

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 1540/Mum/2022 (A.Y. 2017-18)

Mitesh Rameshchandra Shah 51/10, 2 <sup>nd</sup> Floor Ranchoddas Villa Bhaudaji Cross Road B/H bhattwadekar HS Matunga, Mumbai-400 019.  PAN : AKIPS3569A (Appellant)	Vs.	ITO-20(2)(2) Piramal Chambers Room No. 212 2 <sup>nd</sup> Floor Lalbaug Parel Mumbai-400 012.  (Respondent)
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Assessee by	Shri Rajiv Khadelwal
Department by	Shri R.P. Veena
Date of Hearing	24.08.2022
Date of Pronouncement	20.09.2022

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 11-04-2022 passed by Ld CIT(A), National Faceless Appeal Centre, New Delhi and it relates to the assessment year 2017-18. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.23,42,000/- made by the AO u/s 69A of the Act.

2. The facts relating to the issue are stated in brief. The assessee filed his return of income declaring a total income of Rs.1,38,650/- for the year under consideration. He is a partner in various partnership firms and also a director in a company. The assessee had deposited demonetised currency notes aggregating to Rs.23,42,000/- in his bank account during the demonitisation period. The assessee explained the sources of the above said deposits as money withdrawn from his bank account on earlier occasions, income earned during the AY 2016-17 and past savings. He submitted that

the money was withdrawn to meet possible medical expenses of his brother and uncle. The AO did not accept the explanations of the assessee and accordingly added the deposit mentioned as unexplained deposits u/s 69A of the Act. The Ld CIT(A) also confirmed the addition.

3. The Ld A.R submitted that the assessee has withdrawn money on earlier occasions and kept the same in cash within him in order to meet the possible medical expenses. He submitted that the above said explanation given by the assessee has not been proved wrong by the tax authorities. He submitted that they have rejected the explanations only on surmises and further, no material was brought by them to show that the money so withdrawn has been spent away. Accordingly, he submitted that there is no reason to reject the explanation given by the assessee.

4. The Ld D.R, on the contrary, submitted that the assessee has not maintained any books of account and also did not prove that the cash withdrawn about one year back was available with him. Accordingly, he submitted that the order passed by Ld CIT(A) should be confirmed.

5. In the rejoinder, the Ld A.R placed his reliance on the decision rendered by Ahmedabad bench of Tribunal in the case of Kavtaben Chintanbhai Patel (ITA No.306/Ahd/2021 dated 03-08-2022) and submitted that, in the above said case, the past cash withdrawals made from bank have been accepted as sources for subsequent cash deposits.

6. We have heard rival contentions and perused the record. The assessee has submitted the details of cash withdrawals, income for AY 2016-17, past savings before the Ld CIT(A) and the same have been tabulated by Ld CIT(A) at pages 3 and 4 of his order. On a perusal of the same, we have categorised the sources explained by the assessee as under:-

Cash withdrawals of Rs.50,000/- and above	-	Rs.20,00,000
Cash withdrawals of less than Rs.50,000/-	-	Rs. 50,000
Income earned in AY 2016-17	-	Rs. 1,87,500
Past savings	-	Rs. 1,04,500
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		Rs.23,42,000
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We notice that the assessee has not explained as to how he has met his personal expenses, i.e., it was not shown that the above said amounts were not used for meeting personal and household expenses. At the same time, it cannot also be said that all the above said amount would have been spent by the assessee. We notice that the assessee has not maintained any books of accounts. In the case of Kavitaaben Chintanbhai Patel (supra), we notice that the said assessee has maintained books of accounts and the earlier withdrawals were carried forward as cash balance in the books. In the absence of books of accounts, the claim of the assessee that he has kept money in cash could not be accepted in toto. Accordingly, in the facts and circumstances of the case, we have no other option but to estimate the probable cash balance that was available with the assessee. We notice that the assessee has filed returns of income declaring total income of less than Rs.2,00,000/- Accordingly, we are of the opinion that the explanation of the assessee for cash withdrawals may be accepted with regard to the lumpsum withdrawals of Rs.50,000/- and above, since the level of income declared by the assessee would show that it is possible that he would not have spent those cash withdrawals made in lumpsum. We noticed earlier that there was no material to show that the assessee has spent the money so withdrawn. Accordingly, we are of the view that lumpsum withdrawals to the tune of Rs.20.00 lakhs should be accepted as sources for making impugned deposits.

7. With regard to the remaining sources of small withdrawals of Rs.50,000/-, income of AY 2016-17 and past savings, we are of the view that

the assessee may given credit of Rs.1.00 lakh only and the remaining amount should be considered as spent away to meet personal expenses.

8. Accordingly, we hold that the sources for making deposits during demonetisation period should be accepted to the tune of Rs.21.00 lakhs. Accordingly, we modify the order passed by Ld CIT(A) and direct the AO to delete the addition to the extent of Rs.21.00 lakhs and accordingly confirm the addition of remaining amount of Rs.2,42,000/-. We order accordingly.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 20.09.2022.

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 20 /09/2022

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.

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BY ORDER,  
(Assistant Registrar)  
ITAT, Mumbai