

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.3281/Mum/2022
(Assessment Year :2017-18)**

Nidhi Mohnia C/o. Vaish Associates 106, Peninsula Centre Dr. S.S.Rao Road Parel, Mumbai-400 012	Omsharan	Vs.	Income Tax Officer, Int. Tax Ward 3(2)(1) Mumbai
PAN/GIR No.AZQPM1433L			
(Appellant)		..	(Respondent)

Assessee by	Shri Pankaj Soni
Revenue by	Ms. Shilpa N.C.
Date of Hearing	27/12/2023
Date of Pronouncement	29/12/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 07/10/2022 passed by CIT(A)-57, Mumbai for the quantum of assessment passed u/s.143(3) for the A.Y.2007-08.

2. The brief facts are that assessee is an individual and non-resident individual settled in USA, wherein she earning salary

income from the employment in US. In India, the source of income is purely interest income which has been duly disclosed in the return filed in India. On 02/04/2013, assessee in her NRE account has transferred USD 1,00,000/- which in terms was INR 53,29,785/-. Before that, on 01/03/2013 she has transferred USD 92,988/- which in terms was INR 49,56,951/-. The deposits made in NRE account was withdrawn in cash by her mother Smt. Pushpa Mohnia for sum of approximately Rs.90 lakhs. The cash was stated to be withdrawn by her mother for the purpose of purchase of property. Later on, the property could not be purchased. The amount which was withdrawn in the year 2013 was re-deposited on 30/12/2016 for sums aggregating to Rs.89,58,000/-.

3. In the return of income for A.Y.2017-18 filed in India, assessee had shown income of Rs.75,590/- from interest. Such return was selected for limited scrutiny under CASS on the ground that during demonetization period, there was deposit in her account of Rs. 89,58,000/-. During the course of assessment proceedings, assessee was asked for various details which are as under:-

1. Source of your income and nature of income earned also give copy of computation of income for A.Y 2017-18.

2. Details of stay in India for FY 2013-14, 2014-15, 2015-16 & 2016-17. Give copy of passport in support of your claim.

3. Details of all bank account held by you, copy of bank statement of all such bank account for the period from 01.04.2016 to 31.03 2017 with narration of all debit and credit entries for the period under consideration

5. Source of

4. *Source of deposit made in your bank account(s).*
5. *Source of cash deposit of Rs. 89,58,000/- in your bank account at ICICI Bank Andheri Branch during the period of demonetization Give documentary evidence in support of your claim*

4. In response, assessee filed the details of her visit in India alongwith her copy of passport, bank account statement etc., She has stated that from 01/04/2013 to 31/3/2014, the entire stay in India was only 24 days and from 01/04/2014 to 31/03/2017 she has not visited India once and in support copy of passport was also submitted. The details of bank account otherwise and source of cash deposits and cash withdrawals have also been stated before the ld. AO. The assessee's submission has been summarized by the ld. AO in the following manner:-

- That the sources of cash deposits were withdrawals from her NRE a/c maintained with IC ICI bank A/c No. 001101082404 on 07.03.2013 of Rs. 50,00,000/- which was received from her brother Mr. Dheeraj Mohnia Rs. 53,48,000/-19.11.2012 who is also NRI
- That Rs. 39,96,000/ was withdrawn from ICICI bank A/c No. 001101082404 NRE a/c on different dates from 12.04.2013 to 16.04.2013 against her foreign remittance on 02.03.2013 of Rs. 53,29,785/-(USD1 Lakh).
- That the total cash withdrawal amounting Rs. 89,96,000/-
- That the cash deposit of Rs. 89,58,000/- was made out of the same cash withdrawal made by assessee's mother.

5. The ld. AO held that the source of cash deposits in the bank account are not proved on the ground that it is against human probability that her mother and her brother withdrew the cash from her account for sums aggregating to Rs.89,96,000/- and kept the entire cash at home for 44 months and then re-deposited it post demonetization. He further observed that assessee had an option to deposit the money in NRI bank account and would have got tax free interest alongwith security of the said amount, instead assessee took high risk of keeping huge amount of cash at home. Based on this premise, he taxed the entire income u/s.68 r.w.s.115 BE.

6. The ld. CIT (A) too has confirmed the said addition and rejected the entire explanation offered by the assessee. The relevant finding of the ld. CIT (A) reads as under:-

7. Grounds of appeal nos. 1 to 13:

The issue in this appeal is almost identical to the case of Dheerej Singh Omprakash Mohnia (No. CIT(A)-57Mum./10376/2019-20 for AY 2017-18), for ready reference the findings in this case is reproduced below

"I have gone through the AO's finding and appellant's submission. It is seen that appellant tried to explain that the cash in hand was kept for investing in enmovable property. However, it is a common fact that in all deeds of immovable property, the consideration can be paid by cheque and, therefore, this reason does not appear to be correct for keeping such huge amount in cash for such a long time.

7.1 Normally when cash is withdrawn, the same is usually withdrawn for immediate and anticipated expenditure. The same is in the knowledge of the appellant and in absence of any

evidence and considering the long time gap, it is presumed that this money was spent.

7.2 It is to be borne in mind that there has to be some limit to how far an appellant can go to account for his cash withdrawal to explain the source of cash deposit. In my opinion, the logic of cash deposit from cash withdrawal should not be allowed to stretch beyond a reasonable period. If this is allowed, the appellant would use withdrawal from bank account in earlier years to justify its cash deposit, without any time limit. To decide the issue, we have to apply the logic of human probability and surrounding circumstances.

7.3 In the present case, the money was withdrawn four years back, however, no expenditure of whatsoever nature was shown against this withdrawal in last four years.

7.4 The appellant tried to explain that they have enquired from Municipal Corporation of Greater Mumbai to buy property. It is a known fact that for buying properties from Government organization, the payment can be made by cheque, therefore, to claim that the money was kept in cash for buying property from Municipal Corporation of Greater Mumbai goes against the facts and common practice prevalent in the country

7.5 It is also seen that ITR for AYs. 2015-16 and 2016-17 were filed on 30.03.2017, ie. after the deposit of cash in the bank account. It appears that in a bid to cover the cash prior the appellant filed the above ITRs.

7.6 Regarding assessee's plea 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, and 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 and the USA; It can be seen that the benefit of DTAA can be availed if the source of deposit is from outside India. The same benefit is not available in the case of cash deposits. This is for the

reason that in case of cash, the source has to be explained to the satisfaction of Assessing Officer. As the assessee failed to explain the source of deposit, the benefit of DTAA is also not available to assessee

7.7 Considering the facts of the case and relying on the judgement of Supreme Court in the case of Sumati Dayal [214 ITR 801], it is held that it is against the human probability to keep such a huge amount in cash. The order of the AO is, therefore, upheld. These grounds of appeal are Dismissed."

As the facts are almost identical, following the decision in the case of DHEERAJSINGH OMPRAKASHSINGH MOHNIA, these grounds of appeal are Dismissed.

8. Ground of appeal no. 14: This ground relates to charging of interest u/s.234B and D of the IT Act. This ground is consequential in nature and does not require any adjudication.

9. Ground of appeal no. 15: This ground relates to initiation of penalty u/s.271AAC of the IT Act. This ground is premature at this stage and, therefore, Dismissed.

7. Before us, ld. Counsel submitted that the Tribunal in the case of **Dheerajsingh Omprakashsingh Mohnia's** case has deleted the similar addition made by the ld. AO vide order dated 11/10/2023. Thus, this issue is squarely covered because of these facts and reasoning given by the ld. AO has been considered in detail. Ld. DR referred to the various observation of Ld. CIT(A) and AO.

8. After hearing both the parties and on perusal of the relevant finding and material placed on record, we find that there is no dispute that assessee is a non-resident and has been earning salary income in USA. It is also not in dispute that in March &

April 2013, assessee has transferred US Dollars in her NRE account of Rs.49.56 lakhs and Rs.53.30 lakhs as noted above. Further, from the perusal of the bank accounts, it is seen that immediately, thereafter the money has been withdrawn in cash by her mother Smt. Pushpa Mohnia and her brother Shri Neeraj Singh Mohnia. It has been stated that cash was withdrawn for the purchase of property which ultimately could not be fructified. The same amount has been stated to be re-deposited on 13/12/2016 post demonetization. The ld. AO and the ld. CIT(A) has disbelieved the explanation, firstly, on the ground that assessee has kept huge amount of cash and after it was withdrawn for almost 44 months and ld. CIT(A) even disbelieved the theory and the explanation that assessee intended to buy property. One very important fact is that assessee has no source of income in India except for some interest income and the entire amount has been kept in her bank account which is an NRE account and source of her deposit was out salary income from USA which has been transferred to her NRE account in India in USD. If she has no income in India nor she visited India nor she has any business or source in India, then how can it be presumed that assessee has income from undisclosed sources in India which has generated cash which has been deposited in the bank account post demonetization? The ld. AO has not made any enquiry from assessee's mother, Smt. Pushpa Mohnia or her brother Shri Neeraj Mohnia. It has also been brought on record that assessee's brother Shri **Dheeraj Singh Omprakash Singh Mohnia's** who is also an NRI and resident of USA, who had sent

similar amount from USA on similar dates for the purchase of House which has been withdrawn by his mother and brother and was again re-deposited. In case **of Dheeraj Singh Omprakash Singh Mohnia's**, the Tribunal has deleted the addition after observing and holding as under:-

“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 INK)	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 #09681510000 082	HDFC account # 03571570000 598
2	16.02.2010	24,90,000	ICICI NRE bank account # 001101081171	HDFC account # 03571570000 598
3	19.01.2012	10,00,000	HDFC account #09681510000 082	HDFC account # 03571570000 598
4	13.04.2013	61,00,000	HDFC account #09681510000 082	HDFC account # 03571570000 598
	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 Shri Dheerajsingh Omprakashsingh Mohnia advertisement in the Indian Express Newspaper for sale of "Kumar Mahal", Parel, Mumbai as under:

7th May 2015, (Indian Express)
Advt for Sale of "Kumar Mahal" situated
on Aairmai Memwanji street, Patel.

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, Shree Ch. S. D. Chaudhari Charitable Trust, registered immovable property under Municipal Corporation, Trust Registration No. 10/12/2008. Trust, registered immovable property under Municipal Corporation, Trust ACT 1950 under section - 36 in PTR and the organization has got the property on 999 year lease with specified rights and duties. And, interest of public organization remains there in the remaining years of leased property. Law, legal department, other provisions will be applicable to the property. As per the rules and interest of tenants, change in use of leased property has been decided with unanimous decision of trustee council. 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:

No.	Property and address	Property type and description	Property No. No.	Proprietor's name No.	Property type and No.
1	Registered lease agreement No. 133, date 13/01/1994, lease for 999 years at Rs. 400. The property is situated at the City of Bombay registered in Reg. Roll Under No. 1838 Estate and Land Manager Division and Registered Lease Agreement No. 4638. Date 13/01/1994, yearly Rs. 400 for 999 year lease to the Municipal Corporation of the City of Bombay. Registered in Rentroll Under No. 1300 estate Agent and Land Manager, Document page No. 11. Para. 4 contains transfer of property, and section 101 to which (X) has been removed. Page No. 11 Para 14 action Transfer. Or Provisions.	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 burden. Also they need to do offer by considering all aspects.	Survey No. 250001, Maharashtra ward No. 25 (P.F. 622) (513)9 (PTR)	Chandrabhan, J. K. D. 101, Chaudhri, 210-2714, Surat, Patel	No. 133/2000 (133) 1994

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 Shri Dheerajsingh Omprakashsingh Mohnia (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 Shri Dheerajsingh Omprakashsingh Mohnia 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 Vishwasimali Jain Vidyotejak Fund the Ld. A.R. for the Shri Dheerajsingh Omprakashsingh Mohnia 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 Shri Dheeraj Singh Omprakash Singh Mohnia 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 co-ordinate 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 Shri Dheeraj Singh Omprakash Singh Mohnia 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.

9. Thus, this Tribunal has appreciated the same facts on record and held that the addition cannot be sustained on account of cash deposits in the case of Shri Dheerajsingh Omprakashsingh Mohnia. Thus, the aforesaid finding will apply *mutatis mutandis* in assessee's case also. Apart from that, once assessee has not visited India from 01/04/2014 to 31/03/2017 and even in the F.Y.2013-14 her visit was only for 24 days, then it is unfathomable that assessee had earned any income from undisclosed source which has been deposited in her bank account. Thus, the explanation of the assessee cannot be rejected and accordingly, addition made by the ld. AO is directed to deleted.

10. In the result, appeal of the assessee is allowed.

Order pronounced on 29th Dec, 2023.

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER

Mumbai; Dated 29/12/2023
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Mumbai