

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC': NEW DELHI
BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
ITA No.2794/Del/2023
(ASSESSMENT YEAR 2017-18)**

Radha Rani Goel 10/4, Under Hill Lane Civil Lines Delhi-110 054 PAN-AAEPG 6714H (Appellant)	Vs.	Income Tax Officer Ward-70(3) New Delhi (Respondent)
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Assessee by	Sh. K. Sampath, Adv. and Sh. V. Rajakumar, Adv.
Department by	Sh. Om Parkash, Sr. DR

Date of Hearing	18/01/2024
Date of Pronouncement	23/01/2024

ORDER

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Ld. CIT(A)'] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1054870477(1) dated 04/08/2023 against the order passed by Income Tax Officer, Ward-70(3), Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 16/12/2019.

2. The only issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in confirming the addition made in the sum

of Rs 31,40,500/- towards cash deposit in the bank in the facts and circumstances of the case.

3. I have heard the rival submissions and perused the materials available on record. The assessee is an individual and had filed her original return of income for the Asst Year 2017-18 on 23.3.2018 declaring total income of Rs 5,18,770/-, deriving salary income, rental income and interest income. It is not in dispute that the assessee had made cash deposits of Rs 31,40,500/- during the demonetization period in specified bank notes. The assessee explained that the same were sourced out of cash withdrawals from the Punjab National Bank Account No. 0115000100488817. The assessee in support of her contentions furnished the following documents:-

- a) Copy of the Bank Statement for the whole financial year 2016-17.
- b) Copy of the Cash Book for the whole financial year 2016-17.
- c) Copy of the Cash Book for the period 9.11.16 to 31.12.16 (Demonetization period).
- d) Copy of Statement of Affairs as on 31.3.2015, 31.3.2016 and for the year under consideration i.e. 31.3.2017.

4. The assessee pleaded that she had sufficient cash balance to meet the cash deposits made during the whole financial year including the demonetization period. It was submitted that the opening cash balance as on 9.11.2016 with the assessee as per the cash book was Rs 34,20,281/- which would explain the cash deposits made in the sum of Rs 31,40,500/-. The cash balance of

Rs 34,20,281/- was sourced out of cash withdrawals made from the bank account by the assessee and out of past savings. The lower authorities did not heed to the contentions of the assessee and by ignoring the entire factual evidences submitted by the assessee without pointing out any defects thereon, proceeded to treat the cash deposits made in the sum of Rs 31,40,500/- as unexplained. I find that the assessee on her part had furnished the maximum evidences that could be adduced from her side to prove the source of cash deposits. From the perusal of the statement of affairs as on 31.3.2016, the cash balance as on 31.3.2016 with the assessee was Rs 16,12,281/-. There have been cash withdrawals from the bank account during the year and opening cash balance together with the withdrawals less the deposits made during the year upto 8.11.2016 had resulted in a cash balance of Rs 34,20,281/- as on 8.11.2016. Hence the opening cash balance as on 9.11.2016 with the assessee was Rs 34,20,281/- which was used to make cash deposits in the sum of Rs 31,40,500/- during the demonetization period. There is no evidence brought on record by the revenue to prove that the cash balance was not sufficiently available with the assessee to explain the same as a source for cash deposits made. No evidence has been brought on record by the revenue that the cash withdrawals earlier made by the assessee had been spent by the assessee for some other purpose. Hence I hold that the cash deposits made by the assessee stands duly explained out of cash balance available in the books. My view is further fortified by the decision of Hon'ble Karnataka High Court in the case of CIT vs

Kulwant Rai reported in 291 ITR 36 (Kar) wherein it was held as under:-

14. The next ground taken up by the learned counsel for the revenue is with regard to the addition of Rs. 2.5 lakhs on account of cash amounting to Rs. 3,76,800 found in the bed room of the assessee at the time of search.

15. The assessee has not disputed this recovery. However, the case of assessee is that this represented cash remaining from the withdrawal from his bank account from time to time and a sum of Rs. 2 lakhs was received on 4-12-2000 by cheque No. 345947 and the assessee has furnished cash flow statement to this effect also.

16. This cash flow statement furnished by the assessee was rejected by the Assessing Officer which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of Assessing Officer as well as Commissioner of Income-tax are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum of Rs. 10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs. 2 lakhs on 4-12-2000 and there was no material with the Department that this money was not available with the assessee. It has been held by the Tribunal that in the instant case, the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the Assessing Officer or Commissioner of Income-tax (Appeals) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lakhs is legally not sustainable under section 158BC of the Act and the same was rightly ordered to be deleted.

17. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of section 260A of the Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law.

18. Accordingly, the present appeal is, hereby, dismissed.

5. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, I direct the ld. AO to delete the addition made in the sum of Rs 31,40,500/- towards unexplained cash deposits. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 23rd January, 2024.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 23/01/2024

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI