

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

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| ITA No.176/Bang/2024 |
| Assessment Year : 2017-18 |

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| Smt. Fathimath Soudha, #3-9(4), Kinnigoli House, Belthangady Taluk, Kuvettu, Dakshina Kannada – 574 224. PAN : GLRPS 0274 Q | Vs. | ITO, Ward – 2(5), Mangalore. |
| APPELLANT | | RESPONDENT |

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| Assessee by | : | Smt. Suman Lunkar, CA |
| Revenue by | : | Shri. Ganesh R. Ghale, Standing Counsel. |

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| Date of hearing | : | 18.04.2024 |
| Date of Pronouncement | : | 19.04.2024 |

ORDER

Per George George K, Vice President :

This appeal at the instance of the assessee is directed against the Order of the CIT(A) dated 30.11.2023 passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2017-18.

2. There is a delay of 18 days in filing this appeal. Assessee has filed a petition for condonation of delay accompanied by an affidavit stating therein the reasons for late filing of this appeal. We have perused the reasons stated in the affidavit for belated filing of this appeal. We are of the view that there is reasonable cause and no laches can be attributed to the assessee for belated filing of this appeal.

Hence, we condone the delay of 18 days in filing this appeal and proceed to dispose off the same on merits.

3. The solitary issue that is raised is whether CIT(A) has erred in partly confirming the addition made by the AO to the extent of Rs.9,05,000/- under section 69A of the Act.

4. Brief facts of the case are as follows:

Assessee is an individual. She had deposited a sum of Rs.10,60,000/- on 11.11.2016 (during the demonetization period). Assessee had not filed the return of income. Therefore, a notice under section 142(1) of the Act was issued on 09.03.2018 directing the assessee to file return of income relating to Assessment Year 2017-18. Assessee filed the return of income for Assessment Year 2017-18 on 22.04.2019. Since the return of income was filed belatedly, the same was treated as invalid. Assessee, during the course of assessment proceedings, was directed to furnish the source of cash deposits made amounting to Rs.10,60,000/-. Assessee, in response, submitted that assessee's elder brothers who are settled abroad had transferred the amount into the assessee's account out of their savings / earnings with a view to assist the assessee to construct a residential house. Further, it was submitted that assessee had taken gold loan amounting to Rs.10,49,900/- from M/s. Kosamattam Finance Ltd., Belthangady Branch, on various dates by mortgaging gold. It was submitted that the main purpose of taking gold loan was to utilize the funds for construction of the residential house. It was stated that amounts received from her brothers and gold loans taken were withdrawn in cash for the purpose of house construction. It was submitted that due to the demonetization, the cash which was accumulated by the assessee for the purpose of construction activity was deposited into assessee's

saving bank account of Syndicate Bank. The explanation of the assessee was not accepted by the AO. The AO was of the view that it is not logical and reasonable as to why cash of more than Rs.10 lakhs had been kept for almost a year when assessee had access to banking facility nearby. Hence, the AO added the entire cash deposit of Rs.10.60 lakhs under section 69A of the Act. The AO also applied the special rate of tax under section 115BB of the Act @ 60%.

5. Aggrieved by the Assessment Order, assessee filed appeal before the First Appellate Authority (FAA). Before the FAA, assessee produced copy of the house building licence, the details of the financial assistance received by the assessee from her brothers, the gold loan amounting to Rs.10,49,900/- taken from M/s. Kosamattam Finance Ltd., on various dates, etc. The CIT(A) partly allowed the appeal of the assessee. The CIT(A) gave a relief of Rs.1,14,500/- being the withdrawals made in the month of October, 2016, upto the date of demonetization i.e., 08.11.2016. Further, the CIT(A) also granted the benefit of cash loan for a sum of Rs.40,000/- received on 18.10.2016 from M/s. Kosamattam Finance Ltd. Accordingly, the addition under section 69A of the Act was limited to Rs.9,05,500/- (thereby granting a relief of Rs.1,54,500/-). The relevant finding of the CIT(A) reads as follows:

“5.4 I have considered the assessment order, facts of the case, submissions and documents filed by the appellant during the appeal proceedings. It is observed that the appellant deposited cash amounting to Rs.10,60,000/- during demonetization period. The appellant has claimed that the source of the cash deposit is the earlier withdrawals from her saving bank account in which the cash was deposited. These withdrawals were made for construction of residential house. The appellant has furnished copy of house building license dated 21-10-2015 and engineer's certificate for construction of house. The appellant has taken financial assistance from her brother for construction of house. The appellant has received amount of Rs.4,15,549/- from her brother Mr. Mohammed Nurul Hussainar [NRI] and Rs.2,04,600/- from her second brother Mr. Tasleem Arif. They have transferred these amounts on various dates which are followed by

withdrawals on same date or in next one or two days. The same is evident from the bank account of the appellant. Further, the appellant has taken gold loan amounting to Rs.10,49,900/- on various dates from M/s Kosamattam Finance Limited. A certificate from the above company in this regard has been submitted by the appellant. From the certificate, it is seen that loan amounting to Rs.7,50,000/- out of the said loan was received through cheque and the balance amount of loan was received in cash. The said certificate is scanned below:

DATE 23-09-2019


TO WHOMSOEVER IT MAY CONCERN

THIS IS TO CONFIRM THAT MRS SOUDHA W/O MAHAMMAD RAVA, NO 3-94(4-) KINNIGOLI HOUSE KUVETTU VILLAGE BELTHANGADY TQ D K DIST 574224 HAD AVAILED THE FOLLOWING GOLD LOANS AT OUR BELTHANGADY BRANCH, ALL OF WHICH STANDS CLOSED ON 11-11-2016

| SL NO | GOLD LOAN NO | LOAN DATE | LOAN AMOUNT | INTERET | OTHR CHARGS | TOTAL AMOUNT |
|---|--------------|-----------|-------------|---------|-------------|--------------|
| 1 | 3230 | 30-01-16 | 99900/- | 650=00 | 10=00 | 100560=00 |
| 2 | 3403 | 04/03/16 | 750000/- | 4334=00 | 10=00 | 754344=00 |
| NOTE: CASH WITHDRAWAL DATE : 09-03-2016 | | | | | | |
| 3 | 4156 | 07/08/16 | 100000/- | 700=00 | 10=00 | 100710=00 |
| 4 | 4811 | 18-10-16 | 40000/- | 480=00 | 10=00 | 40490=00 |
| 5 | 4922 | 11/02/16 | 60000/- | 270=00 | 10=00 | 60280=00 |
| | TOTAL | | 1049900=00 | 6434=00 | 50=00 | 1056384=00 |

TOTAL AMOUNT PAID RS 10,56,384=00 (RS TEN LAKH FIFTY SIX THOUSAND THREE HUNDRED EIGHTY FOUR ONLY) THROUGH OUR FEDERAL BANK ACCOUNT. PAYMENT OF RUPEES 7,50,000/- UNDER GL NO 3403 BY WAY OF CHEQUE. NO 10019466. REST OF THE GL A/C BY CASH PAYMENT.

THIS CERTIFICATE IS ISSUED AT THE REQUEST OF Mrs SOUDHA FOR SUBMISSION TO IT DEPT


 FOR KOSAMATTAM FINANCE LTD
 Branch Manager

5.5 Out of total loan of Rs.10,49,900/- from M/s Kosamattam Finance Ltd. only Rs.2,99,900/- was received in cash on following dates:

Rs.99,900/- on 30.01.2016, Rs.60,000/- on 11.02.2016. Rs.1,00,000/- on 07.08.2016 and Rs.40,000/- on 18.10.2016.

Similarly, on perusal of bank statements of the appellant, it is seen that total cash withdrawals amounting to Rs.6,18,000/- (approximately) have been made regularly from April 2016 to October, 2016.

5.6 From the above, it is clear that the appellant was in the process of construction of house during the calendar year 2016 for which she sourced funds from her two brothers and availed gold loan from Kosamattam Finance Ltd. as and when the need for funds arose. It is hence difficult to believe the contention of the appellant that she kept on withdrawing cash on regular basis for usage in future as the construction of appellant's house was underway during the period January 2016 to October 2016. As per the engineer's certificate furnished by the appellant, the construction got over on 10th January, 2017. This implies that major part of the construction was done prior to demonetization period. It is further a well-established fact that to undertake any construction, payments are required to be made on the spot or in advance. Hence, the claim of the appellant that she had accumulated cash of Rs.10,60,000/- as on 08.11.2016 is not found to be correct.

5.7 Various courts on the above issue have held that onus for proper explanation of source of cash lies on the assessee. Few of such finding are discussed hereunder:

(i) In case of Narayan Meena v. ITO (2017) 59 ITR 403 (Jaipur)(Trib.), cash deposited in bank account maintained and operated by assessee, addition was held to be justified as explanation regarding nature and source of cash deposit was not explained satisfactorily.

(ii) In case of Champalal Shah v. ITO (2017) 59 ITR 94 (SN)/ 86 taxmann.com 258 (Mum)(Trib), sales was held to be non-genuine and addition was held to be justified as cash sale of gold bars was to undisclosed customers,

(iii) In case of Kanniappan Murugadoss v. ITO (2017) 164 ITD 260 (Chennai)(Trib.), a mere mention of advance for sale of property without any supporting evidence to explain bank deposits was rejected and addition was held to be justified.

(iv) In case of M. Saravana Kumar v. ITO (2017) 58 ITR 54 (Chennai)(Trib.), in order to verify the bank deposits the AO was directed to consider only peak credit in the bank account and the matter was remanded back to the AO for the same

(v) *In case of Swarn Singh v. CIT (2017) 391 ITR 135 (P&H)(HC), addition on unexplained deposits in bank was held to be justified.*

(vi) *In case of Kavita Chandra (Smt) v. CIT(A) (2017) 398 ITR 374 / 248 Taxman 358 (P&H)(HC), since cash withdrawal and deposit to bank was unable to be linked, addition as unexplained income was held to be justified.*

5.8 Keeping in view the facts and chronology of events in the case of the appellant clubbed with the fact that the construction of appellant's home was continuously in progress, it is observed that the source of cash deposits is not linked with bank withdrawals made by the appellant prior to September 2016. However, benefit of withdrawals made by the appellant in October 2016 upto 08.11.2016 which is to the tune of Rs.1,14,500/- and of an amount of Rs.40,000/- received in cash on 18.10.2016 from Kosamattam Finance Ltd. can be given to the appellant assuming the same to be lying unused with the appellant. The appellant is therefore, given benefit of the said amounts (114500+40000) in computing the addition made u/s 69A of the Act. **Accordingly, addition of Rs.9,05,500/- is upheld. The grounds of appeal are partly allowed.**

6. Aggrieved by the Order of the CIT(A), assessee has filed the present appeal before the Tribunal. Assessee filed the written submissions before the CIT(A) along with copy of the certificate of loan obtained from M/s. Kosamattam Finance Ltd., the savings bank account statement for the period from 01.04.2016 to 31.03.2017 with Syndicate Bank, the house building licence dated 21.10.2015, etc. The learned AR reiterated the submissions made before the Income Tax authorities.

7. The learned DR, on the other hand, supported the order of the CIT(A).

8. We have heard the rival submissions and perused the material on record. Assessee had obtained a local panchayath licence bearing No.47/2015-16 for construction of a residential house. The construction certificate from the civil engineering clearly states that the construction work commenced from 09.05.2016

and house was completed on 10.01.2017. Assessee, for the purpose of the construction of the aforesaid house had taken financial assistance of Rs.4,15,000/- from her brother Mr. Mohammed Nurul Hussainar, an NRI. These amounts from Mr. Mohammed Nurul Hussainar were deposited from 18.04.2016 till 29.09.2016 and the assessee had withdrawn cash within two or three days. Similarly, her second brother Mr. Tasleem Arif had also transferred a sum of Rs.2,04,600/- from 03.06.2016 to 03.11.2016. Assessee had withdrawn these amounts within a span of few days. Further, assessee had also availed loan of Rs.10,49,500/- from M/s. Kosamattam Finance Ltd., from 30.01.2016 to 02.11.2016. Out of the loan availed from M/s. Kosamattam Finance Ltd., a sum of Rs.7,50,000/- was transferred directly to the assessee's bank account through account payee cheque. Balance amount was paid to the assessee in cash. The CIT(A) in the above findings had categorically held that since assessee had completed the construction of house in January, 2017, most of the work would have been completed prior to the date of demonetization i.e., 08.11.2016. However, the CIT(A) granted benefit of deduction of Rs.1,54,500/- as source for cash deposit, by taking into consideration withdrawals made by the assessee for the month of October and November. We principally agree with the findings of the CIT(A). However, taking into consideration the totality of facts and circumstances, the credit of Rs.1,54,500/- being cash withdrawal in the month of October and November and also cash receipt on loan from M/s. Kosamattam Finance Ltd., would not be sufficient. For example, the CIT(A) had not given credit for the receipt of cash loan from M/s. Kosamattam Finance Ltd., on 02.11.2016 for a sum of Rs.60,000/- (A loan certificate dated 03.09.2019 is placed on record). Therefore, we are of the view that on the facts of the instant case, a further credit of Rs.3 lakhs ought to be granted as a source of cash deposit made on 11.11.2016, since assessee had received a sum of Rs.6 lakhs and odd from her brothers and also availed a sum of

Rs.10,56,384/- from M/s. Kosamattam Finance Ltd. Therefore, we sustain the addition of Rs.6,05,000/- (Rs.9,05,000 – Rs.3,00,000). It is ordered accordingly.

9. In the result, appeal filed by the assessee is partly allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 19.04.2024.

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|---------------|-------------------------|
| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.