

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI PRADIP KUMAR CHOUBEY, HON'BLE JUDICIAL MEMBER

**I.T.A. No. 206/Kol/2024**  
**Assessment Year: 2017-18**

<b>Syed Waquar Hussain</b> C/o Sri Jitendra Kaushik, Advocate 19D, Muktaram Babu Street Kolkata - 700007 <b>[PAN : ADNPH9460R]</b>	Vs	<b>Assistant Commissioner of Income Tax, Circle-2(1), International Taxation, Kolkata</b>
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Sunil Surana, A/R
Revenue by :	Shri Swapan Kumar Bera, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 16/04/2024  
घोषणा की तारीख /Date of Pronouncement: 30/04/2024

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals) - 22, Kolkata (hereinafter the "ld. CIT(A)") dt. 30/01/2024, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2017-18.

2. The only issue for our consideration is regarding addition of Rs. 15,72,500/- confirmed by the ld. CIT(A) which was made by the ld. Assessing Officer on account of unexplained cash deposit during demonetisation period.

3. At the outset, the ld. Counsel for the assessee submitted that the assessee is a Non-Resident Indian (NRI) and prior to the alleged cash deposit, assessee had withdrawn the amount from its bank account and the cash in hand available with the assessee has been used for making

alleged deposit. He further submitted that there is no dispute about the source of funds available in the bank account and assessee withdrew the amount prior to few months of announcement of demonetisation scheme and utilised the same amount for the purpose of depositing the alleged cash deposit. He thus, prayed that the impugned addition deserves to be deleted. The Id. Counsel for the assessee placed reliance on the decision of this Tribunal in the case of *Manjo Kumar Parmar (HUF) vs. Income Tax Officer, Ward-1(1), Kolkata in ITA No. 1421/Kol/2023, order dt. 10/04/2024.*

3.1. On the other hand, the Id. D/R apart from supporting the orders of both the lower authorities, also referred to the finding of the Id. CIT(A) stating that the assessee withdrew Rs. 41,00,000/- at the close of Financial Year 2015-16 and it is claimed that the cash available with the assessee has been utilised for the alleged cash deposit but during August and September, 2016, the assessee has withdrawn Rs.75,000/- from the bank and there is no explanation as to why the cash of Rs.75,000/- was withdrawn when the assessee was having Rs.45,00,000/- cash in hand available with him. She further submitted that the assessee must have utilised the cash withdrawn during Financial Year 2015-16 and there is no proper explanation about the source of alleged cash deposit.

4. We have heard rival contentions and perused the material placed before us. We observe that the assessee is a NRI and has not furnished return of income for Assessment Year 2017-18. The Id. Assessing Officer, based on the information available with him regarding deposit of cash of Rs.15,72,500/- in the bank account held by the assessee in

State Bank of India during demonetisation period. Since no response was given by the assessee during the assessment proceedings, the Id. Assessing Officer framed best judgment assessment u/s 144 of the Act and made addition of Rs.15,72,500/- as unexplained cash deposit u/s 69A of the Act. We further observe that when the matter was carried before the Id. CIT(A), detailed written submissions were filed. Perusal of the same indicates that the assessee was having Non-Resident External (NRE) account with SBI. The assessee also holds NRE account with Canara Bank and received regular form of remittances in the NRE accounts. On 03/02/2016 and 04/02/2016, the assessee withdrew Rs.5,00,000/- and Rs.36,00,000/- through cheque no. 691688 and 691689 from the bank account held with SBIT. The source of funds available with the bank accounts have not been questioned by the revenue authorities. Now, during the year under appeal, demonetisation scheme was announced and during the period 08/11/2016 to 30/12/2016, Rs.15,72,500/- was deposited in cash with SBI NRE account. We, however, considering the fact that cash has been withdrawn from the bank account during February, 2016 and there is no material available on record to prove that the said cash balance has been utilized by the assessee for any other purposes, it is to be presumed that the assessee has withdrawn cash and kept it with him. There is no bar under the law to withdraw the money from bank account and keep the cash in hand. It is a prerogative of the assessee and if the balances in the bank is from declared sources, there is no bar to withdraw the cash and keep it in hand. No cogent material has been brought on record to demonstrate that the alleged cash has been utilised elsewhere. Since specific source

of cash in hand available with the assessee is arising out of the withdrawal from the bank account, and the alleged cash deposit is found less than 50% of the cash withdrawal during February, 2016, we fail to raise any doubt on the genuineness of the source of the alleged cash deposit.

5. Thus, considering the facts and circumstances of the case, we are inclined to set aside the finding of the Id. CIT(A) and hold that the assessee has successfully explained the source of alleged cash deposit and the action of the Id. Assessing Officer of invoking Section 69A of the Act, is unjustified. Accordingly, the addition made u/s 69A of the Act is deleted and the effective grounds raised by the assessee are allowed.

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

**Order pronounced in the Court on 30<sup>th</sup> April, 2024 at Kolkata.**

*Sd/-*  
**(PRADIP KUMAR CHOUBEY)**  
**JUDICIAL MEMBER**

*Sd/-*  
**(DR. MANISH BORAD)**  
**ACCOUNTANT MEMBER**

Kolkata, Dated 30/04/2024

*30/04/24*

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
**आयकर अपीलीय अधिकरण**  
**ITAT, Kolkata**