



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

ITA No. 298 /Rjt/2024
Assessment Year: (2017-18)

Raghuvirsinh Harishchandrasinh Zala, Halvad C/o. Zala Trading Co., 104 – Marketing Yard, Halvad - 363330	Vs.	ITO, wd – 4, Morbi AAyakar Vibhag, J. K. Chamber, National Hghway 8 – A, At – Lalpar, Morbi - 363642
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAAPZ9516G		
(Appellant)		(Respondent)

Appellant by : Shri Viral Vajani, Ld. A.R.
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR
Date of Hearing : 13/02/2025
Date of Pronouncement : 07/05/2025

आदेश / O R D E R

Per, D. M. SINHA, JM:

Captioned appeal filed by the assessee is directed against the order passed by the National Faceless Appeal Centre [(in short “NFAC/Ld. CIT(A)”] vide order dated 09.03.2024, which in turn assessment order passed by Income Tax Department / Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short “the Act”), vide order dated 24.12.2019.

2. Grounds of appeal raised by the assessee are as follows:

1. The Assessing Officer has erred on facts and in law in making addition of Rs. 10,00,000/- by treating cash deposited in bank account as unexplained investment u/s. 69



r.w.s. 115BBE of the Income Tax Act, 1961. The Commissioner of Income Tax (Appeals), NFAC, has erred on facts and in law in confirming the same.

3. Facts of the case that the assessee is an individual is running a proprietary concerns in the name of M/s. Zala Trading & engaged in trading business of grains. He also derived income by way of agricultural activities. The assessee an individual has e-filed his return of income for AY 2017-18 on 08.07.2017 declaring the income at Rs. 2,72,290/-. Besides the assessee has also shown agricultural income of Rs. 7,64,205/-. The return of income filed was processed u/s. 143(1) of the act without any modification. Thereafter, the case has been selected for complete scrutiny under CASS for examination of reason: “Large agricultural income shown in ITR and large cash deposit during demontisation.” Subject to the above remarks and considering the submission of the assessee, the total income of the assessee is computed as under:

Gross Total Income	Rs. 3,04,413/-
Less: Deduction under Chapter-VIA	Rs. 32,121/-
Total Income	Rs. 2,72,290/-
Addition:	Rs. 10,00,000/-
Unexplained investment u/s. 69 r.w.s. 115BBE of the Act.	
Assessed Income	Rs. 12,72,290/-

4. That the assessee filed an appeal against the order of the Ld. AO, vide order dated 24.12.2019 before the Ld. CIT(A), NFAC. The Ld. CIT(A) has dismissed the appeal with the following observation:

“However, cash deposits have not been explained by the logic of agricultural income as brought out by the AO in his order, accordingly, this plea cannot come to rescue of the appellant. The other plea of the assessee is that he made cash withdrawal of Rs.9,35,000/- form HDFC Bank A/C just 15 days before demonetization. This cash had just been deposited a few days ago and hence cannot explain the cash deposited during demonetization, it would need to be explained itself, having been deposited in the same period.



This alternate plea also cannot come to the rescue of the assessee since AO has taxed only Rs. 10,00,000/- out of total case deposits of Rs.20,00,000/- in bank account during demonetization. Accordingly, no infirmity is found in the order of the AO.”

5. That the assessee filed an appeal against the impugned order dated 09.03.2024 of the Ld. CIT(A) before This Tribunal.

6. During the course of hearing, the Learned Assessee Representative (hereinafter referred to as the “Ld. AR”) of the assessee submitted that the addition confirmed by the Ld. CIT(A) u/s. 69 of the Act, however, the assessee do have the opening cash balance and also the assessee has deposited the cash outcome making withdraw from the bank and money receipt from the Shree Ishanpur Seva Sahkari Mandali Ltd., so, that addition may kindly be deleted. The Ld. AR also relied on several judgement.

7. On the contrary, the Learned Senior Department Representative (hereinafter referred to as the “Ld. Sr. DR”) for the revenue submitted that the assessee have agricultural income only in this year, and further submitted that 50% that is Rs. 10,00,000/- has been taxed u/s. 69 r.w.s. 115BBE of the Act.

8. We have heard both the parties and perused the material available on record. We note that the assessee is individual, doing the business of trading of grains, the assessee’s has business income and agricultural income. We note that the assessee has deposited Rs. 20,00,000/- in the HDFC Bank on 22.11.2016. The money was deposited out of making withdrawal from bank on 24.10.2016 of Rs. 5,35,000/- and 25.10.2016 of Rs 4,00,000/-. The assessee also received amount of 2,50,000/- from the Shree Ishanpur Seva Sahkari Mandali Ltd., and out of the income earned during the year has been deposited. The assessee do have a opening cash balance of Rs. 21,95,076/-. The assessee submitted the Computation of Income and Balance-Sheet for assessment year 2016-17 which is placed on record (page no. 16



of the paper-book). That during the assessment proceedings the assessee has cash balance on 31.03.2016 for AY 2016-17. We further noted that no defect has been pointed out by the Assessing Officer during assessment proceeding about the books of account, No where the genuinity of the books of account and the withdrawal from the bank has been doubted by the ITO. The assessee relied on the judicial pronouncements, where it is categorically held that no addition can be made where the assessee has cash in hand. Details of the judgement are as under;

- Decision of ITAT Mumbai bench in case of Mr. Deven Jitendra Shah ΣTO (ΣTA No.4065/Mum/2018) where it was held that

"The cash deposit made by assessee of Rs. 20,66,010/- where assessing officer made addition to total income u/s 68 of Income tax Act, 1951. Assessee presented to bench that, deposit was made out of the opening balance of cash available on hand and additionally out of the money withdrawn from the bank itself. Bench noticed that assessing officer had not discovered any other utilization of the withdrawals made. Hence, Bench considered that reasons attributed by the assessing officer for not accepting these two sources of cash are purely based on surmises and conjecture. Bench considered it as adequate source for deposit in cash. Therefore, bench set aside the orders of the other authorities and deleted the additions made."

- Decision of ITAT Delhi bench in case of ITO vs. Mrs. Kanwal Aggarwal (ITA No.6210/Del/2013) where it was held that:

"The deposit in bank account was made by assessee of Rs.18,08,000/-, for which assessing officer made the addition to total income. The assessee submitted to the CIT(A) that, assessee had opening balance of cash on hand of Rs.17,46,113/ and had earned income for the year of Rs. 1,08,000/-. Assessee submitted that, the deposit was made out of the opening balance of cash on hand and the income earned during the year. CIT(A) considered that, keeping in view these two sources, the viability of cash on her hand cannot be doubted. In case assessing officer not being satisfied about the closing balance of cash of previous year, appropriate action may be taken to relevant previous year. Hence, the addition was deleted by the CIT(A). ITAT Bench supported the decision taken by CIT(A)."

- Decision of ITAT Delhi bench in case of Parmeet Singh Sood vs. DCIT (ITA No.4832/Del/2012) where it was held that:

"Assessee had deposited Rs.1,00,000/- during the year which was made as addition to total income by assessing officer. Source of the deposits submitted by assessee to be, the opening cash balance on hand of Rs. 76,500/- and the withdrawals of Rs. 60,000/- that was made by the assessee. CIT(A) in case, rest reted addition mate to to 78,500/ being submitted try assessee as



the opening cash balance on hand departed to hank Amount of withdrawals used for the deposits were allowed by the CIT(A) itself, stowever, for opening cash balance, the assessee had the income through salary and hence was not required to maintain any books of accounts. Assessing officer therefore, was not satisfied with the explanation as he observed no evidence regarding the opening cash balance. Bench considered that addition was restricted to amount of opening cash balance simply by disbelieving the existence of the cash balance, denial of opening balance in its entirety is not justified. Considering the same, appeal of the assessee was allowed."

Copies of all the above decisions are attached herewith.

- Without prejudice to the above, the appellant respectfully state as under: The assessing officer has made addition u/s.69 of the income tax act, 1961 of Rs.10,00,000/- being cash deposited in bank account during demonetization period.

Provisions of section 69 are as under:

"Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of accounts, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer (AO) satisfactory, the value of investments may be deemed to be the income of the assessee of such financial year."

- We respectfully state that the addition u/s.69 can be made only when the money is not recorded in the books of accounts maintained by the assessee. In the instant case entries for cash deposited and bank account both are properly recorded in books of accounts maintained by the appellant.
- In the similar case, Hon'ble Income Tax Appellate Tribunal Bangalore Bench, in the case of Smt. Teena Bethala, Bengaluru vs. Income Tax Officer, ward 4(3)(2) in ITA No. 1383 and 1384/Bang/2019 held that –

"onus is upon the AO to find the assessee to be the owner of any money, bullion, jewellery or valuable article and such money, bullion, jewellery or valuable article was not recorded in the books of account, if any, maintained by the assessee for any source of income. In these circumstances, the AO can resort to making an addition under section 5 69 of the Act only in respect of such monies / assets / articles or things which are not recorded in assessee's books of



account. In the case on hand, the cash deposits are recorded in the books of account and are reportedly made on the receipt from a creditor. Further, the PAN and address of the creditor as well as ledger account copies of the creditor in the assessee's books of account have also been filed before the AO. In these circumstances, it is evident that the AO has not made out a case calling for an addition under section 69 of the Act.”

9. We find that sources of cash deposit of Rs. 20,00,000/- in HDFC bank account has been explained by the assessee as cash withdrawals from the bank itself and opening balance of cash. It is not the case of the Assessing Officer that the amount shown as withdrawals from bank and opening balance are not sufficient to cover the deposits in bank. It is also not the case that the Assessing Officer has discovered some other utilization of cash withdrawals. The Assessing Officer has rejected the assessee's explanation only on the ground of the assessee due to non-declaration of agricultural income in earlier years from AY 2016-17 filed demonstration period shown cash of Rs. 21,95,076/-, agricultural income of Rs. 7,64,205/-, there is no ultimate deposited in precedent and succeeding period of confronting year. That the assessee has not given explanation for frequent withdrawal and deposits in the bank. The Assessing Officer not observed the withdrawals and by taking from Rs. 2,50,000 Shree Ishanpur Seva Sahkari Mandali Ltd. and file business receipts. We note that assessee is engaged in the business of grains. The above documents and evidences submitted by the assessee, before lower authorities. Opening balance in cash book cannot be treated genuine, because the assessee has not submitted previous year's cash books to ascertain the truth. No cash has been deposited by the assessee during previous years and subsequent years, in the same period. It can be believed that cash withdrawal from bank may be used by the assessee for his personal purpose. (Drawings)

However, we find little merit in the documents submitted by assessee. The other fact is that entries deposited in the bank account, should not be treated profit of the assessee. This only profit element should be taxed, and therefore, we are of the view, that to meet the end of justice, we direct the assessing officer to make



addition @ 20% of the cash deposit in the hands of the assessee. Thus, the appeal is partly allowed.

In the result, appeal filed by the assessee, is partly allowed.

Order is pronounced on 07/05/2025 in the open court.

**Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER**

**Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER**

Rajkot

(True Copy)

दिनांक/ Date: 07 /05/2025

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order
Assistant Registrar/Sr. PS/PS
ITAT, Rajkot