

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ‘ SMC ‘ Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member**

ITA No.85/Hyd/2022	
Assessment Year: 2017-18	
Mohammad Abdul Rahman Khan c/o Katrapati & Associates 1-1-298/2/B/3, 1 <sup>st</sup> floor Ashok Nagar Hydeabad-500 020  PAN : CIIPK9141A  (Appellant)	Vs. ITO(IT)-1 Aaykar Bhawan Basheer Bagh Hyderabad -500 029      (Respondent)
Assessee by:	Shri K.A. Sai Prasad-CA
Revenue by:	Shri Waseem Ur Rehman, Sr.AR
Date of hearing:	13.06.2022
Date of pronouncement:	14. 06.2022

**ORDER**

**Per Shri Rama Kanta Panda, A.M.**

This appeal filed by the assessee is directed against the order dated 30.12.2021 of the Learned Commissioner of Income Tax (Appeals)-10, Hyderabad relating to AY 2017-18.

2. There is a delay of ‘24’ days in filing of this appeal by the assessee for which assessee has filed a condonation petition explaining the reasons for such delay. After going through the contents of the condonation application and after hearing the Id. DR , the delay in filing of this appeal by ‘24’ days is condoned and the appeal is admitted for adjudication.

3. Facts of the case, in brief, are that the assessee is an individual and had not filed his return of income for the AY 2017-18 within the time limit prescribed u/s. 139(1). On the basis of statement of financial transaction filed by the banks in the wake

of demonetization, the AO had information that assessee has made huge cash deposit during the demonetization period. He, therefore, issued a notice u/s. 142(1) of the I.T.Act in the PAN database H.No. 5-6-280/1. Although, the assessee was supposed to file the return of income on or before 31.03.2018, however, the assessee did not file his return of income in response to the notice issued u/s. 142(1) of the Act. The AO, therefore proceeded to complete the assessment u/s. 144 of the I.T.Act. From the bank account available with him, he noted that assessee has made cash deposit of Rs. 14,50,000/- in Account No. 024501078648 maintained with ICICI Bank, Mehidipatnam branch, Hyderabad during the demonetization period i.e 09<sup>th</sup> November, 2016 to 30<sup>th</sup> December, 2016 in old currency. The AO, thereafter obtained certain information u/s. 133(6) from the bank. Subsequently, the assessee responded to the notice issued by the AO and explained that the cash deposited by him during the demonetization period was gifted to him by his father who in-turn had withdrawn the said amount from his bank account. The AO obtained information u/s. 133(6) from the bank in respect of the bank account maintained by his father. After analyzing the various details, the AO rejected the arguments advanced by the assessee and made addition of Rs. 17,00,100/- to the total income of the assessee by invoking the provisions of section 69A of the I.T.Act. The AO also made addition of Rs. 12,307/- being interest in the SB A/c. Thus, the AO completed the assessment on a total income of Rs. 17,12,410/-.

4. Before the Id.CIT(A), the assessee did not appear despite three opportunities granted. Therefore, the Id.CIT(A) decided the issue on the basis of reply filed during assessment proceedings. He sustained the addition made by the AO of Rs. 17,00,100/- u/s. 69A of the Act, but deleted the addition of Rs. 12,307 u/s. 69 A of the Act by observing as under:-

*“6. Ground of appeal no. 2 and 3 relate to the heart of the relevant issue in appeal i.e. about the sustainability of addition made u/s. 69A @ Rs.17,12,410/-.*

*6.1 With respect to the above issue, the appellant has not filed any information or documentary evidence before me. Opportunities of hearing was afforded to the appellant, three times i.e. on 12.02.2021, 24.09.2021 and 26.11.2021, to which neither the appellant has chosen to appear nor file any written submissions supported by any documentary evidence.*

*6.2 However, the appellant has filed the following reply during the course of assessment proceedings on 19.09.2019, which is reproduced below for the sake of clarity:*

*“ I am in receipt of your notice dt. 13.09.2019. In this regard I wish to submit as under:*

*2.I have deposited amounts totaling to Rs. 17,00,100/- during the F.Y. 2016-17 in ICICI Bank, Mehidipatnam Branch, Hyderabad. A copy of my bank account is enclosed herewith for ready reference.*

*3. this was out o the following:*

*1. Gift from my father on 24.11.2016 out of withdrawals from ICICI bank Himayathnagar Branch on 05.08.2015 Rs. 6,25,000/-*

*2. Gift from my father on 24.11.2016 out of withdrawals from ICICI bank Mehidipatnam Branch 24.11.2015 Rs. 9,00,000/- Rs. 15,25,000/-*

*3. Due to inadvertence in the confirmation filed by my father the amount gifted was typed as Rs. 19,90,000/- instead of Rs. 15,25,000/-*

*4. I am obtaining a fresh confirmation from him and will file it in due course. Copy of the bank account from which he withdrew this amount is enclosed.*

*5. Further I have withdrawn a sum of Rs. 4,65,000/- on 11.02.2016 from ICICI bank, Mehidipatnam Branch from A/c No. 024501005889. A copy of the said bank account is enclosed herewith.*

*6. Thus, a sum of Rs. 19,90,000 was available with me from which I deposited an amount of Rs. 17,00,100/- on the following dates 02.11.2016 and 2,50,000/-, 17.11.2016 Rs. 5,00,000/- and 18.11.2016 Rs. 9,50,000/-. Rs. 17,00,100/- in ICICI Bank, Mehidipatnam Branch bearing account No. 024501078648.*

*7. There was no special occasion for gift b my father. He simply gifted the money. This was anticipation of my sisters marriage. I have also withdrawn money from the bank only for that purpose.*

*8. I have received this gift by way of cash*

*9. I have the following of bank account copies are enclosed herewith. NRO account 630501079227 Mr. basher Khan ICICI bank, Himayathnagar Branch, NRE account 024501005267 Mr. Basheer Khan ICICI Bank mehidipatnam branch. Here are the details of my father: PAN-CIIPK9118D, M.B.No.8121946454, Aadhar Card No.250382310438/- and mail id: [markhan62@yahoo.com](mailto:markhan62@yahoo.com)*

*#My father is a Non-resident and his entire income is in Saudi Arabia. My father is not an Income-Tax Assessee in India as thee is no taxable income in India. As such he did not file any ITR in India. Money was withdrawn from bank, as stated earlier in anticipation of my sister marriage.*

*10.Both my father and me were present India on24.11.2015 when the gift was mad. As already stated this cash was a kept for purpose of my sister marriage and I was advised that there is no law against holding money in cash. Since I had money in cash and I had no option but to deposit it in bank on demonetization. It was not as if I have waited for the demonetization. Nobody knew when the demonetization is coming.*

11. I have left the country after receiving the gift by my father and kept the cash in the house. Since I have given detailed explanation in respect of the money deposited, I request you to kindly accept it and close the proceedings. I am separately filing the return for the AY 2017-18 in response to your notice u/s. 142(1) of the Income tax Act.

6.3 The reply is perused and the confirmation of Gift by his father to the extent of Rs. 15,25,000/- is also available on record.

6.4 The appellant has furnished before the AO, explanation that his father has gifted him Rs. 15,25,000/- for performing his sitters marriage. However he has not furnished any source for the said gifts. Mere furnishing of an NRO bank account would not be sufficient to prove the source, travel and destination of any money. In this case, the appellant has not made any attempt to prove the source for the cash withdrawal, did not demonstrate that the cash was withdrawn for a purpose and as the same stood unfulfilled, the amount remained unspent.

6.5 the record says that both the appellant as well as his father do not work in India. In fact, as per his own explanation, the appellant along with his father owns a car garage in Dammam, KSA(Saudi Arabia) for about twenty years( as appearing in the assessment order).

6.6 The above explanation defeats the appellant's logic that there is no law against keeping cash. The Indian socio-cultural circumstances some times calls for circumstances where people stash cash. But when the appellant and his family stay in Dammam along with his parents, this act of keeping money in cash goes against all probabilities.

6.7 Most importantly, the appellant did not make any attempt to explain the source for the cash deposit; He has not even furnished sources for the amount said to be drawn by him to the extent of Rs. 4,65,000/- on 11.02.2016.

6.8 However as Rs. 12,307/- constitutes interest income earned on NRO ICICI Bank a/c. No. 024501078648, it does not partake the character of unexplained money and the same does not attract sec. 69A. To this extent, these grounds of appeal are allowed. The AO is directed to delete Rs. 12,307/- u/s. 69A. the rest of the amount i.e. Rs. 17,00,100/- remains unexplained and therefore calls for application of sec. 69A.

6.9 Thus, Grounds of appeal no. 2 and 3 are partly allowed.”

5. Aggrieved with such order of the ld.CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

1. The order of the ld.CIT(A-10 Hyderabad is not correct, both on facts and in law, in partly allowing the Appeal.

2. the Learned First Appellate Authority in the facts and circumstances of the case is not justified in confirming the addition of Rs. 17,00,100/- made by the AO u/s. 69A of the I.T.Act.

3. The Learned First Appellate Authority failed to appreciate the fact that the total cash deposits of Rs. 17,00,100/- worked out by the AO was out of cash withdrawal from same bank by the assessee to the extent of Rs.

4,65,000/- and cash gift from father of Rs. 15,25,000/- and hence the addition u/s. 69A is unwarranted.

6. The Ld. Counsel for the assessee, at the outset submitted that the assessee was not present in India during the demonetization period. He submitted that there was a marriage in the family for which, the brother of the assessee had withdrawn an amount of Rs. 9,50,000/- from the bank account on 02.11.2016. During the demonization period, the above amount was deposited by his father in assessee's bank account. The ld. Counsel for the assessee, accordingly submitted that credit to the tune of Rs. 9,50,000/- at least should be given out of the cash deposit of Rs. 17,00,100/-. The ld. Counsel for the assessee further submitted that proper opportunity was not granted by the ld.CIT(A) since he has passed an *ex-parte* order and therefore, the assessee in the interest of the justice should be given one more opportunity to substantiate his case.

7. The ld. DR on the other hand strongly supported the order of the AO and the ld.CIT(A). He submitted that assessment in the instant case was completed by the AO on 29.11.2019 and the cash was deposited in the bank account during November, 2016. This shows that after a gap of three years, the assessee was not able to explain the source of such deposit in the bank account. Referring to the order of the ld.CIT(A), he submitted that the ld.CIT(A) passed the order on 13.12.2021 and in the intervening period of two years i.e from the date of assessment till the date of appeal order, assessee had sufficient time to find out this source of cash deposit, but he failed to do so. Now the assessee is changing the version that the brother of the assessee had withdrawn the money, which was deposited by the assessee's father in assessee's bank account. Therefore, the assessee is not clear in his stand and therefore, the order of the ld.CIT(A) should

be upheld and the grounds raised by the assessee should be dismissed.

8. I have considered the rival arguments made by both the sides and perused the record. I find the AO in the instant case on the basis of information obtained from the bank that assessee has made cash deposit of Rs. 17,00,100/- in his savings bank during demonetization period in his NRO account maintained with ICICI bank, Mehidipatnam branch made addition of the same in absence of any satisfactory explanation from the side of the assessee. I find the Id.CIT(A) upheld the action of the AO in the ex-parte order passed by him, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Id.Counsel for the assessee that an amount of Rs. 9,50,000/- withdrawn by the brother of the assessee from his bank account on 02.11.2016 was inadvertently deposited by the father of the assessee in assessee's bank account and he was not present in the country on the date of deposit in the bank account. It is also submission that the Id.CIT(A) has passed an ex-parte order and the assessee was not given sufficient opportunity to substantiate his case.

9. A perusal of the assessment order shows that the same has been passed by the AO u/s. 144 of the I.T.Act and the order was passed on 29.11.2019, whereas the amount was deposited during demonetization period in the month of November, 2016. Further, the Id.CIT(A) has passed order on 30.12.2021. Thus, the assessee had more than five years time to substantiate the source of such deposit and the assessee was not able to substantiate the source of such cash deposit. At the same time, it is also a fact that the Id.CIT(A) has passed the ex-parte order in absence of any appearance or written submission by the assessee despite three opportunities were granted and the assessee was not present in

India during the demonetization period. Considering the totality of the facts of the case and in the interest of the justice, I deem it proper to restore the issue to the file of the Id.CIT(A) with a direction to grant one last opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear from the Id.CIT(A) and substantiate his case failing which the Id.CIT(A) is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 14<sup>th</sup> June, 2022.

**Sd/-**

	<b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 14<sup>th</sup> June, 2022.

**Thirumalesh/sps**

Copy to:

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3	CIT(A)-10, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*