

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES “SMC”, HYDERABAD**

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.521/Hyd/2023		
Assessment Year: 2017-18		
Thalloju Krishna Murthy, C/o. Mohd Afzal, Advocate, #402, Shersons Residency, 11-5-465, Criminal Court Road, Red Hills, Hyderabad – 500004.	Vs.	The Income Tax Officer, Ward – 9(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Mohd Afzal, Advocate	
Revenue by:	Shri B. Yadagiri, Sr. AR.	
Date of hearing:	14/12/2023	
Date of pronouncement:	21/12/2023	

**ORDER**

**PER LALIET KUMAR, J.M.**

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.03.10.2023 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee reads as under :

“1. The order of the Id.CIT(A) is against the law, weight of evidence and probabilities of case.

2. The Id.CIT(A) erred in confirming the addition of Rs.25,97,884/- u/s 69A of the IT Act.

3. The Id.CIT(A) ought to have appreciated that the assessee explained the transactions by filing the cash book and also source of deposit from the earlier withdrawals, therefore, erred in confirming the addition of Rs.25,97,884/-.

4. The Id.CIT(A) ought to have appreciated that the assessee also deposited cash from the earlier withdrawals prior to demonetization period, in respect of which the learned Assessing Officer accepted the transaction, as there is no difference for the source of deposits prior to demonetization and during demonetization, therefore, erred in confirming the additions in respect of deposits during demonetization period.

5. The Id.CIT(A) ought to have appreciated that the Assessing Officer has not brought on record any material to support that the cash withdrawn is utilized by the assessee for any purpose, therefore, erred in confirming the addition of Rs.25,97,884/- u/s 69A of the IT Act.”

3. Facts of the case, in brief, are that the assessee is an individual, deriving income from house property and other sources, filed his return of income on 08/07/2017 declaring total income of Rs.5,82,530/-. The case was selected for scrutiny for large value of cash deposited during demonetization period and assessee has deposited substantial cash during demonetization period as compared to returned income. Notice is 143(2) was issued and served on assessee. Notices u/s 142(1) of the I.T.Act were issued on 10/07/2019. Thereafter, notice u/s 142(1) of IT Act was issued on 13/08/2019 calling for certain information. In response, the assessee has made his submissions.

3.1. On perusal of the submissions and in order to obtain clarity in respect of the cash payments made against the loan during the demonetization period, a show cause letter dated 18.11.2019 was issued to the assessee, requesting to furnish the explanation to the proposed addition in respect of cash deposits made during the demonetization period. In response, the assessee reiterated the earlier submission dated 21.08.2019 and further stated that the assessee was having certain agricultural lands at Kadthal, Mahbubnagar where a poultry farm was being managed in the earlier years, which later abandoned and he has taken loans only to revive the poultry farm.

3.2. Again, a notice u/s 142(1) of IT Act on 17.12.2019 was issued to the assessee calling for bank statements of account no.1849101003579 and Andhra bank account statement bearing account no.054810025100079 and further assessee was asked to furnish the cash flow statement along with date-wise transaction for the year under consideration by fixing the case on 23.12.2019. As there was no response from the assessee, a final show cause notice dated 26.12.2019 was issued asking as to why the loan was repaid in cash during the demonetization of Rs. 22,91,884/- should not be added to return of income and called for objections if any to the proposed addition. There was no response from the assessee.

3.3. On perusal of submissions and bank statements, Assessing Officer observed that assessee was making partial repayment of loans on multiple occasions of different amounts and major payments were made in the month of during demonetization

period. However, on perusal of submissions of the assessee, Assessing Officer rejected the submission of assessee that the cash deposits were out of previous withdrawals, and held as incorrect and unacceptable. Hence, the cash deposits made in the following bank accounts were treated as unexplained money and added to the income returned.

Account No.	Amount Deposited
1849793000046	Rs.15,29,108/-
1849793000028	Rs. 7,62,776/-
1849101003579	Rs. 3,06,000/-
Total	Rs.25,97,884/-

Accordingly, the Assessing Officer completed the assessment u/s 143(3) of the Act assessing the total income at Rs.31,80,414/- interalia making addition of Rs.25,97,884/- u/s 69A of the Act and initiated penalty proceedings u/s 271AAC separately.

4. Feeling aggrieved with the order of Assessing Officer, assessee filed an appeal, which was later migrated to the Id.CIT(A), NFAC, Delhi, who confirmed the addition made by the Assessing Officer by holding as under :

*“5.2. Now before me in the appellate proceedings, written submission has been filed. It has been stated that cash has been withdrawn by the appellant worth Rs.50,59,000/- out of the proceeds of loan account and interest on deposits for the revival of poultry form. I have gone through the cash book filed by the appellant. The cash withdrawal and cash deposits have not been correlated. The Assessing Officer has held in para-9 of the assessment order that loan to revival the project abandoned earlier and the project was not materialized. It has been further held by the Assessing Officer that*

*loan of Rs.10,00,000/- on 24.10.2016 which was repaid on 15.11.2016 hence the appellant did not explain the source of the cash before the Assessing Officer and before me in the appellate proceedings. Hence the Assessing Officer is correct in making addition u/s.69A of the Income Tax Act of cash deposits worth Rs. 25,97,884/-. Hence the addition of the Assessing Officer is confirmed and the appeal of the appellant is dismissed.”*

5. Before me, ld. AR submitted that during the period from April 2016 to December, 2016, assessee has withdrawn Rs.50,59,000/- from his various bank accounts after utilizing the loan facility from the bank. The assessee thereafter, was contemplating to utilize the funds for renovation and improvement of poultry farm. Because of the non-availability and other technical support, assessee has not utilized the funds for the purpose of carrying out the improvement and renovation of the poultry farm. It is also the case of the assessee that the loan was taken by the assessee on the FDRs deposited with the bank. The assessee had produced the cash flow statement which is available at page 7 of the paper book. It was submitted that the Assessing Officer had made the addition of Rs. 25,97,884/- in the hands of the assessee on the ground that in general a prudent person withdraws the amount if the earlier withdrawn amount was exhausted or utilized and the Assessing Officer rejected the contention of the assessee that cash deposits were made to clear the loan amounts during the demonetization out of the earlier withdrawals. It is the contention of the assessee before us that once the funds were available with the assessee prior to demonetization then the Revenue authorities cannot question the same. He further submitted that onus is on the assessee to prove the source of the cash. For the above said purposes, he relied on the following decisions :

1. Kavitaaben Chintanbhai Patel Vs. ITO (ITAT Ahmedabad).
2. ACIT, Central Circle-1, Gurugram Vs. M/s. Omaxe Forest SPA and Hills Developers Ltd in ITA No.2/Del/2023 dt.18.08.2023.
3. Ajit Bapu Satam Vs. DCIT, Circle – 2(1), Mumbai in ITA No.1599/Mum/2021 dt.29.08.2022.
4. Pawan Meena Vs. ITO in ITA No.410/JPR/2022 dt.17.03.2023.

5.1. Id. AR produced the Cash Book for the period from 01.04.2016 to 31.03.2017 which to the following effect :

T KRISHNA MURTHY  
CASH BOOK  
01.04.2016 TO 31.03.2017

Date	Particulars	Vch Type	Vch No.	Debit Cash Withdrawal / Rental Income	Credit / Cash Deposit	Closing Balance in Hand
01.04.2016	Opening Balance			52500.00		52500.00
10.04.2016	Rental Income	Receipt	2	6000.00		58500.00
	Rent					
12.04.2016	Andhra Bank 05410025100079	Contra	1	15000.00		208500.00
	Being cash withdrawn					
22.04.2016	Canara Bank 1849101003579	Contra	2		6000.00	202500.00
03.05.2016	Andhra Bank 05410025100079	Contra	3	20000.00		402500.00
	Being cash withdrawn					
10.05.2016	Rental Income	Receipt	7	6000.00		408500.00
	Rent					
18.05.2016	Canara Bank 1849101030462	Contra	4	1500000.00		1908500.00
	Being cash withdrawn					
04.06.2016	Andhra Bank 05410025100079	Contra	5	20000.00		1928500.00
	Being cash withdrawn					
10.06.2016	Rental Income	Receipt	14	6000.00		1934500.00

	Rent					
18.06.2016	Canara Bank 1849101003579	Contra	6	980000.00		2914500.00
	Being cash withdrawn					
04.07.2016	Canara Bank 1849101003579	Contra	7	150000.00		3064500.00
	Being cash withdrawn					
04.07.2016	Loan Canara Bank 1849793000028	Payment	12		15000.00	2914500.00
	Loan repaid					
10.07.2016	Rental Income	Receipt	18	6000.00		2920500.00
	Rent					
02.08.2016	Canara Bank 1849101003579	Contra	8		20000.00	2900500.00
	Being cash deposit					
06.08.2016	Andhra Bank 05410025100079	Contra	9		206000.00	2694500.00
	Being cash deposit					
10.08.2016	Rental Income	Receipt	23	6000.00		2700500.00
	Rent					
03.09.2016	Andhra Bank 05410025100079	Contra	10	25000.00		2950500.00
	Being cash withdrawn					
10.09.2016	Rental Income	Receipt	29	6000.00		2956500.00
	Rent					
16.09.2016	Andhra Bank 05410025100079	Contra	11	600000.00		3556500.00
	Being cash withdrawn					
10.10.2016	Rental Income	Receipt	32	60000.00		3562500.00
	Rent					
21.10.2016	Andhra Bank 05410025100079	Contra	12	50000.00		3612500.00
	Being cash withdrawn					
24.10.2016	Canara Bank 1849101003579	Contra	13	1000000.00		4612500.00
	Being cash withdrawn					
04.11.2016	Loan Canara Bank 1849793000028	Payment	17		600000.00	4012500.00
	Loan repaid					

07.11.2016	Loan Canara Bank 1849793000028	Payment	18		200000.00	3812500.00
	Loan repaid					
10.11.2016	Rental Income	Receipt	39	6000.00		3818500.00
	Rent					
15.11.2016	Loan Canara Bank 1849793000054	Payment	19		1006027.00	2812473.00
	Being Loan repaid					
18.11.2016	Loan A/c 1849793000046	Payment	20		1529108.00	1283365.00
	Being loan repaid by cash					
19.11.2016	Canara Bank 1849101003579	Contra	14		20000.00	1263365.00
	Being cash deposit					
23.11.2016	Canara Bank 1849101003579	Contra	15	20000.00		1283365.00
	Being cash withdrawn					
24.11.2016	Canara Bank 1849101030462	Contra	16		49000.00	1234365.00
	Being cash withdrawn					
24.11.2016	Canara Bank 1849101003579	Contra	17		186000.00	1048365.00
	Being cash deposit					
24.11.2016	Loan Canara Bank 1849793000028	Payment	21		762776.18	285588.82
	Loan repaid					
03.12.2016	Canara Bank 1849101030462	Contra	18		150000.00	135588.82
	Being cash deposited					
03.12.2016	Canara Bank 1849101003579	Contra	19		50000.00	8588.82
	Being cash deposit					
03.12.2016	Canara Bank 1849101003579	Contra	20	20000.00		10588.82
	Being cash withdrawn					
09.12.2016	Canara Bank 1849101030462	Contra	21		14500.00	91088.82

	Being cash deposited					
09.12.2016	Canara Bank 1849101030462	Contra	22	15000.00		106088.82
	Being cash withdrawn					
10.12.2016	Rental Income Rent	Receipt	42	6000.00		112088.82
19.12.2016	Andhra Bank 05410025100079	Contra	23	10000.00		122088.82
	Being cash withdrawn					
26.12.2016	Canara Bank 1849101030462	Contra	24	20000.00		142088.82
	Being cash withdrawn					
26.12.2016	Canara Bank 1849101003579	Contra	25	20000.00		162088.82
	Being cash withdrawn					
03.01.2017	Canara Bank 1849101030462	Contra	26	20000.00		182088.82
	Being cash withdrawn					
09.01.2017	Andhra Bank 05410025100079	Contra	27	24000.00		206088.82
	Being cash withdrawn					
10.01.2017	Rental Income Rent	Receipt	48	6000.00		212088.82
16.01.2017	Canara Bank 1849101003579	Contra	28	20000.00		232088.82
	Savings interest					
18.01.2017	Canara Bank 1849101030462	Contra	29	10000.00		242088.82
	Being cash withdrawn					
19.01.2017	Andhra Bank 05410025100079	Contra	30	24000.00		266088.82
	Being cash withdrawn					
10.02.2017	Rental Income Rent	Contra	53	6000.00		272088.82
14.02.2017	Canara Bank 1849101030462	Contra	31	24000.00		296088.82
	Being cash withdrawn					
02.03.2017	Canara Bank 1849101030462	Contra	32	50000.00		346088.82

	Being internal transfer					
02.03.2017	Canara Bank 1849101003579	Contra	33	40000.00		386088.82
	Being cash withdrawn					
02.03.2017	Andhra Bank 05410025100079	Contra	34	24000.00		410088.82
	Being cash withdrawn					
08.03.2017	Canara Bank 1849101003579	Contra	36		50000.00	360088.82
	Cash deposit					
10.03.2017	Rental Income	Receipt	58	6000.00		366088.82
	Rent					
				5365500.00	4999411.18	
	Closing Balance				366088.82	
				5365500.00	5365500.00	

Opening Balance	52,500
Rent till demonetization	48,000
Cash withdrawn till demonetization	4,920,000
Cash in hand	5,020,500

6. Per contra, ld. DR had relied upon the orders of lower authorities. It was submitted that the normal conduct of a prudent person is required to be considered. It was submitted that once funds were utilized on 12.04.2016 to an extent of 15 lakhs and thereafter again sum of Rs.15 lakhs was withdrawn on 18.05.2016. Thereafter another sum of Rs.9,80,000/- was withdrawn on 18.06.2016. The above said fact has to be examined from the point of view that on 23.05.2016 the assessee has taken loan from Canara Bank, Kadtal Branch to an extent of Rs.15 lakhs. It was submitted that assessee has taken loan of Rs.15 lakhs on 23.05.2016. It is highly improbable and against the conduct of a prudent person that despite the availability of cash with the assessee, the assessee would had taken

loan for Rs.15 lakhs on 23.05.2016. It was submitted that the addition was made in accordance with the law and therefore, the appeal is required to be dismissed.

7. I have heard the rival submissions and perused the material on record. The assessee has filed the copy of cash book from 01.04.2016 to 31.03.2017 and from cash book, the assessee was able to demonstrate that the assessee has withdrawn more than Rs.49,94,411/- during this period. As against the above said amount, the assessee has deposited in the bank account and the Assessing Officer has added the amount of Rs.25,97,884/- to the income of the assessee treating it as unexplained cash deposits by the assessee. The Id.CIT(A) has not accepted the withdrawal of the assessee made on various occasions and confirmed the order of Assessing Officer. It is evident from record that the assessee has withdrawn the cash on 17.04.2016 to an extent of Rs.15 lakhs, similar amount was also withdrawn by the assessee on 18.05.2016. As per the case of the assessee, the assessee withdrawn the cash on various occasions prior to demonetization for the purpose of renovation / improvement of the poultry form. Since the demonetization has taken place, the amount so withdrawn was available and was deposited back by the assessee. In the present case, the Revenue has not brought on record any contrary evidence showing utilization of cash for any other purposes. The Revenue authorities have not doubted taking a loan despite the availability of the cash during the year under consideration.

8. The Id. AR relied upon the decision of Mumbai Tribunal in the case of Ajit Bapu Satam Vs. DCIT, Circle – 2(1), dt.29.08.2022 and

Kavitaben Chintanbhai Patel Vs. ITO wherein it was held by the Benches of Tribunal that once the assessee was able to demonstrate that he has withdrawn the amount and the Revenue has not brought any evidence that the assessee has utilized the amount available with him for any other purpose, then no additions made were required to be deleted. In my view, the above said judgments are required to be applied. However, in the present case, there is a difference as the assessee despite the availability of cash, taken loan on 23.05.2016. In my view, no prudent person take a fresh loan when the cash was available with him. Besides that the assessee has utilized the part of cash in making deposits and the same is clear from the cash book and other corresponding documents produced before me. Considering the totality of the facts and circumstances and the conduct of the assessee, I am of the opinion that the ends of justice would be met, if I restrict the addition to Rs.10 lakhs and thus delete the remaining amount of Rs.15,97,884/- (Rs.25,97,884 – Rs.10,00,000) made in the hands of the assessee. Thus, the appeal of the assessee is partly allowed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 21<sup>st</sup> December, 2023.

Sd/-  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

Hyderabad, dated 21<sup>st</sup> December, 2023.

***TYNN/sps***

Copy to:

S.No	Addresses
1	Thalloju Krishna Murthy, C/o. Mohd Afzal, Advocate, #402, Shersons Residency, 11-5-465, Criminal Court Road, Red Hills, Hyderabad – 500004.
2	The Income Tax Officer, Ward – 9(2), Hyderabad.
3	PCIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*