

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” “A” BENCH: BANGALORE**

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.918/Bang/2023
Assessment Year: 2017-18

Veena Makam Nandakumar No.142, 3 rd Main, 3 rd Cross Behind Sukh Sagar Kammanahalli Main Road Bangalore 560 084 PAN NO : ACEPV3443J	Vs.	ITO Ward 1(2)(4) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri H. Guruswamy A.R.
Respondent by	:	Shri Ganesh R Ghale, Standing Counsel for Revenue

Date of Hearing	:	26.12.2023
Date of Pronouncement	:	01.01.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2017-18 dated 20.9.2023 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The assessee has raised following grounds of appeal:

- 1. “The impugned Order u/s. 250 of the Act dated: 20-09-2023 passed by the Ld. CIT(A), NAFC Delhi is opposed to law, facts and circumstances of the case.*
- 2. The Ld. CIT(A) has erred in confirming the total addition of Rs. 15,36,000/- without appreciating the fact that the amount so deposited includes re-deposit of Rs. 9,00,000/- which was withdrawn on 08-07-2016.*

3. *The Ld. CIT(A) has erred in confirming the addition of Rs. 5,50,000/- which partly forms a part of total deposit of Rs. 15,36,000/- without appreciating the fact that the said amount was lent to One Sri. Muni Reddy on 21-08-2015 and the same amount was returned in cash and deposited into the Bank on 15-11-2016.*
4. *The Ld. CIT(A) has erred in confirming the addition of Rs. 75,000/- (Rs. 51,000/- plus Rs. 24,000/-) which partly forms a part of total deposit of Rs. 15,36,000/- without appreciating [he fact that the said amount was savings out of the household expenses and the same was deposited on 02-12-2016 amounting to Rs. 51,000/- and on 12-12-2016 amounting to Rs. 24,000/-.*
5. *The Ld. CIT(A) has not adjudicated the additional ground of Appeal relating to a Notice u/s. 143(2) of the Act dtd: 12-09-2018 said to have been served in 24-09-2018 was not digitally signed as per CBDT Instruction No. 172018 dtd: 12-02-2018*
6. *The Ld. CIT(A) has erred in confirming the addition of Rs. 15,36,000/- holding that the appellant has not able to show similar turnover of Transportation business either earlier or later without appreciating the fact that the Assessee has not tarried out any business and therefore the finding of the Ld. CIT(A) was based on misguided and misunderstood opinion and the AO has clearly held in para 3.2 of the Assessment Order that the Assessee has not involved in any business.*

Total tax effect – Rs.15,89,152/-”

2. Facts of the issue are that the assessee had filed the return of income on 20-07-2017 declaring income of Rs. 6,69,880/-. The return of income so filed was selected for limited scrutiny to examine the cash deposits made into the Bank during demonetization period. The Assessee has deposited each of Rs. 11,000/-, 9,00,000/-, 5,50,000/-, 50,000/- and 24,000/- on 11-11-2016, 13-11-2016, 15-11-2016, 02-12-2016 and 12-12-2016 respectively, into Kotak Mahindra Bank, Koramangala Branch, Bangalore. The total cash deposits was of Rs. 15,36,000/-. The Assessee submitted the explanation before the ld. AO vide Letter dated 03-12-2019 and also before the Ld. CIT(A) in support of the source of cash deposits. However, the ld. AO and ld. CIT(A) have not appreciated the explanation offered and the addition made of Rs. 15,36,000/- was confirmed by the ld. CIT(A) in the Appellate Order dated 20-09-2023 vide paras 5.8 and 5.9.

3. The Id. A.R. submitted that the assessee was working as a software engineer for a period of 15years and the last employment was with M/s. Tech Mahindra Ltd and the Salary drawn was in the range of Rupees 12 to 15 lakhs per annum and later resigned the Job on medical grounds. The Assessee has been residing with her father as she was deserted by her estranged spouse on account of certain irreconcilable family disputes. The Id. A.R. submitted that the amount of Rs.15,36,000/- was deposited into the Bank as under:-

Date of Deposit	Amount	Source
11-11-2016	11,000	Cash available on hand
13-11-2016	9,00,000	Dut of Cash Withdrawals on 08-07-2016 from the same Bank M/s. Kotak Mahindra Bank, Koramangala Branch
15-11-2016	5,50,000	Cheque was issued to One Sri. Maruthi Reddy on 21-08-2016 being the advance to purchase some immovable property but the title was found to be defective and hence the amount returned in cash by Sri. Maruthi Reddy has deposited into the Bank in view of demonetization scheme as the Assessee was not expected to hold the old currency.
02-12-2016	51,000	Cash on hand out of saving from House hold expenses
12-12-2016	24,000	Amount given by the parents.
Total	15,36,000	

3.1 The Id. A.R. submitted that the AO in para 3.2 of his order has held that the explanation offered in respect of cash deposit of Rs. 9,00,000/- and 5,50,000/- was not supported by proper documentary evidence and it was said to be an intentional act of the Assessee and therefore rejected the explanation in respect of a sum of Rs. 9,00,000/- and 5,50,000/-. However, the Id. AO has not rejected the explanation of the Assessee in respect of other cash deposits of Rs. 86,000/-. Therefore, the Id. AO was not justified to hold the entire sum of Rs. 15,36,000/- as

income including a sum of Rs. 86,000/- for which explanation was not rejected. He submitted that the assessee had enough cash balance of Rs. 18,24,219/- as on 05-07-2016 with Kotak Mahindra Bank out of which cash of Rs. 9,00,000/- was withdrawn on 08-07-2016 with an intention to make further advance for purchase of immovable property. However, the deal was not materialised in view of defective title of the property and therefore the cash held on hand was re-deposited into the Bank on 12-11-2016 solely for the reason of demonetization restrictions. He submitted that after the broken relationship with the estranged husband, she has been staying with her father. The Assessee for all her financial transactions depends upon the guidance of the Father Sri. Nandakumar who has made arrangements to purchase an immovable property in favour of the Assessee from One Sri. Maruthi Reddy to whom an advance of Rs. 5,50,000/- was given and later in order to buy the property a further sum of Rs. 9,00,000/- was drawn from the Bank on 08-07-2016. However, on examination, the title of the property was found to be defective and hence the purchase deal did not take place and assessee's father received the entire amount of Rs. 5,50,000/- from Maruthi Reddy and the same was deposited into the Bank. However, the ld. AO and the ld. CIT(A) have rejected the contention and made the addition and the same was confirmed by the ld. CIT(A). In this regard, he submitted that a sum of Rs. 5,50,000/- was paid to Sri. Maruthi Reddy by way of cheque debited in assessee's bank account on 21-08-2015 and the payment was made as advised by Assessee's father who had undertaken the negotiation of the deal. For the failure of the deal the amount of Rs.5,50,000/- which was paid by cheque was returned in cash and the same was deposited into the bank. The Amount of Rs. 9,00,000/- remitted into the Bank represents the amount withdrawn from the Bank on 08-07-2016. In this regard, the ld. A.R. submitted that the Hon'ble High Court of Karnataka in the case of S.R. Venkata Ratnam v/s. CIT [1981] 127 ITR 807 (Kar), has held that the ld. AO has not made any exercise to disbelieve the version of the assessee about the redeposit

of the amount out of the earlier withdrawal and also the ld. AO was required to disprove that the amount withdrawn earlier was not the amount re-deposited. In view of the judicial decision cited above, the ld. A.R submitted that the ld. AO has not brought any evidence on record in support of the rejection of the Assessee's claim as to the earlier withdrawal and the same was recycled by way of cash deposit at a later date. Therefore, he submitted that the ld. AO was not justified to make an addition of Rs. 14,50,000/- which is included in the total disallowance of Rs. 15,36,000/-. The addition made of Rs.11,000/-, Rs.51,000/ and Rs.24,000/- was out of the personal savings. In view of the above submissions, the ld. A.R. prayed that the addition made by the AO and confirmed by the ld. CIT(A) is opposed to Law and Facts of the case and hence the additions so made and confirmed of Rs. 15,36,000/- is liable to be deleted in the interest of equity and justice.

4. On the other hand, the ld. D.R. submitted that assessee has not given proper evidence to substantiate his claim of withdrawal of Rs.9 lakhs and the purpose for which the amount was withdrawn and could not establish that the same has been redeposited into the bank account.

4.1 With regard to the cheque issued by Rs.5.5 lakhs to a person on 21.8.2015 and money received in instalment on various dates, assessee has not established the claim for which the cheque was issued, the details of return of income filed by other person. In view of the absence of proper explanation, the addition was made by lower authorities and the same is to be sustained and he also relied on the order of this Bench in case of Afroz Khan in ITA No.830/Bang/2023 dated 5.12.2023 and also the order of the Tribunal in the case of Shri Mohammed Sharaq in ITA No.1818/Bang/2019 dated 7.4.2021.

5. I heard the rival submissions and perused the materials available on record. In this case, the assessee has deposited an amount of Rs.15.36 lakhs and the first deposit of Rs.11,000/- on 11.11.2016 is out of opening balance and that cannot be considered as unexplained income of the assessee and credit to be given to that extent. Next amount of deposit was on 13.11.2016 at Rs.9 lakhs. The contention of the ld. A.R. is that the assessee has withdrawn money on 8.7.2016 of Rs.9 lakhs from M/s. Kotak Mahindra Bank, Koramangala branch and the same has been deposited into same bank. In support of this, assessee has filed bank account copy of Kotak Mahindra Bank which shows that as on 6.7.2016, the assessee is having balance Rs.18,24,219/- and on 8.7.2016 assessee has withdrawn Rs.9 lakhs from that account and thus closing balance in that account was Rs.9,24,219/-. The said amount of withdrawal was redeposited on 13.11.2016 and the balance in that account has been increased to Rs.13,78,833/-. The ld. AO has not doubted the withdrawal of Rs.9 lakhs on 8.7.2016. However, he has doubted only the redeposited amount of Rs.9 lakhs on 13.11.2016. Admittedly, in this case, withdrawal is before deposit of the cash into assessee's bank account. The only argument of the ld. D.R. is that assessee has not explained the reason for withdrawals of cash from the said account to hold that source of cash was not explained by the assessee. In our opinion, that cannot be reason for addition of Rs.9 lakhs on this unexplained income of assessee. Once the assessee has explained the source of deposit as having given from the withdrawal made in the bank account, it was not open to the revenue to examine as to what assessee did with that money and cannot chose to disbelieve the plea of the assessee merely on the surmises that it would not be probable for the assessee to keep the money idle. Being so, the addition cannot be made on this count. This view of me is supported by the order of the Tribunal in the case of Shri

Narayana Shibaroor Shibaraya Vs. ITO Ward-3(3)(3) in ITA No.684/Bang/2022 dated 23.11.2022 wherein held as under:

“5. I have considered the rival submission. I am of the view that the explanation offered by the Assessee with regard to the source of deposit of Rs.15.00 lakhs in his bank account is satisfactory and therefore, no addition can be made on account of unexplained cash. As rightly contended by the ld.counsel for the Assessee, the withdrawal of cash from the bank account prior to deposit of cash is not disputed by the revenue. The fact that the Assessee did not explain the reasons for withdrawal of cash from his bank account cannot be the basis to hold that the source of deposit of cash was not explained by the Assessee. The legal position in this regard is that if the deposit of money in the bank account is preceded by withdrawal of money from the very same bank account, then the source of funds is prima facie demonstrated or explained by the Assessee. The Honourable Karnataka High Court in the case of S.R.Ventakaratnam Vs CIT, Karnataka-I & Others 127 ITR 807 has held that once the Assessee discloses the source as having come from the withdrawals made on a given date from a given bank, it was not open to the revenue to examine as to what the Assessee did with that money and cannot chose to disbelieve the plea of the Assessee merely on the surmise that it would not be probable for the Assessee to keep the money unutilized. The decision of the Hon'ble Karnataka High Court supports the plea of the assessee. It is seen that the cash deposits in the bank account are preceded by withdrawal from the very same bank account. I am of the view that the ratio laid down in the aforesaid judgment will apply to the facts of the present case. If the revenue wants to disbelieve the plea of the Assessee then it must show that the previous withdrawal of cash would not have been available with the Assessee on the date of deposit of cash in the bank account. The AO and CIT(A) have proceeded purely on assumption and surmises that cash withdrawn was not available to the Assessee on completely extraneous factors. In our view, the Assessee has satisfactorily explained the source of funds out of which deposit of cash was made in the bank account. I therefore delete the addition made in this regard. Consequently, the appeal of the Assessee is allowed.

6. In the result, appeal of the assessee is allowed.”

5.1 Similar view was taken by this Tribunal in the case of Shri Girigowda Dasegowda Vs. ITO Ward 2(2)(8) in ITA No.360/Bang/2022 dated 10.8.2022 wherein held as under:

“9. I have carefully considered the rival submission. The Hon'ble Karnataka High Court in the case of Smt. P. Padmavathy (supra) clearly laid down that earlier withdrawals of cash from Bank account have to be accepted as available to an assessee to explain a later deposit as source. The Hon'ble Court held that it was not open to the Revenue to

contend that the assessee has to explain as to how the cash withdrawn earlier was utilized by an assessee and was still available with the assessee. The decisions cited by the learned DR are contrary to the law laid down by the Hon'ble Karnataka High Court and therefore not binding. I, therefore, hold the past withdrawals as claimed by the assessee from 2013 should be considered as being available to the assessee to explain the source of deposit. We are also of the view that a reasonable quantum of cash available out of past savings should also be considered as being available to the assessee to explain the source of cash deposited in the bank account."

10. I, therefore, set aside the order of the CIT(A) and remand the case to the AO to consider the issue denovo in the light of the observations as made above.

11. The appeal of the assessee is accordingly treated as allowed for statistical purposes.

12. In the result, appeal of the assessee is allowed for statistical purposes."

5.2 In view of the above, I am inclined to delete this amount of Rs.9 lakhs made by ld. AO sustained by NFAC.

6. Next addition of Rs.5.5 lakhs is towards the deposit made on 16.11.2016. The assessee has pleaded that assessee has given an amount of Rs.5.5 lakhs to one Mr. Sri Maruti Reddy on 21.8.2016 towards purchase advance of immovable property. Later, there was a defect in title and amount has been returned by Shri Maruthi Reddy and it was used for redepositing the same to the assessee's bank account. This plea of the assessee was not verified by the lower authorities and outrightly they made addition by disbelieving it. In my opinion, it is incumbent upon the authorities to carry out necessary enquiry when assessee has made a statement that assessee has received the said amount from other party namely Shri Maruthi Reddy by way of refund of purchase advance given to him. In the present case, the lower authorities without carrying out any enquiry, made additions which is inappropriate. As held by the Hon'ble Karnataka High court in the case of S.R. Venkata Ratnam Vs. CIT reported in 127 ITR 807, the ld. AO has not made any exercise

to disbelieve the version of the assessee about the redepositing of amount out of the earlier withdrawal and also the ld. AO was required to disprove that the amount withdrawn earlier was not the amount redeposited. In the present case, when the assessee has taken a plea that it was the amount received from Mr. Maruthi Reddy, which was earlier advanced to him to purchase a property and that has not been verified by ld. AO and the addition has been made, which is not possible to do so without verifying the same. Hence, I find force in the argument of the ld. A.R. and the addition was made on this count is deleted.

7. Next addition of Rs.51,000/- is towards the deposit made on 2.12.2016. It has been explained that the said amount has been deposited out of earlier savings. This is a nominal amount saved by assessee used to redeposit to bank account on demonetization. Considering the smallness of amount, I do not find any reason to sustain the addition. The addition is deleted.

8. The last addition of Rs.24,000/- towards deposit made on 2.12.2016. It was taken a plea that the said amount of Rs.24,000/- was received from past savings given by assessee's parents and that said amount has been kept by assessee's parent and on demonetization the same amount has been given to the assessee and deposited to assessee's bank account. In my opinion, as discussed earlier, without bringing any material against the assessee, addition cannot be made. Accordingly, the addition is deleted.

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

Order pronounced in the open court on 1st Jan, 2024

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 1st Jan, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**