

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 3645/Mum/2023
(Assessment Year: 2017-18)**

Varsha Ratan Bhalwankar 101, Sarkar Plaza Hill Road, Op. St. Josephs Convent, Bandra West, Mumbai- 400050 PAN : AAFPB1020Q	Vs.	ITO, Ward-13(3)(3), Room No. 313, 3 rd Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri K.K. Lalkaka, CA
Revenue/Respondent by : Dr. Yogendra T. Wakare, DR

Date of Hearing : 22.02.2024
Date of Pronouncement : 27.02.2024

ORDER

Per Padmavathy S, AM:

This appeal is against the order of the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC) [for short 'the CIT(A)] dated 05.09.2023 for the AY 2017-18. The assessee raised the following grounds of appeal:

1. On the facts and circumstances of the case and in law, the Appellate Order dated 5th September, 2023 sustaining the addition of Rs. 12,00,000/- passed by CIT(A) is bad in law. Illegal, in excess of and/or in want of jurisdiction and/or otherwise void.

2. On the facts and circumstances of the case and in law, the Appellate Order dated 5th September, 2023 passed by CIT(A), Income tax Department, National Faceless Appeal Centre is invalid in law since the time limit in terms of Notice u/s.250 dated 31 August, 2023 of the Income tax Act to furnish Written Submissions was fixed at on or before 7th September, 2023 whilst the CIT(A) final Appellate Order was passed on 5th September, 2023 and, therefore, no reasonable opportunity was given to the Appellant thus violating the principle of natural justice.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the order of the Assessing Officer in making addition of Rs. 12,00,000/- under Section 68 of the Income tax Act although the provisions of the said section are not strictly applicable to the Appellant inasmuch as the Appellant did not maintain books of accounts, and further, since cogent and convincing explanation was given to the Assessing Officer explaining the source of investment of Rs. 12,00,000/- in response to Notice u/s. 142(1) of the Income tax Act which explanation was summarily discarded by the CIT(A) on illogical and ill reasoned grounds.

Your Appellant, therefore, prays that the said addition of Rs. 12,00,000/- is invalid in law and unjustifiable on facts and therefore needs to be deleted.”

2. The assessee is an individual and filed the return of income for AY 2017-18 on 28.03.2018 declaring a total income of Rs. 2,42,650/-. The case was selected for scrutiny and statutory notices were duly served on the assessee. The AO during the course of hearing noticed that the assessee has deposited sum of Rs. 12,00,000/- during the demonetization period in Specified Bank Noted (SBN) and called on the assessee to furnish the details pertaining to the same. The assessee submitted before the AO the relevant details and also submitted that the deposit is out of the cash withdrawn earlier from the same bank account. The assessee further submitted before the AO that her husband is diagnosed with heart ailment and that the assessee needs to take care of her aged parents which required having cash for emergency if needed. The AO did not accept the submissions of the assessee held that the money withdrawn by the assessee have not been utilized for a long time for

their purposes as stated by the assessee and accordingly added the same as income under section 68 of the Income Tax Act (the Act) the relevant observations of the AO in this regard are extracted below:

“7.1 The assessee has deposited cash amounting to Rs. 12,00,000/- during demonetisation period. The reply filed by the assessee has been on this issue have been quoted in paras above, and the same is duly considered. However, the same is not found tenable due to following reasons.

7.1.1 The assessee has claimed that the entire amount of cash deposit is withdrawn from the bank itself. However, it is seen that the assessee has also withdrawn cash deposited on dates other than demonetization period, as mentioned in the notice dated 11.01.2019, mentioned supra. The assessee has majorly attributed the withdrawal of Rs. 12,00,000/- to Assessee's husband's & here parents' medical exigency. However, as per medical reports filed by the assessee as enclosure to submission dated 27.05.2019, the husband of assessee had undergone Coronary Angiography on 07.10.2014. The heart ailment of assessee's husband was known to the assessee two years prior to demonetization period. Accordingly, necessary cushion for any emergency medical needs of assessee's husband had arisen from FY 2014-15 only. The assessee has also claimed that Assesses parents were also old and more than 80 years, and the amount withdrawn were also kept aside as medical need to attend them. However, even this fact had existed much prior to demonetization period. Accordingly, withdrawing cash in the year for the sake of medical emergencies which were in place since 2 years seems unpalatable. It is pertinent to note that the amount of 12 lacs are not withdrawn at one go from the account. Even if the argument of withdrawal of assessee were to meet emergency medical needs of husband and parents, withdrawal from accounts in the amounts of 1 lac on two dates in April 2016, 1 lac in May 2016, 5 lacs on two different dates in July 2016, and 4 lacs in Sept 2016 do not support the theory of provision of emergency medical need. It is also beyond reasonable justification why an amount which was periodically withdrawn from the bank accounts by the assessee in the months from April till September, 2016, was kept in the custody of the assessee, and deposited back during demonetization period. The assessee has not been able to conclusively prove why cash withdrawn in April, 2016 was not utilized till May, and further cash was withdrawn in May, 2016. Similarly, why cash withdrawn in April & May, 2016 was not utilized till July, and further cash was withdrawn in July, 2016 has not been explained by the assessee, though due opportunities were provided by the assessee. It

is difficult to believe that the assessee who had clearly identified medical emergencies which are likely to arise in FY 2014-15 itself, had chosen to withdraw partial amounts such as Rs. 1 lac on 18.04.2016 and 21.04.2016. It is also seen that assessee had withdrawn cash on 18.04.2016 amounting to Rs. 1 lakh, while on 16.04.2016, she had received amount of Rs.1 lakh from R. B. Balwankar (her husband) by transfer, Similarly, just before cash withdrawal of Rs. 4 lakh on 30.09.2016, amount of 4 lakhs were deposited by R. B. Balwankar (her husband) by transfer. Which indicates that assessee's husband had the monies, which he could have directly withdrawn and kept aside for alleged medical emergencies. However, he has instead transferred it to assessee, who have withdrawn it in cash. It is seen that all cash withdrawals of the assessee are preceded by transfers from assessee's husband or entities associated with the assessee, i.e. Rachna Astra Constructions, Bhalwankar Associates etc. In this factual matrix, the submission made by the assessee that cash was withdrawn from the accounts sighting medical emergencies of the husband and parents is not proved beyond doubt. It is also interesting to note that the amount of 12 lakhs which were withdrawn on various dates prior to demonetization was deposited in banks by the assessee 15.11.2016, 16.11.2016, 18.11.2016 and 19.11.2016. On 21.11.2016, the same were converted into FDs. It has been submitted by the assessee in its last submission dtd 27.05.2019 that being a Flexi saving account, the amount was automatically transferred to Flexi FD. Even if this argument of the assessee is accepted on face value, considering the fact that the medical emergencies continued in respect of assessee's family members beyond demonetization period, she did not break those FDs till the end of F.Y. 2016-17. The assessee has not been able to substantiate its claim that amount of Rs. 12 lakhs which was withdrawn on various dates from 18th April 2016 till 30.09.2016 were withdrawn and kept aside for medical emergencies mentioned supra, neither any satisfying answer has been provided regarding why the amounts were withdrawn even after earlier withdrawn amount remained unutilized, It is also beyond comprehension why the assessee kept cash of Rs. 12 lakhs in her possession for nearly two months.

7.2 Considering the above, nothing is brought on the record supporting the theory adduced by the assessee that the amount of Rs. 12 lacs withdrawn various dates from 18th April 2016 till 30.09.2016 were withdrawn and kept aside for medical emergencies mentioned supra, and the same were again re deposited during demonetisation period. The argument for support of such deposits are an afterthought, and assessee has not been able to satisfactorily explain the actual source of cash amounting to Rs. 12 lacs in its accounts beyond doubt. In such circumstances, I am constrained to hold that amount

deposited amounting to Rs. 12 lakhs by the assessee is nothing but its unexplained cash credits in his bank accounts, and accordingly, the same is added back to income of the assessee u/s.68 of Income Tax Act, 1961. As the additions are made u/s.68 of the Act, the provisions of Sec.115BBE are made applicable and tax is calculated accordingly. Further, as the assessee's income determined income includes income referred u/s.68 of the Act, penalty proceedings u/s 271AAC(1) are hereby Initiated.”

3. The AO also made an addition of Rs. 3,15,000/- towards landscaping income not declared by the assessee. On further appeal, the CIT(A) confirmed the addition made by the AO towards cash deposited by the assessee during demonetization period but gave relief with respect to the income from landscaping business. The assessee is in appeal before the Tribunal against the order of the CIT(A).

4. During the course of hearing, the ld. AR presented arguments only with respect to the merits of the case and therefore the grounds raised with regard to proper opportunity was not given to the assessee (ground no.1 & 2) are dismissed as not pressed. On merits, the ld. AR submitted that the assessee has produced all the relevant materials in order to support the claim that the deposits are made out of earlier withdrawals from the bank. The ld. AR further submitted that this fact that the assessee has withdrawn cash prior to demonetization is not disputed by the revenue and that the only reason for the lower authorities to make the addition is that the assessee had held the cash without spending for the purpose of re-depositing the same during the demonetization period. The ld. AR drew our attention to para 5.2 of the CIT(A)'s order where while giving relief on the landscaping income the CIT(A) observed that no addition under section 68 of the Act can be made for the reason that the assessee has not maintained any books of account. The ld. AR submitted that the CIT(A) however while confirming the

addition towards cash deposit during the demonetization period has done so under section 68 of the Act. Accordingly, the ld. AR submitted that the revenue is not consistent in taking a view with regard to the additions made in assessee's case. The ld. AR also argued that assessee holding cash out of previous withdrawing without spending cannot be a reason for making the addition under section 68 of the Act ignoring the fact that the assessee needed the cash for medical emergency. The ld. AR relied on the decision of Jodhpur Bench of the Tribunal in the case of Smt. Krishna Agarwal vs. ITO (ITA No.53/Jodh/2021) where it has been held that mere time gap between withdrawal and deposit cannot be sole basis for rejecting the explanation the assessee as there is material that the amount so withdrawn is utilized somewhere else. The ld AR also placed reliance on various other decision to contend that section 68 is not applicable when no books of accounts are maintained.

5 The ld. DR on the other hand relied on the order of the lower authorities.

6. We have heard the parties and perused the material on record. The assessee has withdrawn cash from Dena Bank on various dates as per details given below and have deposited the same during demonetization period:

<u>No.</u>	<u>Date</u>	<u>Cash withdrawal</u>	<u>Cheque Number</u>	<u>INR</u>
1	18.04.2016	Cash	23334	1,00,000
2	21.04.2016	Cash	23342	1,00,000
3	23.05.2016	Cash	23344	1,00,000
4	13.07.2016	Cash	23345	2,50,000
5	18.07.2016	Cash	23346	2,50,000
6	30.09.2016	Cash	52329	4,00,000
		Total cash withdrawal		12,00,000

7. The above withdrawals and deposits are substantiated by the copies of bank statements (page 3 to 7 of PB). It is also noticed that the lower authorities have not disputed the fact that the assessee had withdrawn the cash and the deposits are made out of the said cash withdrawals. However, the reason provided by the assessee for holding such huge cash in hand at the time of demonetization has not been accepted by the Revenue and on that basis the said addition is made by the AO. The Revenue also did not accept the submission of the assessee that the cash was withdrawn for meeting the medical emergency stating that the angiography was done in 2014 and does not support the said claim of the assessee. In our considered view the contention of the revenue lacks merits since the AO cannot question the personal decisions of the assessee as to the purpose for which cash should be withdrawn. Once the source for the deposit is established and accepted as the earlier withdrawals from the bank, the revenue cannot make the addition stating that the reason for withdrawal is not acceptable to the AO and that the cash has been kept unutilized. In this regard we noticed that the Hon'ble Kerala High Court in the case of CIT Vs. K. Sreedharan (1993) 201 ITR 1010 (Ker.) wherein it was held that the period of four years between 1976-77 and 19880-81 is not so long period as to rebut the presumption regarding the continued availability of the amount.

8. We notice further that during the assessment proceedings of the immediately preceding assessment year i.e. AY 2016-17, the AO had called for details pertaining to deposits of SBN during demonetization period and did not record any adverse finding regarding the various details furnished by the assessee in this regard. In assessee's case the reason for withdrawal as stated by the assessee is that the same is required for meeting any medical emergency since the husband of the

assessee is suffering from heart ailment and the documentary evidences in support of the claim are part of the records (page 11 to 25 of PB). Further from the perusal of the bank statements it is noticed that the assessee has made many withdrawals and deposits which include withdrawals for personal purposes such as payment to LIC etc. We notice that the Revenue has not brought anything on record to show that the money withdrawn has been utilized somewhere else and that the subsequent deposits are not out of the cash withdrawn. The only contention of the revenue is that the cash is withdrawn by the assessee specifically for the purpose of depositing the same later during demonetization period and the said contention based on mere suspicion does not hold merit. We also noticed that the revenue has not brought on record any tangible material in support of the allegation that the cash deposited during demonetization period is from any unexplained source warranting addition under section 68 of the Act. Considering the facts and circumstances of the present case, we are of the considered view that there is no justifiable basis to hold that the explanation furnished by the assessee is not acceptable and to deny that the source for deposit is from earlier withdrawals from the bank. Therefore, we hold that the addition made by the AO is not tenable in the facts and circumstances of the present case and accordingly the said addition is deleted.

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

Order pronounced in the open court on 27-02-2024.

Sd/-
(ABY T VARKEY)
Judicial Member
**SK, Sr. PS*

Sd/-
(MS. PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai