

**IN THE INCOME TAX APPELLATE TRIBUNAL
(AGRA BENCH 'DB' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.138/AGR/2019
(ASSESSMENT YEAR : 2009-10)**

Shri Dharmesh Singh Sikarwar,
Gandhi Colony,
Morena (Madhya Pradesh).

vs. ITO, Ward 1,
Morena.

(PAN : DGXPS0724K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Shailendra Srivastava, Sr. DR

Date of Hearing : 10.10.2023

Date of Order : 13.10.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id. CIT (Appeals), Gwalior dated 08.02.2019 pertaining to assessment year 2009-10.

2. Grounds of appeal taken by the assessee read as under :-

“1. On the facts and in the circumstances of the case, the Id. CIT (A) erred in law and on facts in upholding the validity of proceedings u/s 147. CIT's decision on their point may kindly be negated and reversed.

2. Without prejudice to ground no.1 above the Id. CIT (A) was not justified on facts and law in confirming of Rs.16,70,320/- made u/s 69A as unexplained money. The above addition may kindly be deleted.”

3. Brief facts of the case are that in this case, assessee had not filed his return of income for the year under consideration. Further on verification of data available in ITD system, it was found that assessee had deposited cash of Rs.19,90,120/- during F.Y. 2008-09 (relevant A.Y. 2009-10) in his savings bank account maintained with SBI, Morena. Therefore, case was reopened by issue of notice u/s 148 of the Income-tax Act, 1961 (for short 'the Act') after recording the "reasons to believe" and taking prior approval u/s 151 (1) for issuing notice u/s 148 from Pr. Commissioner of Income Tax, Gwalior on 29.3.2016. Notice u/s 148 of the Act was issued on 30.3.2016 by Speed Post which returned undelivered on 4.4.2016 with remarks "insufficient Address". Notice u/s 148 dated 30.3.2016 served on 22.8.2016 by Inspector of Assessing Officer to the assessee. During the assessment proceedings, questionnaire and notice u/s 142(1) were issued from time to time and sent through speed post but almost every notice returned undelivered with remark "Insufficient Address" Thereafter, notices were served through Inspector of the AO. On perusal of records, it was noticed by the AO that assessee had deposited cash amount of Rs.19,90,120/- in F.Y. 2008-09 in his saving bank account No.30099373576 in State Bank of India, Morena. The assessee had filed his return of income for A.Y. 2009-10 belatedly on 17.5.2017 in compliance to notice u/s 148 of the Act dated

30.3.2016 declaring total income of Rs.1,49,240/- u/s 44AD. Notices u/s 143(2)/142(1) of the Act 1961 were issued on 7.11.2017 and served to the assessee on same date. The assessee had submitted his reply on 14.11.2017 in compliance to the above notice. Thereafter the assessee has submitted his reply dated 6.12.2017 alongwith other documents. Reply of the assessee had been duly considered by AO however, not found acceptable due to the following reasons as mentioned in para 5 of assessment order:-

- (i) The assessee has filed return of income u/s 44AD of Rs.1,33,610/- on the total of Rs.16,70,120/ But no bills vouchers and other document related to business are submitted
- (ii) The assessee has submitted that source of the cash deposited in saving bank account is his agriculture income. But no land ownership record is available.
- (iii) Assessee has nor submitted dildoo of agriculture crops, details of expenses incurred for agriculture income etc.
- (iv) The assessee has submitted details of every entry of cash deposit with explanation. Considering his reply, only deposit of Rs.3,20,000/- on 24.10.2008 appeared to be genuine.
- (v) On perusal of computation and other facts it appears that assessee was not in a position to explain Rs.16,70,120/- (19,90,120-320,000) for which he has submitted a return u/s 44AD to mislead department.

In view of the above facts, AO noted that the assessee had failed to explain the source of cash deposit in his savings bank account except transaction of Rs.3,20,000/-. Therefore, AO added Rs.16,70,120/-

(19,90,120-3,20,000) to the total income of the assessee u/s 69A of the Act as unexplained money and passed the assessment order u/s 143(3) of the Act on 22.12.2017.

4. Against this order, assessee appealed before the Id. CIT (A). As regards assessee's challenge to validity of reopening, Id. CIT(A) considered the issue and held as under :-

“ I have given my thoughtful consideration to the facts of this case and various contentions advanced by the assessee. This is an undisputed fact that assessee did not file his return of income for A.Y. 2009-10. Moreover, the Id. AO has AIR information available with him in ITD system that assessee deposited cash amounting to Rs.19,90,120/- during FY 2008-09 in his Saving Bank A/c. Thus, prima facie, Id AO has sufficient as well as cogent material to form his belief about escapement of income especially when assessee failed to submit his return of income. On the basis of information about cash deposit of Rs.19,90,120/- Id AO formed his "reason to believe" and recorded the reasons and thereafter, after seeking approval of competent authority, notice u/s 148 of the Act was issued. Thus, this is very much evident that Id AO was having sufficient, cogent, reliable and relevant material to re-open the case by issue of notice u/s 148 of the Act. The allegation of appellant that without prejudice to ground No.1 above, the AO was not justified in law and on facts in treating the amount of Rs.16,70,120/ as unexplained cash deposit in the bank and adding it to the total income. Hon'ble Apex Court in the case of Raymond Woolen Mills Ltd. V/S TO 236 ITR 34 (SC) has held that in determining whether commencement of re-opening-proceedings are valid it has only to be seen whether there was prima facie some material on the basis of which department could re-open the case. Further, in a very recent decision, Hon'ble ITAT, Indore in the case of Smt. Sharmila Devi Dungarwal V/s ITO (2018) 33 ITJ 277 (Trib. Indore) has upheld the reassessment notice issued on the basis of AIR information regarding cash deposit in Saving Bank A/c. In this case, Id AO received AIR information about cash deposit in

Saving Bank A/c based on which case was reopened by issue of notice u/s 148 of the Act. Hon'ble ITAT has held that this AIR information supported by material was sufficient enough for the AO to issue notice u/s 148 of the Act and hon'ble ITAT upheld the action of re-opening by saying that no infirmity in the decision of CIT(A) in confirming the action of AO. Thus, present case is squarely covered by the decision of Hon'ble ITAT. Indore in the case of Smt. Sharmila Devi Dungarwal and hence ground #2 is held to be unsustainable. In view of the above discussion inter alia ratio laid down by Hon'ble Apex court in Raymond Woolen Mills Ltd Case & by ITAT in the case of Smt. Sharmila Devi Dungarwal, I hold that Id AO was having sufficient & cogent material to form his "reason to believe" about escapement of income so as to reopen the case and therefore, issue of notice u/s 148 of the Act for re-opening the assessment was valid and legal, hence sustained. In the result, ground#2 of appeal is dismissed.

5. As regards merits of the case which involves cash deposited in the bank account amounting to Rs.16,70,320/-, Id. CIT (A) noted assessee's submissions that the family owned 240 bighas of land. Furthermore, assessee claimed that withdrawals made from bank account were also recycled and amount was redeposited in same bank account. However, Id. CIT (A) was not convinced and held as under :-

“6.4 I have given my thoughtful consideration to the submission filed by the appellant inter alia facts of this case. At the outset, it is an admitted fact that the assessee neither filed return of income for A.Y. 2009-10 nor could explain the source of cash deposits or utilization of withdrawals made from Bank A/c. Neither any purchase or sales bills/invoices were produced before AO or undersigned to prove that any business activity was carried out by the appellant. As far as factum of business activity is concerned, the assessee has failed to furnish any evidence viz. license for business, address of Shop purchase/sale bills of goods to prove the business activity. Simply by claiming that he was engaged in business activity of

grain trading. claim cannot be accepted. Similarly, assessee has failed to prove his agricultural income. It might be true that assessee belongs to a family of agriculturist who owns sufficient land holding but claim of agricultural income must be supported by corroborative evidences like sale of crop, expenses incurred on agricultural activity etc. Assessee has obviously not furnished any cogent evidence of this nature. Hence, in absence of any evidence whatsoever, claim of agricultural income cannot be accepted simply on the basis of 'Rin Pustika or a certificate from village Sarpanch. Assessee has admittedly did not provide sufficient details/evidence about credits and withdrawals made from said bank account making him disentitled for availing benefit of 'peak credit'. Hon'ble Allahabad High Court in the case of Bhaiyalal Shyam Behari Vs CIT (2005)276 ITR 38 (A11) has held that in order to adjudicate upon the plea of peak credit the factual foundation has to be laid by the assessee. He has to own all cash credit entries in the books of accounts and only thereafter can the question of 'peak credit' be raised. The assessee claimed cash credits as genuine all along it was held that the assessee was not entitled to claim the benefit of "peak credits". Following this ratio, I am of considered view that assessee does not deserve any benefit of "Peak credit". So I am of considered opinion that assessee is not entitled for any benefit for recycling & rotation of funds. It is trite law that onus to prove the cash deposited in Bank Account is on the assessee. I have no hesitation to say that appellant has utterly failed to discharge his onus and failed to furnish any cogent evidence neither before A.O nor before me to satisfactorily explain the source of cash deposited to the tune of Rs.16,70,120/-. It would not be out of place to refer to the decision of Apex Court rendered in the case of CIT Vs Chinnathamban (SC) 292 ITR 682 that cash deposits in Bank A/c should be explained by the assessee, otherwise, it is unexplained income u/s 69 or 69B of the Act. In view of above discussion, I have no hesitation to hold that since assessee failed to discharge his onus to prove nature and source of cash found deposited in Bank Account, same need to be taxed as unexplained. So, I find no infirmity in the decision of Ld AO in making addition of Rs. 16,70, 120/- as unexplained money. Hence, ground #2 stand dismissed.”

6. Against this order, assessee is in appeal before us. None appeared on behalf of the assessee for a long time. We have heard the ld. DR for the Revenue and perused the records.

7. We find that ld. CIT (A) has passed a reasonable order which does not need any interference on our part. Ld. CIT (A) has clearly noted that there is no evidence that assessee does any business. Further, ld. CIT (A) has found that there is no evidence/proof of agricultural income. In these circumstances, the source of cash remains unsubstantiated. Hence, we uphold the order of ld. CIT (A).

8. In the result, the appeal of the assessee stands dismissed.

Order pronounced in the open court on this 13th day of October, 2023.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 13th day of October, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Gwalior
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**