

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "E": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 960/Del/2021
(Assessment Year: 2017-18)

Om Parkash Nahar, C/o. IPSO LEGAL, H-35, 1 st Floor, Jangpura Extension, New Delhi-110014. PAN: ADZPN7381H	Vs.	Income Tax Officer, Ward : 67 (2), New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Rajiv Saxena, Adv.; & Ms. Sumangla Saxena, Adv.
Department by:	Shri M. N. Shete, Sr. D.R.;
Date of Hearing :	22/11/2021
Date of pronouncement :	27/01/2022

ORDER

PER AMIT SHUKLA, J. M.

This appeal has been filed by the assessee against the order dated 20.12.2019 passed by the National Faceless Appeal Centre (NFAC) for the assessment year 2017-18.

2. The grounds of appeal raised by the assessee are as under:-

“1. That the Ld. Commissioner of Income-tax (Appeals) has grossly erred in law as well as on facts in confirming the addition made by the AO to the tune of Rs.44,13,000/- without appreciating:

i) That the amounts withdrawn by assessee who is juvenile diabetic on insulin for the last 50 years with high blood pressure and heart bypass surgery whose hands tremble leading to non-tallying of signature on cheque, hence, consequential withdrawal of cash in person were kept for emergencies pertaining to medical attention for himself and his aged and ailing wife.

ii) That it was never stated that the amount was kept for normal distribution (except few hours before death of assessee) to family members as all the children of the assessee are well settled in public service with gazetted posts and have their own sufficient source of income.

iii) That assessee had to deposit the cash due to demonetisation that too partially i.e. notes of Rs.500 and Rs. 1,000 as they were no longer considered as legal tender.

iv) That the amount withdrawn from 2014 to 2016 far exceeds the amount re-deposited by nearly 50% and sufficient to fulfill household and other expenses.

v) That the said beneficial addition but restricting it to Rs. 19,50,000/- i.e. withdrawal of 3 months from August to October 2016 only is confirmed on the basis of vague assumptions against factual scenario is not maintainable in the eyes of the law which is not fair, just and equitable but confiscatory and expropriatory.

2. That Ld. CIT (Appeals) has erred in law as well as on facts in not appreciating the additional evidence placed on record which clearly establishes the existence of HUF and funds withdrawn from 2014 to 2016 from the income earned by HUF whose appropriate tax paid on time .

3. That Ld.CIT(Appeals) has erred in law as well as on facts by restricting the addition to Rs.44,13,000/- due to accepting withdrawals made only in August and Oct. 2016 only and failed to understand that funds withdrawn in 2015 -16 were Rs.38,70,000/- while in 2014-15 it was Rs.30,25,000/- remained with the assessee

as no deposit was made by the assessee during this period except Rs. 1,00,000/- and so there was sufficient cash available with the assessee even if period of 2013-14 is excluded withdrawing Rs.7 lac.

4. That Ld.CIT(A) has erred in law as well as on facts in passing order u/s 250 of the IT Act, without affording adequate opportunity to represent the assessee and passing the said order in haste which is bad in law and against the principles of natural justice.

5. That Ld.CIT(A) has erred in law as well as on facts in confirming the addition despite unequivocal evidences and documents furnished by the assessee as and when sought by the Ld. AO at the time of assessment. “

3. The facts in brief are that the assessee is an Individual and senior citizen aged about 79 years old who has retired as Senior Government servant, Addl. Secretary Department of Legal Affairs, Ministry of law, Government of India. The assessee had shown income from Pension, earning of bank interest in his Individual capacity and has declared income at Rs.19,06,400/-. The assessee is also Karta of HUF, 'Om Prakash Nahar HUF' which was earning rent from property deposited in Bank of Baroda and has been shown separately in HUF's Income Tax return. The ld. Assessing Officer noted that there was cash deposit during demonetization period and accordingly a notice under Section 143(2) of the Act was issued on 24.09.2018 as the case was selected under CASS for limited scrutiny to verify the cash deposit. The Assessing Officer noted that the assessee had deposited cash of Rs.63,63,000/- in his bank account maintained by the Bank of Baroda during demonetization period. In reply the assessee submitted that, he is retired Govt. servant receiving pension in UCO Bank, Patiala House and he is also having huge rental income as Karta. The saving bank account of HUF was opened in individual name of Om Parkash Nahar, but the rental income was deposited in the Bank of Baroda

which stands in his Individual name, but right from beginning, the income of the HUF was being deposited in the said account and shown in HUF's return. The amount of Rs.63,63,000/- was deposited out of withdrawals from the same account from time to time made during the years 2014, 2015 and 2016, because of his serious illness and old age. The assessee was in the habit of withdrawing the money and keeping in the form of cash at home. The ld. Assessing Officer rejected the assessee's explanation and held that there is no substantial justification given by the assessee as to, *firstly*, why the PAN of the Individual was used in opening the bank account as the income was from property held by the HUF. *Secondly*, assessee has not declared cash deposit during demonetisation period in the column in the return for Assessment Year 2017-18; and *lastly*, the assessee's reply that he has withdrawn money being old and suffering from disabling ailment, and allegedly withdrew to be distributed to his family members, which cannot be believed and accordingly he added the entire amount of Rs.63,63,000/- under Section 69A / 115BB of the Act.

4. The ld. CIT (Appeals) has given part relief and restricted the addition to Rs.44,13,000/- after holding that cash withdrawn from account from 1.04.2016 to 9.11.2016 for sums aggregating to Rs.19,50,000/- can be held to be out of money withdrawn from the bank account, which was deposited after demonetization. The relevant finding of the ld. CIT (Appeals) reads as under:-

4.3.6 *The assessee could have been given the benefit of doubt if the cash withdrawn in immediate preceding couple of months or so was by and large matching the figure of deposit after demonetization. In F.Y. 2016-17, before demonetization, cash withdrawn are shown below:*

17.08.2016	Rs. 8,00,000/-
23.08.2010	Rs.7,00,000/-
27.10.2016	<u>Rs.4,50,000/-</u>

Total : Rs.19,50,000/-

From 01.04.2016 to 9.11.2016, cash withdrawn from the account was Rs.19,50,000/-. In my consideration view, it will be in the fitness of things if it is held that cash of Rs.19,50,000/- was still available for re-deposit in the bank account. Therefore, the addition is restricted to Rs. (63,63,000 – 19,50,000) i.e. Rs.44,13,000/-. “

5. We have heard both the parties and perused the material and finding given by the impugned order as well as various documents filed in the paper book on record including several bank statements for the impugned assessment year. The additions made on account of deposit made by the assessee in the bank account from the period 10.11.2015 to 13.12.2016 for sums aggregating Rs.63,63,000/- in the following manner:-

Date	Amount
10.11.2016	Rs. 12,50,000/-
19.11.2016	Rs. 12,50,000/-
29.11.2016	Rs. 14,64,000/-
09.12.2016	Rs. 11,99,000/-
13.12.2016	<u>Rs. 12,00,000/-</u>
	<u>Rs.63,63,000/-</u>

6. The assessee who is a senior citizen and a retired Govt. servant is deriving income from pension, bank interest and is also earning rent from property as a Karta of HUF. It is also an accepted fact that the rental income has been shown in the return of income for HUF, which

has been deposited in the Individual bank account of the assessee, which he has opened in his Individual name. The returned income from Assessment Years 2014-15 to 2018-19 shows that the assessee had declared quantum of income in the following manner:-

Assessment Year	Total Income
2014-15	27,54,300/-
2015-16	31,69,640/-
2016-17	30,21,340/-
2017-18	37,28,900/-
2018-19	32,42,940/-

7. The assessee's explanation is that looking to his old age and suffering from various ailments as he had suffered a heart attack and had juvenile diabetes, therefore, for his mental security he was in the habit of keeping huge cash with him. This is also evident from the fact as brought out on record by the Id. Counsel that since beginning, assessee has been withdrawing cash and keeping it with him after withdrawing from his bank account. It has also been submitted by him that the assessee had under-went bypass surgery and operation in the past and looking to his ailment and staying alone with his wife, therefore, he has been withdrawing and keeping cash for his personal and psychological security. In support of this explanation, he has shown the bank accounts of the assessee and pattern of his cash withdrawals and filed a chart depicting cash in hand after withdrawing from bank starting from 1.11.2012, which for the sake of ready reference is reproduced as under:-

S.no.	Date	Cash Deposit	Cash Withdrawal	Balance in passbook	Availability of cash	Remark
1.	Opening cash in hand				5,00,000	Figures are not available due to old passbook not traceable but according to rental income and withdrawals made atleast this amount was in hand always available with the assessee due to severe illness.
2.	01.11.2012			2,64,555		Rent for Oct 2012 of Rs.2,58,750/- deposited
3.	03.11.2012		2,60,000	4,555	7,60,000	
4.	21.11.2012					Rent for Nov 2012 of Rs.2,58,750/- deposited
5.	27.11.2012		2,60,000	6,064	11,20,000	
6.	20.12.2012					Rent for Dec 2012 of Rs.2,58,750/- deposited
7.	22.12.2012		2,60,000	2,369	13,80,000	
8.	10.01.2013					Rent for Jan 2013 of Rs.2,58,750/- deposited
9.	12.01.2013		2,60,000	8119	16,40,000	
10.	19.02.2013					Rent for Feb 2013 of Rs.2,58,750 deposited.
11.	26.02.2013			8869		Rs.2,58,000/- transferred
12.	25.03.2013					Rent for March 2013 of Rs.2,58,750/- deposited.
13.	03.04.2013			117585		Rs.1,50,000 transferred
14.	18.04.2013			3,76,335		Rent for April 2013 of Rs.2,58,750/- deposited
15.	08.05.2013		3,60,000	18,017	20,00,000	
16.	23.05.2013	70,000		88,017	19,30,000	

17.	28.05.2013			3,96,217		2 cheques of Rs.319,500 and 67,500 deposited due to increase in rent for May 2013 etc and cheque of Rs.78,800 deposited to Commissioner SDMC.
18.	21.06.2013		3,00,000	96,217	22,30,000	
19.	24.06.2013			3,75,217		Rent of Rs.2,79,000 deposited for June 2013
20.	25.07.2013					Income Tax deposited of Rs.3,51,575/-.
21.	26.07.2013 13.08.2013			302642 581642		Rent for July and August Deposited of Rs.2,79,000 each
22.	20.08.2013		5,70,000	11,642	28,00,000	Rent of Rs.2,79,000 deposited for Sept 2013
23.	24.09.2013			2,90,642		
24.	19.10.2013		2,85,000	5,642	30,85,000	
25.	22.10.2013			284642		Rent of Rs.2,79,000 deposited for October 2013
26.	16.11.2013		2,80,000	9252	33,65,000	
27.	19.11.2013			288252		Rent of Rs.2,79,000 deposited for Nov 2013
28.	21.12.2013		2,80,000	8252	36,45,000	
29.	23.12.2013					Rent of Rs.2,79,000 deposited for Dec 2013
30.	24.01.2014	149000			34,96,000	
31.	27.01.2014			715252		Rent of Rs.2,79,000 deposited for Jan 2014
32.	03.02.2014	1,13,000		828,252	33,83,000	
33.	21.02.2014			11,07,252		Rent of Rs.2,79,000 deposited for Feb 2014
34.	01.03.2014			10,28,452		Transferred Rs.78,800/-
35.	03.04.2014			13,07,452		Rent of Rs.2,79,000 deposited for March 2014
36.	21.04.2014		5,00,000	807452	38,83,000	
37.	20.05.2014	1,00,000			37,83,000	
38.	21.05.2014		5,00,000	420426	42,83,000	
49.				11,43,426		Enhanced Rent of Rs.3,01,500 for April and May 2014 and other 2 cheques of Rs.75,000 and 45,000 deposited.
40.	01.07.2014					Income tax Deposited of Rs.3,40,000
41.	02.07.2014 19.08.2014			1406426		2 cheques of Rs.301,500 for the month of June and July
42.	28.08.2014		5,00,000 8,00,000	106426	55,83,000	

43.	14.10.2014	NEFT of Rs.9,04,500/-		10,10,926		Rent transferred through NEFT of Rs.9,04,500/-
44.	10.11.2014			1329039		Rent transferred through NEFT of Rs.3,01,500
45.	21.11.2014		11,00,000		66,83,000	
46.	10.12.2014					Rent transferred through NEFT of Rs.3,01,500
47.	26.12.2014		5,25,000	5539	72,08,000	
48.	08.01.2015 10.02.2015 11.03.2015			9,10,039		Rent transferred through NEFT of Rs.3,01,500-3 cheques
49.	30.03.2015			4,29,239		Two cheques of Rs.78,800 and 402,000/- deposited for property tax and income tax resp.
50.	11.04.2015		6,00,000	130739	78,08,000	Rent transferred through NEFT of Rs.3,01,500
51.	12.05.2014 12.06.2014			7,43,555		Rent transferred through NEFT of Rs.3,01,500/- 2 cheques
52.	20.06.2015		7,40,000	3,555	85,48,000	
53.	01.08.2015 11.08.2015			861,555		2 transfers of Rs.75,000 and 3,24,000 due to increase in rent
54.	29.08.2015		8,00,000	61,555	93,48,000	
55.	10.09.2015			385,555		Rent of 3,24,000 received
56.	15.09.2015			175555		Income tax paid of Rs.2,10,000
57.	08.10.2015			499,555		Rent of 3,24,000 received
58.	30.10.2015		4,80,000	19,555	98,28,000	
59.	09.11.2015 10.12.2015			6,75,228		2 transfers of 3,24,000 each of rent
60.	28.12.2015		3,00,000	375,228	1,01,28,000	
61.	11.01.2016			6,99,228		Rent received of Rs.3,24,000
62.	29.01.2016		3,50,000	349228	1,04,78,000	
63.	10.02.2016			673228		Rent received of Rs.3,24,000
64.	17.02.2016		6,00,000	73,228	1,10,78,000	
65.	11.03.2016 13.04.2016 10.05.2016			10,51,793		3 transfers of Rent received of Rs.3,24,000 each
66.	21.05.2016 02.06.2016			877,015		Various payments made
67.	10.06.2016			12,01,015		Rent received of Rs.3,24,000
68.	30.06.2016 08.07.2016 11.07.2016					Rent received of Rs.3,24,000/- and various payments

8. Thus, Ld. Counsel submitted that looking to the peculiar facts of the assessee's case and in the habit of withdrawing the money and keeping in the form of cash at home cannot be doubted. When the Govt. announced the demonetisation, the cash kept by him over a period of time has been deposited in the bank account and the entire

source is from the money withdrawn by him from his own bank account from time to time.

9. The ld. DR strongly relied upon the order of the Assessing Officer and the ld. CIT (Appeals) and submitted that the amount which assessee had withdrawn before the demonetisation, i.e. from 1.04.2016 to 9.11.2016 already the ld. CIT (Appeals) has given benefit. It is improbable that money withdrawn years ago has been kept in the form of cash and suddenly on the day of demonetisation assessee had to deposit the said amount. Such explanation without any proper material to support cannot be accepted.

10. We have heard the rival submissions. After considering the facts and material on record and on perusal of the bank statement, we find that the assessee had been making huge withdrawals from time to time. The assessee is having huge income from rent which is Rs.2,58,750/- per month which the assessee has been receiving through cheque in his bank account and such rental income has been disclosed in the return of income of Om Prakash Nahar, HUF. Apart from that, assessee is also getting pension from Government of India. Besides this, the assessee has no source of income or is involved in any business or profession. From the perusal of the history of cash withdrawals starting from the financial year 2014-15, we find that assessee has been regularly withdrawing huge cash amount on various dates and there was hardly any credit balance left in his bank account. The funds flow statement as incorporated above clearly shows that each and every withdrawal has been mentioned and utilization thereof and the money being withdrawn from the bank account. Even after house-hold withdrawal, there was a huge amount available with the assessee in the form of cash. Under these facts and

circumstances stated by the assessee, it cannot be held to be improbability that assessee did not have any availability of cash at the time of demonetisation. It has not been brought on record whether assessee was carrying out any business or profession or was having income from undisclosed sources of income which can be said to be available with the assessee in the form of cash. If the assessee had no source of income apart from rental or pension income and some interest amount and same income earned regularly has been withdrawn regularly leaving very less cash in the bank account, that shows the pattern that the assessee was indeed in the habit of keeping the money in the form of cash probably looking the old age and various ailments as explained by him. Under these circumstances, we find that the explanation of the assessee to be reasonable and plausible and preponderance of probability is in the favour of the assessee and without any adverse material it cannot be presumed that the cash deposited by the assessee is out of some his undisclosed source. Accordingly, the addition of Rs.44,13,000/- as sustained by the CIT (Appeals) is deleted.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on : **27/01/2022**.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated : 27/01/2022.

MEHTA

Copy forwarded to

1. Appellant;

2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	25.1.2022
Date on which the typed draft is placed before the dictating member	27.1.2022
Date on which the typed draft is placed before the other member	27.1.2022
Date on which the approved draft comes to the Sr. PS/ PS	27.1.2022
Date on which the fair order is placed before the dictating member for pronouncement	27.1.2022
Date on which the fair order comes back to the Sr. PS/ PS	27.1.2022
Date on which the final order is uploaded on the website of ITAT	27.1.2022
date on which the file goes to the Bench Clerk	27.1.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	