

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “D”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.3280/M/2022
Assessment Year: 2017-18**

Shri Dheerajsingh Omprakashsingh Mohnia, C/o. Vaish Associates, 106, Peninsula Centre, Dr. S.S. Rao Road, Parel, Mumbai – 400 012 PAN: AMVPM6622M	Vs.	Income Tax Officer, Int Tax Ward 3(2)(1), Room No.1627, 16 th Floor, Air India Building, Nariman Point, Mumbai – 400 021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Pankaj Soni, A.R. &
Shri Devansh Jain, A.R.

Revenue by : Shri Suresh D. Gaikwad, D.R.

Date of Hearing : 14 . 07 . 2023

Date of Pronouncement : 11 . 10 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

At the very outset it is brought to the notice of the Bench that the appellant Shri Dheerajsingh Omprakashsingh Mohnia (hereinafter referred to as ‘the assessee’) could not file the present appeal within the period of limitation, rather same has been filed with a delay of 23 days and sought to condone the same on the grounds inter-alia that the assessee is a Non Resident Indian (NRI) working in United States of America (USA) for more than 20 years

and is not conversant with the income tax law; that the assessee's brother namely Mr. Neeraj Soni Mohnia who is based in Mumbai is looking after the tax matters of the assessee by filing the return of the assessee; that the assessee's mother aged 75 years is living with Mr. Neeraj Soni Mohnia who was suffering from cataract in both the eyes and had to undergo two major eye surgeries and was hospitalised twice during October 2021 to November 2022 and since Mr. Neeraj Soni Mohnia brother of the assessee was busy in taking care of her mother he could not pursue the filing of appeal within time; that the delay in filing the appeal is neither intentional nor willful but due to unavoidable circumstances.

2. However, on the other hand, the Ld. D.R. for the Revenue opposed the application for condonation of delay on the ground that the late filing of appeals in this case is apparently malafide due to callous attitude of the assessee and prayed for dismissal of the application.

3. Keeping in view the fact that the assessee is a NRI and his tax affairs in India are being looking after by his brother who remained occupied to look after his mother who was hospitalized, the delay in filing the appeal appears to be not willful or intentional. We find it a sufficient to condone the delay keeping in view the law laid down by the Hon'ble Supreme Court in case of Land Acquisition Collector vs. MST Katiji & Others 167 ITR 471 (SC) wherein it is held that "it is on contention of delay that when substantial justice and technical considerations are pitted against each other, the case of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice

being done because of a non deliberate delay”. So the delay of 23 days in filing the present appeal is hereby condoned and present appeal is ordered to be registered and heard today by the Bench on merits.

4. The assessee by filing the present appeal, sought to set aside the impugned order dated 28.01.2020 passed by the Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as CIT(A)] qua the assessment year 2017-18 on the grounds inter-alia that :-

“1. That the Commissioner of Income-tax (Appeals) (CIT(A)) erred on facts and in law in confirming the assessment completed by the assessing officer under section 143(3) of the Income Tax Act, 1961 ('the Act') at an income of Rs. 93,11,280 as against the income of Rs. 3,11,280 return filed by the appellant.

2. That the CIT(A) erred on facts and in law in confirming the addition made by the assessing officer under section 69A of the Act on account of cash lying with the appellant amounting to Rs. 90,00,000 which was then deposited into his bank account.

3. Without prejudice, that the CIT(A) erred on facts and in law in not appreciating that the appellant was not required to maintain books of account and thus, there cannot be any allegation that the money is not recorded in the books of account.

4. Without prejudice, that the CIT(A) erred on facts and in law in confirming the assessing officer's observation that the cash lying with the appellant, which was then deposited into the bank account on 30.12.2016, constitutes his unexplained money, merely based on conjectures and surmises.

5. Without prejudice, the CIT(A) erred on facts and in law in confirming the assessing officer's inference that the cash lying with and deposited by the appellant constituted his unexplained money without appreciating that the appellant had sufficient opening balance of cash in hand in the relevant year from which an amount of Rs. 90,00,000 was deposited in the bank account by him.

6. Without prejudice, that the CIT(A) erred on facts and in law in not appreciating that the cash in hand of the appellant, which was withdrawn earlier, cannot be construed as an income of the appellant.

7. *Without prejudice, that the CIT(A) erred on facts and in law in not appreciating that the source of the entire cash lying with the appellant was the salary received on account of his employment outside India.*

8. *Without prejudice, that the CIT(A) erred on facts and in law in confirming the assessing officer basing his conclusions on the ex parte replies from the banks, without affording any opportunity to the appellant to rebut or provide explanations against the same, thereby violating the principles of natural justice.*

9. *Without prejudice, that the CIT(A) erred on facts and in law in confirming the assessing officer basing his conclusions on the fact that the denomination of the cash withdrawn earlier and that of the cash deposited in the relevant year is different.*

10. *Without prejudice, that the CIT(A) erred on facts and in law in not appreciating that the appellant is a person resident outside India and hence the alleged income under section 69A of the Act can be taxed in India only if the same is received or deemed to be received in India or if the same accrues or arises in India or deemed to have accrued or arisen in India as per the provisions of section 5 of the Act.*

11. *Without prejudice, that the CIT(A) erred on facts and in law in not appreciating that the alleged income under section 69A of the Act cannot be taxed in India also in view of Article 16 of the Double Taxation Avoidance Agreement between India. (DTAA) and the USA.*

12. *Without prejudice, that the CIT(A) erred on facts and in law in confirming the assessing officer's observation that the assessment order passed for the assessment year 2015- 16 proved that there was no cash in hand of appellant in that year without appreciating that no such observations were made in the said order.*

13. *That the assessing officer erred on facts and in law in levying interest under section 234B and section 234D of the Act.*

14. *Without prejudice, that the assessing officer erred on facts and in law in initiating penalty proceedings under section 274 read with section 271AAC of the Act.*

15. *The appellant craves leave to add to, alter, amend or vary from the above grounds of appeal at or before the time of hearing”*

5. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee's return of income filed for the year under consideration declaring total income

at Rs.3,11,280/- was processed under section 143(1) of the Income Tax Act, 1961 (for short 'the Act'). Subsequently on receipt of information from Deputy Director of Income Tax (Investigation), Mumbai that "the assessee has received cash amounting to the tune of Rs.90,00,000/- (in denomination of Rs.500 & Rs.1000 currency notes) in his bank account No.001101082440 maintained with ICICI Bank, notices under section 142(1) were issued calling upon the assessee to furnish the source of his income and detail of his stay in India during Financial Year 2013-14 to 2016-17 and source of cash deposit of Rs.90,00,000/- in bank account. The assessee filed detailed reply. Declining the contentions raised by the assessee that "cash deposits were made out of cash withdrawals made by his mother, which was kept at home for about 44 months", the Assessing Officer (AO) by invoking the principle of "human probability" proceeded to hold that the cash deposit by the assessee during demonetization is not same cash withdrew by his mother from his bank account, made the addition of Rs.90,00,000/- to the income of the assessee under section 69A and total income of the assessee is taxed under section 115BBE of the Act @ 60% and assessed the total income at Rs.93,11,280/- under section 143(3) of the Act.

6. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

7. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

8. Undisputedly the assessee is a NRI working in USA for the last 20 years and earning salary income and interest income in India. It is also not in dispute that an amount of Rs.90,00,000/- was deposited in the assessee's account maintained with ICICI Bank during demonetization. It is also not in dispute that the assessee has transferred an amount of Rs.1,10,90,000/- being remittance from USA during the period 2009 to 2013 to his Non-Resident (External) Account (NRE) & Non-Resident (Ordinary) Account (NRO) accounts in India from which the same were transferred to the bank account of his mother Mrs. Pushpa Mohnia in India detailed as under:

Sr. No.	Date of remittance	Amount of remittance (in INR)	Bank account of the Appellant in India in which transfer was made from his bank account outside India	Bank account of Appellant's mother, Pushpa Mohnia in India in which the transfer was made from the bank account of the Appellant in India
1	29.05.2009	15,00,000	HDFC account #09681510000082	HDFC account # 03571570000598
2	16.02.2010	24,90,000	ICICI NRE bank account # 001101081171	HDFC account # 03571570000598
3	19.01.2012	10,00,000	HDFC account #09681510000082	HDFC account # 03571570000598
4	13.04.2013	61,00,000	HDFC account #09681510000082	HDFC account # 03571570000598
	Total	1,10,90,000		

9. It is also not in dispute that subsequently Mrs. Pushpa Mohnia mother of the assessee transferred an amount of Rs.90,00,000/- from her aforesaid HDFC Bank account to her ICICI Bank account. It is also not in dispute that the AO as well as the Ld. CIT(A) have accepted the facts put forth by the assessee that the amount of Rs.90,00,000/- was transferred by the assessee to his mother residing in India through his NRE & NRO accounts in India which amount was subsequently withdrawn by his mother but treated the amount of Rs.90,00,000/- as unexplained money under section 69A of the Act by invoking the principle of human probability; that it is humanly not possible that amount of Rs.90,00,000/- remained kept by the assessee in his house for about 44 months and as such it is not same amount.

10. In the backdrop of the aforesaid undisputed facts the sole question arises for determination in this case is:

“As to whether the assessee has been able to prove the nature and source of Rs.90,00,000/- being his savings from the salary drawn in USA and transferred to the account of his mother through his NRE & NRO accounts in India which was subsequently withdrawn by his mother and deposited in the bank account of the assessee during demonetization?”

11. The Ld. A.R. for the assessee challenging the impugned order passed by the Ld. CIT(A) contended inter-alia that when nature and source of Rs.90,00,000/- has been duly proved the addition thereof cannot be made on the basis of human probabilities; that the amount in question was transferred by the assessee to the account of his mother as the family intended to make certain investment in real estate in India; that mother of the assessee being an old lady of 75 years withdrew the amount in order to clinch a property deal in Mumbai in response to the

advertisement in the Indian Express Newspaper for sale of “Kumar Mahal”, Parel, Mumbai as under:

(Indian Express)
7th May 2015, Advt for Sale of "Kumar Mahal" situated
on Aaimai Merumaiji street, Parel.

Joint Charity Commissioner, Surat Division – Surat
Public notice for change in use of immovable leased property.

Application No. 36/12/2013

Joint Charity Commissioner, Surat Department – Surat, Shri S.D. Chaudhari and Shri Dhanu Vaidya, Jais Vidyanagar Trust, Registration No: A/126/Surat Trust, registered immovable property under Mumbai Sarvajit Trust ACT 1930 under section - 36 in PTR and the organization has got the property on 999 year lease with specified rights and duties. Kind, interest of public organization membership in the remaining years of leased property. Law, legal departments, other provisions will be applicable to property. As per the rules and interest of tenants, change in use of leased property has been decided with unanimous decision of trustee trustee. Also, property rights, change in use of property also decided. The application number is 36/12/2013. The description to change in use of property is as under:

Sr. No.	Property and address	Property type and description	Property No. etc.	Proprietor's name etc.	Remarks (to be filled by him)
1	Registered lease agreement No. 153, date 15/01/1941, lease for 999 years at Rs. 400. The tenant is Corporation of the City of Bombay registered in Kees Roll Under No 1218 Estate and Land Manager Division and Registered Lease Agreement No. 4638, Date 12/09/1948, yearly Rs. 11 for 999 year lease to the Municipal Corporation of the City of Bombay, Registered in Rentroll Under No. 2309 estate Agent and Land Manager, Document page No. 11 Plan. 4 conditions transfer of property under section 108 to which (3) has been removed. Page No. 11 Para 14. Union Transfer for Provision	30 tenants are there living in the property. The income of the organization will be changed for remaining years out of 999 years. The offering person has to check all legal provisions and information of the property on their own with the trustee. Also they need to do offer by considering all aspects.	Street No. 110/111, Maharashtra ward No. 21, (P.F. 427 (13)9 (PTR)	Chandragopal Jadhav P.N. No. 2110/111, date 21/04/2013, Shivaji Parel Division, Mumbai (Plan 10)	

12. The Ld. A.R. for the assessee further contended that when nature and source of the amount in question is duly proved the same cannot be treated as unexplained merely on the basis of human probability, more particularly when no evidence has come on record that the money in question is a black money and relied upon the order passed by co-ordinate Bench of the Tribunal viz. Mrs. Usha Narayan Chaware vs ITO, Ward-4(5), Pune-ITA No. 377/PUN/2022 (Pune Trib.), ITO, Ward-12(2)(1), Mumbai vs M/s. G.G. Engineering Limited- ITA No. 2757/Mum/2022

(Mumbai Trib.), Shri Shail Jayesh Shah vs ITO. Ward 20(3)(3), Mumbai- ITA No. 1102/Mum/2022 (Mumbai Trib.), Smt. Krishna Agarwal vs ITO, Ward-1, Pali- ITA No. 53/JODH/2021 (Jodhpur Trib.) and Abhilasha Jain vs DCIT, Circle (Intl Tax) Jaipur- IT(IT)A. No. 05/JP/2022 (Jaipur Trib.)

13. However, on the other hand, the Ld. D.R. for the Revenue in order to repel the argument addressed by the Ld. A.R. for the assessee contended that the explanation put forth by the assessee that the amount in question was withdrawn from the bank to make investment in the real estate is apparently not tenable as no such agreement to sell has been brought on record; that huge cash of Rs.90,00,000/- cannot be kept at home for a long period of 44 months; that there is no evidence on record brought by the assessee if any efforts were made to purchase the property during the period of four years and relied upon the decision rendered by the Hon'ble Supreme Court in case of Simit Dayal vs. CIT 214 ITR 801 and the circular dated October 21, 2021 qua purchase of immovable property by non resident of individual.

14. When we examine the contentions raised by the Ld. Authorised Representatives of the parties to the appeal in the light of the undisputed facts that "the assessee being a NRI, worked in USA earned salary which was offered to tax in USA and regularly remitted total amount of Rs.1,10,90,000/- during the period 29.05.2009 to 13.04.2013 and transferred the said amount, from his bank account maintained outside India to his NRE and NRO accounts maintained with HDFC Bank and ICICI NRE Bank account, from which the said amount was transferred to the account

of Smt. Pushpa Mohnia mother of the assessee maintained with the HDFC Bank, it is proved on record that the amount so transferred was not a black money rather received in India as per RBI guidelines.

15. Furthermore, Smt. Pushpa Mohnia mother of the assessee, an old lady 75 years, withdrew the aforesaid amount of Rs.1,10,90,000/- from her bank account in different trenches about four years back, and made the claim that the amount was withdrawn to clinch a property deal as per advertisement in Indian Express Newspaper dated 07.05.2015 for the purchase of “Kumar Mahal” in Parel, Mumbai. This claim cannot be rejected merely on the basis of human probabilities, particularly when entire amount in question is a money received by the assessee from foreign remittances through banking channel. Merely because of the fact that the amount remained lying in the house of the assessee for four years the claim cannot be rejected. More so when the amount in question is being dealt with by the mother of the assessee a lady of 75 years old, certainly decision making to again keep the amount in bank ought to be taken as slow as a natural consequence of old age. Moreover, it is nowhere case of the AO that the amount withdrawn by Smt. Pushpa Mohnia mother of the assessee from her account about four years back and then deposited in the account of his son during demonetisation, was spent somewhere else and the amount in question was a black money.

16. In order to prove the contention that the assessee’s mother kept the amount in question at her house to clinch the deal with Shri Surat Vishwasrimali Jain Vidyotejak Fund the Ld. A.R. for the

assessee brought on record letters dated 05.06.2012 & 09.06.2012 making an offer to acquire the property in question. Both the letters have been brought on record by the assessee wherein offer for the property in question has been made by the mother of the assessee for an amount of Rs.4,90,00,000/-. Again these facts strengthen the contention of the assessee that the money withdrawn from the bank account of the assessee remained lying in the house of his mother being ready cash and she deposited the same during demonetisation as deal for the property was not clinched.

17. Furthermore, the assessee's brother Mr. Neeraj Mohnia claimed to have filed an application dated 24.05.2016 under the Right to Information Act seeking information about the property having C.S. No.103 of Dadar Naigaon division. Then inspection of the relevant documents was permitted by the Office of Executive Engineer (Building Proposals) City-III, Mumbai as per their letter dated 21.06.2016, which has been perused by us available at page 118 of the paper book.

18. Perusal of the application dated 24.05.2016 filed by the brother of the assessee and order for inspection passed by Asst. Engineer (Building & Proposition) City-V, Mumbai dated 21.06.2016 apparently proves that the family member of the assessee who was NRI were continuously making efforts to purchase some property with the cash amount lying at their home during the intervening period of withdrawing the money in question from bank account by Smt. Pushpa Mohnia and then depositing the same in assessee's account during demonetisation and this piece of

evidence cannot be taken as fabricated by any stretch of imagination.

19. It is further contended by the Ld. A.R. for the assessee that since the assessee and his wife was having some medical issue due to which they were unable to bear a child, they were undergoing lot of stress due to which they could not devote his time to make investment decision.

20. Once the availability of cash in question being a legal money was proved on record and it is not the case of the AO that the said money was spent by the assessee elsewhere, depositing the same in the bank account during demonetisation after a period of four years does not change the character of a money from a white money to black money. Moreover, mother of the assessee who has kept the money with her after withdrawing from her account and deposited the same in the bank account of the assessee during demonetisation was not into any business from which she might have earned the money in question as a black money and deposited the same during demonetisation in the bank account of her son. In these circumstances contentions raised by the Ld. D.R. for the Revenue are not sustainable. Identical issues have been decided by the coordinate Benches of the Tribunal in favour of the assessee referred to in preceding para No.12 as relied upon by the assessee.

21. In view of what has been discussed above, we are of the considered view that in the face of contentions made by the Ld. A.R. for the assessee supported with an evidence brought on record, the addition cannot be made merely by invoking the principle of "human probabilities"; that no one can keep the huge

amount at home for a period of about four years. In other words when the cash amount lying in the house of the mother of the assessee is a legal money received through banking channel, it is difficult to question the intention of the assessee as well as mother of the assessee.

22. So in view of what has been discussed above the question framed by the Bench is answered in affirmative. The impugned order passed by the Ld. CIT(A) is not sustainable in the eyes of law, hence set aside. The AO is directed to delete the addition made in this case.

23. Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 11.10.2023.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 11.10.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.