

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री अरुण खोडपिया, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI ARUN KHODPIA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.937/Chny/2022
निर्धारण वर्ष /Assessment Year: 2017-18

Mr.Kottur Rajendran Gobi Krishna,
No.14, Saranya Garden,
Jothi Nagar,
Pollachi-642 001.

v. The Income Tax Officer
(International Taxation
Ward),
May Flower Mid City Building,
1510, Trichy Road,
Coimbatore-641 018.

[PAN: BAVPK 2380 K]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.R.Vijayaraghavan, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.P. Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 14.03.2023
घोषणाकी तारीख /Date of Pronouncement : 16.03.2023

आदेश / ORDER

PER ARUN KHODPIA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-16, Chennai, dated 05.09.2022 and pertains to assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

(1) The learned CIT(A) has failed to appreciate that the appellant was a Non-Resident, having been employed in aboard as a SW Engineer on deputation and not having any occupation in India to hold that the cash re-deposited in the appellant's Bank account to the extent of Rs.10,00,000/- was in the nature of unexplained money contemplated u/s 69A of the I.T. Act, 1961, in the facts and circumstances of the case.

(2) The learned CIT(A) has erred in rejecting the explanations offered by the appellant with proper documentary evidence, holding that Preponderance of

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possibility does not support the claim of the appellant, in the facts and circumstances of the case, even though the AO has not established that the cash withdrawn earlier from SB account was used for other purposes anywhere else.

(3) The learned CIT(A), in the facts and circumstances of the case, has erred in holding that the explanations with documentary evidences provided by the appellant does not sound credible or plausible, even when he appreciated the fact that the appellant is well employed outside India and has remitted money from such income derived outside India and that his Bank account in India is being managed by his mother as a power of attorney holder.

(4) The learned CIT(A) has failed to appreciate that the AO has not found that cash withdrawn earlier had been used up elsewhere and it was not available for household to keep cash at home, independent of how much it is and ought to have appreciated that in the appellant's case, the cash kept at home and re-deposited in the Bank is from an explained source and is not an unexplained money, in the facts and circumstances of the case.

(5) The Hon'ble ITAT (Delhi), in ITA No.5660/Del/2012 relating to ITO Vs Mrs.Deepali Sehgal, has held that lapse of substantial time after which cash withdrawn was re deposited in the SB account, does not give rise to unexplained money, unless the AO has other evidence to disprove the argument.

(6) For these and other additional grounds of appeal that may be adduced at the time of hearing, the order of the Commissioner of Income Tax (Appeals)-16, Chennai, is opposed to law and unsustainable in the facts and the circumstances of the case.

3. The brief facts of the case are that the assessee is a non-resident individual and filed his return of income for the AY 2017-18 on 31.05.2018 admitting a total income of Rs.4,37,188/- having income from salary and from other sources. The case was selected for scrutiny under CASS for the AY 2017-18. During the course of assessment proceedings, u/s.143(3) of the Income Tax Act, 1961 (in short "the Act"), it was observed by the AO that the assessee had made cash deposits to the tune of Rs.10 lakhs in various bank accounts maintained with different banks. A question was put up before the assessee by the AO to submit source for cash deposits. In response, the assessee submitted that source for cash deposits is out of cash withdrawals from the assessee's mother Smt. Thangamani's HDFC Bank account and the same was produced before the AO. On perusal of

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the account maintained with HDFC bank A/c No.02691530008737 of the mother of the assessee, it was observed by the AO that no cash withdrawals were found during the period from 01.04.2016 to 31.03.2017. Thus, the AO hold that cash deposits made by the assessee during the FY 2016-17 of Rs.10 lakhs is in the nature of unexplained money under the provisions of Sec.69A of the Act, and added the amount of Rs.10 lakhs in the hands of the assessee. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld.CIT(A), where the Ld.CIT(A) had discussed the issue in detail and part relief of Rs. 3.00 Lac was granted to the assessee. Now, the assessee is before us to challenge the findings of the Ld.CIT(A).

4. At the outset, the Ld. Counsel for the assessee has submitted that accounts statement of Smt.Thangamani maintained with HDFC bank A/c No.02691530008737. On perusal of the said account, it is seen that there were withdrawals in the month of April, 2015, September, 2015 & October, 2016 which is in aggregating approximately of Rs.10 lakhs. It is also observed that the assessee's mother has withdrawn in aggregate of Rs.29.37 lakhs during the period from October, 2012 to October, 2016. These details were produced before the appellate authority by the assessee, but the same could not find favour for the reason that as mentioned by the Ld.CIT(A) that during the period of demonetization, there was cash deposit of Rs.10,00,000/- in bank account of assessee. The source of the same is stated to be out of cash withdrawals made by assessee's mother from her bank account. But it is seen that the cash withdrawal from account of

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assessee's mother took place more than a year before claim of re-deposit. It is unlikely that cash withdrawn in the months of September and October 2015 remained as such for re-deposit in November/December 2016. Preponderance of probability does not support the claim of assessee. Therefore, the explanation deserves to be rejected only. Having said that, it must be kept in mind that Indian families are in the habit of keeping money in cash. It can be assumed that certain sum of money is kept in the form of cash by the family. Considering the financial background of assessee as given in the written submission, I am of the considered view that benefit to the extent of Rs.3,50,000/- is given to assessee. Therefore, relief of Rs.3,50,000/- is given. Addition of Rs.6,50,000/- is sustained.

5. The Ld.AR for the assessee has agitated that since the sufficient withdrawals are there in the account of the assessee's mother, the amount of Rs.10 lakhs deposited during the relevant Financial Year cannot be said as unexplained within the provisions of Sec.69A of the Act, and the Ld.CIT(A) has failed to appreciate the fact that the assessee was a non-resident having been employed in abroad as SW Engineer and have no occupation in India to hold that the cash deposits by him was in the nature of unexplained money. The findings of the Ld.CIT(A) was unjustified and thus, needs to be set aside and the assessee may kindly be granted entire relief of Rs.10 lakhs.

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6. On the contrary, the Ld.DR supported the order of the Revenue authorities and mentioned that relief of Rs.3.50 lakhs was already granted by the Ld.CIT(A) and thus, order of the Ld.CIT(A) should be sustained no further relief can be granted to the assessee since the assessee was failed to substantiate its contentions having no withdrawals in the relevant assessment year.

7. We have heard both the parties and submissions. As per details furnished by the assessee, there were various transfers by the assessee to his mother's account from 18/12/2012 to 25/10/2106 which aggregates to Rs. 29.37 Lacs out of which cash withdrawals of Rs.20.59 Lacs were made from 10/11/2014 to 17/11/2016. Assessee himself has also withdrawn Rs. 5.39 Lacs from hos HDFC Account starting from 21/04/2015 to 31/10/2016. It is also evident that the amounts transferred and withdrawn during the earlier years were for more than Rs.10 lakhs. However, whether the same were available for deposit with the assessee or his mother for depositing the same when demonetization was declared, could not be established by the assessee. Looking to the factual matrix of the case, there is a probability that funds were in hand of the family of the assessee thus, Ld CIT(A) has allowed the relief to the assessee for Rs.3,50,000/-. However, we are of the opinion that the relief granted by the Ld.CIT(A) is not sufficient looking the funds transferred by the assessee to his mother and withdrawals made by both assessee and his mother in the relevant assessment year and earlier years. We, therefore, of the view that an amount of Rs. 5,00,000/-

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should be allowed as available cash with the family to deposit the same in bank and restrict the addition made by the Ld.AO to Rs.5,00,000/-.

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

Order pronounced on the 16th day of March, 2023, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(अरुण खोडपिया)
(ARUN KHODPIA)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 16th March, 2023.
TLN

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:**

1. ँ पीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आंकर आणुक्त (ं पील)/CIT(A)
4. आंकर आणुक्त/CIT
5. विभागीं प्रतिनिधि/DR
6. गार्ड फाईल/GF