

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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.39/Bang/2023
Assessment Year: 2013-14

Shanthi R. Pai Devaashish 6 th Cross, Laxmindranagar Udupi 576 102 PAN NO : APDPP3715P	Vs.	ITO Ward-3 Udupi
APPELLANT		RESPONDENT

Appellant by	:	Shri Mahesh R. Uppin, A.R.
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for Revenue

Date of Hearing	:	27.03.2023
Date of Pronouncement	:	18.04.2023

O R D E R

This appeal by the assessee is directed against order of the NFAC, Delhi dated 28.10.2022 for the assessment year 2013-14.

2. The assessee has raised following grounds of appeal:

1. *“In the facts and circumstances of the case, whether the appellate authority was justified in partly allowing the appeal by giving a relief to the extent of Rs. 5,00,000/- and sustaining the remaining addition of Rs. 21,79,000/- under Sec. 69A of the Act by not giving relief to the extent of cash withdrawals found in the Bank A/c of the appellant which is contrary to the decision of Hon. ITAT, Panji in Govardhan K. Oza vs. ITO, Ward — 2, Belagaum (ITA No. 332/PNJ/2013).*

2. *Whether the respondents were justified in compelling the Appellant to obtain and furnish explanation for the cash deposits in her bank a/c made by her husband who was suffering from neurological disorder, continued dementia and*

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memory failure since 2016 and was unable to recall / memorize the past transactions which he did in appellant's Bank A/c.

3. *Whether the Appellate authority was justified in sustaining the addition made invoking Sec. 69A of the Act even when the conditions precedent for the invocation of said section were not met in appellant's case.*

4. *Whether or not the impugned order passed by the appellate authority is bad in law as it was passed without giving a mandatory personal hearing to the appellant as required under Sec. 250 (1) of the Act ;*

5. *The additions made as Unexplained Money is not sustainable as it is opposed to the order of this Tribunal in Smt. Teena Bethala vs. I.T.O. (ITA No 1383/Bang/2019) and the decision in - C.I.T. vs. Bhaichand N. Gandhi [1983] 141 ITR 67 (Bom) ; and*

6. *The appellant craves leave to add, delete, to amend, modify and / or to alter any of the foregoing grounds and also urge such other grounds at the time of hearing."*

3. The facts of the case are that the AO made addition of Rs.26,79,000/- on account of cash deposit by holding that during the course of proceedings, Smt. Shanthi R. Pal wife of Sri Ramesh Pai filed Medical Certificate issued by Muniyal Ayurvedic Hospital and Dr. Raja certifying Sri Ramesh Pai is suffering from Dementia. She stated that she is a home maker Sri Ramesh Pai was employed overseas as Chartered Accountant serving overseas for about 33 years from 1975 to 2008 and he used to send money from abroad and also invested in Term Deposits in India in his name and her name. During the course of assessment proceedings, explanation regarding the cash deposit of Rs. 26,79,000/- made by the assessee was called for and the assessee has failed to give any proper explanation with evidence regarding the sources of the cash deposit. However, Smt. Shanthi R Pai has stated that sources for the deposit might be interest free loans, which were, given by her husband to his friends and relatives have been received back. But she is not aware of that and the explanation is not supported by any evidence. Under the circumstances,

explanation given by the assessee cannot be accepted and entire amount of Rs.26,79,000/- is treated as unexplained money deposited into bank account. Being aggrieved by the said order passed by the AO, the assessee went in appeal before the NFAC. The NFAC observed that this appeal by the assessee is against addition of Rs.26,79,000/- on account of unexplained cash-deposits. The assessee has repeated the submission before NFAC, which was made before AO without furnishing any supporting evidence. It was stated that the amount was deposited by her husband, who later suffered dementia and memory failure. Therefore, necessary supporting evidence could not be furnished. Hence, the NFAC observed that in the absence of any supporting document/evidence, the contention of the assessee is difficult to accept. During the year the assessee has declared total income of Rs.9,56,830/-. In view of economic status of the assessee and her husband it will be reasonable to give an allowance of Rs.5,00,000/- for withdrawals and past savings. Accordingly, the addition was restricted to Rs.21,79,000/- and the NFAC partly allowed the assessee's appeal filed before him. Against this assessee is in appeal before us.

4. I heard the rival submissions and perused the materials available on record. The assessee is not able to discharge the burden cast upon him to prove the source of deposit of money to the bank accounts to the extent of Rs.21.79 lakhs. The assessee only pleaded that the money has been deposited by her husband and he is suffering from dementia as there was a memory failure. However, I find that there was a deposit of multi crores of rupees into his bank account during this assessment year. The assessee cannot be escaped by stating that the money has been deposited by assessee's husband who was suffering from Dementia disorder and continued with that illness and there was memory failure since 2016 and was unable to recall or memorize the past transaction which he did in

past. This explanation cannot be satisfactory and no benefit could be given, as such lower authorities are very reasonable in sustaining only an addition of Rs.21.79 lakhs out of multi crores of rupees deposited into her bank account. The assessee placed reliance on various orders of the Tribunal as follows:

1. ITA No. 13/JP/2020 DT: 28-1-2022 (PARA: 9)
Dr. Vishan Swaroop Gupta Vs I.T.O
2. ITA No. 1383 & 1384/BANG/2019 Para: 14.3.3
Smt. Teena Bethala Vs ITO dated 28.8.2019
3. ITA No. 2292/MUM/2016 Para: 6
Dy. Commissioner of Income Tax V/s M/s Karthik Construction Co. dated 23.2.2018
4. 1982 TAX.L.R. 1056 Para: 4 CIT Vs Bhaichand N. Gandhi

4.1 In my opinion, ratio laid down in these decisions have no application to the facts of the present case. Accordingly, I am not considering those judgements. It is a primary obligation on the part of the assessee to prove the source of credit in to assessee's bank account, which is not explained in this case.

4.2 Further, assessee's counsel submitted that an addition has been made u/s 69A of the Act, wherein the condition precedent for invoking said section was not made in assessee's case. In this case, addition has been made by AO towards unexplained money deposited into bank account on the reason that there was unexplained deposit into assessee's bank account as follows:

Sl. No.	F. Y.	Information Code	Information	Value
1	2012-13	AIR-001	Deposited cash of Rs.10,00,000/- or more in a Saving Bank Account	Rs.26,79,000/-
2	2012-13	FRM-15CA	Remittance to a non resident or to a foreign company	Rs.3,08,78,272/-
3	2012-13	TDS-194A	TDS Return — Other Interest	Rs.8,71,031/-
4	2012-13	TDS-195	TDS Return — Payment to Non residents	Rs.85,803/-

4.3 The AO has not mentioned any section in the assessment order. Applicable of section in this case is 69 of the Act, which is with regard to any unexplained investment made and not recorded in the books of accounts, if any maintained by the assessee for any source of income and assessee offered no explanation about the nature and sources of such investments or the explanation offered by him or her which is not in the opinion of AO satisfactory, the value of such investments be deemed to be income of the assessee for said financial year. Being so, I do not find any merit in the argument of the Id. A.R. and the same is rejected.

5. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 18th Apr, 2023

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 18th Apr, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore