

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

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

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No. 180/RPR/2023

निर्धारण वर्ष / Assessment Year : 2017-18

Nanakchand Agrawal
L/h of Kalawati Agrawal,
Near Telephone Tower,
Dhamtari, Baster Road,
Dhamtari (C.G.)-493 773
PAN : ACHPA6904A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer
Ward Dhamtari (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.K Agrawal, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 23.08.2023

घोषणा की तारीख / Date of Pronouncement : 01.11.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the legal heirs of the assessee (since deceased) is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 23.03.2023, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 14.11.2019 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. On the facts and in the Circumstances of the case the order passed by the learned CIT (A) is unjust, unfair and bad-in-law as well on facts.
2. On the facts and in the Circumstances of the case the learned CIT (A) is not justified in sustaining the addition U/s 69A for cash deposits in Bank amounting to Rs.23,00,000/-which was out of balance of cash withdrawal from Bank in the year 2014-15 for Rs. 21,60,000/- and Rs.1,40,000/- out of income of the year 2015-16.
3. On the facts and in the Circumstances of the case the learned AO/CIT (A) erred in not accepting cash deposits in Bank out of earlier cash withdrawal from Bank without finding that the cash withdrawn has been spent or invested elsewhere.
4. On the facts and in the Circumstances of the case the learned AO as well as CIT (A) erred in disbelieving the availability of cash in hand merely because the same is kept as cash in hand for nearly 32 months, because the assessee was having bank account.
5. On the facts and in the Circumstances of the case the learned CIT(A) erred in holding that cash in hand on 31.03.2015 has not been reflected in return for the A.Y. 2015-16 ignoring the fact that the return in form No. 1 applicable and filed by the appellant does not have any column to disclose cash in hand while the Balance Sheet required and filed during assessment proceedings duly shows available cash in hand amounting to Rs.21,60,301/- on 31.03.2015.

6. On the facts and in the Circumstances of the case the learned AO as well as CIT(A) erred in not accepting availability of cash in hand duly shown in return form No.4S for the A.Y. 2016-17 filed by the assessee, which required to disclose the assets and liabilities, on the ground that return has been filed on 02.12.2016 i.e. one day after cash deposited in Bank.

7. On the facts and in the Circumstances of the case the learned AO as well as CIT (A) erred in objecting that the part of interest income shown as business income and another part of interest income shown as income from other sources, while the interest income estimated and shown at Rs.3,00,000/- earned on advancing money to various persons was very much income earned on carrying business activity, as such were correctly shown as business income while the interest on deposits with firm and bank are shown as income from other sources in all the years correctly.

8. On the facts and in the Circumstances of the case the learned CIT (A) erred in not considering or even not taking notice of various decision/orders of different High Courts and Tribunals relied upon by the appellant in written submission as also in joinder to the written submission filed on 02.03.2023 i.e. before the due date of 06.03.2023 fixed for filing response.

9. That the appellant reserves the right to add, alter or delete all or any of the grounds of appeal.”

2. Succinctly stated, the assessee, a widow, had e-filed her return of income for A.Y.2017-18 on 09.01.2018, disclosing an income of Rs.12,83,090/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

3. During proceedings, it was observed by the A.O that the assessee had during the demonetization period, i.e., on 01.12.2016, deposited an amount of Rs.23 lac in old notes of Rs. 500/- and Rs. 1000/- in her bank A/c. No. 13460100010285 with Bank of Baroda. The A.O. vide notice u/s 142(1) of the Act dated 15.06.2019 called upon the assessee to furnish the nature and source of the said cash deposit made during the demonetization period. In

response, the assessee stated that the same was sourced out of cash withdrawals that were made from her bank account in F.Y. 2014-15, and the same was lying available with her as cash in hand of Rs.23,45,301/- as of 31.03.2016. It was, thus, the claim of the assessee that the cash deposits of Rs. 23 lac (supra) deposited during the year in her bank account, i.e., on 01.12.2016, were sourced out of the cash withdrawals from her bank account in F.Y 2014-15 and lying available with her as cash in hand on 01.12.2016 (supra). Considering the submission of the assessee and examining the facts, the A.O issued another notice u/s 142(1) of the Act dated 01.10.2019 to the assessee and called upon her to justify the purpose for having withdrawn the amount of Rs. 21.60 lac (approx.), and keeping such substantial amount as cash in hand for nearly 32 months when she had a bank account. Further, on examination of the records, it was observed by the A.O. that the amount of Rs. 23,45,301/- was shown as cash available on 31.03.2016 in her return of income for A.Y. 2016-17 that was filed on 02.12.2016, i.e., during the demonetization period after the cash deposit of Rs. 23 lac (supra) in old currency notes was made by her during the year under consideration. Again, the A.O. called for the assessee to justify the factual position. Also, it was observed by the A.O that during the A.Y. 2015-16 and A.Y. 2017-18, the assessee had filed her return of income in ITR-1(SAHAJ) wherein she had in the said respective returns of income disclosed the interest income under the

head “income from other sources” but had during the demonetization period filed her return of income for A.Y. 2016-17 in ITR-4S (SUGAM), wherein apart from having income from other sources she had, disclosed business income. The A.O. called upon the assessee to furnish the nature and details of the business activity she had carried out during A.Y. 2016-17. In response, the assessee submitted that she had given amounts kept as cash in hand to various persons at interest for a short period, and the interest income earned on the same was shown as business income, while the interest income that was earned on the amount that was given to M/s Mangal Tyres, i.e., a concern owned by her grandson was disclosed under the head 'income from other sources.'

4. Considering the aforesaid facts, the A.O issued a “Show Cause Notice” (SCN) dated 09.10.2019, wherein the assessee was called upon to explain why the amount of Rs. 23 lac (supra) deposited in her bank account during the demonetization period, i.e., on 01.12.2016 be not treated as unexplained and added to her total income for the year under consideration. In response, the assessee sought an adjournment and requested some time as her counsel was busy with Audit work, which was allowed, but thereafter did neither come up with any reply nor any supporting document in response to the show cause

notice dated 09.10.2019. The A.O., thus, held a conviction that the assessee had nothing more to say.

5. On perusal of the reply furnished by the assessee during proceedings, it was observed by the A.O that the assessee had withdrawn the entire amount from her bank account during April and May of 2014, and a major amount of Rs.1,02,30,000/- was diverted by her to M/s Mangal Tyre (supra). As regards the balance amount, it was observed by the A.O. that the assessee had made cash withdrawals of Rs.21.60 lac (approx.) but had nowhere stated the purpose for doing so and also why she had kept such a substantial amount as cash in hand for nearly 32 months when she had a bank account. The assessee had stated before the A.O that cash in hand that was available with her was utilized for giving interest-bearing advances to various persons, and the interest income of Rs. 3 lac that she earned on such advances was disclosed as business income in the return of income filed by her for A.Y. 2016-17, while for the interest earned on the amount deposited with M/s Mangal Tyres (supra) was disclosed under the head "income from other sources." During the proceedings, it was further observed by the A.O. that the assessee had nowhere clarified why she had treated interest income in two ways while filing the return of income, i.e., partially as business income and partially as income from other sources. Accordingly, the A.O. was of the view

that if the assessee was doing the business of money lending, then she should have treated all the interest income earned as business income. The A.O observed that during the A.Y. 2015-16 and A.Y. 2017-18, the assessee had no business income, and was in receipt of interest income on bank deposits and deposit with M/s Mangal Tyres (supra). The A.O further observed that the assessee has not clarified that in her return of income for the A.Y. 2016-17, why the interest income received from M/s Mangal Tyres (supra) was not treated as business income whereas interest received on the amounts advanced to various person was treated as business income. The A.O. observed that the assessee had also not furnished the list of the various persons to whom the money was given and interest income was earned. Also, on perusal of the return of income filed by the assessee for the last ten years, it is observed by the A.O. that the assessee had never filed the return of income disclosing any business income, and was only in receipt of interest income during all the years. The A.O also observed that only in the return of income for A.Y. 2016-17, which the assessee had filed during the demonetization period, i.e., on 02.12.2016 after cash was deposited by her in her bank account in old currency notes on 01.12.2016, that the assessee had shown the business income by giving a differential treatment to the interest income. The A.O further observed that though the assessee had disclosed a substantial amount of cash in hand lying available with her but had

failed to come forth with any satisfactory explanation for having kept the same for 32 months despite having a bank account. Accordingly, the A.O. was of the view that the assessee had carried out the entire exercise with the intent to justify the deposit of her unaccounted money in the bank account by relating the same with the cash withdrawals made from her bank account in the year 2014. As such, the A.O. was of the view that the assessee, by filing her return of income for A.Y 2016-17 in ITR-4S (SUGAM) during the demonetization period, i.e., on 02.12.2016, after making the cash deposit of Rs. 23 lac (supra) in her bank account in old currency notes on 01.12.2016, had used the column of cash balance of the ITR form to project the availability of cash in hand of Rs.23,45,301/- on 31.03.2016. Accordingly, the A.O found no merit in the explanation of the assessee that the cash deposit of Rs. 23 lac (supra) in her bank account on 01/12/2016 was sourced out of the cash in hand available with her on the said relevant date and treating the entire amount of Rs. 23 lac (supra) as her unexplained money u/s 69A r.w.s. 115BBE of the Act made an addition of the same to her total income for the year under consideration.

6. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. The CIT(Appeals), after deliberating on the contentions advanced by the assessee, upheld the order of the A.O by observing as follows:

“7. DECISION:- I have considered the submission of the appellant and the assessment order of the AO passed u/s 143(3) of the I.T. Act 1961. In the instant case, AO has brought to tax an amount of Rs.23,00,000/- being cash deposited in the bank account of the appellant during the demonetization period. The facts of the case are that appellant is stated to be an old lady (widow) of 80 years. She had filed return of income for AY 2017-18 on 09.01.2018 declaring taxable income at Rs.12,83,090/-. On scrutiny AO had noticed that appellant had deposited cash amounting to Rs.23,00,000/- in her bank account during the demonetization period. On being asked as to why said amount should not be taxed for which, the appellant is stated to have been withdrawn cash amounting to Rs.23,45,306/- from her bank account during the FY 2014-15 which again has been deposited during the demonetization period amounting to Rs.23,00,000/- It is further stated that this amount has been shown as cash on hand ending 31.03.2016 in her return of income. However, the explanation of the appellant has been rejected by the AO stating that no reason has been provided as to why the said cash has been kept with the appellant for about 32 months. It is further stated by the AO that appellant had deposited cash in her bank account during the demonetization period on 01.12.2016 whereas the return of income for the AY 2016-17 was filed on 02.12.2016 one day after deposited cash in the bank. Therefore, the submission of the appellant with regard to disclosing cash on hand as on 31.03.2016 has not been accepted by the AO considering it as an after thought action on the part of the appellant.

Before me, appellant has submitted same submissions as had been made before the AO. In this regard, AO had given opportunities of being heard and in response appellant had also submitted explanations to the queries raised by the AO. On perusal of the assessment order I have noticed that AO has considered the evidence and explanation submitted by the appellant before making the addition u/s 69A. In my considered opinion AO had given reasons as to why appellant submissions are not acceptable. He had analyzed evidence on record and arrived at a conclusion that appellant's submissions are found without any merit. I have also found that there is a contradiction in appellant's own submissions with regard to interest income offered to tax. Appellant had shown part of interest income as business income and another part of interest income as income from other sources. The findings of the AO is appeared to be reasonable with regard to keeping a cash worth of Rs.23,45,301/- for more than 31 months. Appellant has not filed any evidence as to whether the said cash has been shown as cash on hand as on 31.03.2015 and same has been reflected in the return of income for AY 2015-16. In view of the above narrated facts, I do not find any reason to interfere with the assessment made by the AO. In the facts and circumstances of the appellant's case, the addition amounting to Rs.23,00,000/- made by the AO u/s 69A r.w 115BBE stands confirmed. All the grounds of appeal taken by the appellant are dismissed.

In the result appeal is dismissed.”

7. The assessee, being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal.

8. Shri S.K Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee submitted that CIT (Appeals) had erred in sustaining the addition of Rs.23 lac made by the A.O u/s 69A of the Act. The Ld. AR submitted that the aforesaid cash deposit was sourced out of the cash withdrawal from the assessee's bank account in the year 2014-15 of Rs. 21,60,000/- a/w an amount of Rs.1,40,000/- out of her income for the year 2015-16. The Ld. AR submitted that the lower authorities had erred in most arbitrarily disbelieving the availability of cash in hand merely because the assessee, despite having a bank account, had kept a substantial amount as cash in hand for nearly 32 months. The Ld. AR submitted that as in the case of the assessee for A.Y 2015-16 and A.Y 2017-18, the return in "Form No. 1" (SAHAJ) was applicable, wherein there was no column to disclose cash in hand, thus, she had filed the same, but in the "balance sheet" that was filed during assessment proceedings the cash in hand amounting to Rs.21,60,301/- that was available with her on 31.03.2015 was duly disclosed. The Ld. A.R. further submitted that as for A.Y 2016-17, considering the streams of income of the assessee, the latter was required to file her return of income in "Form 4S", wherein there was an innate requirement to disclose the assets and liabilities; therefore, the

assessee had while filing her return of income for the said preceding year complied with the statutory requirement and disclosed the amount of cash in hand that was available with her on 31.03.2016. The Ld. A.R further submitted that the assessee had rightly shown part of the interest income that was received by her from the business of money lending under the head “business income” while for that earned on her deposit with M/s Mangal Tyres (supra) under the head “income from other sources.” The Ld. AR, in support of his aforesaid contention, had relied on the following judicial pronouncements:

1. Sl. No. 1 of cases relied upon as per paper book – CIT Vs. Sreedharan(201-ITR-1010)
2. Sl. No. 2 S.R. Venkat Ratnam Vs. CIT (127-ITR-807)
3. Sl No. 3 Sindh Medical Stores Vs CIT 117 DTR (Raj) 78
4. Sl No. 4 CIT Vs Kulwant Rai (291-ITR-36 (Del)
5. Sl.No. 5 of cases relied upon as per paper book-Sampatraj Rakeshkumar Vs. ITO-2019TaxPub(DT)0381
6. Sl. No. 6 of cases relied upon as per paper book- Smt. Krishna Agrawal Vs. ITO – 53/ Jodh/2021
7. Sl No. 7 Sunanada Sanjay Chandaliya ITA No. 1967/PUN/2018
8. Sl. No. 8 ITO Vs Shri M Prabhakar ITA No. 1727/Hyd/2014
- 9.. Sl. No. 9 Vinay Dashrath Gupta Vs. CIT
10. Sl No. 10 Smt. Veena Awasthi ITA No. 2015/LKW/2016
- 11 Sl No. 11 ITO Vs Panchdeep Consultants : 2022 Tax – Pub (DT)6062
12. Sl No. 12 R.K. Dave Vs ITO : 94 – TTJ-19
13. Sl No. 13 Rajiv Chandran Vs ITO: (2019 Tax Pub (DT) 1402 (Del Tri)
14. Sl No. 14 ACIT Vs Baldev Raj Chawla – (121-TTJ(Tri) 366 (Del)
15. Sl No. 15 Gordhan Vs ITO No. 811/Del/2015
16. Sl No. 16 Moon Computing P. Ltd Vs ITO, ITA No. 7606/Del/2019

9. Per contra, the Ld. Departmental Representative (for short, ‘DR’) relied on the orders of the lower authorities.

10. I have heard the Id. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

11. At first blush, the claim of the assessee that the cash deposits of Rs. 23 lacs (supra) made on 01.12.2016, i.e., during the demonetization period, were sourced out of the cash withdrawals that were made by her way back in F.Y.2014-15 and was disclosed in her return of income for the immediately preceding year, i.e., A.Y 2016-17 as cash in hand of Rs.23,45,301/- on 31.03.2016 appeared to be very convincing, but on a perusal of the entire set of facts, I am unable to persuade myself to concur with the same. It is not a case where the source of the cash deposit of Rs.23 lacs (supra) on 01.12.2016, i.e., during the demonetization period, is explained to have been sourced out of cash withdrawals made by the assessee in F.Y.2014-15 and was lying available with her as cash in hand in the succeeding years. Rather, it is the claim of the assessee that the cash withdrawal of Rs. 21.60 lacs (supra) made from her bank account during 2014 was, thereafter, utilized by her for giving short-term interest-bearing advances to third parties. Based on the aforesaid facts, the assessee had, in her return of income for the immediately preceding year, i.e., A.Y.2016-17, disclosed an interest income

of Rs.3 lacs (on an estimated basis) that was stated to have been received on such third party advances. As such, it is not a case that the A.O had declined to accept the explanation of the assessee that the cash deposits of Rs.23 lacs made on 01.12.2016 in her bank account were sourced out of the cash withdrawals that she had made way back in A.Y.2016-17 for the reason that a substantial period had lapsed, but the said explanation was rejected for the reason that now when the assessee had herself claimed that the cash withdrawals of Rs.21.60 lacs (supra) was thereafter, utilized by her for giving short term interest bearing advances to third parties, then in the backdrop of the aforesaid factual position the availability of the said funds as cash in hand with her during the year for making cash deposit in her bank account did not merit acceptance. It is incomprehensible that the amount of Rs.21.60 lacs (supra) withdrawn by the assessee in the period relevant to A.Y.2015-16 would have been exploited by giving the same as short-term interest-bearing advances to third parties and, at the same time, be available with her for sourcing the cash deposits in her bank account. A heavy onus was cast upon the assessee to establish the availability of an amount of Rs. 23 lac on the date on which the same was claimed to have been redeposited, i.e., on 01.12.2016. I do not say that no part of the funds sourced out of the aforesaid cash withdrawals by the assessee from her bank account in A.Y.2015-16 would have been available with her on 01.12.2016 (supra), but in the absence

of the requisite details, which would evidence that the interest-bearing short term advances on which she had garnered interest income of Rs.3 lacs in the immediately preceding year, were liquidated and available with her as cash in hand on the date of deposit, i.e., on 01.12.2016, the aforesaid claim of the assessee cannot be summarily accepted on the very face of it.

12. At this stage, I may herein observe that the assessee had neither in the course of the assessment proceedings nor before the CIT(Appeals) or in the course of proceedings before me, placed on record the cash flow statement a/w. documentary evidence, which would establish that the short-term interest-bearing advances that she had given in the preceding year to third parties out of her cash withdrawals of Rs.21.60 lac (supra) made from her bank account in the year 2014 were received back and lying available with her to, inter alia, source the cash deposit of Rs. 23 lac (supra) on 01.12.2016 in her bank account during the year under consideration. Although I am principally in agreement with the Ld. AR that the availability of cash in hand with the assessee out of cash withdrawals made by her in A.Y.2016-17 could not be summarily discarded on the ground that a substantial period had lapsed, in the absence of any material which would establish that the said amount was utilized/invested by the assessee somewhere else, but as the availability of the said fund with the assessee which as claimed by her was in

the immediately preceding year, i.e., A.Y 2016-17 parked as short-term interest-bearing advances to third parties, had not been proved, therefore, I am constrained to reject her claim as regards the source of the aforesaid amount.

13. Apropos the judicial pronouncements pressed into service by the Ld. AR, I am afraid that the same being distinguishable on facts would by no means assist the case of the assessee before me. In all the aforementioned cases, the courts/tribunals had held that availability of cash withdrawals with the assessee cannot be summarily discarded merely on account of lapse of a substantial period unless utilization of the said amount during the intervening period is proved. I am afraid that the facts involved in the present case of the assessee are distinguishable as against those involved in the aforementioned judicial pronouncements. As the assessee had herself claimed that cash withdrawals made from her bank account in A.Y.2016-17 were, thereafter, parked as short-term interest-bearing advances to third parties, therefore, for substantiating her claim that the said funds were available with her to source the cash deposits of Rs.23 lacs (in demonetized currency) on 01.12.2016, she was supposed to establish on the basis of supporting material that the interest-bearing short term advances that she gave in the immediately preceding year,

i.e., A.Y 2016-17 were received back from the aforementioned parties, which, as observed by me hereinabove, she had failed to do.

14. Considering the fact that the legal heir of the assessee had failed to discharge the primary onus that was cast upon him to substantiate the “nature” and “source” of the cash deposit of Rs.23 lacs (supra), AND their explanation that the same was sourced out of the cash withdrawals of Rs. 21.60 lac (supra) made from her bank account on the year 2014 is nothing short of an unsubstantiated claim; thus, the same does not merit acceptance. However, in all fairness availability of cash in the hand with the assessee considering the fact that she had regularly been assessed to tax for the last many years can safely be taken at an amount of Rs.2,50,000/- (on estimated basis). Accordingly, addition made by the A.O is sustained to the extent of Rs.20,50,000/- [Rs.23,00,000/- (-) Rs.2,50,000/-]. Thus, the **Grounds of appeal** raised by the assessee are partly allowed in terms of my aforesaid observations.

15. In the result, the appeal of the assessee is partly allowed in terms of the aforesaid observations.

Order pronounced in open court on 01st day of November, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 01st November, 2023.

**##SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.