

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: SMC: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.195/Del/2023
Assessment Year: 2017-18

Laxmi Narain 113, First Floor, Happy Homes, B Block, Omaxe City, Sector 15, Bahadurgarh, Haryana- 124507 PAN AATPN 6519 J	vs.	ITO, Ward-2, Rohtak 124001
(Appellant)		(Respondent)

For Assessee :	Ms. Mansi Jain, CA
For Revenue :	Shri Om Prakash, Sr DR

Date of Hearing :	13.03.2023
Date of Pronouncement :	31.03.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal filed by the assessee is directed against the order dated 23.12.2022 of the Ld. NFAC, New Delhi, relating to Assessment Year 2017-18.

2. The sole ground hesitated by the assessee in this appeal is that the Ld. CIT(A) has erred in confirming the addition Rs. 10,49,000/- on account of cash deposit in the bank account of

assessee treating the same as unexplained u/s. 69A of the Income Tax Act 1961 (for short the Act).

3. The learned counsel of the assessee submitted that the assessee has deposited amount of Rs. 10,49,000/- in cash in his bank account during demonetization period on 18.11.2016 and prior to this assessee has made several deposits for the renovation of his house and on account of wedding of his son and other miscellaneous expenses. The learned counsel further explained that however the said cash amount could not be spent for the purpose it was withdrawn till the time of demonetization and therefore the assessee re-deposited major proportion of withdrawal amount to the extent of Rs. 10 lac belong to the cash withdrawn out of the FDR amount received on maturity on 30.05.2016, and rest Rs. 49,000/- was out of other withdrawals and past savings made by the assessee from time to time. Placing reliance on the order of ITAT Delhi dated 22.09.2022 in the case of Satish Kumar vs ITO in ITA no. 1711/Del/2021 for same A.Y. 2017-18. The learned AR drew our attention towards para 9 and submitted that until and unless the Assessing Officer established that the amount withdrawn from

bank account was utilised or deposited somewhere else then the AO is entitled to making any addition in the hand of assessee u/s. 69A or any other provisions of the Act. The learned AR drawing our attention towards certificate of registration of marriage of Shri Amit Bhardwaj with Smt Riddhi Bhardwaj submitted that the marriage of son of assessee was postponed from the year 2016 to 25.04.2017 and the amount of cash was withdrawn from the bank account of assessee for the purpose of renovation of house and expenditure to be incurred on the occasion of marriage of his son and before completing said activities demonetization was declared and therefore the assessee was compel to re-deposit the withdrawn amount to his bank account therefore the addition made by the AO may kindly be deleted.

4. Replying to the above the learned Senior DR supported the orders of the authorities below.

5. On careful consideration of above submissions first of all I note that the co-ordinate Bench of ITAT in the case Satish Kumar vs ITO (supra) in para 9 held as follows:-

9. In view of the above, I observe that the Co-ordinate Bench of Tribunal held that sometimes it may happen that the cash withdrawals from bank account continues remains as cash balance with the assessee even for many month and for sometimes cash withdrawn is utilized on the same day. All these probable aspect of the matter cannot be simply ignored or brushed aside but the facts remains that the factum o f cash withdrawn from bank is not at all disputed. It is not a case of the Assessing o fficer that the amount withdrawn from bank account was utilized or deposited somewhere else, it was ld. CIT(A) who improvised the stand of revenue by taking into consideration. The amounts contemplated by the assessee to the family to meet routine expenses. Be that as it may, it was explained by the assessee be fore ld. CIT(A) as noted in para 6 .5 of first appellate order that the family size of assessee's is 10 comprising assessee, his wife , two sons and two daughters-inlaw and four grand children. In this situation when the son o f assessee is doing construction business and other sons and both the daughters-in-law are also earning then the contribution of assessee Rs.20,000/- per month for household expenses and other expenses cannot be held as in su fficient and the ld. CIT(A) cannot allowed to make a new case as an appellate stage . Unless and until, revenue authorities bring on record positive or adverse material to establish that the amount withdrawn by the assessee from his bank account was utilized or deposited somewhere else and the impugned amount of cash deposited was not the same which was withdrawn by the assessee from his bank account. The addition u/s 69A of the Act would not survive and thus, cannot be held as sustainable on the touch stone of principles of tax jurisprudence.

6. In the present case also there is no dispute regarding the fact the assessee deposited Rs. 10,49,000/- in cash on 18.11.2016 during demonetization period and the AO picked up said amount for making addition in the hands of assessee u/s. 69A of the Act.

From the copies of the order of authorities below I clearly note that the Ld. CIT(A) in para 5.6 examined the explanation given by the assessee and noted that the claim of assessee that whatever was withdrawn by the appellant from his bank account had been deposited wholly implies that no cash transaction has been done by the assessee during the period of six months which is beyond probability. At that same time, I am of the view that the assessee is a senior citizen having family including Shri Amit Bhardwaj as a son born on 26.01.1988 and his marriage was solemnized on 25.04.2017 with Smt Riddhi Bhardwaj. On the occasion of wedding of son it is obvious that renovation of house and other expenses are incurred by the parents and in such a situation withdrawal of cash is a normal action of a father. So far as allegation of Ld. CIT(A) that entire amount of withdrawal was re-deposited is a fact of beyond probability is concerned I am not in agreement with such allegation as when the purpose of renovation of house and marriage of son is deferred and the assessee was having cash amount withdrawn from his bank then after declaration of demonetization he had no option but to re-deposit the same to his bank account. This conduct is a

normal conduct of a man ordinary prudent which cannot be doubted unless revenue authorities bring on record positive or adverse material to establish that the amount withdrawn by the assessee from his bank account was utilised or deposited somewhere else and the impugned amount of cash deposited by the assessee during demonetization was not the same which was withdrawn by the assessee from his bank account during pre-demonetization period. No such findings have been recorded by the authorities below in this case. Therefore I am inclined to hold that the explanation offered by the assessee explaining the source of cash deposit to his bank account his properly explained and no addition u/s. 69A of the Act or any other provision of the Act is required to be made in the hands of assessee on this count. Accordingly grounds of assessee are allowed and AO is directed to delete the addition.

7. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 31.03.2023.

Sd/-

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 31st March, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi