

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHIR KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO.2848/MUM/2022 (A.Y: 2017-18)

Rubina Amin Merchant 71, Monalisa Apartments St. John Baptist Road Opp. Mt. Marry Steps, Bandra (W) Mumbai - 400050 PAN: AFOPM6147F (Appellant)	v.	Income Tax Officer – 23(3)(1) Room No. 118, 1 st Floor Matru Mandir, Tardev Road Mumbai – 400 007 (Respondent)
---	----	--

Assessee Represented by	:	Ms. Vinitha Shah
Department Represented by	:	Shri Ashish Kumar Deharia
Date of Hearing	:	03.01.2023
Date of Pronouncement	:	31.03.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 27.09.2022 for the A.Y.2017-18.

2. Brief facts of the case are, assessee filed its return of income on 23.12.2017 declaring total income of ₹.2,10,610/- for the A.Y. 2017-18. The return was processed u/s. 143(1) of Income-tax Act, 1961 (in short "Act"). The case was selected for limited scrutiny under CASS on the reasons large value cash deposits during demonetization period as compared to return of income. Notice u/s. 143(2) and 142(1) of the Act were issued and served on the assessee. In response AR of the assessee attended and submitted the relevant information as called for.

3. Assessee is a house wife and declared the income from other sources. The Assessing Officer observed that assessee has deposited cash of ₹.13,34,500/- in her bank accounts maintained with DCB Bank Ltd and IDBI Bank during demonetization period (09.11.2016 to 30.12.2016). During the course of assessment proceedings, assessee submitted that the source of cash deposit is out of cash in hand and cash withdrawn from bank account.

4. After considering the submissions of the assessee, Assessing Officer rejected the same by observing as under: -

"1. A person withdraws money for purpose and it must have been already expended for purposes of withdrawal. In such circumstance, there is no any reason to believe that cash withdrawal money amounting to Rs.13,47,500/- have been kept for long period in the house in spite of having 2 bank accounts of the assessee. It will not

be out of context to note here that assessee has a meagre income of Rs.2 lacs per annum only and huge cash withdrawal and depositing the same in the bank account during demonetization period remains unexplained and can't be accepted.

2. *Assessee has also not brought anything on records that she has been withdrawing the money and depositing the same in the bank account in the previous year's and/or subsequent period of demonetization period.*

3. *Assessee has produced the cash book which cannot be accepted being made for in personal capacity and not required by the law and it is therefore inferred that the so called cash book which is pre-requisite condition to must have for the business only have been filed during the course of assessment proceedings to camouflage the real truth of cash deposit.*

4. *It is further observed that assessee has also not provided any details of expenses out of cash withdrawal. Therefore, the cash book remains unexplained and therefore cannot be accepted.*

In view of the above, it is held that cash deposit to the extent of Rs. 13,34,500/- is unexplained money u/s 69A of the Act and therefore, is being added back to the income of the assessee. Total income assessed is taxed u/s 115BBE of the Act at the rate of 60%.

5. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) sustained the addition made by the Assessing Officer by relying on various case laws and applying the concept of preponderance of probability sustained the additions.

6. Aggrieved assessee is in appeal before us raising following grounds in its appeal: -

"1. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in not providing an opportunity for personal hearing or video conferencing before passing the appellate order.*

2. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in making an addition of Rs.13,34,500/- u/s. 69A of the Income Tax Act, 1961 by treating the entire cash deposit as alleged unexplained money, without considering the facts and circumstances of the case.*

3. *On the facts and circumstances of the case as well as in Law, the Learned CIT(A) as well as Learned Assessing Officer has erred in invoking the provision of section 115BBE of the Income Tax Act, 1961, without considering the facts and circumstances of the case.*

4. *On the facts and circumstances of the case as well as in Law, the Learned CIT(A) as well as Learned Assessing Officer has erred and failed to appreciate that the cash redeposited represents the cash withdrawn from the bank.*

5. *The appellant craves leave to add, amend, alter or delete the said ground of appeal."*

7. At the time of hearing, Ld. AR of the assessee brought to our notice Page No. 2 of the Paper Book which is the bank statement in which assessee has substantial bank balance in the form of bank deposits. Further, he brought to our notice Page No. 3 of the Paper Book as per which assessee has withdrawn ₹.2,77,000/- and deposited the same cash. Further, he brought to our notice bank account maintained by the assessee in her bank accounts and also cash book, as per the cash book he submitted that assessee has opening balance of ₹.2,45,000/- and withdrawal made by the assessee on various dates which comes to ₹.13,47,500/- as on 01.11.2016 and due to demonetization assessee had to deposit the same in the bank account. In this regard he relied on the following case laws: -

- i. Vardhan Ghildiyal v. ITO [2022] 138 taxmann.com 101 (Delhi – Trib)*
- ii. Smt. Uma Agrawal v. Income Tax Officer [2021] 127 taxmann.com 735 (Agra – Trib.)*
- iii. Order of the ITAT Delhi Bench in the case of Om Prakesh Nahar v. ITO in ITA.No. 960/Del/2021 dated 27.01.2022.*

8. On the other hand, Ld. DR relied on the orders of the lower authorities.

9. Considered the rival submissions and material placed on record, we observed from the record submitted before us that assessee has withdrawn cash from bank from 01.08.2016 to 10.10.2016 to the extent of ₹.10.97 lakhs and had opening cash balance of ₹.2,45,600/- the same amount was redeposited into bank account during the period of demonetization. This clearly indicates that assessee has enough cash in her hand to deposit the same in the bank account. Since assessee has maintained cash book and submitted the same in support of her claim. However, tax authorities have rejected the same and proceeded to make the addition disbelieving the fact that assessee while withdrawing the cash must have requirement and they disbelieve that cash was kept in hand. We observe that the cash withdrawn by the assessee during the August, September and October and subsequently the same was redeposited in the bank account. In the similar facts the ITAT Delhi Bench in the case of

Om Prakash Nahar v. ITO in ITA.No. 960/Del/2021 dated 27.01.2022 has considered the similar plea and decided the issue in favour of the assessee by observing as under: -

"8. Thus, Ld. Counsel submitted that looking to the peculiar facts of the assessee's case and in the habit of withdrawing the money and keeping in the form of cash at home cannot be doubted. When the Govt. announced the demonetisation, the cash kept by him over a period of time has been deposited in the bank account and the entire source is from the money withdrawn by him from his own bank account from time to time.

9. The Id. DR strongly relied upon the order of the Assessing Officer and the Id. CIT (Appeals) and submitted that the amount which assessee had withdrawn before the demonetisation, i.e. from 1.04.2016 to 9.11.2016 already the Id. CIT (Appeals) has given benefit. It is improbable that money withdrawn years ago has been kept in the form of cash and suddenly on the day of demonetisation assessee had to deposit the said amount. Such explanation without any proper material to support cannot be accepted.

10. We have heard the rival submissions. After considering the facts and material on record and on perusal of the bank statement, we find that the assessee had been making huge withdrawals from time to time. The assessee is having huge income from rent which is Rs.2,58,750/- per month which the assessee has been receiving through cheque in his bank account and such rental income has been disclosed in the return of income of Om Prakash Nahar, HUF. Apart from that, assessee is also getting pension from Government of India. Besides this, the assessee has no source of income or is involved in any business or profession. From the perusal of the history of cash withdrawals starting from the financial year 2014-15, we find that assessee has been regularly withdrawing huge cash amount on various dates and there was hardly any credit balance left in his bank account. The funds flow statement as incorporated above clearly shows that each and every withdrawal has been mentioned and utilization thereof and the money being withdrawn from the bank account. Even after house-hold withdrawal, there was a huge amount available with the assessee in the form of cash. Under

these facts and circumstances stated by the assessee, it cannot be held to be improbability that assessee did not have any availability of cash at the time of demonetisation. It has not been brought on record whether assessee was carrying out any business or profession or was having income from undisclosed sources of income which can be said to be available with the assessee in the form of cash. If the assessee had no source of income apart from rental or pension income and some interest amount and same income earned regularly has been withdrawn regularly leaving very less cash in the bank account, that shows the pattern that the assessee was indeed in the habit of keeping the money in the form of cash probably looking the old age and various ailments as explained by him. Under these circumstances, we find that the explanation of the assessee to be reasonable and plausible and preponderance of probability is in the favour of the assessee and without any adverse material it cannot be presumed that the cash deposited by the assessee is out of some his undisclosed source. Accordingly, the addition of Rs.44,13,000/- as sustained by the CIT (Appeals) is deleted."

10. Respectively following the above decision, we are inclined to allow the claim of the assessee. Accordingly, ground raised by the assessee is allowed.

11. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 31st March, 2023

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai / Dated 31/03/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum