

आयकर अपीलीय अधिकरण, 'बी' (एस एम सी), न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' (SMC) BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ITA No.: 1478/CHNY/2023

निर्धारण वर्ष/Assessment Year: 2017-18

**Shri Kondichetty
Venkataswamy Janarthanam,**
Old No.26, New No.28,
Kattabomman 7th Street,
Kodungaiyur, Chennai – 600 118.

The Income Tax Officer,
Vs. Non-Corporate Ward 4(2),
Chennai.

PAN: AAKPJ 1304Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 21.02.2024

घोषणा की तारीख/Date of Pronouncement

: 21.02.2024

आदेश/ ORDER

This appeal by the assessee is arising out of the order of the Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2023-24/1057232243 (1) dated 19.10.2023. The assessment was framed by the Income Tax Officer, Non-Corporate Ward 4(2), Chennai for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 28.12.2019.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition of cash deposit made during demonetization period in specified bank notes u/s.69 of the Act as unexplained money. For this, assessee has raised various grounds which are argumentative, factual and hence need not be reproduced.

3. Brief facts are that the assessee is a real estate broker earning commission income and also declaring agricultural income. The assessee filed his return of income for the relevant assessment year 2017-18 on 20.07.2017 declaring total income at Rs.4,08,140/-. The assessee's case was selected for scrutiny through CASS for the reason that the assessee has deposited cash amounting to Rs.11,00,000/- during demonetization period from 09.11.2016 to 30.12.2016 in his current account maintained with the following banks:-

<i>S.No.</i>	<i>Bank</i>	<i>Cash deposit</i>
1.	ICICI bank A/c No.-190205000368	Rs.6,00,000/-
2.	ICICI bank A/c. No.-190205000481	Rs.5,00,000/-
	<i>Total</i>	<i>Rs.11,00,000/-</i>

The AO asked the source of cash deposit of this Rs.11,00,000/-.

The assessee explained that the cash deposit of Rs.11,00,000/-

made during demonetization period is out of previous cash withdrawals but the AO has not accepted the explanation of assessee and added this amount of Rs.11,00,000/- as unexplained money u/s.69 of the Act and taxed the same at the rate of 60% as provided u/s.115BBE of the Act. Aggrieved, assessee preferred appeal before CIT(A).

4. The assessee before CIT(A) contended that he has cash withdrawal of Rs.23.30 lakhs during the period 01.04.2016 to 08.11.2016 and Rs.3.20 lakhs during the period 09.11.2016 to 31.12.2016. The assessee before CIT(A) submitted the cash receipts and payments made during the period 01.04.2016 to 08.11.2016 as under:-

<i>Receipts</i>	<i>Amounts</i>	<i>Payments</i>	<i>Amounts</i>
<i>Opening Balance</i>	<i>1,23,988.00</i>	<i>Amount Deposited in Bank</i>	
		<i>-From 01.04.2016 to 08.11.2016</i>	<i>3,57,000.00</i>
		<i>-From 09.11.2016 to 31.12.2016</i>	<i>6,50,000.00</i>
<i>Withdrawals from Bank</i>		<i>Amount Deposited in Jewel Loan</i>	<i>5,00,080.00</i>
<i>-From 01.04.2016 to 08.11.2016</i>	<i>23,30,000.00</i>	<i>Drawings</i>	<i>59,500.00</i>
<i>(Refer Annexure : 1)</i>		<i>Sundry Expenses</i>	<i>6,420.00</i>
<i>-From 09.11.2016 to 31.12.2016</i>	<i>3,20,000.00</i>	<i>Advances</i>	<i>9,12,800.00</i>
<i>(Refer Annexure : 2)</i>		<i>Construction Expenses</i>	<i>2,53,000.00</i>
<i>Consultancy Charges Receipts</i>	<i>4,15,760.00</i>	<i>Closing Balance</i>	<i>5,14,528.00</i>
<i>Interest Receipts</i>	<i>63,500</i>		<i>32,53,248.00</i>
	<i>32,53,248.00</i>		

The CIT(A) required the assessee to file cash book for the period 31.03.2015, 31.03.2016 so that he can verify the cash withdrawals. The assessee before CIT(A) filed the bank statements and also details of cash withdrawals from ICICI bank along with statements of ICICI bank. But the CIT(A) was of the view that non-production of books of accounts, the assessee is unable to satisfactorily explain the cash withdrawals which claimed to have been deposited which depositing cash during demonetization period of Rs.11 lakhs. Hence, he dismissed the appeal of assessee. Aggrieved, assessee is in appeal before the Tribunal.

5. I have heard rival contentions and gone through facts and circumstances of the case. I noted that the assessee in his paper-book consisting of 43 pages filed cash book, trial balance, copy of capital account and also withdrawals made from ICICI Bank from 01.04.2016 to 08.11.2016 amounting to Rs.23.30 lakhs apart from cash withdrawn from 09.11.2016 to 31.12.2016 of Rs.3.20 lakhs. The assessee also filed summary of account statement received from ICICI Bank which is supportive to details of cash withdrawals. I have verified some of the entries and noted that there are cash withdrawals by assessee. The assessee might have

utilized some of the cash for household expenses or anywhere but it is not possible that the entire cash of Rs.23.30 lakhs was spent by assessee unless and otherwise it is proved by the Revenue. Hence, I'm of the view that the cash deposits amounting to Rs.11,00,000/- made during demonetization period is out of previous withdrawals and it is explained. Hence, I delete the addition and reverse the order of the AO and CIT(A) on this issue and allow the appeal of the assessee.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court at the time of hearing on 21st February, 2024 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 21st February, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.