

HC upheld additions as assessee failed to prove that sum deposited in bank was from unutilized cash withdrawal

Summary – The High Court of Delhi in a recent case of Dinesh Kumar Jain, (the Assessee) held that where assessee claimed that he withdrew certain amount from his bank account for construction of a building and surplus money, when not required, was redeposited, in same bank account, since assessee failed to produce any bills/vouchers relating to construction, and justify substantial cash withdrawals for meeting construction cost and re-deposits when money was not required, additions under section 68 in respect of amount redeposited was justified

Facts

- During year, the assessee deposited Rs. 82 lakhs in his joint bank account along with two others. The assessee submitted that the assessee and other joint account holders had an over draft facility and the amounts withdrawn were for construction of a building belonging to the three joint account holders and the surplus money, when not required, was re-deposited.
- The Assessing Officer rejected explanation of the assessee and made additions of amount of Rs. 82 lakhs to income of the assessee on account of unexplained cash deposits.
- On appeal, the Commissioner (Appeals) and the Tribunal also upheld the order of the Assessing Officer. The Commissioner (Appeals) on proper appreciation of the facts and material on record, sustained the addition of 1/3rd amount in question under section 69A.
- On further appeal, the Tribunal also upheld the order of the Assessing Officer and Commissioner (Appeals).
- On appeal to the High Court:

Held

- The Tribunal noted that as regards addition on merit, the Assessing Officer has specifically noted that assessee could not prove at the assessment stage that out of cash withdrawn, some payments have been made to the contractors/suppliers and balance cash in hand has been deposited subsequently. The assessee did not make any cheque payment for construction. The Assessing Officer asked for the details of project report and details furnished to the bank for utilizing the bank loan. However, no details have been filed before Assessing Officer as to how the cash amount have been used in phased manner for construction in the property. The assessee also failed to provide any details of cost of construction incurred by the assessee and others in the property. Even no bills of purchase of material or any payment to contractor have been produced before Assessing Officer. It, therefore, clearly proved that assessee has no evidence at all to explain as to how much amount has been incurred in construction of the property. These facts prove that assessee has no evidence

of any amount invested in construction of property in assessment year under appeal because no bills of material purchased have been filed before the authorities below. The assessee did not incur any construction expenditure through banking channel. No details of construction expenses were prepared or filed before Assessing Officer. No details of expenses shown in cash supported by any evidence were filed before the authorities. The assessee later on prepared a cash flow statement and filed before the Commissioner (Appeals) to show the amount of withdrawal, re-deposited and amount used for construction. It would show that from 5-5-2010 to 20-5-2010 assessee has withdrawn Rs.46 lakhs in cash and on 24-5-2010 assessee made re-deposited to Rs. 1 lakh only and used Rs.5 lakhs for construction only. Similarly, on 11-6-2010 assessee has withdrawn Rs. 10 lakhs from the bank but it was not used either for re-deposit or for construction purpose up to 30-6-2010 because on 30-6-2010 assessee claimed deposit of Rs.1 lakh only. Similarly, on 29-7-2010 and 30-7-2010, no amount have been withdrawn from the bank but assessee claimed re-deposit of Rs.5 lakhs and Rs.2.50 lakhs on both the days as well as claimed Rs.5 lakhs spent for construction. Similarly, from 2-8-2010 to 5-8-2010 assessee has withdrawn Rs.30 lakhs from the bank but claimed construction expenses of Rs.5 lakhs only on 5-8-2010. Thereafter, from 7-8-2010 to 18-8-2010, there is no withdrawal from the bank but assessee made deposits of Rs.34.50 lakh in cash in the bank account. This position is going on for the entire year. The assessee has not filed any explanation about the discrepancy in the cash flow statement. It is not explained when huge cash amount have been withdrawn, why only part amount have been used for construction and if sufficient cash was available to assessee on prior dates, why there is again huge cash withdrawal on subsequent dates without incurring any expenditure on construction. Therefore, cash flow statement is wholly unreliable and full of doubts. The cash flow statement would not prove any nexus between the withdrawals of the cash account from the bank and re-deposit as claimed by the assessee. The totality of the facts and circumstances clearly prove that assessee failed to explain deposit of huge cash in the joint bank account to the satisfaction of the authorities below. Therefore, the Tribunal held that the authorities below rightly rejected the contention of the assessee that amount is re-deposited after making withdrawal from the same bank account. The Commissioner (Appeals) on proper appreciation of the facts and material on record, correctly sustained the addition of 1/3rd amount in question under section 69A.

- The cash flow statement provided by the assessee reveals that huge amounts were withdrawn in cash on different dates. Rs.36 lakh was withdrawn by way of three bearer cheques of Rs.12 lakh each on 5-5-2010 and Rs.25 lakh was withdrawn in cash by way of three bearer cheques on 5-8-2010. On 16-11-2010, Rs.10 lakhs was deposited in cash and on the same day Rs.10 lakhs was withdrawn by way of two bearer cheques of Rs.5 lakh each. Rs.10 lakh was withdrawn in cash on 20-5-2010, 11-6-2010 and 16-11-2010. Withdrawals were substantial and on many occasions there were three withdrawals, *i.e.*, as many as or equal to number of account holders.
- On being questioned, the appellant assessee had stated that the overdraft account was separate and different from the joint account from which withdrawal and deposits were made. It is strange

that deposits were not made in the overdraft account so as to reduce liability to pay interest. However, one need not base decision on the said reason.

- Incongruities in the cash flow statement with reference to the quantum and dates of withdrawal and deposit and failure to produce any bills/vouchers and the accounts relating to construction, to verify and justify substantial cash withdrawals of Rs.1.82 crores during the entire year for meeting cost of construction and re-deposits of Rs.82 lakh when money was not required, it is apparent dig holes and exposes the concocted explanation. The assessee had conveniently claimed that entire construction was without any bank transaction or bill, vouchers, etc. This is not plausible. Facts on record are glaring and one-sided. It is obvious that the bills of purchases, payments made to contractor etc. and the accounts relating to construction were held back, as they would have revealed the truth and would not have supported the already weak and tenuous explanation of the appellant-assessee. The reasoning given by the Tribunal is not perverse. It is based and founded on the evidence and material on record.