

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - B” BENCH : BANGALORE**

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT

ITA No.360/Bang/2022
Assessment Year : 2017-18

Shri. Girigowda Dasegowda, 1/11, A Cross, Pipeline, Malleshwaram Bengaluru – 560 003. PAN : AFGPD 5520 F	Vs.	ITO, Ward – 2[2][8], Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. Ganesh R Ghale, Standing Counsel for Department.

Date of hearing	:	28.07.2022
Date of Pronouncement	:	10.08.2022

ORDER

This is an appeal filed by the assessee against order dated 24.09.2021 of National Faceless Appeal Centre (NFAC), Delhi, relating to Assessment Year 2017-18.

2. The assessee is an individual. His source of income is pension from Vijaya Bank where the assessee worked prior to retirement, interest income on bank deposits. He filed return of income for Assessment Year 2017-18 declaring total income of Rs.4,40,450/-. The return of income was taken up for scrutiny because the assessee had deposited cash of Rs.28,28,000/- in two bank accounts in his name with Bank of Baroda. The deposit was made during the demonetization period.

3. The assessee explained the source of funds as earlier cash withdrawals from the very same bank accounts, withdrawals from FD and pension account. The AO disbelieved the plea of the assessee for the following reasons:

“8. As per assessee's letter itself, he has claimed that he had witharawn total amount of Rs.18.67.500/- from Oct. 2013 to 08.11.2016. whereas he has deposited total amount of Rs. 28,28,000/- during the period of demonetization.

The assessee has stated that cash deposited during the demonetization period is out of previous withdrawals only, which includes pension, bank interest , PF & Gratuity, Leave en-cashment and commuted that have been deposited in bank. However, the assessee failed to produce documentary proof/evidence to prove that the above benefits were withdrawn from banks in cash and the same amount was deposited during the demonetization period. Further it is also seen that he had invested Rs.15,00,000/- (Account No. (Vijay Bank) 128602061000233/234/235) in Fixed Deposited on 19.10.2013 out of the "PF Commutation and gratuity" and is receiving interest on the same. The Bank interest declared for AY 2017-18 is at Rs.1,09,219/-.

In view of the above. assessee's claim that he had deposited the cash, out retirement benefits is not acceptable and is without any supporting evidences.

9. The assessee has claimed that all the expenses related to him are borne by his sons and all the cash withdrawn by him has been deposited by him into his bank accounts during the period of demonetization. Bank statement of Account No. -128601021000016 for the period Sept, 2013 to demonetization period has been perused and it has been seen that there are no major withdrawal in the said bank account during the year. Further there have cash deposits and withdrawal all through the year, which shows that assessee, was not having huge cash balance at home with him. If that was the case, no bank withdrawal would have been made just before the period of demonetization. However considering the average need of person to

maintain cash at home for medical contingency and bank withdrawals made during the year, the cash in hand as on 08.11.2016 is taken at Rs.5,00,000/-. Hence the balance cash deposited in bank accounts during the demonetization period at Rs.23,28,000/- remains unexplained at assessee's hands.”

4. The AO therefore after giving credit for Rs. 5 lakhs added a sum of Rs.23,28,000/- as unexplained money deposited in bank account under section 69A of the Income Tax Act, 1961 (Act).

5. On appeal by the assessee, the CIT(A) confirmed the order of the AO. On the plea of the assessee that earlier cash withdrawals from the two bank accounts are the source of funds for the cash deposit made in the bank account during the previous year, the assessee had relied on withdrawals from 13.09.2013 and 06.04.2015 but the CIT(A) considered withdrawals from only 06.04.2015 and 21.05.2015 respectively. The reasoning of the CIT(A) in this regard was as follows:

“5.11 From the above bank account it is seen that only few substantial withdrawals were made before 31.03.2016 (end date of demonetization period)

From account no. 128601021000016

<i>Date</i>	<i>Amount (Rs)</i>
<i>02.05.2017</i>	<i>65,000/-</i>
<i>08.06.2015</i>	<i>1,00,000/-</i>
<i>29.07.2015</i>	<i>50,000/-</i>
<i>03.08.2015</i>	<i>30,000/-</i>

From the above it is further seen that above amounts were withdrawn about more than 1 year before deposits.

From Account no.-128601010005646, hardly any substantial amount was withdrawn.

So the appellant might have received various amounts totalling to Rs.19,20,000/- on retirement as given in Table-1, there is no evidence of withdrawal of substantial amount from bank. In fact, as pointed out by the AO, the appellant had FDRs of Rs.15,00,000/- in bank and received interest of around Rs 1.09 L during the FY 2016-17. Thus, the claim of the appellant that cash was withdrawn from bank is not supported by any evidence.

5.12 The appellant was specifically asked to tell as to what utilisation was made of the money deposited in bank accounts, but the appellant failed to give any reply.

5.13 From his bank statement it is also seen that his bank accounts hardly has 10,000/- credit (Cr) Balance. Whenever balance goes over Rs. 1,00,000/- he tries to make FDR and deposits even Rs. 500/- and Rs. 600/- in his bank account (refer bank accounts above, transactions dated 20.06.2016, 08.07.2016 and 25.10.2016).

5.14 A person having Rs. 12,020/- per month pension claims that he had cash in hand of Rs. 28,28,000/- is without any basis. The appellant does not have status to hold Rs. 28,28,000/- in cash and there is no evidence of withdrawing all his retirement benefit in cash

*Broadly, he received Rs.19.20 Lakh do retirement and still have FDRs of Rs 15,00,000/-, then it is possible that he withdrew the balance amount of Rs.4,20,000/-. Even if it is accepted that no amount was spent by him and entire amount was kept as Cash in hand the benefit of Rs.5,00,000/- given by the AO without any evidence is very reasonable. Therefore, the addition of Rs.23,28,000/- made by the AO is confirmed. Hence, ground of appeal **DISMISSED.**"*

6. The limited prayer of the learned Counsel for the assessee before the Tribunal was that there were substantial withdrawals prior to 06.04.2015 and 21.05.2015 respectively from the two bank accounts and the CIT(A) erred in not giving credit to these withdrawals on the ground that these withdrawals were at a time which was more than 2 years from the date of deposit. The learned Counsel for the assessee in this regard placed reliance

on a decision of the Hon'ble Karnataka High Court in the case of Smt. P. Padmavathi Vs. The ITO ITA No.414 of 2009 judgment dated 06.10.2010 wherein the question before the Hon'ble Court relating to Assessment Year 2004-05 was whether the findings of the authorities that the source of cash deposited in the loan account is not properly explained is sustainable. The Court held that earlier withdrawal from the same account shall be held to be proper explanation of the source. The following were the relevant observations of the Court:

“11. Question 3: In so far as the cash deposit in two loan accounts as set out above is concerned, the material on record discloses that the assessee had Rs.7,00,000/- in cash on 20.8.2003 having withdrawn the same from his bank account. The said Rs.7,00,000/- has suffered tax. No doubt the deposit in the two loan accounts was made on 29.9.2003 and on 25.11.2003. The authorities have disbelieved the ease of the assessee on the ground that there is a gap of 40 days or more between the withdrawal of the amount from the bank account and re-deposit of the same in the loan account. Secondly, on the ground that, it is risky to keep large amount of cash on hand. Thirdly, they are of the view that the explanation offered such as having borrowed a gold loan, yet another loan of Rs.2,00,000/- and sale of paddy, are not established by proper evidence. It is in this context, it is useful to refer to a judgment of this Court in the case of ‘S.R.Venkataratnam Vs. Commissioner of Income Tax, Karnataka-1 and another’ reported in ITR (127) 1981 Page 807, where a learned Single Judge held as under:

“Once the petitioner-assessee disclosed the source as having come from the withdrawal made on a given date from a given bank, it was not for the respondents no.1 and 2, to concern themselves with what the assessee did with the money, i.e., whether he had kept the same in his house or utilised the services of a bank by depositing the same. The ITO has only two choices before him. One was to reject the explanation as not believable for the reason that on his investigation no such pigmy deposit was

ever made into the bank. In the alternative, he ought to have called upon the assessee- petitioner to substantiate his claim by documentary evidence. Having exercised neither of the choices, it was not open to the ITO to merely surmise that it would not be probable for the assessee to keep Rs.15,000/- unutilised for a period of two years. The ITO should have given an opportunity to the assessee to substantiate his assertion as to the source of the capital outlay."

12. *In this case, it is not in dispute that the assessee withdrew a sum of Rs.5,00,000/- on 18.8.2003 and Rs.2,00,000/- on 20.8.2003 from her savings account. She is an agriculturist and she had agricultural income. Once she demonstrated that she was in possession of Rs.7,00,000/- cash plus agricultural income on her hands, if after 40 days, a cash deposit is made to the extent of about Rs.5,20,000/- towards loan account, it cannot be said that the source of the said deposit is not properly explained. Merely because there is a delay of 40 days from the date of withdrawal of the money from the bank account to the date of deposit in the loan account. Once money is shown to be in the account and withdrawn, what the assessee did with that money till it was actually deposited, is not the concern of the Department. As long as the source is explained and established and when the money is withdrawn from a savings bank account and paid to discharge loan by deposit into a loan account, it is not possible to hold that the source is not explained. In that interregnum period, if the very same money is utilized for other purpose and thereafter, it is appropriated towards discharge of a loan, that cannot be held against the assessee. In that view of the view, the finding recorded by the Tribunal is erroneous and requires to be set aside. Therefore, the said substantial question of law is also held against the revenue and in favour of the assessee."*

7. The learned Counsel for the assessee also prayed that availability of reasonable quantum of cash in the form of past savings should also be accepted especially when withdrawals to the tune of Rs.24 lakhs are accepted by the AO in para 6 of his order.

8. The learned DR submitted that withdrawals from 2013 cannot be considered as available to assessee in Financial Year 2016-17. According to him, subsequent withdrawals when cash is already available with the assessee has not been explained. The assessee has also not explained as to why and for what purpose cash withdrawn was kept with the assessee. His argument was that the plea of the assessee is contrary to hum probability. He relied on order dated 07.04.2021 of ITAT, Bengaluru SMC Bench in the case of Shri. Mohammed Sharaq Vs. ITO ITA No.1818/Bang/2019 wherein this Tribunal held that availability of earlier withdrawal of cash for the subsequent deposit must be established by the assessee and in the absence of such evidence, the benefit of earlier withdrawal cannot be given to an assessee. He also relied on similar decision rendered by ITAT, Delhi, in the case of Leela Devi Vs. ITO in ITA No.1423/Del/2020 order dated 01.02.2021.

9. I have carefully considered the rival submission. The Hon'ble Karnataka High Court in the case of Smt. P. Padmavathy (supra) clearly laid down that earlier withdrawals of cash from Bank account have to be accepted as available to an assessee to explain a later deposit as source. The Hon'ble Court held that it was not open to the Revenue to contend that the assessee has to explain as to how the cash withdrawn earlier was utilized by an assessee and was still available with the assessee. The decisions cited by the learned DR are contrary to the law laid down by the Hon'ble Karnataka High Court and therefore not binding. I, therefore, hold the past withdrawals as claimed by the assessee from 2013 should be considered as being available to the assessee to explain the source of deposit. We are also of the view that a reasonable quantum of cash

available out of past savings should also be considered as being available to the assessee to explain the source of cash deposited in the bank account.

10. I, therefore, set aside the order of the CIT(A) and remand the case to the AO to consider the issue denovo in the light of the observations as made above.

11. The appeal of the assessee is accordingly treated as allowed for statistical purpose.

12. In the result, appeal of the assessee is allowed for statistical purpose.

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

Sd/-
(N. V. VASUDEVAN)
Vice President

Bangalore,
Dated: 10.08.2022.
/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.