

आयकर अपीलिय अधीकरण, न्यायपीठ –“B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Shri P. M .Jagtap, Vice-President (KZ) and Shri A. T. Varkey, JM]

I.T.A. No.86/Kol/2020
Assessment Year: 2013-14

Wilson Gidla (PAN:ADYPG4618F)	Vs.	DCIT, Circle-63, Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	05.10.2021
Date of Pronouncement	13.10.2021
For the Appellant	Shri P.K. Himmatsingha, AR
For the Respondent	Smt. Ranu Biswas, Addl. CIT

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT-19, Kolkata dated 21.11.2019 for A.Y 2013-14.

2. At the outset, the Ld. AR of the assessee, Shri P.K. Himmatsingha, drew our attention to the fact that though the assessee had raised twenty grounds of appeal in the original Form no.36, the assessee has filed concise grounds of appeal vide letter dated 06.09.2021 where the assessee has raised four grounds of appeal which reads as under:

“1) That under the facts & circumstances of the case, Ld CIT(A) erred in confirming the addition of Rs.79,00,101 made by AO without considering the cash withdrawal made earlier from bank account, which were re-deposited into the bank account, the addition so made is bad in law.

2) That the Ld CIT(A) erred in confirming the addition of Rs. 79,00,101 made by the AO rejecting the cash flow statements which categorically reflects a direct link

between withdrawal of cash from bank and re-deposit of the same into the bank account of the appellant and thereby explains the source of the amount deposited into bank.

3) That under the facts & circumstances of the case Ld CIT(A) was wrong in confirming the whimsical addition of Rs. 79,00,101 made by the A.O as an income from undisclosed sources, based on suspicion, surmises & Conjecture and ignoring the glaring and explicit evidence specifically the source of captioned deposit explained through the evidence produced during the course of hearing. Therefore, such addition is liable to be struck down.

4) That the Ld. CIT(A) ignored the fact that the A.O had nothing on record and he could not produce any evidence as such to show that the amount withdrawn from the bank has been used elsewhere instead of depositing the same into bank.

5) That the appellant craves to add or amend any grounds of appeal on or before the date of hearing.”

3. From the perusal of the aforesaid grounds of appeal preferred by the assessee, it is noted that the assessee is aggrieved by the action of the Ld. CIT(A) in confirming the addition of Rs.79,00,101/- made by the AO without taking into consideration neither the fact that the assessee had withdrawn cash at regular interval and deposited the same back in his bank accounts of the same amount; nor without finding any fault with the cash flow statement filed by the assessee from which the assessee has been able to demonstrate direct link of withdrawal of cash and re-deposit of the same into one of the five (5) bank accounts of the assessee.

4. Brief facts of the case as noted by the AO is that the assessee had filed return of income on 04.07.2014 disclosing total income of Rs.16,72,840/-. The AO noted that the return was processed u/s 143(1) of the Income Tax Act (hereinafter the ‘Act’). Later the case was selected for scrutiny and the AO had issued statutory notices regarding scrutiny assessment. According to the AO, the assessee was employed as Principal of Douglas Memorial Higher Secondary School and earned salary from it and earned income from house property and interest income as well. The AO noted that the assessee’s case was selected for scrutiny under CASS and reason for selection was mentioned as “*large cash deposits in savings bank account*”. The AO noted that

on examination of bank account no.911010039299503 with Axis Bank at Salt Lake reveals that cash aggregating to the tune of Rs.89,00,101/- was deposited by the assessee during the year under consideration. According to the A.O, the first of such deposit of Rs.5,00,101/- was made on 04.05.2012 and the last being Rs.2,00,000/- made on 17.11.2012. Details of cash deposits in the account were given at Page 2 which is as under:

<i>Date</i>	<i>Amount</i>
04/05/2012	5,00,101/-
14/05/2012	9,00,000/-
15/05/2012	9,00,000/-
16/05/2015	9,00,000/-
17/05/2012	9,00,000/-
12/07/2012	9,00,000/-
13/07/2012	8,00,000/-
14/07/2012	3,00,000/-
25/08/2012	9,00,000/-
27/08/2012	1,00,000/-
15/11/2012	9,00,000/-
16/11/2012	7,00,000/-
17/11/2012	2,00,000/-
<i>Total</i>	<i>89,00,101/-</i>

5. According to the AO, this chart would reveal that the assessee had deposited Rs.89 lakhs within a period of seven months from May 2012 to November 2012 and even though during the assessment proceedings the assessee was repeatedly asked to explain the source of such cash in his hands to deposit in account with credible evidence, the assessee replied that he was principal of school which was running on a cantonment land and since the Ministry of Defense has asked them to vacate that premises, he being a principal taking into consideration the difficulties that would be

faced by the students, started a small school for which he was looking for land. According to him, since the lands in the municipal area would be costly, he was looking for lands in the village/agricultural lands and for that he had approached the services of few brokers who had assisted him in locating few lands for sale. According to the assessee, he had withdrawn cash for the purpose of giving advance to the landlords for the agricultural lands. And since the proposed sale/purchase of land did not materialize, he had re-deposited the withdrawn cash back in his either of the five (5) bank accounts which has been duly shown to the Department. Before the AO/CIT(A), the assessee had filed cash flow statement to buttress his explanation/contention, which has not been rebutted by either of them but they ignored it. According to assessee, the amounts deposited in the bank accounts are withdrawn in anticipation of giving advance and later re-deposited when the purchase of land deal fails. Further, according to the assessee, he returned an income of Rs.67 lakhs in the previous assessment year i.e. in A.Y 2012-13. Therefore, according to the assessee, he had enough money in his hand, sufficient for withdrawal and re-deposit in his bank account. The assessee had filed the cash flow statement which the AO had reproduced from page no.3 to 6 of his order. However, according to the assessee without pointing out any mistake in the cash flow statement which clearly shows that the assessee had disclosed sums/money in his bank account which is the opening balance from the earlier year and which has been withdrawn and re-deposited back into his accounts, the AO has erroneously made the addition. Thus according to the assessee, the assessee was able to reconcile amounts withdrawn and re-deposited before the AO. However the AO has not accepted the assessee's cash flow statement which linked with the withdrawal and deposits and only accepted Rs.10 lakhs as genuine and made an addition of Rs.79,00,101/-.

6. Aggrieved by the aforesaid action of the AO, the assessee preferred an appeal before the Ld. CIT(A) who has confirmed the action of the AO by holding that the assessee had failed to submit any documentary evidence to support the contention of the assessee i.e withdrawn the money for the purpose of giving advance to the landlords and since the land deal could not materialize, the amount had been re-deposited back into his bank accounts. Therefore, he confirmed the addition. Aggrieved by the aforesaid action of the Ld. CIT(A), the assessee is before us.

7. We have heard both the parties and perused the records. We note that the assessee is a principal of a higher secondary school which was functioning on a cantonment land. Since the Ministry of Defense has asked the school to vacate the premises, the assessee being the principal of the school taking into consideration the future of students started a small school for which he was looking for agricultural land to construct the school. According to the assessee, in the previous year (AY 2012-13) the assessee has been assessed at Rs 61,76,145/- by the AO which fact is emanating from page no.22 of the paper-book (assessment u/s 147/143(3) of the Act *albeit* by later order dated 21.12.2016) wherein the total income as per computation made by the assessee to the tune of Rs.61,76,145/- has been accepted. In this AY 2013-14, the assessee had filed return of income showing Rs.16,72,840/-. The AO has noted that the assessee had earned income from salary, house property and interest income. It is noted that the assessee's case was selected for scrutiny under CASS for the reason that there was "*large cash deposits in savings bank account*". The AO noted that the assessee had bank account no.911010039299503 with Axis Bank wherein he had deposited an amount of Rs.89,00,101/- during the assessment year (from 04.05.2012 to 17.11.2012) when asked by the AO to explain the source of such cash deposits, the assessee stated that the aforesaid reason for withdrawal of cash for the purpose/intention to give advance for purchase of agricultural land. According to the assessee, the cash deposits were in fact the amount which was withdrawn from one of

his five (5) bank accounts and later on re-deposited into his bank account. The assessee had submitted the cash flow statement which has been reproduced by the AO in his assessment order. The Ld. AR drew our attention to page no.11 of the paper-book wherein the cash flow account has been placed on record. The cash flow account is reproduced as under:

ASST YEAR: 2013-14

F.Y.: 31.3.13

DATE	PARTICULARS	AMOUNT	DATE	PARTICULARS	AMOUNT
1.4.12	To, Opening Bal, C/D	552653.50	2.5.12	By Aix Bank	43.00
4.4.12	To, Axis	900000.00	4.5.12	-DO-	500101.00
10.4.12	-DO-	900000.00	14.5.12	-DO-	900000.00
11.4.12	-DO-	900000.00	15.5.12	Drawings	900000.00
15.4.12	To Suseela Gidla	200000.00		-DO-	900000.00
15.4.12	To Axis Bank	100.00		Drawings	900000.00
17.4.12	-DO-	800000.00	16.5.12	-DO-	900000.00
20.4.12	-DO-	900000.00	17.5.12	-DO-	900000.00
27.4.12	-DO-	400101.00	12.7.12		
30.4.12	-DO-	0.65	13.7.12	-DO-	900000.00
1.5.12	To Doglus Memorial	800000.00	14.7.12	-DO-	800000.00
10.7.12	To Axis Bank	750000.00	25.8.12	-DO-	300000.00
11.7.12	-DO-	750000.00	27.8.12	-DO-	900000.00
2.8.12	-DO-	750000.00	15.11.12	-DO-	100000.00
3.8.12	-DO-	7 0000.00	16.11.12	-DO-	900000.00
17.8.12	-DO-	50000.00	17.11.12	-DO-	700000.00
9.10.12	-DO-	500000.00	17.11.12	-DO-	200000.00
18.10.12	-DO-	900000.00		By SuseelaGidla	200000.00
19.10.12	-DO-	900000.00		By Doglus Memorial	800000.00
20.10.12	-DO-	900000.00		By, Drawings	120000.00
23.11.12	-DO-	900000.00			
27.11.12	-DO-	700000.00			
29.11.12	-DO-	689000.00			
5.12.12	-DO-	150000.00			
6.12.12	-DO-	1000000.00			
24.12.12	-DO-	2000000.00			
25.2.13	-DO-	1000000.00			
1.3.13	-DO-	2000000.00			
6.3.13	-DO-	975000.00			
	To, Rent received	20174.00	3.3.13	By, Ba. B/D	10216885.15
		22037029.15			22037029.15

8. The Ld. AR has drawn our attention to the each of the withdrawal from three bank accounts, statements of which is placed from page no.2 to 10. We note that the assessee had the following disclosed bank accounts:

- a) Axis Bank, Barrackpore Br, S/B-910010036526250
- b) Axis Bank, Barrackpur, S/B-4360101002351550
- c) Axis Bank, Sector- Branch, S/B-911010039299503
- d) State Bank of India, Titagarh Br., S/B-10156723982
- e) Axis Bank, Sector-V Branch, S/B-912010023970893

The Ld. AR has drawn our attention to each withdrawal and deposit of amount in the bank accounts of the assessee and has linked withdrawal with the deposits made by the assessee. Thus we note that the assessee has been able to discharge the onus to prove the source of cash deposits to the tune of Rs.79,00,101/- from the cash flow statement supra.

9. We note that, the withdrawal of cash has been accepted by the AO. In such scenario, unless the AO is able to show that the assessee has been able to utilize this withdrawn cash for some investment/undisclosed expenses of the same/like amount, we infer that the assessee has been able to show that money re-deposited in the bank account of the withdrawn/like amount, so the assessee's contention need to be accepted without any rebutted material to suggest otherwise. The Ld. DR could not rebut/controvert the cash flow statement *vis-à-vis* the bank statements filed from page no.2 to 10 of the paper-book and it is noted that the assessee had returned more than Rs.61 lakhs income for AY 2012-13 *albeit* in the re-opened assessment and moreover, we note from page 7 of paper-book wherein the statement of Axis bank account no.911010039299503 from period 01.04.2012 – 31.03.2013, we note that the assessee had Rs.49,47,467/- as opening balance and in another account of assessee in Axis bank account no.4360101002351550 during the same period placed at page 4 & 5 of paper-book, the assessee had opening balance of Rs.1,13,18,729/-, therefore, the

assessee had enough money in his bank as disclosed, therefore, no addition u/s 68 of the Act was warranted in this case and therefore, the assessee succeeds and since the assessee has been able to explain the nature and source of the deposits in the bank account which has been found adversely by the Department. Therefore, we direct the AO to delete the addition of Rs.79,00,101/-.

10. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 13th October 2021.

Sd/-
(P. M. Jagtap)
Vice-President

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 13.10.2021
RS

Copy of the order forwarded to:

1. Appellant- Wilson Gidla, 52, Barrack Road, Barrackpor, Kolkata – 700120.
2. Respondent – DCIT, Circle-63, Kolkata
3. The CIT(A)- , Kolkata
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata