

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC-II', NEW DELHI**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 6694/Del/2014 : Asstt. Year : 2009-10**

Anil Kumar, Vill-Charora, Anoop Shahar, Buland Shahar, UP.	Vs	Income Tax Officer, Ward-1, Buland Shahar, UP.
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. BAAPK4175P</b>		

**Assessee by : Sh. Gautam Jain & Piyush Kr. Kamal, Advs.  
Revenue by : Sh. Amrit Lal, Sr. DR**

<b>Date of Hearing : 24.08.2016</b>	<b>Date of Pronouncement : 22.11.2016</b>
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**ORDER**

This is an appeal by the assessee against the order dated 19.09.2014 of Id. CIT(A), Meerut.

2. Following grounds have been raised in this appeal:

*“1. That the I'd CIT(A) has failed to appreciate the facts and circumstances governing the impugned matter and has instead gone on to sustain the addition of Rs 70,000/- made by the AO, merely on taking an unsupported overview of the entire matter. The said addition deserves to be deleted.*

*2. That the I'd CIT (A) has failed to appreciate the facts and circumstances governing the impugned matter and has instead gone on to sustain the addition of Rs 4,98,000/- made by the AO, merely on taking an*

*unsupported overview of the entire matter. The said addition deserves to be deleted.*

*3. That the Ld CIT (A) has failed to appreciate the facts and circumstances governing the impugned matter and has instead gone on to sustain the addition of Rs 1,00,000/- made by the AO, merely on taking an unsupported overview of the entire matter. The said addition deserves to be deleted.*

*4. That the Id CIT (A) has failed to appreciate the facts and circumstances governing the impugned matter and has instead gone on to sustain the addition of Rs 40,000/- made by the AO, merely on taking an unsupported overview of the entire matter. The said addition deserves to be deleted.*

*5. That the Id CIT (A) has failed to appreciate the facts and circumstances governing the impugned matter and has instead gone on to sustain the addition of Rs 1,00,000/- made by the AO, merely on taking an unsupported overview of the entire matter. The said addition deserves to be deleted.*

*6. That the Id CIT (A) has failed to appreciate the facts and circumstances governing the impugned matter and has instead gone on to sustain the addition of Rs 2,00,000/- made by the AO, merely on taking an unsupported overview of the entire matter. The said addition deserves to be deleted.*

*7. That the Id CIT (A) has failed to appreciate the facts and circumstances governing the impugned matter and has instead gone on to sustain the addition of Rs 4,00,000/- made by the AO, merely on taking an*

*unsupported overview of the entire matter. The said addition deserves to be deleted.”*

3. From the above grounds, it is gathered that the grievance of the assessee relates to the sustenance of addition of Rs.14,08,000/- (Rs.70,000/-, Rs.4,98,000/-, 1,00,000/-, Rs.40,000/-, Rs.1,00,000/- and Rs.4,00,000/-) made by the AO.

4. Facts of the case in brief are that the assessee filed the return of income on 29.03.2010 declaring an income of Rs.1,30,920/-. Later on, the case was selected for scrutiny. The AO during the course of assessment proceedings asked the assessee to explain the exact source of the cash deposited in SB A/c 04012010043650 maintained with Oriental Bank of Commerce , Charora Branch, Bulandshahar. The explanation of the assessee before the AO was that the deposits in the bank were on account of sale proceeds of agricultural produce i.e. Sugarcane and Wheat and amounts re-deposited from the withdrawals made on earlier dates. The explanation of the assessee was against the each deposits were as under:

<i>Date of deposit</i>	<i>Mode of deposits</i>	<i>Amount of deposit in Rupees.</i>	<i>Explanation/ Elucidation of assessee in respect of cash deposits.</i>
13.05.2008	Cash	70,000/-	Receipts from Sale of Sugar Cane
02.06.2008	Cash	30,000/-	Re-deposit withdrawals made on 24.05.2008
09.06.2008	Cash	4,98,000/-	Receipt from Sale of Sugar Cane
23.06.2008	Cash	1,00,000/-	Receipt from Sale of Wheat

19.08.2008	Cash	2,00,000/-	Re deposit withdrawal made on 28.07.2008.
17.09.2008	Cash	40,000/-	Re deposit withdrawal made on 15.07.2008.
17.10.2008	Cash	48,000/-	Re deposit withdrawal made on 23.09.2008 & 06.10.2008
01.11.2008	Cash	30,000/-	Re deposit of withdrawal made on 27.09.2008.
10.01.2009	Cash	50,000/-	Re deposit withdrawal made on 26.12.2008.
23.01.2009	Cash	1,00,000/-	Receipt from sale of Sugar Cane
30.01.2009	Cash	2,00,000/-	Receipt from sale of Sugar Cane.
09.02.2009	Cash	4,00,000/-	Cash deposited by Mr. Harendra Kumar for DD to Pawan Kumar Agarwal & Rekha Devi Agarwal R/o - Silliguri Rs.2,00,000/- each.
20.03.2009	Cash	2,00,000/-	Re-deposit withdrawal made on 09.03.2009.

5. The AO did not find merit in the submissions of the assessee by observing at page nos. 4 to 10 of the assessment order dated 03.10.2011, as under:

*“Cash Deposit of Rs.70,000/- On 13.05.2008:- In this respect assessee explained the source of deposit that it is "Sale of Sugar Cane". This contention of the assessee is wholly devoid of merit and liable to be rejected on several grounds as follows:-*

*i) Vide order sheet entry dated:02.08.2011 assessee was specifically asked to furnish the Name & complete address of the Institution / Person to whom Sugar Cane & Wheat were sold. Further on this very day assessee was asked to furnish the Quantity of Sugar Cane & Wheat & the rate @ on which Sugar Cane & Wheat were sold. But assessee neither could furnish the name & Complete address of the Persons/Institution whom Sugar Cane & Wheat were*

*sold nor he could furnish its rate per quintal & its quantity.*

*ii) Assessee could not furnish any credible evidence in respect of Sale proceeds of -. "Suger Cane." In other words, assessee could not substantiate this deposit with credible evidence.*

*iii) Above all, assessee has not disclosed or shown any agricultural income in his returns of income filed before the department on 29.03.2010 for the relevant assessment year of 2009-10.*

*iv) On going over frequency of transaction of the bank pass book of the same financial year it was found that all the sale proceeds from Suger Cane are received through cheques.*

*v) Explanation offered by the assessee in respect of cash deposits of Rs.70,000/- is not satisfactory.*

*vi) All the agricultural land of assessee & his family members are mortgaged before the Oriental Bank of Commerce, Charora, Anoopshahar, Bulandshahar. And the persons who are showing their lands are given to assessee on lease has alsomortgaged their land before the Oriental Bank of Commerce, Charora, Anoopshahar, BSR.*

*Hence contention / explanation of the assessee is not satisfactory. Since, assessee fail to explain the exact sources of above deposits of Rs.70,0007-, hence, addition of Rs.70,000/- is being hereby made to the total income of the assessee on account of Cash*

*deposit into the bank account of the assessee from undisclosed sources.*

*[Addition: Rs.70,000/-].*

*Cash Deposit of Rs.4,98,000/- on 09.06.2008:- In this respect assessee explained the source of deposit that it is "Sale of Suger Cane". This contention of the assessee is wholly devoid of merit and liable to be rejected on several grounds as follows:-*

*i) Vide order sheet entry dated:02.08.2011 assessee was specifically asked to furnish the Name & complete address of the Institution / Person to whom Suger Cane & Wheat were sold. Further on this very day assessee was asked to furnish the Quantity of Suger Cane & Wheat & the rate @ on which Suger Cane & Wheat were sold. But assessee neither could furnish the name & Complete address of the Persons/Institution whom Suger Cane & Wheat were sold nor he could furnish its rate per quintal & its quantity.*

*ii) Assessee could not furnish any credible evidence in respect of Sale proceeds of -"Suger Cane." In other words, assessee could not substantiate this deposit with credible evidence.*

*iii) Above all, assessee has not disclosed or shown any agricultural income in his returns of income filed before the department on 29.03.2010 for the relevant assessment year of 2009-10.*

*iv) On going over frequency of transaction of the bank pass book of the same financial year it was found that*

*all the sale proceeds from Suger Cane are received through cheques.*

*v) Explanation offered by the assessee in respect of cash deposits of Rs.4,98,000/- is not satisfactory.*

*vi) All the agricultural land of assessee & his family members are mortgaged before the Oriental Bank of Commerce, Charora, Anoopshahar, Bulandshahar. And the persons who are showing their lands are given to assessee on lease has also mortgaged their land before the Oriental Bank of Commerce, Charora, Anoopshahar, BSR.*

*Hence contention/explanation of the assessee is not satisfactory. Since, assessee fail to explain the exact sources of above deposits of Rs.4,98,000/-, hence, addition of Rs.4,98,000/- is being hereby made to the total income of the assessee on account of Cash deposit into the bank account of the assessee from undisclosed sources.*

*[Addition: Rs.4,98,000/-].*

*Cash Deposit of Rs.1,00,000/- on 23.06.2008:- In this respect assessee explained the source of deposit that it is "Sale of wheat". This contention of the assessee is wholly devoid of merit and liable to be rejected on several grounds as follows:- i) Vide ordersheet entry dated:02.08.2011 assessee was specifically asked to furnish the Name & complete address of the Institution/Person to whom Suger Cane & Wheat were sold. Further on this very day assessee was asked to furnish the Quantity of Suger Cane & Wheat & the rate @ on which Suger Cane & Wheat were sold. But assessee neither could furnish the name & Complete*

*address of the Persons/Institution whom Suger Cane & Wheat were sold nor he could furnish its rate per quintal & its quantity.*

*ii) Assessee could not furnish any credible evidence in respect of Sale proceeds of -"Wheat." In other words, assessee could not substantiate this deposit with credible evidence.*

*iii) Above all, assessee has not disclosed or shown any agricultural income in his returns of income filed before the department on 29.03.2010 for the relevant assessment year of 2009-10.*

*iv) Explanation offered by the assessee in respect of cash deposits of Rs.1,00,000/- is not satisfactory.*

*v) All the agricultural land of assessee & his family members are mortgaged before the Oriental Bank of Commerce, Charora, Anoopshahar, Bulandshahar. And the persons who are showing their lands are given to assessee on lease has also mortgaged their land before the Oriental Bank of Commerce, Charora, Anoopshahar, BSR.*

*Hence contention/explanation of the assessee is not satisfactory. Since, assessee fail to explain the exact sources of above deposits of Rs.1,00,000/-, hence, addition of Rs.1,00,000/- is being hereby made to the total income of the assessee on account of Cash deposit into the bank account of the assessee from undisclosed sources.*

*[Addition: Rs.1,00,000/-].*

**Cash Deposit of Rs.40,000/- on 17.09.2008:-** In this respect assessee explained the source of deposit that it is - Re deposit withdrawal made on 15.07.2008. Assessee's explanation in this regard is not satisfactory. Being on going over the frequency of transactions it was found that the assessee had deposited Rs.2,00,000/- on 19.08.2008. Hence if he had any surplus of cash the same would have been deposited on or before 19.08.2008. Further, in that, withdrawal made on 28.07.2008 was deposited on 19.08.2008, while this withdrawal was made on 15.07.2008 i.e. much before the 28.07.2008. Hence, contention of the assessee is devoid of merit and liable to be rejected. Since, assessee fail to explain the exact sources of above deposit of Rs.40,000/-, hence, addition of Rs.40,000/- is being hereby made to the total income of the assessee on account of Cash deposit into the bank account of the assessee from undisclosed sources.

[Addition: Rs.40,000/-].

**Cash deposit of Rs.1,00,000/- on 23.01.2009:-** In this respect assessee explained the source of deposit that it is "Receipt from Sale of Suger Cane". This contention of the assessee is wholly devoid of merit and liable to be rejected on several grounds as follows:-

i) Vide order sheet entry dated:02.08.2011 assessee was specifically asked to furnish the Name & complete address of the Institution/Person to whom Suger Cane & Wheat were sold. Further on this very day assessee was asked to furnish the Quantity of Suger Cane & Wheat & the rate @ on which Suger Cane & Wheat were sold. But assessee neither could

*furnish the name & Complete address of the Persons/Institution whom Suger Cane & Wheat were sold nor he could furnish its rate per quintal & its quantity.*

*ii) Assessee could not furnish any credible evidence in respect of Sale proceeds of -"Suger Cane." In other words, assessee could not substantiate this deposit with credible evidence.*

*iii) Above all, assessee has not disclosed or shown any agricultural income in his returns of income filed before the department on 29.03.2010 for the relevant assessment year of 2009-10.*

*iv) On going over frequency of transaction of the bank pass book of the same financial year it was found that all the sale proceeds from Suger Cane are received through cheques.*

*v) Explanation offered by the assessee in respect of cash deposits of Rs.1,00,000/- is not satisfactory.*

*vi) All the agricultural land of assessee & his family members are mortgaged before the Oriental Bank of Commerce, Charora, Anoopshahar, Bulandshahar. And the persons who are showing their lands are given to assessee on lease has also mortgaged their land before the Oriental Bank of Commerce, Charora, Anoopshahar, BSR.*

*Hence contention/explanation of the assessee is not satisfactory. Since, assessee fail to explain the exact sources of above deposits of Rs.1,00,000/-, hence, addition of Rs.1,00,000/- is being hereby made to the*

*total income of the assessee on account of Cash deposit into the bank account of the assessee from undisclosed sources.*

*[Addition: Rs.1,00,000/-].*

***Cash deposit of Rs.2,00,000/- on 30.01.2009:-*** *In this respect assessee explained the source of deposit that it is "Receipt from Sale of Suger Cane". This contention of the assessee is wholly devoid of merit and liable to be rejected on several grounds as follows:-*

*i) Vide order sheet entry dated:02.08.2011 assessee was specifically asked to furnish the Name & complete address of the Institution/Person to whom Suger Cane & Wheat were sold. Further on this very day assessee was asked to furnish the Quantity of Suger Cane & Wheat & the rate @ on which Suger Cane & Wheat were sold. But assessee neither could furnish the name & Complete address of the Persons/Institution whom Suger Cane & Wheat were sold nor he could furnish its rate per quintal & its quantity.*

***ii)*** *Assessee could not furnish any credible evidence in respect of Sale proceeds of -"Suger Cane." In other words, assessee could not substantiate this deposit with credible evidence.*

***iii)*** *Above all, assessee has not disclosed or shown any agricultural income in his returns of income filed before the department on 29.03.2010 for the relevant assessment year of 2009-10.*

*iv) On going over frequency of transaction of the bank pass book of the same financial year it was found that all the sale proceeds from Sugar Cane are received through cheques.*

*v) Explanation offered by the assessee in respect of cash deposits of Rs.2,00,000/- is not satisfactory.*

*vi) All the agricultural land of assessee & his family members are mortgaged before the Oriental Bank of Commerce, Charora, Anoopshahar, Bulandshahar. And the persons who are showing their lands are given to assessee on lease has also mortgaged their land before the Oriental Bank of Commerce, Charora, Anoopshahar, BSR.*

*Hence contention/explanation of the assessee is not satisfactory. Since, assessee fail to explain the exact sources of above deposits of Rs.2,00,000/-, hence, addition of Rs.2,00,000/- is being hereby made to the total income of the assessee on account of Cash deposit into the bank account of the assessee from undisclosed sources.*

*[Addition: Rs.2,00,000/-].*

***Cash deposit of Rs.4,00,000/- on 09.02.2009:-*** *In this respect assessee explained the source of cash deposit of Rs.4,00,000/- are "Cash Loan from Shri Harendra Kumar for DD to Pawan Kumar Agarwal & Rekha Devi Agarwal, R/o - Silliguri, Rs.2,00,000/- each." To examine the veracity of this cash loan vide Order Sheet entry dated: 02.08.2011, 17.08.2011 and 12.09.2011, assessee was specifically asked to produce Mr. Harender Kumar, so that this cash loan could be examined properly. But assessee failed to produce Mr. Harender Kumar. None the less, on 19.09.2011 a summon U/s-131 was issued fixing the date therein for 29.09.2011, for personal presence of Mr. Harendra Kumar on the given address by*

*the assessee. But on the fixed date of 29.09.2011 nobody attended the case. Hence, here assessee failed to proved the identity of cash loan creditor & also failed to prove his creditworthiness of loan creditor.*

*In this connection further discreet enquiry was made, in the wake of enquiry it was found that some associates of the assessee has purchased the property from Mr.Pawan Kumar Agarwal & Rekha Devi Agarwal of Silliguri. And assessee provided accounted money through routing/depositing his un-accounted money and by making draft. In view of this fact, it is also deciphered that the assessee is also using his bank account for providing accommodation / fake entries.*

*In view of these foregoing facts of the case explanation offered by the assessee in respect of Cash deposits of Rs.4,00,000/- on 09.02.2009 is not satisfactory. Since, assessee fail to explain the exact sources of aforesaid cash deposits of Rs.4,00,000/-, hence, addition of Rs.4,00,000/- is being hereby made to the total income of the assessee on account of Cash deposit into the bank account of the assessee from undisclosed sources.”*

*[Addition: Rs.4,00,000/-].*

Accordingly, the addition of the impugned amount was made.

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the assessee had sizable agricultural holdings on which he had been doing agricultural operations and growing sugarcane and wheat. It was further submitted that on a reasonable estimate he and his family was having a minimum income to the tune of Rs.12,09,000/- annually.

Therefore, a fair amount of cash was available with him which he had deposited periodically.

7. The ld. CIT(A) however, did not find merit in the submissions of the assessee and sustained the addition by observing in paras 5.4 & 5.5 of the impugned order which read as under:

*“5.4 I have carefully considered the written arguments of the AR as well as the assessment order. First of all out of 13 instances of cash deposits, the AO has made addition on account of only 7 instances. The rest he has treated as explained. Thus, the AO has not blindly and mechanically considered all cash deposits as unexplained. The appellant had not shown any agricultural income for the relevant assessment year. This point has not been answered properly by the AR. He has merely stated that as the agricultural income does not invite taxation, the appellant did not prefer to show any agricultural income. The AO has also made an observation that the sale proceeds from sugar cane are received through cheques. On this point the AR has not made any comment.*

*5.5 On the basis of above facts, I have come to a conclusion that the AO has rightly made these additions. The addition of Rs. 14,08,000/- made on account of unexplained cash deposits is sustained. The grounds of appeal Nos. 4 to 10 are accordingly dismissed.”*

8. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee resides in a joint family and owns a total of 72 Bighas at Village- Charora, Tehsil Anoopshahar, District- Bulandshahar and had taken 85 Bighas on batai (lease) from various persons and cultivated total land measuring 157 Bighas but neither the AO nor the Id. CIT(A) considered the facts of the present case in right perspective and even if the assessee's income is estimated @ Rs.9,000/- per Bigha, the total agricultural income was at Rs.14,13,000/- and after adjusting the payment of land lease amounting to Rs.2,04,000/-, the assessee was having a minimum agricultural income of Rs.12,09,000/- per annum which was more than sufficient to explain the deposits in the bank. It was also stated that few of the deposits were out of the earlier withdrawals but this fact has not been considered by the AO and the Id. CIT(A). Therefore, the addition made by the AO and sustained by the Id. CIT(A) was not justified.

9. In his rival submissions the Id. DR strongly supported the impugned order passed by the Id. CIT(A) and reiterated the observation made by the AO and the Id. CIT(A) in their respective orders.

10. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the AO while making the impugned additions has not considered the explanation of the assessee in right perspective, even he has not considered the earlier withdrawals which were re-deposited by the assessee and had also not given due weightage to the agricultural income earned by the assessee. I, therefore, by considering the totality of the facts deem it appropriate to set aside this issue back to the file of the AO to be re-adjudicated in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

11. In the result, appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 22/11/2016)

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 22/11/2016**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**