

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. 153/RPR/2022

निर्धारण वर्ष / Assessment Year : 2017-18

Sunil Khemani
C/o. Anil Electricals, Opp. Dena Bank,
Jawahar Nagar, M.G Road,
Raipur (C.G.)-492 001
PAN : AFHPK9274J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(3), Raipur (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal &
Smt. Laxmi Sharma, CAs

Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 07.02.2023

घोषणा की तारीख / Date of Pronouncement : 13.02.2023

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 28.06.2022, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 16.12.2019 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. On the facts and in the circumstances of the case, that the ld. CIT(A) has erred in sustaining the addition of Rs.17,00,000/- made by the ld. AI as undisclosed investment u/s.69 being cash deposit during demonetization period.
2. On the facts and circumstances of the case and in law, the ld. CIT has erred in applying sec. 115BBE.
3. That the assessee craves leave to add, urge, alter, modify and withdraw any ground/grounds before or at the time of hearing of the appeal.”

2. Before adverting any further, I may herein observe that the assessee though had raised an additional ground of appeal before me, however, the same was, thereafter, as per instruction of the assessee withdrawn by his counsel vide letter dated 07.02.2023 (placed on record). Accordingly, the **additional ground of appeal** raised by the assessee is dismissed as withdrawn.

3. Controversy involved in the present appeal lies in a narrow compass, i.e., the sustainability of the addition of Rs.17 lac made by the A.O u/s.69 of the Act, of cash deposited by the assessee over the period 16.11.2016 to 18.11.2016 i.e. during the demonetization period in his bank account No.2555101001451 with Canara Bank, Branch: Telibandha, Raipur, which thereafter was sustained by the CIT(Appeals).

4. The case of the assessee was selected for limited scrutiny u/s. 143(2) of the Act. During the course of the assessment proceedings, it was observed by the A.O that the assessee had during the demonetization period made cash deposits of Rs.17 lac in his bank account, as under:

Date of deposit	Amount
16/11/2016	900000
17/11/2016	400000
18/11/2016	400000

On being queried about the source of the aforesaid cash deposits made during the demonetization period, it was submitted by the assessee that the same were sourced out of his salary income a/w. income from other sources. In support of his aforesaid claim, the

assessee filed before the A.O statement of affairs for the year under consideration a/w. those for the immediately two preceding years. On the basis of the cash withdrawals of Rs.16.98 lac that was made by the assessee from his bank account in September, 2014, it was, therein, claimed by him that the said funds were utilized for sourcing the cash deposits of Rs.17 lac (supra) in his bank account. Observing that the opening capital of the assessee, as was projected in his balance sheet on 01.04.2014 was Rs.25.77 lac (approx.), the A.O called upon him to explain the basis for formation of the said amount. In reply, the assessee filed with the A.O details of working of capital from the year 2010-11 onwards. It was submitted by the assessee that he had in the preceding year advanced loan of Rs.14,50,127/- to M/s. Anil Electricals and Rs.1,73,584/- to M/s. Anil Marketing, which fact could safely be gathered from his balance sheet for the year 2013-14.

5. It was, further submitted by the assessee that the aforesaid loans were received back by him in his bank account from the aforesaid persons during the year 2014-15, and the same pursuant to the withdrawals out of the said amount from his bank had resulted to an increase in his cash in hand to an amount of Rs.18,72,437/- during the said year i.e. F.Y.2014-15. However, the A.O did not find

favour the aforesaid explanation of the assessee. Although, it was the claim of the assessee that the amount of Rs.15.25 lac which was withdrawn by him from his bank account in the year 2014 a/w. other balance cash in hand available with him, were utilized for making cash deposits of Rs.17 lac (supra) in his bank account during the demonetization period, but the said claim of the assessee did not find favour with the A.O. Holding a conviction that the assessee had failed to come forth with any explanation as regards the cash deposits of Rs.17 lac made by him in his bank account, the A.O made an addition of the entire amount u/s.69 of the Act.

6. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

7. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

8. I have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the ld. A.R to drive home his contentions.

9. As observed by me hereinabove, it is the claim of the assessee that the amount of Rs.17 lac (supra) deposited by him during the demonetization period i.e. 16.11.2016 to 18.11.2016 in his bank account No.2555101001451 with Canara Bank, Branch : Telibandha was primarily sourced out of his earlier cash withdrawals that were made by him from his aforesaid bank account in two tranches in the F.Y.2014-15, as under:

Date	Particulars	Amount
21.08.2014	Cash withdrawals	Rs.9,00,000/-
30.08.2014	Cash withdrawals	Rs.6,25,000/-

, while for the balance amount was deposited out of the amount which were available with him at the relevant point of time of making the respective deposits. Although the assessee in order to substantiate his claim that the cash deposits of Rs.17 lac (supra) in his bank account during the year under consideration were sourced out of the cash withdrawals of Rs.15.25 lac (supra) a/w. balance cash in hand available with him, had pressed into service his statement of affairs for the year under consideration a/w. those of the preceding two years, but the A.O holding a conviction that it was impractical and beyond comprehension that the assessee would have retained

the said amount with him for two years (approx.), thus, was not inclined to accept his said explanation.

10. I have given thoughtful consideration to the issue in hand and is unable to fully subscribe to the explanation of the assessee as regards the source of the cash deposits in his bank account. Although, it is beyond comprehension that any person would withdraw substantial amount of Rs.15.25 lac (supra) from his bank account for the purpose of keeping it at home and re-deposit the same after a gap of two years in the same account. At the same time I am also not able to subscribe to the view taken by the A.O that no part out of the said cash withdrawals would have been available with the assessee at the point of making the aforesaid bank deposits. I, say so, for the reason that neither is anything discernible from the record nor has been brought to my notice by the Ld. Departmental Representative (for short 'DR'), which would reveal that the aforesaid amount of Rs.15.25 lac (supra) withdrawn by the assessee during the year 2014 was utilized/invested by him. At the same time, I cannot also remain oblivion of the fact that the cash withdrawals of Rs.15.25 lac(supra) made by the assessee in two tranches, viz. (i) on 21.08.2014 : Rs.9,00,000/-; and (ii) on 30.08.2014 : Rs.6,25,000/-, in all probabilities reveals that having utilized/invested the cash

withdrawal of Rs.9 lac carried out by the assessee on the first occasion i.e. on 21.08.2014 would have prompted him to make the second withdrawal of Rs.6.25 lac on 30.08.2014. In so far the balance sheet for the F.Y.2014-15 and 2016-17 that were filed by the assessee before the A.O are concerned, I am of the considered view that as the same, as admitted by the Ld. AR were compiled in the course of the assessment proceedings for the purpose of explaining the availability of cash in hand with him, therefore, the same being nothing better than a document prepared as per convenience could have by no means be relied and acted upon.

11. Considering the aforesaid facts, I am of the considered view that in light of the aforesaid cash withdrawals of Rs.15.25 lac a/w. cash in hand that would have been available with the assessee, a salaried person both out of his savings and current years income, it can safely be held that an amount of Rs.3 lac (out of cash withdrawals of Rs.6,25,000/- made by the assessee on 30.08.2014) and Rs.50,000/- (out of cash in hand available with him from his savings account and current years income) could safely be held to have been available with him for making the cash deposits by him during the year under consideration in his aforesaid bank account with Canara Bank, Branch : Telibandha, Raipur. I, thus, in terms of

my aforesaid observations scale down the addition made/sustained by the lower authorities to an amount of Rs.13,50,000/-[Rs.17 lac (-) Rs.3.50 lac].

12. In the result, appeal of the assessee is partly allowed in terms of the aforesaid observations.

Order pronounced in open court on 13th day of February, 2023.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 13th February, 2023

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, रायपुर / DR, ITAT, "SMC" Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur