

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**Before Sh. Saktijit Dey, Vice President
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 1082/Del/2022 : Asstt. Year: 2017-18

Viren Bakhru, R-887, 2 nd Floor, New Rajinder Nagar, New Delhi-110060 (APPELLANT)	Vs	ACIT, Circle Intl. Taxation-1(1)(2), New Delhi-110002 (RESPONDENT)
PAN No. ASDPB9854A		

**Assessee by : Sh. Sanjeve Deora, Adv.
Revenue by : Sh. Sanjay Kumar, Sr. DR**

Date of Hearing: 09.10.2023

Date of Pronouncement: 11.12.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by assessee against the order of Id. CIT(A)-42, New Delhi dated 21.03.2022.

2. Following grounds have been raised by the assessee:

"1. That within the facts and circumstances of the case and law on the point, the learned Commissioner of Income tax (Appeal)-42, New Delhi (learned CIT(A)), has framed the impugned order under section 250 of the Income-tax Act, 1961 (Act), without considering and appreciating factual and legal position of the case and that the impugned order deserves to be set aside.

*2. That within the facts and circumstances of the case and law on the point, the learned CIT(A) was not justified in rejecting the Appellant's explanation that **deposit of cash of Rs. 12,00,000 in his Non-Resident Ordinary Account (NRO Bank Account)** during the period of demonetization was out of withdrawals from the same Bank Account, and has erred in confirming the Assessment Order passed by the learned Assessing Officer treating the*

cash deposit of Rs. 12,00,000 as unexplained money under section 69A of Income-tax Act, 1961, and the impugned addition deserves to be deleted.

3. That within the facts and circumstances of the case and law on the point, the learned CIT(A) has erred in not considering the factual position explained by the Appellant through his submission made during the appellate proceedings that while the learned Assessing Officer accepted the fact that moneys had been withdrawn by the Appellant from his NRO Bank Account and that the moneys were not put to any use by the Appellant, there could have been no source of the impugned deposits in the NRO Bank Account of the Appellant other than the moneys lying on hand, and the impugned addition deserves to be deleted.

4. That within the facts and circumstances of the case and law on the point, the learned CIT (A) has erred in concluding that there was withdrawal of cash of Rs. 41,300 on 26.09.2016 when the Appellant was holding cash on hand of Rs. 12,00,000 and had deposited it during period of demonetization and therefore holding that the explanation of the Appellant submitted during appellate proceedings is unsubstantiated, without any tenable evidence, self-serving and make-believe story, as the finding had been arrived at without seeking any response of the Appellant on the withdrawal amount and without affording an opportunity to the Appellant to explain the same, for the withdrawal of Rs. 41,300 was by way of cheque to meet an urgent personal requirement of spouse of the Appellant when the Appellant was outside the home, and as such could not be the basis of dismissing the appeal of the Appellant, and the impugned order therefore, deserves to be set aside.

5. That within the facts and circumstances of the case and law on the point, the learned CIT(A) has erred in not applying the correct legal position to the facts of the case as relied upon by the Appellant during the appellate proceedings.

6. That the grounds of appeal submitted hereinabove may be read as without prejudice to one another in cases and circumstances wherever the context so requires.

7. That within the facts and circumstances of the case and the law on the point, the learned CIT(A) has erred in framing the impugned order to the extent as discussed

hereinbefore and the Appellant reserves its right to file and produce information, evidences and documents as already available on record or additional and new information, evidences and documents with an appropriate application to be preferred for the purposes, both before and during the hearing/s in this appeal.

8. That within the facts and circumstances of the case and law on the point, the learned CIT(A) has erred in framing the impugned order to the extent as discussed hereinbefore and the Appellant reserves its right to add or delete the ground(s) appearing hereinbefore and craves leaves to amend or vary the same, before and at the time of hearing."

3. Heard the arguments of both the parties and perused the material available on record.

4. Facts of the case in brief are that the assessee is a non-resident Indian, staying in Dubai, UAE. The assessee filed return of income on 31.03.2017 declaring total income of Rs.470/-. The case was selected for scrutiny to examine the cash deposited by the assessee in his bank account during demonetization period. The assessee was asked to explain the source of cash deposit. The assessee explained that the same was made out of the withdrawals made from bank account. The Assessing Officer was not satisfied and the assessment was completed u/s 143(3) of the Income Tax Act, 1961 after making an addition of Rs.12,00,000/- to the returned income. The Id. CIT(A) affirmed the action of the Assessing Officer.

5. During the course of assessment proceedings, proceedings before the Id. CIT(A) and before the Tribunal, the assessee furnished required information/details, bank statements and other documents. The monies have been withdrawn from the NRO account to the extent of Rs.18,30,300/- during the period 17.07.2015 to 22.09.2016 and deposited an amount of

Rs.12,00,000/- in the same NRO account owing to demonetization. The observation of the Id. CIT(A) that odd amounts have been withdrawn as suspicious in nature is wrong on facts as the remittances from Dubai to NRO account were initiated in round amounts of foreign currency, the amounts credited in NRO bank account were odd amounts due to conversion of foreign currency to Indian rupees and deduction of bank charges and it was the amount credited in NRO bank account which has been withdrawn to be held as cash for meeting the expenses in India. The passport also proves that the assessee has travelled to India on 16.11.2016 and deposited the remaining cash of Rs.12,00,000/- in the same NRO bank account. Since, the withdrawals of the NRI are from his bank account, his absence has been proved, his arrival to India is not in question, the availability of cash in hand is not in dispute, ergo we hold that no addition u/s 69A of the Income Tax Act, 1961 is called for.

6. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 11/12/2023.

Sd/-

(Saktijit Dey)
Vice President

Dated: 11/12/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR