation and supporting evidences to justify holding of such substantial amount of cash. It is also the responsibility of the assessee to prove that the cash withdrawals are out of incomes which have been subject to tax, and in the given case the assessee has not discharged the said onus also. Considering the facts peculiar to the assessee's case, we hold that out of the total deposit of Rs. 57,91,770/- the opening cash balance as of 01.04.2015 to the tune Rs.46,38,384 which is supported by the disclosure in the return of income cannot be treated as unexplained for the year under consideration. We further hold that as far as the balance amount of addition is concerned the issue is remitted back to the AO for the limited purpose of verification of withdrawals and deposits made during year under

consideration afresh and decide in accordance with law. The assessee is directed to provide the necessary details to substantiate reasons for the cash withdrawals and holding of huge cash balance with proper evidences and cooperate with assessment proceedings. It is ordered accordingly.

7. In result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 22-05-2025.

Sd/-
(ANIKESH BANERJEE)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai