

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 173/Ind/2022**  
**Assessment Year: 2009-10**

Shri Hemant Pandya, 139, Prabhu Nagar, Indore	<b><u>बनम/</u></b> Vs.	ITO-3(2), Bhopal
(Appellant / Assessee)		(Respondent / Revenue)
<b>PAN: AJGPP 7486 G</b>		
Assessee by	Shri V.N. Dubey, Shri Ibrahim Kannodwala, Adv. & AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	02.03.2023	
Date of Pronouncement	22.05.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 07.04.2022 passed by learned Commissioner of Income-Tax-National Faceless Appeal Centre, Delhi [“Ld. CIT(A)”], which in turn arises out of assessment-order dated 15.12.2016 passed by learned ITO, Ward-3(2), Bhopal [“Ld. AO”] u/s 147 read with section 143(3) of Income-tax Act, 1961 [“the Act”] for Assessment-Year [“AY”] 2009-10, the assessee has filed the grounds as mentioned in Appeal Memo (Form No. 36).

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Brief facts leading to present appeal are such that assessee-individual filed his return of income of relevant AY 2009-10 on 31.03.2010 declaring a total income of Rs. 1,49,900/- earned from salary, profession and other sources. Thereafter, the revenue took action u/s 147 for assessment of cash deposits having been made by assessee in bank a/c during the previous year 2008-09 relevant to AY 2009-10. The notice u/s 148 followed by notices u/s 143(2) and 142(1) were issued, in response to which the assessee made submissions from time to time. During assessment-proceeding, Ld. AO found that the assessee has made cash deposits of Rs. 14,76,000/- in SB A/c with Bank of Baroda, AB Road, Indore. When the AO asked the assessee to explain the source of deposits, the assessee submitted following sources vide written-reply dated 05.12.2016 (copy filed at Page No. 24 to 27 of the Paper-Book), namely (i) cash-gift of Rs. 7,65,000/- received from Shri Mithilesh Kumar Pandya (father); (ii) cash-gift of Rs. 1,50,000/- received from Smt. Rajni Pandya (mother); (iii) cash-gift of Rs. 1,00,000/- received from Late Smt. Indu Pandya (grandmother); and (iv) cash-withdrawal of Rs. 2,48,000/- from assessee's own bank account which remained unutilized and therefore re-deposited. However, the AO was not satisfied with submissions of assessee who noted that (i) the affidavits appeared to be afterthought; (ii) all gifts have been received in cash; and (iii) there was a time gap between gifts received and cash deposited in bank a/c. Finally, the AO treated the deposits of Rs. 12,63,000/- as unexplained and made addition u/s 69 of the act.

4. Aggrieved, the assessee carried matter in first-appeal and made a detailed submission which is re-produced by CIT(A) in Para No. 4 of appeal-order. But, however, the Ld. CIT(A) was not impressed with submissions of assessee and upheld AO's action with the following findings/conclusions noted in his order:

*"1. Merely submission of an affidavit preferably from relatives (interested parties) does not prove the genuineness of transaction unless the same is backed by authentic evidences.*

2. Documents furnished regarding sale of flat at Indore for an amount of Rs. 10,65,500/- by the father of the assessee (one of the donor) in order to show the creditworthiness of the donor, nowhere reflects that the entire sale consideration amount was received in cash (as claimed in the Affidavit as well as in written submission filed). On page 6 of the sale agreement (para 3) only amount is mentioned, however, mode of payment is not incorporated.

3. All the donors as well as the donee (the assessee) were having bank account in their names and were operational during the year. Then, what prompted them to enter into the transaction of gift in cash rather than routing the transactions through banking channel.

4. As per the claim of one of the donor i.e. the father of the assessee has claimed to have donated cash gift over a period of two years i.e. from year 2006 to 2008, however, the assessee kept the entire cash gift for two years and suddenly the entire cash gift was deposited in the month of January 2009. No plausible reason is given, as to why the huge amount was kept idle in cash for such a long time particularly in a situation, where the donor as well as done were familiar with the bank transaction. The impugned observation gets strength from the fact that the assessee, while submitting his explanation with regard to source of balance cash of Rs.2,48,000/- has taken a plea that the said amount was withdrawn by him in cash from his bank account on 28.11.2007 (which was earlier received by him as loan from Ranjit Securities. It is not understandable, as to what prompted the assessee to withdraw the amount in cash on 28.11.2007 when he had already been accumulating cash gifts as claimed to be received from his father right from the year 2006.

5. Further, his mother, who was having no independent source of income. managed to accumulate an amount of Rs.1,50,000/- in cash.

6. The appellant has not specified the occasion i.e. Birthday. Wedding Anniversary etc. on which these gifts were donated. Normally, in Indian Society people give complimentary gift to their relatives on these occasions, However, in impugned case, the actual background of these cash gifts are missing.”

5. Still aggrieved, the assessee has come in next appeal before us assailing the orders of lower-authorities.

6. Ld. AR representing the assessee drew our attention to the orders of lower-authorities as also the documents filed in the Paper-Book and made following submissions with respect to various sources of deposits claimed by assessee:

(i) Regarding cash gift of Rs. 7,65,000/- received from father Shri Mithilesh Kumar Pandya, Ld. AR submitted that the assessee's father

has confirmed the same in a duly sworn affidavit on stamp paper submitted to AO (copy filed in Paper-Book). In the said affidavit, his father has made averments that he worked with Central Bank of India; he was a pensioner getting monthly pension of Rs. 28,860/-; that he received approximately Rs. 14,03,964/- from PF, Gratuity, Commutation of pension at the time of retirement in March, 2006. Regarding immediate source of making gift to assessee, his father averred to have sold a residential flat No. 201 situated at 43, Pagnispaga, Indore through registered-deed dated 20.11.2008 and received sale consideration of Rs. 10,65,500/- in cash out of which he made a cash gift of Rs. 7,65,000/- to assessee. Copy of sale-deed was also filed to both of the lower-authorities and the same is also placed at Page No. 50 to 59 of the Paper-Book. Regarding the observation of Ld. CIT(A) that the sale-deed reveals only sale consideration of Rs. 10,65,500/- but does not disclose the mode of payment, Ld. AR submitted that it is the practice in practical life to mention details of cheques/bank transfers in the sale-deed. But if no mode is specified, it is receipt in cash only. He also submitted that assessee's father has categorically averred in his affidavit that the entire consideration was received in cash; such averment is a factual averment on stamp paper and cannot be brushed aside for the reasoning that sale-deed does not specify mode of receipt. Regarding another observation of lower authorities that there was a time gap of about two years between the receipt of gift from father and deposit in bank a/c and how a person would hold cash for about two years, Ld. AR submitted that the assessee was contemplating purchase of a house and therefore the cash was held but when the deal could not materialize, it was deposited into Bank A/c. Ld. AR further argued that in any case, it is the choice of assessee to hold the cash with him or deposit the same instantly in bank a/c; the department cannot have any objection against assessee's decision.

- (ii) Regarding cash gift of Rs. 1,50,000/- received from his mother Smt. Rajni Pandya, Ld. AR submitted that the assessee's mother has confirmed the same in a duly sworn affidavit on stamp paper submitted to AO (copy filed in Paper-Book). In the said affidavit, his mother has made averments that she was a housewife but she received cash gifts from her mother, brothers and sisters and she made a cash gift of Rs. 1,50,000/- to assessee out of personal household savings. But the CIT(A) rejected assessee's submission by noting that mother was not having independent source of income so as to accumulate a sum of Rs. 1,50,000/-. Ld. AR submitted that assessee's mother was aged about 57 years at the relevant time and accumulation of Rs. 1,50,000/- was duly explained from gifts received by her/household savings made by her. Further, the sum of Rs. 1,50,000/- was not a hefty sum considering the age of assessee's mother.
- (iii) Regarding cash gift of Rs. 1,00,000/- received from his late grandmother Smt. Indu Pandya, Ld. AR submitted that assessee has himself averred/confirmed the same in a duly sworn affidavit filed to AO (copy filed in Paper-Book). Ld. AR pointed out that the said affidavit had to be sworn/given by assessee himself owing to the compelling circumstance that the grandmother had already expired on 13.02.2015. In the said affidavit, it has been averred that the grandmother regularly received family pension from State Govt. of Madhya Pradesh (because her husband was a government employee who expired much earlier) and out of that she gifted a sum of Rs. 1,00,000/- to assessee.
- (iv) Regarding cash withdrawal of Rs. 2,48,000/- from his own Bank A/c, Ld. AR submitted that the assessee withdrew the same on 28.11.2017 in anticipation of making a deal for purchase of property but the deal could not materialize and the money stood unutilized which was re-

deposited in Bank A/c. An affidavit duly sworn by assessee on stamp paper alongwith a copy of bank pass-book from which the aforesaid withdrawal was made, was also filed to AO (copies of the same are placed in Paper-Book) in support of this.

7. Regarding observation of CIT(A) that all donors and assessee were having bank accounts in their names then what prompted them to enter into cash transactions of gift rather than doing through banking channel, Ld. AR submitted that assessee's father received sale consideration of property in cash and that is why he made cash gift to assessee. Regarding gifts received from mother and grandmother, Ld. AR submitted that they were ladies who generally keep certain cash with them and out of cash so held, they made gifts to assessee; there is nothing wrong in cash gifts.

8. Regarding another observation of CIT(A) that the assessee had not specified any occasion i.e. birth-day, wedding anniversary, etc. on which the gifts were given although normally people give complementary gifts on these occasions, Ld. AR firstly drew our attention to the affidavits and pointed out that the affidavits clearly mention that gifts were given to assessee for "personal use". Then, Ld. AR submitted that the assessee has received gifts from father, mother and grandmother and not from "people" as mistakenly observed by CIT(A). Ld. AR submitted that gifts from father, mother and grandmother do not require any special occasion and the CIT(A) is not justified in making such observation.

9. Lastly, Ld. AR strongly relied upon the decision in **Dheeraj Thakran Vs. ITO, Ward-1(4), ITA No. 2761/Del/2016 (ITAT, Delhi), order dated 28.05.2021** wherein a similar controversy was adjudicated in a favour of assessee. Ld. AR submitted that the decision is directly governing assessee's case and in the light of same, the sources of deposit in bank a/c explained by assessee must be accepted and the addition made/confirmed by lower-authorities must be deleted.

10. Per contra, Ld. DR defended the orders of lower-authorities. Ld. DR made strong contentions emphasizing the same line of reasoning as observed by lower-authorities and prayed to uphold their action.

11. We have considered rival submissions of both sides, perused the orders of lower authorities and the documents filed in the paper-book. At first, we would like to extract the order of Hon'ble ITAT, Delhi Bench in **Dheeraj Thakran Vs. ITO (supra)** which is heavily relied upon by Ld. AR. The relevant paragraphs are as under:

*"19. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. The first issued to be decided of the grounds of appeal is regarding the order of the CIT(A) in confirming the addition of Rs.50,40,000/- made by the AO on account of cash deposit in bank account. A perusal of the assessment order shows that the AO made addition of the above amount due to non-submission of details during the course of assessment proceedings. Before the CIT(A), it was submitted that the above amount of Rs.50,40,000/- was deposited out of cash withdrawal from the same bank amounting to Rs. 41,15,000/-, Rs.9,25,000/- received as gifts from father, mother, brother and wife and an amount of Rs.5,55,000/- was the opening cash balance. We find, the ld.CIT(A), after obtaining two remand reports from the AO and the rejoinder of the assessee to such remand reports, sustained the addition made by the AO. A perusal of the various details furnished by the assessee in the paper book which were also filed before the lower authorities, shows that the assessee, during the year under consideration has explained the deposit of the above amount of Rs.50,40,000/- as under:-*

- a) Opening cash balance - Rs.5,55,000/-
- b) Cash withdrawn by the assessee  
from the bank and re-deposited during the year - Rs.41,15,000/-
- c) Gift received from blood relations and spouse - Rs.9,25,000/-

*20. So far as the opening cash balance of Rs.5,55,000/- is concerned, we find, the ld.CIT(A) rejected the opening cash balance of Rs.5,55,000/- shown by the assessee in the cash book produced before him on the ground that the assessee has not disclosed such closing cash balance in the return of income of the preceding year. It is the submission of the ld. counsel that the income-tax return form does not have a column to show such figure of closing cash balance and it is also his submission that there is no requirement under the law for showing such cash in hand in the return of income. While we accept*

the submission of the ld. counsel for the assessee that there is no requirement of law for showing the cash in hand in the return of income, however, in absence of filing of any balance sheet in the preceding year and in absence of any other evidence to show that the assessee was, in fact, in possession of opening cash balance of Rs.5,55,000/- as at the beginning of the year, the plea of the ld. Counsel for the assessee cannot be accepted in toto. However, considering the totality of the facts of the case, we are of the considered opinion that acceptance of opening capital of Rs.5 lakh in the facts and circumstances of the case will meet the ends of justice. We, therefore, accept the opening cash balance of Rs.5 lakh as explained and the balance Rs.55,000/- has to be added as unexplained cash.

21. So far as the amount of Rs.41,15,000/- withdrawn from the bank accounts and re-deposited during the year is concerned, we find from the details furnished by the assessee that there are sufficient cash withdrawals before deposits in the bank account. There is no other evidence with the Department that the assessee has in fact invested elsewhere or spent otherwise or that it is not available with him. It has been held in various decisions that when the assessee has made deposits out of the earlier withdrawal of cash from the bank account and no material has been brought by the Revenue that such money is not available with the assessee, then, the AO is not justified in making the addition. We find, the Hon'ble Karnataka High Court in the case of [S.R. Venkata Ratnam vs. CIT](#), 127 ITR 807, has held as under:

"There is some force in the argument of the learned counsel for the petitioner and the argument advanced by the revenue is, therefore, without any force. Once the petitioner-assessee disclosed the source as having come from the withdrawal made on a given date from a given bank, it was not for respondents Nos. 1 and 2 to concern themselves with what the assessee did with that money, i.e., whether he had kept the same in his house or utilised the services of a bank by depositing the same."

22. Similarly, the Hon'ble Delhi High Court in the case of [CIT vs Kulwant Rai](#) 291 ITR 36 (Del), has observed as under:-

"The orders of Assessing Officer as well as Commissioner of Income Tax are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessed, a sum of Rs. 10,000/- was being spent for household expenses every month and the assessed has withdrawn from bank a sum of Rs. 2 lacs on 4th December, 2000 and there was no material with the Department that this money was not available with the assessed. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessed are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the Assessing Officer or Commissioner Income Tax (A) to support their view that the entire cash withdrawals must have been spent by the assessed and accordingly, the Tribunal rightly held that



*the assessment of Rs. 2.5 lacs is legally not sustainable under [Section 158BC](#) of the Act and the same was rightly ordered to be deleted."*

*23. The various other decisions relied on by the ld. counsel for the assessee also support his case that the earlier cash withdrawals from the bank account should be available to the assessee for deposit in the bank account subsequently. Since, in the instant case, there is sufficient withdrawal from the bank account before such deposits were made, therefore, we accept the contention of the assessee regarding the source of Rs.36,39,000/- withdrawn from the bank accounts to be re-deposited.*

*24. So far as the gift of Rs.9,25,000/- is concerned, we find from the details furnished by the assessee that the assessee has received the following gifts:-*

- a) Shri Shubhram Thakran (father)- Rs.5,75,000/-*
- b) Shri Ravinder Singh (brother) - Rs.1,50,000/-*
- c) Smt. Savitri Devi (mother) - Rs.1,00,000/-*
- d) Smt. Sunita (wife) - Rs.1,00,000/-*

*25. From the various details furnished by the assessee, we find, the AO, during the course of remand proceedings, himself has accepted the withdrawals of cash by his father from the bank account to the tune of Rs.3,50,000/-. It is the submission of the ld. counsel that merely because the father of the assessee has not made gifts in cheque and has made the gift in cash, the same cannot be rejected disregarding the various other documentary evidences furnished by the assessee. Further, when the father of the assessee is an agriculturist, possession of balance cash amount of Rs. 2,25,000/- should not have been doubted. Similarly, the brother and wife of the assessee are income-tax payees and the mother has given out of her past savings. We find some force in the above arguments of the ld. counsel. During the course of assessment proceedings, the assessee has filed the affidavits of the donors who are parents, brother and spouse, respectively. They are not outsiders or unknown persons. No independent inquiry whatsoever was conducted by the AO either u/s 133(6) or 131(1) of the Act. Since the gifts in the instant case are received from parents, brother and spouse, respectively and the father has withdrawn substantial cash amount from the bank before giving the gift of Rs.5,75,000/- on various dates to his son and the gifts of Rs.1,50,000/- from brother, Rs.1 lakh from mother and Rs.1 lakh from spouse are not huge amounts, therefore, doubting the genuineness of such gifts received from blood relations is not justified. We accordingly accept the source of Rs.9,25,000/- deposited in the bank to be out of gifts. Thus, in nutshell, as against the addition of Rs.50,40,000/- made by the AO and sustained by the CIT(A), an amount of Rs.49,85,000/- is accepted as explained. The order of the CIT(A) is modified to this extent and the ground raised by the assessee is partly allowed."*

12. On perusal, we find that the present case of assessee involves identical controversy as adjudicated in the above order of ITAT. Therefore, in

the light of above order, we would like to deal with the case of assessee as under:

- (i) Regarding cash gift of Rs. 7,65,000/- received from father, we find that the assessee has given an affidavit of his father wherein father has clearly averred to have made cash gift to assessee. We find that the said affidavit, given by father, is not controverted by revenue-authorities; they have merely raised certain suspicion or presumption. On perusal of affidavit, we find that assessee's father retired from Central Bank of India and he was a pensioner at the relevant time. Regarding source of gift to assessee, we find that assessee's father sold a residential flat on 20.11.2008 and a copy of sale-deed is placed on record. Thus, the factum of sale is clearly proved without any doubt; in fact the authorities did not have any dispute. The only apprehension raised by CIT(A) that the mode of receipt of sale-consideration is not mentioned in the sale-deed for which we find weightage in the argument of Ld. AR that had there been any cheque/bank transfer, it would have been mentioned in the sale-deed but since there is no mention of cheque/bank transfer, the consideration was received in cash only. We also find merit in the submission of Ld. AR that the assessee's father, who was best known of the mode of receipt, has made a categorical and clear averment in the affidavit on stamp paper that the entire consideration was received in cash. Therefore, averment on stamp paper is very important and it cannot be brushed aside on mere suspicion. Regarding the time gap between receipt of gift and deposit in bank a/c, we find that the gap is not more than two years and as stated by Ld. AR, the assessee was contemplating purchase of a house and therefore the cash was held. But, however, when the cash could not be utilized, it was re-deposited into bank a/c. In any case, we also find merit in the submission of Ld. AR that it is a decision of assessee whether to hold cash or deposit into bank a/c, the revenue authorities cannot have any say in the

matter. Looking into these evidences and circumstances, we accept this source claimed by assessee.

- (ii) Regarding cash gift of Rs. 1,50,000/- received from mother, we find that mother has given a duly sworn affidavit. Here also we find that said affidavit, given by mother, is not controverted by revenue-authorities; they have only raised certain suspicion or presumption. In the said affidavit, his mother has made averments that she was a housewife but she received cash gifts from her mother, brothers and sisters and she made a cash gift of Rs. 1,50,000/- to assessee out of personal household savings. We find that the assessee's mother was aged about 57 years at the relevant time and accumulation of Rs. 1,50,000/- was duly explained from gifts received/household savings made by her. Considering the age of mother, the sum of Rs. 1,50,000/- is certainly not a hefty sum. Therefore, in such circumstances, we accept this source as well.
- (iii) Regarding cash gift of Rs. 1,00,000/- claimed to have been received from late grandmother, we find that the affidavit supporting gift is given by assessee himself. Although the reason given by assessee is that grandmother had already expired in the year 2015, but we do not find any strong, cogent or independent evidence by which it can be conclusively proved that the assessee had actually received a gift of Rs. 1,00,000/- from grandmother. In our mindful consideration, the affidavit is given by assessee himself for supporting his own case, which unless corroborated by some independent or corroborative evidence, cannot be accepted. Finding no such evidence, we are unable to accept this source as genuine.
- (iv) Regarding cash withdrawal of Rs. 2,48,000/- from his own Bank A/c, we have perused copy of bank pass-book and find that the assessee has in fact made a cash withdrawal on 28.11.2017. Here the case of

assessee is such that he made this withdrawal in anticipation of making a deal for purchase of property but the deal could not materialize and the money stood unutilized which was re-deposited in Bank A/c. We find that the explanation given by assessee is not found false by lower-authorities. Further, there is no evidence with the department that the assessee has in fact invested elsewhere or spent otherwise or that the withdrawn cash is not available with him. It has been held in various decisions that when the assessee has made deposits out of the earlier withdrawal of cash from the bank account and no material has been brought by the Revenue that such money is not available with the assessee, then, the AO is not justified in making the addition. Therefore, we accept the contention of the assessee that the cash withdrawal of Rs. 2,48,000/- made from own bank a/c was re-deposited.

13. Before concluding, we would also like to deal with some more observations made by Ld. CIT(A). Regarding his observation that gifts were made in cash and not through banking channel, we find merit in the submission of Ld. AR that the assessee's father received sale consideration of property in cash and that is why he made cash gift to assessee. Regarding cash-gift received from mother, we find merit in the submission of Ld. AR that mother being a lady used to keep cash with her. In fact, this practice of ladies keeping cash is widely known to everyone. Therefore, making a gift of Rs. 1,50,000/- out of such cash held by her, is justified. Regarding another observation of CIT(A) that the assessee had not specified any occasion i.e. birth-day, wedding anniversary, etc. on which the gifts were given although normally people give complementary gifts on these occasions, we find that the assessee has received gift from family members, namely father and mother for personal use which do not require any special occasion like birthday, marriage, etc. The affidavit given by donors, being father and mother, themselves speak that they made gifts to assessee for "personal use". Therefore, the observations made by CIT(A) are mere suspicious an

presumptions which are not strong enough to negate the assessee's factual submissions.

14. In view of above discussions and for the reasons mentioned therein, we accept all sources explained by assessee as genuine except the gift of Rs. 1,00,000/- claimed to have been received from grandmother. Therefore, we direct the AO to delete the addition of Rs. 11,63,000/- and the remaining addition of Rs. 1,00,000/- is upheld.

**15. Resultantly, this appeal of assessee is partly allowed.**

*Order pronounced in the open court on 22/05/2023.*

Sd/-

(VIJAY PAL RAO)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 22.05.2023

Patel/Sr. PS

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Sr. Private Secretary*  
*Income Tax Appellate Tribunal*  
*Indore Bench, Indore*

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	