

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.2902/Bang/2017
Assessment Year :2009-10

Smt. Thahseen Husna, #64-65, 27 th Main, NIFT Road, HSR Sector – 1, Bengaluru–560 034. PAN : AAUPH 4381 H	Vs.	The Assistant Commissioner of Income Tax, Circle – 4[3][1], Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. Sankar Ganesh K, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	28.02.2022
Date of Pronouncement	:	.03.2022

ORDER

Per N. V. Vasudevan, Vice President :

This is an appeal by the assessee against Order dated 20.10.2017 CIT(A)-4, Bengaluru, in relation to Assessment Year 2009-10.

2. The only issue that arises for consideration in this appeal is as to whether the Revenue authorities were justified in confirming an addition of Rs.46,60,000/- as unexplained cash deposits. Ground Nos.2 and 3 raised by the assessee in this regard reads as follows:

2. *The learned CIT[A] is not justified in upholding the addition of Rs.46,60,000/- as unexplained cash deposits rejecting the explanation tendered by the appellant for the source of the said cash deposits in the bank account, which is supported by*

an agreement entered into by the appellant with Dr. Anjuman Yaseem for lease of the appellant's property and the confirmation letter filed in course of the appellate proceedings under the facts and in the circumstances of the appellant's case.

3. *Without prejudice to the above, the authorities below are not justified in treating the entire cash deposits as income and ought to have taxed only the peak credit under the facts and in the circumstances of the appellant's case.*

3. The assessee is an individual and his source of income is income from house property. In the course of assessment proceedings, the AO noticed that the assessee had made cash deposits totalling Rs.46,60,000/- on various dates in his various Bank Accounts. The AO called upon the assessee to explain the source of funds out of which the aforesaid cash deposits were made. The assessee explained that the sources of cash deposits were from and out of the lease deposits received by the assessee from one Dr. Arjumand Yasmeen in respect of property Nos.64 and 65, Husna Sahar Arcade, HSR Layout, Bengaluru, owned by the assessee. The aforesaid property was leased by the assessee under lease agreement dated 22.04.2008 to Dr. Arjumand Yasmeen.

4. The AO, on going through the lease agreement, noticed that the cash deposits made in the bank accounts were on various dates starting from 24/04/2008 till 26/03/2009. The AO noted that as per the lease deed, Dr. Arjumand Yasmeen, was required to make payments in different installment commencing from 31/05/2008 to 30/11/2008. He noted that the dates of cash deposits in the bank accounts did not match with the dates on which the lease deposit was to be paid as per lease agreement. Therefore, the AO called upon the assessee to prove the genuineness of the payments received from Dr. Arjumand Yasmeen and her credit worthiness to give such advances. It was

submitted by the assessee that aforesaid Dr. Arjumand Yasmeen is an NRI and stays abroad Jeddah, Saudi Arabia and therefore, during the course of assessment proceedings the assessee could not produce the confirmation letter from her and therefore, the AO concluded that the assessee has not proved the cash deposits made in the bank account and brought to tax a sum of Rs.46,60,000/- as unexplained cash deposits.

5. Aggrieved by the order of the AO, assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee contended that after conclusion of the assessment and during the month of March, 2014, the aforesaid Dr. Arjumand Yasmeen, came to India and thereafter, the assessee has obtained the confirmation letter from her confirming the payments made to the assessee on various dates. The copy of the confirmation letter of Dr. Arjumand Yasmeen was filed before CIT(A). In support of the identity of Dr.Arjumand Yasmeen, the assessee filed Residence Permit of Dr.Arjumand Yasmeen issued by the Kingdom of Saudi Arabia. It was submitted that the aforesaid documents were additional evidence and the same could not be produced before the AO during the course of assessment proceedings as the aforesaid Dr. Arjumand Yasmeen was abroad at the relevant time and therefore the default in filing the same before the AO would be covered under the exception to Rule 46A of the Income Tax Rules, 1962 and therefore, the additional evidence tendered by the assessee be admitted. It was contended that in light of the additional evidence tendered by the assessee, the addition made by the AO is unjustified and unwarranted as the very addition has been made for the want of evidence for the claim of the assessee with regard to the source of the cash deposits made in the bank account.

6. The CIT(A) called for a remand report from the AO. In the remand report, the AO submitted that in the confirmation of Dr. Arjumand Yasmeen confirming the payment of Rs. 45,00,000/- made to the assessee, the payments

are said to be made spread over a period of time i.e., from 15/05/2008 to 26/03/2008. The AO pointed out that the confirmation contains only the date(s) of payment whereas, it does not contain the details of amounts paid and the mode of payment. As per the lease agreement, the lease amount of Rs.45,00,000/- should have been paid between the period 31.05.2008 to 30.11.2008. As per the bank account statements, the assessee deposited cash on various dates starting from 24/04/2008 to 26/03/2009 which is even beyond 30/11/2008. Further, the credit worthiness of Dr. Arjumand Yasmeen could not be established by the assessee. Copy of residence permit evidencing that Arjumand Yasmeen is a practicing doctor in Saudi Arabia and the income earned is tax free in KSA cannot prove the plea of assessee without proof as to what is the mode of payment by Dr. Arjumand Yasmeen to the assessee. If there was any transfer of money, the same should have been reflected in the bank account of Dr. Arjumand Yasmeen showing a withdrawal / transaction. In the instant case, the issue is cash deposits, so how can one arrive at a conclusion that the cash deposits precisely represents the money given by Dr. Arjumand Yasmeen in the absence of any documentary evidence. If Dr. Arjumand Yasmeen carried the money all the way from Saudi Arabia to India through her bank account then there is no evidence to suggest that money is being withdrawn from her bank account and correspondingly deposited into the assessee's account since bank account of Dr. Arjumand Yasmeen is not available on record. If Dr. Arjumand Yasmeen has brought cash front Saudi Arabia then, according to the Currency Import Regulations as per Indian Customs Currency & Airport Tax Regulations the amount should not exceed US\$ 5000 in cash or US\$ 10000 in Travellers Cheque which should be declared at the time of entry into India. No evidence regarding this is on record. The itinerary / travel dates of Dr. Arjumand Yasmeen are not on record in order to verify credentials. In view of the above facts, the AO submitted that the plea of the assessee should be rejected.

7. The CIT(A) confirmed the order of the AO. The CIT(A) was of the view that as per the Bank statements of the assessee, cash deposits were made on various, dates starting from 24/04/2008 till 26/03/2009 totalling to Rs. 46,60,000/- which did not match with that of the lease amount said to have been received as per the above lease agreement. As per the lease agreement the last instalment was payable on 30/11/2008 but as per the Bank statement there were deposits even after this date i.e. upto 26/03/2009. The CIT(A) held that the confirmation letter of Dr. Arjumand Yasmeen does not indicate the exact quantum of cash-amounts disbursed to the assessee on the dates mentioned therein. The confirmation letter does not contain the current, Indian address or PAN of Dr. Arjumand Yasmeen. The said letter also does not indicate any information on the assessment and residential status of Dr. Arjumand Yasmeen either in India or in the Saudi Arabia. As per the confirmation letter the impugned cash payments were spread over the period between 15/05/2008 to 26/03/2009, which was beyond the dates stipulated in the lease-agreement. The assessee has failed to provide specific evidentiary explanation to justify the pertinent questions, which therefore remain unanswered. The assessee as well as Dr. Arjumand Yasmeen have not provided valid and acceptable details to explain or even indicate the mode of transfer of the impugned sums from Saudi-Arabia to India. The confirming party has not placed on record any bank particulars to indicate the transfer of funds through banking channels, or any Bank-statement showing the corresponding deposits / withdrawals, in relation to the amount of Rs. 45,00,000/- claimed to be paid to the assessee. There is thus no direct nexus found between the cash withdrawals of Dr. Arjumand Yasmeen and corresponding credits in assessee's accounts.

8. Aggrieved by the order of the CIT(A), assessee has filed the present appeal before the Tribunal. Learned Counsel for the assessee while reiterating the case of the assessee as put forth before the AO submitted that atleast on

ground No.3, the matter should be remanded to the AO to tax only the peak credit. In this regard, the learned Counsel brought to our attention to copy of the bank statement which is at Pages 4 to 19 of the Paper Book. He brought to our notice that in these bank accounts there were deposits as well as withdrawals and the earlier withdrawal will be a source for the subsequent deposits into same bank account and therefore only the peak credit has to be brought to tax. Learned DR however submitted that this is an afterthought and the plea should not be accepted.

9. We have carefully considered the rival submissions. In para 5.1 of the AO's order, the AO has set out the various dates on which the assessee deposited a total sum of Rs.46.60 lakhs in his Bank Accounts. The period is from 24.04.2008 and 26.03.2009. As per the lease agreement dated 22.04.2008, the lessee (Dr. Arjumand Yasmeen) has to pay assessee seven lease rent instalments of Rs.45 lakhs as set out in clause 1 of the lease deed. In the confirmation letter of the lessee filed before CIT(A), the lessee has stated that she did not adhere to the time Schedule as mentioned in the lease deed but gave cash to the assessee on various dates. These dates start from 15.05.2008 till 26.03.2009 and tallies with the dates as given by the AO in the Order of Assessment in paragraph 5.1. The confirmation of the lessee was filed only before CI(A) and is an afterthought. The assessee being recipient of cash from the lessee ought to have stated the correct dates before AO. The assessee chose to rely only on dates as given in the lease agreement dated 22.04.2008 as the source of funds for cash deposit in Bank Account. When the AO pointed out discrepancies in the dates of receipt as given in lease and the dates of deposit of cash in the Bank Account, the assessee has chosen to file confirmation of the lessee giving dates of receipt of cash to coincide with the dates of deposit of cash in the Bank Account. The CIT(A) has therefore rightly disbelieved the plea of the assessee. The CIT(A) has also rightly pointed out as to how the lessee has not shown as to the source

from where the cash was given to the assessee. We therefore find no infirmity in the order of the CIT(A).

10. With regard to the alternative plea of the assessee raised in ground No.3, we find from a perusal of the Bank Accounts that these were deposits which are preceded by withdrawals and therefore the earlier withdrawals from the Bank Account will be source for the deposits made subsequent to the dates of withdrawal. In such a scenario, the peak credit alone should be taken. Since this plea was not raised before the CIT(A) or AO, we deem it fit and proper to remand the issue of making addition on the basis of peak credit to the AO for fresh consideration after due opportunity to the assessee. We hold and direct accordingly.

11. In the result, the appeal by the assessee is partly allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(B. R. BASKARAN)
Accountant Member

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 04.03.2022.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.