

IN THE INCOME TAX APPELLATE TRIBUNAL
Circuit Bench, Varanasi

Before Shri B.R. Baskaran (AM) & Shri Amit Shukla (JM)

I.T.A. No. 09/VNS/2023 (A.Y. 2017-18)
I.T.A. No. 10/VNS/2023 (A.Y. 2017-18)

Ashraf Bano D/o. Mr. Jafuruddin Bankat Sagri, Azamgarh UP-223 221. PAN : AZTPB6056B (Appellant)	Vs.	ITO-3(1) Azamgarh (Respondent)
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Assessee by	Shri Salabh Singh
Department by	Shri A.K. Singh
Date of Hearing	26.09.2023
Date of Pronouncement	09.11.2023

ORDER

Per B.R.Baskaran (AM) :-

Both the appeals filed by the assessee are directed against the orders passed by Ld CIT(A), NFAC, Delhi and they relate to the assessment year 2017-18. The appeal numbered as ITA 09/VNS/2023 is related to the quantum assessment proceedings and the appeal numbered as ITA 10/VNS/2023 is related to the penalty levied u/s 271AAC of the Act. Both the appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. We shall first take up the appeal filed in quantum assessment proceedings. The assessee is an individual and is residing in Saudi Arabia. The department noticed that the assessee has deposited a sum of Rs.13,50,000/- in her bank account maintained with ICICI Bank, Azamgarh during demonetization period. Since the assessee did not file any return of

income, the AO re-opened the assessment u/s 147 of the Act. Since the assessee did not respond to any of the notices issued by the AO, the assessing officer completed the assessment to the best of his judgment u/s 144 of the Act by assessing the above said deposit amount of Rs.13,50,000/- as unexplained income of the assessee u/s 69A of the Act.

3. Before Ld CIT(A), the assessee raised legal grounds challenging the validity of reopening of assessment, improper service of notice etc. With regard to merits, it was submitted that the assessee's younger sister named Ms Anam had taken gold loan of Rs.12,76,000/- from ICICI Bank in February, 2016. It was stated that Ms Anam has gifted the above said sum of Rs.12,76,000/- to the assessee. During demonetization period, the above said amount together with the savings of the assessee aggregating to Rs.13,50,000/- was deposited into the bank account. Accordingly, it was submitted that the sources of Rs.13,50,000/- has been explained and accordingly it was prayed for deletion of the addition made by the AO.

4. All the legal grounds were dismissed by Ld CIT(A). With regards to the issue urged on merits, the Ld CIT(A) confirmed the addition with the following observations:-

“4.9 And coming to the merits of the case the issue is very limited that there is a deposit of Rs.13.5 lakhs in the bank account on 24.11.2016. The appellant tries to explain the same that this was received from her younger sister Ms. Anam Jafuruddin. However, when source of cash of Ms Anam Jafuruddin is examined it is seen that she has withdrawn an amount of Rs.12,76,000/- on 19-02-2016 and that too is after taking a gold loan. To this amount it is stated that she has added her own cash of Rs.76,000/- and then gifted this money in November, 2016 to deposit in the bank. It is very strange kind of explanation there is a sister of the assessee who withdraws money after pledging gold (as it was a gold loan) and then gifts the entire money to her sister that too in the month of November, 2016 as a gift. This is not what normally happens that a person obtains a loan under personal obligation and then give away the money as gift. This explanation of the appellant is clearly an after thought and is not acceptable and hence rejected.”

5. We heard the parties and perused the record. With regard to validity of reopening of assessment, we notice that the assessing officer has recorded reasons for re-opening and the same is extracted in the assessment order. It is an undisputed fact that the assessee has deposited a sum of Rs.13,50,000/- in her bank account during demonetization period and further the assessee was not earlier assessed to income tax. Thus a deposit of such magnitude by a person who is not assessed to income tax would definitely trigger in the mind of the assessing officer the reason to believe about escapement of income. Accordingly, we are of the view that the Ld CIT(A) is justified in confirming the validity of reopening the impugned assessment. With regard to the next legal issue of improper service of notice, we find that the Ld CIT(A) has addressed the same in paragraph 4.5 of his order and has held that the service of notice u/s 148 of the Act to the last known address based on the bank account shall be construed as valid service of notice. We notice that the Ld CIT(A) has given proper reasoning for rejecting this legal ground and accordingly, we uphold the same.

6. With regard to the merits of the case, we notice that the assessee's explanation was rejected by Ld CIT(A) holding it as an afterthought. However, we notice that the impugned Savings Bank account maintained with ICICI bank stands in the joint name of the assessee (Ms Ashraf Bano) and her sister (Ms Anam Jafaruddin). It is stated that gold loan of Rs.12,76,000/- was taken by Ms Anam from ICICI Bank on 19-02-2016 and the same was transferred to the joint bank account. It appears that money was withdrawn in between. However, it is stated that a sum of Rs.13,50,000/- was deposited into the above said joint account on 24.11.2016. Subsequently the gold loan account was closed on 25.11.2016 by transferring funds from the above said bank account. These details are given at pages 12 and 13 of order passed by Ld CIT(A).

7. From the above said facts, we notice that the SB account does not stand in the individual name of the assessee, but it was a joint bank account maintained by the assessee and her sister. It is claimed that out of the deposit of Rs.13,50,000/-, a sum of Rs.12,76,000/- represented gold loan obtained Ms Anam. It was stated that the loan amount was deposited in the very same joint bank account, cash withdrawn from it and later deposited in the very same account. The very same deposit is claimed to have been assessed as income in the hands of the assessee. The balance available in the SB account was used to repay the gold loan also.

8. If the above said explanation of the assessee is found to be true, then, in our view, the sources to the extent of Rs.12,76,000/- will stand explained. Alternatively, even if the theory of gift is not accepted, yet it is possible to interpret that, out of the total deposits of Rs.13,50,000/-, a sum of Rs.12,76,000/- shall belong to assessee's sister. In that case, it is not possible to assess the above said amount of Rs.12,76,000/- in the hands of the assessee, as it belongs to Ms Anam.

9. However, we notice that it is not clear as to whether the assessee has furnished copies of gold loan statement, copies of bank account in order to substantiate above said explanations. We earlier noticed that the assessee has not appeared before the AO. The order of Ld CIT(A) is also silent about furnishing of above said evidences. Even if the assessee had furnished them, then it is imperative for the Ld CIT(A) to obtain a remand report from the AO on those documents. There cannot be any dispute that bald explanations given without furnishing any evidence to substantiate the same are liable to be rejected.

10. Considering the facts of the present case and in the interest of natural justice, we are of the view that the assessee may be given an opportunity to

furnish evidences to substantiate her explanations, viz., the copies of gold loan statement and copies of bank account in support of her explanation.

11. In view of the above, we set aside the order passed by Ld CIT(A) on merits of the issue and restore the same to the file of the AO for the purpose of examining the issue afresh by duly considering the gold loan statements and the transactions with the bank. If the assessee could produce documents in support of her above said explanation, then we direct the AO to delete the impugned addition of Rs.13,50,000/-. Otherwise, the AO may take appropriate decision in accordance with law.

12. We shall now take up the appeal filed by the assessee against the penalty levied u/s 271AAC of the Act. Since we have restored the merits of the issue to the file of the AO, the impugned penalty order will not survive. The AO may initiate penalty proceedings afresh in the set aside proceedings, if warranted.

13. In the result, both the appeals of the assessee are treated as allowed.

Order pronounced on 09.11.2023.

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Varanasi.; Dated : 09/11/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Varanasi.
6. Guard File.

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BY ORDER,
(Assistant Registrar)
ITAT, Varanasi