

**IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH  
JODHPUR  
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND  
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**ITA No. 81/Jodh/2020 &  
SA No. 06/JODH/2020  
(Arising out of ITA No. 81/JODH/2020)  
(Assessment Year 2010-11)**

Shri Kishan Kumawat, Th. L/H Sm. Sumitra Kumawat, 679, Bhuwana, Udaipur (Raj).	Vs.	I.T.O. Ward 2(1), Udaipur.
PAN No. AFEPK 5711 P		

Assessee by	Shri Amit Babel, CA
Revenue by	Miss. Kajal Singh, JCIT-DR
Date of Hearing	10/08/2021
Date of Pronouncement	02/09/2021

**ORDER**

**PER: SANDEEP GOSAIN, J.M.**

Both, i.e. stay application as well as income tax appeal are fixed for hearing today before the ITAT. With the consent of the Id. counsel of the assessee as well as Id. DR of the Revenue, both i.e. the S.A. and the appeal itself are taken for hearing.

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. Firstly, we take ITA No. 81/Jodh/2020 for deciding the issue because once the income tax appeal is being decided then S.A. which is arisen from

income tax appeal, will automatically decide. This is an appeal filed by the assessee against the order of the Id. CIT(A)-1, Udaipur dated 10/01/2020 for the A.Y. 2010-11, wherein the assessee has raised the following grounds of appeal:

- “1. The learned tax officer, Ward 2(1), Udaipur has erred in treating the cash deposited, totaling to Rs. 4,75,000/- in the bank, as income from undisclosed sources. The deposits represent partly out of earlier cash withdrawals from bank and partly out of cash lying in hand to meet necessary house hold needs. Therefore, the addition made is unjust, unreasonable and unwarranted. The addition made should be deleted.*
- 2. The Commissioner of income Tax (Appeals)-1, Udaipur has also erred in not considering the facts or our submission submitted before him and totally relied upon the remand report of the Income tax officer.*
- 3. Your appellant should be allowed to add, amend or delete any ground or ground of appeal.”*

4. The fact of the case in brief are that the assessee is e-filed his return of income for the year under consideration on 25/11/2010 declaring total income of Rs. 2,91,960/-. Subsequently, the AO received information from the ITO (I&CI), Udaipur that the assessee alongwith other co-owners, had sold an agricultural land and received Rs. 46,00,000/- jointly, out of which Rs. 13,00,000/- was received by the assessee and there were cash deposits in the assessee's bank account. In response, the assessee furnished return of income on 07.07.2017, declaring the total income at Rs. 5,31,350/-. Thereafter, the AO completed the assessment U/s 143(3)/147 of the Income Tax Act, 1961 (in short, the

Act) on 12-12-2017 determining the total income of the assessee at Rs. 21,57,960/- by making the additions/disallowances.

5. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of the parties and material placed on record, given part relief to the assessee.

6. Against the impugned order passed by the Id. CIT(A), the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

7. The main grievance of the assessee relates to challenging the order of the Id. CIT(A) in confirming the addition made on account of cash deposit in the bank account as income from undisclosed sources. In this regard, the Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied upon the written submissions filed before him and the same is as under:

*"In this regard, we have to state that this matter had been discussed and made it clear during the hearing to the Assessing Officer that there was no fresh cash deposited in the bank by your appellant. The most of cash was deposited*

*out of cash withdrawals earlier from the bank and partly with the cash kept by him at home for personal use.*

*Later on, the Ld. Assessing Officer did not raise any specific query on this matter and therefore we presumed that he has noted the facts. But, he added the total amount of cash deposited as a fresh deposit without considering the earlier cash withdraws and made the addition. The Assessing Officer could have seen this fact, if he had, looked carefully the bank statements submitted. We are submitting a detail chart of bank transactions in support of our submission of facts. Kindly look into the matter carefully and do the needful at your end, (Annex-I) to avoid the unwarranted harassment to your appellant."*

8. On the other hand, the Id. DR has vehemently supported the orders of the Revenue authorities.

9. We have considered the rival contentions and carefully perused the material available on record. From perusal of the record, we observed that during the assessment proceedings, the A.O. had raised any doubt/query on the credit entries appearing in the bank statement, except loan entries. This fact can be verified from the note-sheet of the case. It is undisputed fact the assessee has received Rs. 13,00,000/- after selling of agricultural land and the A.O. mixed the expense of leveling of land which was sold and resulted in capital

gain and house construction expenses. The land was sold on 29/10/2009 and sale proceeds were received. After this date the house construction was started. The A.O. raised objection about deposit of Rs. 49,000/-. It is a common phenomenon in the rural area, out of petty savings in hand for the expenses meted out and after that the same may be deposited in the bank. The assessee also submitted that the amount was deposited partly from the savings lying with him and partly from the withdrawals from bank. The construction expenses started after the date 29/10/2009 i.e. receipt of sale proceeds of land sold. Hence, the presumption of the Assessing officer is not correct, as claimed. The construction bills submitted before the A.O. by the assessee supports the claim made by the assessee. The assessee also submitted that during this and earlier periods, huge withdrawals of Rs.6,84,890/- were made. This amount does not include payments made by cheques. The construction expenses bills mentioned in the remand report are partly in cash and most of them are incurred through cheques like P.R. Enterprises & others, as appearing in the bank statement submitted by the assessee. The unutilized cash balance was deposited back in the bank. Considering the facts and circumstances of the case as well as the fact of selling of agricultural land and doing construction by the assessee,

we are of the view that the assessee has explained the source of cash deposit in the bank account and we find merit in the contention of the assessee, therefore, we direct to delete the addition made qua this issue.

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

11. We decide the appeal of the assessee on merit and allowed the appeal in favour of assessee, therefore, the S.A. filed by the assessee become infructuous.

Order is pronounced in the open court on 2<sup>nd</sup> September, 2021.

Sd/-  
(VIKRAM SINGH YADAV)  
Accountant Member

Sd/-  
(SANDEEP GOSAIN)  
Judicial Member

Jodhpur  
Dated 02/09/2021  
\*Ranjan

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File (ITA No. 81/Jodh/2020 & SA 06/Jodh/2020)

Assistant Registrar  
Jodhpur Bench