

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.200/Rjt/2022
(Assessment Year: 2017-18)

Ashokbhai Bhaisinh Jadeja, "Pitru Ashish", 2/4 Paras Society, Opp. Panchwati Society, Jamnagar Gujarat-361008	Vs.	The Principal Commissioner of Income Tax, Jamnagar
[PAN No.ABXPJ9746L]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Chetan Agarwal, A.R.
Respondent by:	Shri Shramdeep Sinha, CIT DR

Date of Hearing	10.08.2023
Date of Pronouncement	23.08.2023

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

This appeal has been filed by the assessee against the order passed by the Ld. Principal Commissioner of Income Tax, (in short "Ld. PCIT"), Jamnagar in File No. PCIT.J/HQ/263/ABJ/2020-21 vide order dated 24.06.2021 passed for Assessment Year 2017-18.

2. The assessee has taken the following grounds of appeals:-

"1. Learned PCIT, Jamnagar has erred in law as well as on facts in holding that scrutiny assessment made u/s. 143(3) is erroneous and prejudicial to the interest of revenue.

2. Learned PCIT, Jamnagar has erred in law as well as on facts by not examining issue on the basis of material available on record to first

hold that order passed by ld.AO is erroneous and simply remitting matter to AO for fresh consideration.

3. *Ld. PCIT erred in law as well as on fact in assuming jurisdiction u/s. 263 of the Act.”*

3. At the outset, we observe that there is a delay of 330 days in filing of the present appeal. The assessee has filed an application for condonation of delay alongwith an affidavit dated 15.07.2022. The assessee has submitted that the reason for delay in filing of the present appeal is that the assessee was not aware that appeal against order under Section 263 can be filed before ITAT and the Counsel appointed by the assessee has also did not inform him about the aforesaid provisions. Subsequently, the assessee approached a new Counsel, and on his advice, the assessee immediately filed appeal before ITAT. Before us, the Counsel for the assessee submitted that the assessee is a retired employee who was earlier working with Bharat Sanchar Nigam Limited (in short “BSNL”) and he had retired in 2016. Further, the Counsel for the assessee also submitted that the assessee has been suffering from paralysis since August 2021 and medical records of the assessee have also been produced before us for reference, in support of the above contention by the Counsel for the assessee. Accordingly, the Counsel for the assessee submitted that it is a genuine case for delay in filing of the present appeal as is evident from the advanced age of the assessee and also from the fact that he is suffering from paralysis. Accordingly, it was requested that looking into instant facts the delay in filing of the present appeal may be condoned.

4. On going through the application for condonation of delay as duly supported by the affidavit, we are of the considered view that this is a fit case

for condonation of delay in filing of the present appeal. Accordingly, looking into the facts of the instant case, we are hereby condoning the delay in filing of the present appeal, in the interest of justice.

5. On merits, the brief facts of the case are that the assessee filed return of income for A.Y. 2017-18 on 30.10.2017 declaring total income of Rs. 4,85,230/-. The case was selected for limited scrutiny in order to examine “cash deposit during demonetization period”. The assessment was finalized under Section 143(3) of the Act vide order dated 28.11.2019 by accepting the returned income. Subsequently, the Principal Commissioner of Income Tax (in short “PCIT”) initiated 263 proceedings by observing that the assessee had deposited substantial cash in the bank account to the tune of Rs. 14,61,500/- during demonetization period. During the course of assessment proceedings, the assessee submitted before the Assessing Officer that the assessee had withdrawn an amount of Rs. 10,00,000/- on 05.10.2016 and another sum of Rs. 5,00,000/- on 06.10.2016 (totaling to Rs. 15,00,000/-) from his bank account for the purpose of investing in agricultural land development, but since the above investment did not materialize and in the mean time there was announcement of demonetization on 08.11.2016, the assessee deposited a sum of Rs. 14,61,500/- on various dates during demonetization period, in his bank account. However, the PCIT observed that the assessee has merely stated that the amount withdrawn by him was for the purpose of investing in agriculture land development but no proof in this regard has been submitted by the assessee during the course of assessment proceedings. Further, the Assessing Officer has also not enquired into the aspect that when this sum of Rs. 15,00,000/- was withdrawn by the assessee, then why a lesser sum of Rs. 14,61,500/- was deposited by the assessee and that too in six installments.

Therefore, there is nothing on record to prove the genuineness of the facts of assessee's case. The Assessing Officer has not verified or carried out any investigation in this regard. Accordingly, the PCIT set-aside the assessment order on the ground that the assessment order is erroneous and prejudicial to the interest of the Revenue.

6. The assessee is in appeal before us against the aforesaid order passed by the PCIT setting-aside the assessment order as being erroneous and prejudicial to the interest of the Revenue.

7. Before us, the Counsel for the assessee submitted that the assessee is an employee of BSNL and he got retired in the month of August, 2016. On his retirement, the assessee received retirement benefits like gratuity, provident fund, leave encashment etc. in the month of September 2016, totaling to Rs. 25,67,308/-. Out of the above post retirement benefits received by the assessee, the assessee withdraw a sum of Rs. 10,00,000/- on 05.10.2016 and another sum of Rs. 5,00,000/- on 06.10.2016 (total withdrawals being 15,00,000/-). The purpose of withdrawal of the aforesaid amount was to use the fund for development of an agricultural land. However, the fund could not be used after withdrawal since only after few days later the demonetization was declared by the Government. Therefore, the aforesaid amount of Rs. 15,00,000/- was lying with the assessee till the date of demonetization was announced on 08.11.2016. Once the demonetization was announced, the assessee immediately proceeded to re-deposit the aforesaid amount of Rs. 15,00,000/- in his bank account and re-deposited a sum of Rs. 14,61,500/- in his bank account in six installments as below:-

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<i>Sr. No.</i>	<i>Date</i>	<i>Amount Deposited in Cash (Old Currency Notes)</i>
<i>1</i>	<i>12/11/2016</i>	<i>46,500/-</i>
<i>2</i>	<i>23/11/2016</i>	<i>50,000/-</i>
<i>3</i>	<i>24/11/2016</i>	<i>25,000/-</i>
<i>4</i>	<i>29/11/2016</i>	<i>40,000/-</i>
<i>5</i>	<i>05/12/2016</i>	<i>7,00,000/-</i>
<i>6</i>	<i>06/12/2016</i>	<i>6,00,000/-</i>
<i>Total</i>		<i>14,61,500/-</i>

The Counsel for the assessee submitted that the amount of Rs. 14,61,500/- was deposited in six installments due to limitation of banking authority to accept a large amount during the period of demonetization in one installment. Further, the assessee also used the cash deposit machine of the bank to deposit the money in order to avoid the long queue during demonetization period, because of the assessee's ill health. On the question as to why a lesser amount of Rs. 14,61,500/- was re-deposited against a total withdrawal of Rs. 15,00,000/- the Counsel for the assessee submitted that the differential amount of Rs. 38,500/- was consisting of Rs. 100 rupee notes in denomination and hence, the sum were not deposited and only Rs. 500/- and Rs. 1000/- rupees notes were deposited by the assessee amounting to Rs. 14,61,500/-. Accordingly, the Counsel for the assessee submitted that the assessee has been able to fully explain the source of deposit of Rs. 14,61,500/- in his bank account during the demonetization period as being out of withdrawals made by the assessee only one month back out of his post retirement benefits and hence looking into the instant facts of the case the assessment order is not erroneous and prejudicial to the interest of the Revenue.

8. In response, the Ld. D.R. placed reliance on the observation made by the PCIT in the 263 order.

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9. We have heard the rival contentions and perused the material on record. After going through the facts of the instant case, we are of the considered view that the assessee has been able to fully explained the source of deposit of Rs. 14,61,500/- in his bank account which is from the withdrawals made by the assessee amounting to Rs. 15,00,000/- on 05.10.2016 and 06.10.2016 which were received by the assessee as part of his retirement benefits from BSNL. Accordingly, looking into the instant facts, we are of the considered view that Ld. CIT(A) has erred in facts and law in holding that the assessment order is erroneous and prejudicial to the interest of the Revenue. The assessee has also placed on record his bank statements and copy of reply furnished to the Assessing Officer in the assessment proceedings in order to substantiate the source of the deposits made by him during the demonetization period.

10. In the result, the appeal of the assessee is allowed.

This Order pronounced in Open Court on

23/08/2023

Sd/-

(WASEEM AHMED)

ACCOUNTANT MEMBER

Ahmedabad; Dated 23/08/2023

TANMAY, Sr. PS

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

Sd/-

(SIDDHARTHA NAUTIYAL)

JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot