

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

I.T.A. No. 6179/Mum/2019  
(Assessment Year 2010-11)

Isaksab Mohmadgaushsab Mulla Shabaj Gaon Masjid Chawl Kokan Shabaj Village Belapur Navi Mumbai-400 064  PAN : APTPM1004J (Appellant)	Vs.	ITO-28(1)(4) Room No.13, 3 <sup>rd</sup> Floor Tower NO.6, Vashi Railway Station Complex, Vashi Navi Mumbai-400 073  (Respondent)
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Assessee by	None
Department by	Rajni Roya
Date of Hearing	29.11.2021
Date of Pronouncement	12.01.2022

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-26, dated 19.06.2019 and pertains to assessment year 2010-11.

2. Grounds of appeal read as under:-

1. The Ld. Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs.21,00,000/- made by the Assessing Officer to the income of the assessee on account of following cash deposits in the bank account of the assessee.

Date	Mode	Amount deposited Rs.
05-10-2009	By Cash	4,00,000/-

06-10-2009	By Cash	4,00,000/-
31-03-2010	By Cash	13,00,000/-

1.1 The Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the above cash deposits amounting to total of Rs.21,00,000/- were made out of the cash withdrawals from the same bank account, prior to making the above cash deposits.

Sr. No	Date	Mode	Amount withdrawn Rs.
1	18-09-2009	Self	4,00,000/-
2	19-09-2009	Self	4,00,000/-
3	22-09-2009 '	Serf	3,00,000/-
4	22-09-2009	Self	4,00,000/-
5	01-02-2010	Self	14,00,000/-
6	27-03-2010	Self	4,50,000/-
7	27-03-2010	Self	4,00,000/-
8	27-03-2010	Self	4,50,000/-

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3. Brief facts of the case are that addition in this case was made by the AO on account of cash deposits in assessee's bank account, in an ex-parte order u/s. 144 of the I.T.Act. Before the Ld.CIT(A), assessee gave details that the cash which was deposited was withdrawn from the bank of the assessee itself during the same financial year. However, the Ld.CIT(A) rejected the same. He held that assessee has not given any cogent reason for cash withdrawal and subsequent cash deposits in same bank. Hence, he dismissed the assessee's appeal.

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

5. I have heard the Ld. DR and perused the records. From the submissions in the grounds of appeal and the facts on record. I note that the cash were withdrawn during the same financial year from the same bank before the deposit in the same bank. It is not the case of the revenue that revenue has detected any application of the cash withdrawal in any other manner. It is also not the case that the deposit is not commensurate with the withdrawal. Hence, why this plea of the assessee of having deposit the same cash, which was withdrawn from the bank in the same account cannot be accepted is not evident from the orders of the authorities below. Addition based on whims and fancies are not sustainable. There is no law that if a person withdraws cash from his own bank and subsequently deposits the same in the bank account, there would be adverse inference against the assessee. Hence, I set aside the orders of the authorities below and direct that addition be deleted.

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

Pronounced in the open court on 12 .01.2022

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 12 .01.2022

*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