

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 2673/Del/2023
(Assessment Year: 2017-18)

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| Mrs. Pushpa Rai, C/o. Sabharwal & Partners, 4819/24, Mathur Lane, Ansari Road, Daryaganj, New Delhi PAN:ACLPR1666C | Vs. ITO, Ward-5(2)(4), G. B. Nagar (UP) |
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| Assessee by : | Shri V. K. Sabharwal, Adv Shri Aditya Rai, Adv |
| Revenue by: | Shri Om Prakash, Sr. DR |
| Date of Hearing | 17/01/2024 |
| Date of pronouncement | 19/01/2024 |

ORDER

1. The appeal in ITA No.2673/Del/2023 arises out of the order of National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/NFAC/S/250/2023-24/1055071262(1) dated 11.08.2023 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 dated 17.01.2020 (hereinafter referred to as 'the Act') by ITO, Ward-5(2)(2), Gautam Budh Nagar (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal:-

"1. That the assessment order passed u/s of the Income Tax Act, 1961 on 21.12.2019, as upheld by CIT(A) on 11.08.2023 is perverse to the law and tot eh facts of the case, because of the issuance and service of unsigned notice u/s 143(2) on 14.08.2018 and unsigned order on 21.12.2019, as such the orders passed become non est as having no locus standi under the law.

2. That the order passed further becomes illegal as not tenable under the law and to the facts of the case, because of viewing and holding the declared legitimate amount of Rs. 15 lakhs, as being withdrawn from her bank account, as unexplained u/s 69A of the 1. Tax Act, 1961.

3. That the Assessing Officer and Ld. CIT(A) failed to appreciate while passing the orders that an amount of Rs. 15 lakhs, as withdrawn from her bank account, which consequently re-deposited as being not utilized for the purpose for which it was withdrawn cannot construe and to be opined to be her undisclosed income chargeable to tax u/s 69A of the Income Tax Act, 1961.

4. That the illegal and impugned additions so made u/s 69A of the Income Tax Act, 1961 was not in consonance to the provisions of law contained w/s of the Act, as the appellant was not required to maintain any books of accounts under the Law with respect to her income declared, wherein it could have required to be recorded.

5. That the order passed on 21.12.2019 as upheld by Ld. CIT(A) on dated 11.08.2023 was further illegal under the law and to the facts of the case, thereby making and upholding illegal and impugned additions of Rs. 15 lakhs in the income of the appellant, as against the principles of law and natural justice because of providing of insufficient and unreasonable time of 2 days only through SCN issued on 26.11.2019 for 29.11.2019 to file reply and upload all the required documents.

6. That the order passed by the Assessing Officer and upheld by Ld. CIT(A) was further invalid under Article 14 of the Constitution of India as both failed to understand or ever proved the concept of income either accrued or ever arise to the tune of Rs. 15 lakhs, which could only be charged, which has charged to tax u/s 69A of the Income Tax Act, 1961 for the year under assessment.

7. That the illegal and impugned additions so made are incorrect under the law and to the facts of the case as the Assessing Officer was not having any documents, material either collected, possessed or ever confronted that the appellant has earned and not disclosed her income Rs. 15 lakhs if any be earned from any of undisclosed sources.

8. That the Ld. CIT(A) further failed to adjudicate the legal issues raised on merits therefore, upholding the illegal and impugned additions so made of RS. 15 lakhs by the Assessing Officer was incorrect under the law and to the facts of the case, as such not tenable.

9. That the assessment order passed on 21.12.2019 and upheld by the Ld. CIT(A) on 11.08.2023 thereby making and upholding illegal and impugned additions so made of Rs. 15 lakhs u/s 69A is entirely based mere presumption and guesswork of the Assessing Officer without the support of any material either collected, confronted or ever placed upon records to deny the declared savings of the appellant.

10. That the order passed by the Assessing Officer is further incorrect under the law and to the facts of the case, as the Assessing Officer has failed to prove that an amount of Rs. 15 lakhs pertains to the undisclosed income of the appellant earned during the year under assessment.

11. That the Assessing Officer and the Ld. CIT(A) were not having any material based upon to which that the explanation given, documents produced and

placed upon records by the appellant with regard to the nature and source of Rs. 15 lakhs deposited in her bank account during the year under assessment was factually incorrect, due to which the additions were made in the hands of the appellant to the tune of Rs. 15 lakhs, which was charged to tax @ 60% u/s 115BBE of the Income Tax Act, 1961.

12. That the interest charged w/s 234A, 234B & 234C and initiation of penalty proceedings u/s 271AAC of the Act, are further illegal as against the law and to the facts of the case.

13. That the appellant assails her right to amend, alter or change any grounds of appeal at any time even during the course of hearing of this instant appeal."

3. Though the assessee has raised several grounds of appeal on merits, the only effective issue is to be decided in this appeal is as to whether the Id CIT(A) was justified in confirming the addition made on account of cash deposit made in the bank account during the demonetization period in the sum of Rs. 15 lakhs u/s 69A of the Act in the facts and circumstances of the instant case.

4. I have heard the rival submissions and perused the material available on record. The assessee is an individual and had filed return of income for AY 2017-18 on 28.03.2013 declaring taxable income of Rs. 3,23,220/-. The case of the assessee was selected for limited scrutiny through Computer Assisted Selection of Cases for Scrutiny (CASS) to examine large value cash deposit during the demonetization period. The assessee is a housewife earning income from interest and rental income. During the year under consideration, the assessee had deposited cash during demonetization period in her bank account maintained with Oriental Bank of Commerce, Gheja- Bhangel, Noida in A/c. 07112151007951 on the following dates:-

| | |
|------------|--------------|
| 17/11/2016 | Rs. 2 Lakhs |
| 23/11/2016 | Rs. 13 lakhs |
| Total | Rs. 15 lakhs |

5. The assessee when asked to explain the source of cash deposits, submitted that on 29.09.2015 she had withdrawn a sum of Rs. 15,50,000/- from the very same bank account vide cheque No. 425535 out of money lying in the bank account. The immediate source of withdrawal was that there was a credit to the tune of Rs. 15,89,022/- on 28.09.2015 in the bank account of the

assessee toward maturity proceeds of fixed deposit held by the assessee. Hence, out of maturity proceeds of FDs, the assessee had withdrawn cash of Rs. 15,50,000/- on 29.09.2015. The assessee submitted that she was trying for seeking medical admission for her son in Dr. M. C. Saxena Medical College, Lucknow in the management quota for which a sum of Rs. 15 lakhs was given to her son Mr. Vivek along with two of his accomplices. The medical college accepted Rs. 50,000/- towards initial deposit from the assessee's son and informed that due to some litigation going on regarding the eligibility of their seats in medical college, they would later inform the students regarding the payment of remaining sum of Rs. 14,50,000/-. The assessee's son brought back the cash of Rs. 14,50,000/-. On the way on 08.10.2015, when the assessee's son and his accomplice were returning from Lucknow in a car bearing registration No. DL1CP 7958, they were intercepted by the Firozabad Police authorities and since the source of withdrawal of cash was proved by the assessee's son, the Hon'ble District Magistrate of Firozabad released the entire cash of Rs. 14,50,000/- to the assessee's son. Thereafter, the assessee along with her son kept on enquiring with the medical college regarding the seat based on the newspaper report published in the local newspapers. The same lasted for more than a year. In the mean time, the affected students knocked the door of the competent court and the competent court passed an order in favour of the students that since the dispute between Medical Council of India and the Management of Dr. MC Saxena Medical College, Lucknow had wasted the precious time of the students for more than one year, hence, the management of Dr. MC Saxena Medical College were ordered to compensate each and every student for wasting of their precious time.

6. The Id AR before us placed the evidence on record the order of the competent Court in Writ Proceedings dated 07.11.2016. Hence, it could be seen that assessee was all alone holding cash of Rs. 15 lakhs (cash withdrawal of Rs. 15,50,000/- less Rs. 50,000/- paid to Medical college as initial deposit) in order to get the admission in medical college by paying the necessary amount in the management quota. Since on 08.11.2016, demonetization policy was announced

by the Govt. of India, the assessee had no other option but to deposit the monies in the bank account in specified bank notes on 17.11.2016 and 23.11.2016 after ascertaining the fact that pursuant to the order of the competent Court, there is no likelihood in the near future for the assessee to secure admission in medical college for her son. All these facts clearly goes to prove the bonafide intention of the assessee and the source of the cash deposits being clearly explained. I have gone through the bank statement of Oriental Bank of Commerce enclosed in paper book wherein, for the period of 01.09.2015 to 31.12.2016 which is reproduced hereunder:-

ORIENTAL BANK OF COMMERCE (PUNJAB NATIONAL BANK WEF 01-04-2020)
GEJHA BHAGEL NOIDA-SP SSI BR

Page 1
MK400788 0711

Customer Account Ledger Report from 01-09-2015 to 31-12-2016

DATE : 18-01-2022 15:39:18

Account No : 07112151007951 INR PUSHPA RAI
ADDRESS : W/O-K.L.RAI N/O-SADBHAMNA
BHANGEL PO-GEJHA,G.B.NAGA
NOIDA
UTTAR PRADESH
201304
INDIA

Order by Transaction Date.

| Tran Date | Particulars | Cheque No. | Dr. Amount (INR) | Cr. Amount (INR) | Balance |
|------------|-------------------------------|------------|------------------|------------------|----------------|
| | Opening Balance | | | 4,767.10Cr | |
| 28-09-2015 | 07113531000043: Closure Pro | | | 15,89,022.00 | 15,93,789.10Cr |
| 29-09-2015 | SELF CASH WITHDRAWAL | 425535 | 15,50,000.00 | | 43,789.10Cr |
| 04-01-2016 | 07112151007951: Int. Pd:01-07 | | | 672.00 | 44,461.10Cr |
| 04-04-2016 | 07112151007951: Int. Pd:01-04 | | | 443.00 | 44,904.10Cr |
| 04-05-2016 | 07112151007951: Int. Pd:01-05 | | | 148.00 | 45,052.10Cr |
| 03-06-2016 | 07112151007951: Int. Pd:01-06 | | | 153.00 | 45,205.10Cr |
| 09-06-2016 | PROTON Card# X88227 AMC CHG | | 115.00 | | 45,090.10Cr |
| 04-07-2016 | 07112151007951: Int. Pd:01-06 | | | 148.00 | 45,238.10Cr |
| 01-08-2016 | 07112151007951: Int. Pd:01-07 | | | 154.00 | 45,392.10Cr |
| 01-09-2016 | 07112151007951: Int. Pd:01-08 | | | 154.00 | 45,546.10Cr |
| 03-10-2016 | 07112151007951: Int. Pd:01-09 | | | 150.00 | 45,696.10Cr |
| 02-11-2016 | 07112151007951: Int. Pd:01-10 | | | 155.00 | 45,851.10Cr |
| 17-11-2016 | CASH DEPOSIT | | | 7,00,000.00 | 2,45,851.10Cr |
| 23-11-2016 | CASH DEPOSIT | | 15,00,000.00 | 13,00,000.00 | 15,45,851.10Cr |
| 23-11-2016 | CDR | | | 282.00 | 45,851.10Cr |
| 01-12-2016 | 07112151007951: Int. Pd:01-11 | | | | 46,133.10Cr |
| | Page Total Credit | | 30,91,481.00 | | |
| | Page Total Debit | | 30,50,115.00 | | |
| | Closing Balance | | | | 46,133.10Cr |
| | Total Credit | | 30,91,481.00 | | |
| | Total Debit | | 30,50,115.00 | | |

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7. From the above, it could be seen that the source of cash deposits is clearly explainable from the cash withdrawal made earlier which is reflected in the same bank account. The reason for holding huge cash of Rs. 15 lakhs for a period of 14 months had also been explained by the assessee as she had to pay the requisite fees to the medical college within three days from the date of intimation by the College management. Further, the assessee had also explained the source of withdrawal of cash to be out of maturity proceeds of fixed deposits which is also evident from the bank statement reproduced supra. Hence, I have

no hesitation in deleting the addition made on account of cash deposit u/s 69A of the Act in the instant case. Accordingly, grounds raised by the assessee on merits are hereby allowed.

8. Since, relief is granted to the assessee on merits, the other legal grounds raised by the assessee on unsigned notice u/s 143(2) of the Act need not be gone into and it is left open.

9. Accordingly, grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 19/01/2024.

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:19/01/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi