

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 5442/Mum/2018
(Assessment Year 2013-14)

Shiva Prakash Nair A-1/3, Vishal Mitra Pragati Nagar Goregoan(W) Mumbai-400 062 PAN : AJXPN9710E (Appellant)	Vs.	ITO-2(3)(1) Pratyakshakar Bhavan, BKC, Bandra(E) Mumbai-400 051 (Respondent)
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Assessee by	None
Department by	Ms. Smita Verma
Date of Hearing	13.10.2021
Date of Pronouncement	16.12.2021

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-57 dated 13.03.2018 and pertains to assessment year 2013-14.

2. Grounds of appeal read as under:-

1. In the facts and circumstances of the case and in law, the learned CIT(A) has erred in making addition of Rs. 9,22,000/- to the total income of the Appellant on account of unexplained cash deposits.

3. Brief facts of the issue are as under:-

The facts of the case are the AO on perusal of Bank statement of the assessee found that he has made cash deposits of Rs. 9,20,000/- in his saving A/c. No. 002214110000018 on the following dates.

Dates	Cash Deposits
01.11.2012	45,000
05.11.2012	45,000
23.11.2012	49,000
11.02.2013	45,000
12.02.2013	45,000
14.02.2013	45,000
15.02.2013	45,000
16.02.2013	50,000
18.02.2013	1,00,000
23.02.2013	1,00,000
25.02.2013	2,00,000
26.02.2013	1,50,000
12.03.2013	3,000
Total	9,22,000/-

On being enquired by the AO the Authorized Representative of the assessee submitted that the cash deposited into NRO Account during the financial year amounting to Rs. 7,80,000/- is from the withdrawal made from the account to the tune of Rs. 8,50,000/- and the rent received in cash.

The Assessing Officer did not accept this and contended that perusal of Bank statement shows that the assessee has made only two withdrawal of Rs. 2,00,000/- on 19.02.2012. The assessee has made cash deposits much late i.e. in the month of Feb 2013 & cash of Rs. 7,80,000/- out of Rs. 9,22,000/- was deposited only from 11th February to 26th February. And hence the amount of Rs. 9,22,000/- was added as unexplained cash deposits by the Assessing Officer.

4. Upon assessee's appeal Ld.CIT(A) noted that following submission of the assessee.

“During the course of appellate proceedings the appellant's AR submitted that the assessee has contented before the AO that he has withdrawn the cash in the month of November 2012 to the tune of Rs. 4,00,000/- the entry of which has been proved to ITO in the Bank statement which the ITO has admitted and acknowledged in the order. The ITO's contention that why would the assessee keep the cash for three months in hand in more a personal matter of the assessee in view of the NRI status of the assessee. It was further contended that he has been on NRI since more that 30 years and has sincerely offered all the rent received from his property for taxation and paid taxes. The balance cash was deposited from his opening cash balance out of the rent received in cash in the past which also was rejected by ITO. Hence additions made by the ITO should be deleted.

5. However, Ld.CIT(A) was not convinced, he held as under:-

The appellant has withdrawn Rs. 4 lac in the month of Dec 2012 and claims that rental income was received in cash which was also deposited. The appellant has not submitted any evidence before me to substantiate that cash deposited was out of rental income received in cash and also the cash withdrawn was deposited. The dates of deposits are such that appellant has deposited on 1st Nov, 5th Nov, 23rd Nov 2012. Then on 11th Feb, 23 Feb, 14th Feb, 15th Feb 2013. The appellant could not explain cogently why deposits were made every 2nd or third day. If the cash was lying with him why was the same not deposited in one go if it was not spent. The nature of deposits raises a question which the appellant could not explain. I am unable to accept the appellant's reasoning and hence the explanation of the appellant cannot be accepted and addition made by AO under unexplained cash deposits amounting to Rs. 9,22,000/- is hereby confirmed.

6. Against the above order, assessee is in appeal before ITAT.

7. I have heard the Ld. DR and perused the records. I note that this addition has been sustained on the basis of surmise and juncture. Why earlier withdrawn cash cannot be deposited is not explained by the Ld.CIT(A). It is not the case that it has been found that there is any application of the withdrawal. Furthermore, why on particular date cash has been deposited cannot be the sole basis for addition. Assessee's claim of receipt rent in cash can also not be rejected as assessee has duly shown rental income. Hence, I find that this addition is not based upon cogent findings and the same is liable to be deleted. Hence, I set aside the orders of the authorities below and delete the addition.

8. In the result, appeal by the assessee stands allowed.

Pronounced in the open court on 16 .12.2021

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 16 /12/2021

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai