

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA

[Before Shri Sonjoy Sarma, Judicial Member &
Shri Girish Agrawal, Accountant Member]

I.T.A. No. 845/Kol/2023
Assessment Year : 2017-18

Sunil Khaitan	vs	DCIT, Circle-1(1), Kolkata
PAN: AEXPK 6895 C		
Appellant		Respondent

Date of Hearing	21.03.2024
Date of Pronouncement	08.04.2024
For the Assessee	Shri Sunil Surana, AR
For the Revenue	Shri Vineet Kumar, JCIT

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2017-18 is directed against the order dated 03.07.2023 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the 'ld. CIT(A)'].

2. Brief facts of the case are that the assessee filed its return of income declaring total income of Rs. 40,48,000/- for the A.Y. 2017-18. The case of the assessee was selected for scrutiny under CASS for verification of cash deposit during the year and cash deposit made during demonetization period followed by notices issued u/s 143(2) and 142(1) of the Act. In compliance to notices, assessee furnished his written reply containing various documents in relation to query made by the AO. After considering the submission of the assessee, the ld. AO noticed that the assessee has deposited cash of Rs. 34,18,000/- in Specified Bank Notes (SBNs) during demonetization period. The source of cash deposits was made out

of cash withdrawals from the banks and the source of the bank account of the assessee was unsecured loan from different parties and salary income of the assessee. However, the ld. AO did not convince with the contention made by the assessee and he viewed that alleged cash deposit made during demonetization period aggregating to Rs. 34,18,000/- was added to the income of the assessee generated out of undisclosed source of income by assessing the income of the assessee at Rs. 74,66,000/-.

3. Aggrieved by the above order, assessee went into appeal before the ld. CIT(A). However, ld. CIT(A) never looked into the fact as claimed by the assessee.

4. Dissatisfied with the above order, assessee is in appeal before the Tribunal raised multiple grounds of appeal. However, the main grievance of the assessee is against the impugned order passed by ld. CIT(A) sustaining the order of AO making an addition of Rs. 34,18,000/- u/s 68 of the Act.

5. At the time of hearing, ld. AR stated that assessee has submitted all the relevant details regarding the source of fund by submitting necessary details before the ld. CIT(A). The ld. AR in order to substantiate its claim brought to our notice citing the above fact which is stated as under:

"In ground no. 1 & 2, the appellant submits that the appellant has disputed the addition under section 68 when more than sufficient cash balance was available with the assessee. The opening cash in hand balance of the assessee was Rs. 6,62,008/- as on 01/04/2016 which is also evident from the regularly maintained cash book of the assessee which was also submitted before the AO. Not only that, the assessee filed the copies of the Fund flow / cash flow statement and the cash book for the FY 2014-15 as well as FY 2015-16 before the Ld AO vide

letter dated 04.10.2019 (copy enclosed) from which it was evident that the closing balance of cash in hand as on 31.03.2016 was Rs 6,62,008/- . Further from the perusal of the cash book for the period 01.04.2016 to 07.11.2016 i.e. before the announcement of demonetization on 08.11.2016, the assessee withdrew a sum of Rs. 69,32,000/-, re-deposited a sum of Rs.30,57,500/- in bank account and spent Rs. 6,55,000/- for personal purposes (drawings) till 08.11.2016. A summary of cash inflow and outflow for the period 01.04.2016 to 08.11.2016 is made as under for the sake of convenience:

INFLOW	AMOUNT	OUTFLOW	AMOUNT
Opening Balance as on 01.04.2016	6,62,008/-	Cash deposited in banks	30,57,500/-
Cash withdrawn from banks	69,32,000/-	Drawings	6,55,000/-
		Closing balance as on 08.11.2016	38,81,508/-
TOTAL	75,94,008/-		75,94,008/-

Therefore, the assessee had a sum of Rs. 38,81,508/- available for deposit in the bank account out of which only Rs. 31,68,000/- was only deposited: (i) Rs 24,51,500/- on 17.11.2016 and Rs 7,16,500/- on 23.11.2016. This still leaves a surplus cash of Rs. 7,13,508/- available with the assessee which was not deposited in bank. In support of the same, copy of the cash book of the assessee from 01/04/2016 till 31/03/2017 is enclosed along with copy of bank statement, profit & loss account and balance sheet for the year ended 31/03/2017. The same was also filed before the AO. The AO has not disputed similar deposit before demonetization period as also the cash balance finally remained in the cash book after deposit during demonetization period. He has also not rejected the cash book. The assessee's family consisted of self and wife and resides in own flat at 1, Ashoka Road, Alipore Kolkata.

The Ld. AO has added the cash deposits of Rs 34,18,000/- (actual amount Rs 31,68,000/-) u/s 68 as assessee's own money generated out of undisclosed sources. However, he did not bring on record any material to show that the assessee received any cash from undisclosed sources or that the assessee did not have the cash in hand of Rs 38,81,508/- on 8.11.2016. The said amount should not have been added u/s 68. In this connection, your attention is invited to section 68 of the Income tax Act 1961 which is as under:

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of the previous year.

From the above, it can be seen that Section 68 is applicable when any sum is found credited in the books for which the assessee offers no explanation, then the said amount can be charged to income tax as income of the assessee. What section 68, therefore, provides is that in cases where there is credit in the books and the assessee offers no explanation, the said amount can be charged to income tax as income. In the present case, there was no cash received in the books of the assessee. It was only that the assessee deposited the cash lying with him in the bank account on the announcement of demonetization. There are various judgements of courts that if the assessee has proved with reference to the bank statements and cash book that the source of cash deposits during demonetization was the cash withdrawn by him earlier, then no addition could have been made.”

6. The ld. AR reiterated the plea of assessee as put forth before the AO and ld. CIT(A). On the other hand, ld. DR relied on the order of ld. CIT(A).

7. We have carefully considered the rival submissions. It is seen that the cash deposit made by assessee in the bank account are preceded by withdrawal from the very same bank account. The cash flow statement filed by the assessee also explaining availability of cash on various dates of the deposit of cash in the bank account has not been disbelieved by the revenue authorities. They have proceeded on the basis of time lag between the dates of withdrawal of cash from the bank account and the dates of deposits, the availability of cash cannot be believed. However, 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 Hon'ble 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. We are 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 would not be lying idle with the assessee for such a long time. In our view, the assessee has satisfactorily explained the source of funds out of which deposit of cash was made in the bank account. We, therefore, delete the addition made in this regard.

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

Order pronounced in the open court on 08.04.2024.

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 08.04.2024
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sunil Khaitan, 1, Ashoka Road, Alipore, Kolkata – 700026.
2. Respondent – DCIT, Circle-1(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata