

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,**

ITA No.4474/Mum/2023 (A.Y 2017-18)

Ram Raghunath Kadam 2476 Building No. 35 Uday CHS, Tank Road Kala Chowki, Abhyudaya Nagar, Mumbai 400033	Vs.	Income Tax Officer- 34(2)(2) C-41 to 43 G Block Bandra Kurla Complex Bandra (E), Mumbai 400051
PAN/GIR No. : AEBPK5370A		
Appellant	..	Respondent

Appellant by :	Shri Mandar Vaidya
Respondent by :	Shri Krishna Kumar, JCIT

Date of Hearing	07.05.2024
Date of Pronouncement	08.05.2024

आदेश / O R D E R

PER AMARJIT SINGH, AM:

This appeal filed by the assessee is directed against the order passed by the CIT(A), NFAC, Delhi, which in turn arises from the assessment order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (the Act), dated 16.12.2019 for A.Y. 2017-18. The assessee has assailed the impugned order on the following grounds before us:

- “1. On the facts and in the circumstances of the case and in law, Learned CIT(A) NFAC, Delhi erred in confirming the addition of Rs. 32,13,500/- made by the A.O on account of cash deposited in the bank accounts of the Appellant, by invoking section 69A r.w.s.*

115BBE of the Income- tax Act, 1961 (hereinafter referred as 'Act'). The addition made by the AO and sustained by the learned CIT(A) is not justified.

2. *On the facts and in the circumstances of the case and in law, Learned CIT(A) NFAC, Delhi erred in confirming the addition of Rs. 32,13,500/- made by the A.O on account of cash deposited in the bank accounts of the Appellant, by invoking section 69A r.w.s. 115 BBE of the Act. The said addition made by the A.O. without considering various submission and evidence filed before A.O., during the scrutiny proceeding and passed the assessment order dated 16th December, 2019.*
3. *The appellant craves leave to add, alter, amend or delete any ground (s) of appeal either before or during the course of hearing of the appeal.”*

2. The facts in brief that the return of income declaring total income of Rs.3,58,220/- was filed on 04.08.2017. The case was selected for limited scrutiny to verify the cash deposited during the demonetisation period. During the course of assessment, on perusal of ITS details, the Assessing Officer (AO) noticed that the assessee had deposited Rs.32,13,500/- in State Bank of India, Lalbaug Branch, Mumbai during demonetisation period. On a query the assessee explained that he was working with the Indian Railways in Store Department as a Clerk and he retired from the service in July, 2009. He also explained that he is 70 years old and living with his mother who is 89 years old and has been suffering from heart problems and also undergone knee replacement surgery. Therefore, he stated that because of medical emergency he always used to have cash in hand which he has withdrawn from his bank account regularly from FY 2013-14 as under: -

Period	Amount
F.Y. 2013-14	8,31,500/-
F.Y. 2014-15	5,37,200/-
F.Y. 2015-16	7,48,700/-
01.04.2016 – 07.11.2016	2,41,500/-
Total	23,58,900/-

I therefore deposited the total cash of Rs.32,18,500/- during the demonetization period, the sources of said cash deposits are as under: -

<i>Out of cash balance in hand received from salary income</i>	<i>Rs.12,15,850/-</i>
<i>Out of cash withdrawals after deducting personal expenses</i>	<i>Rs.19,97,650/-</i>
<i>Total</i>	<i>Rs.32,13,500/-</i>

3. However, the AO has not satisfied with the submission of the assessee and stated that the assessee has failed to substantiate his arguments with documentary evidences to prove the source of cash deposited in the bank account. The AO also mentioned that from the year 2009 onwards the assessee has not incurred expenses on medical bills as claimed by him. Therefore, the cash deposit of Rs.32,13,500/- was treated as unexplained money u/s 69A of the Act and added to the total income of the assessee.

4. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee reiterating the facts reported by the AO that the assessee has failed to substantiate its claim of deposit made of Rs.32,13,500/-.

5. During the course of appellate proceedings before us, the ld. Counsel for the assessee submitted that the assessee is a senior citizen aged 74 years and retired from active service in the Indian Railways in 2009. He further submitted that the assessee has explained that the source of the said deposit was cash at hand which the assessee had withdrawn in the earlier periods from his bank account. Further, the ld. Counsel filed application to admit additional evidences under rule 29 of the Income Tax Rules, 1962 comprising copy of old bank statement which could not be filed before the lower authorities because the same could not be procured

from the banks in time. Therefore, the assessee has submitted the same as additional evidences in support of his claim that part of the amount deposited in bank account was withdrawn in the earlier period. The assessee has submitted the additional evidences along with affidavit dated 4th May, 2024 as under: -

Sl. No.	ANNEXURE	PARTICULARS
1.	Ann.-1	Copy of superannuation fund statement issued by the Central Railway (Employer of the Applicant/ Assessee) at the time of retirement of the Applicant/ Assessee of Rs.23,49,025/-.
2.	Ann.-II	Copy of the Bank statement issued by State Bank of India bearing S.B. Account No.:- 11037339449 from the period of May, 2009 to December, 2013.
3.	Ann.-III	Copy of the Bank Statement issued by State Bank of India bearing S.B. Account No.:- 30801737847 from the period of June, 2009 to December, 2013.
4.	Ann.-IV	Copy of the Bank statement issued by The Central Railway Employee's Co-Operative Credit Society Ltd. bearing S.B. Account No.:- 04030 from the period of April, 2011 to December, 2015.

The assessee also claimed that he has received retirement benefit in the year 2009 of an amount of Rs.23,49,025/- which was credited to his saving bank account maintained with the State Bank of India and some balance was available with him. The assessee also submitted that from his saving bank account he had also transferred funds to the Central Railway Employees Co-Operative Credit Society Ltd. from which he was regularly withdrawing cash. Considering the affidavit and submissions of the assessee that the copy of old statements of the bank accounts was not procured from the bank as it was difficult to procure from their system, we find bona fide reason for not submitting these copies of bank statement before the AO at the time of assessment proceedings. Therefore,

we admit the same as additional evidence under Rule 29 of the I.T. Rules, 1962 after also considering the judicial pronouncements referred to by the ld. Counsel in the case of CIT vs. Satya Setia 143 ITR 486 and CIT vs. G.V. Rattiah and Co. 256 ITR 351 for deciding the case of the assessee on merit.

6. On the other hand, the ld. D.R. supported the orders of the lower authorities.

7. Heard both the side and perused the material on record. During the course of assessment the AO treated the cash deposit of Rs.32,13,500/- in the bank account of the assessee as unexplained money u/s. 69A of the Act. During the course of assessment proceedings the assessee has submitted his explanation along with evidences. He also explained that he was working with Indian Railways in the Store Department as a Clerk for 18 years and in Textile Department of Central Government for almost 20 years and throughout his career of 38 years all his salary income was received in cash only. He also explained that he is 74 years old and living with his mother who has been suffering from heart problems and also undergone knee replacement surgery. Because of his old age and dependent mother he had kept cash at home for medical emergencies. During the course of appellate proceedings before us the ld. Counsel submitted that the AO has not considered the specific submission provided by the assessee and also requested that the submission pertaining to old bank statements, which has been provided as additional evidence be considered for deciding the case of the assessee on merit. In the light of the above facts and circumstances we remit the matter of cash deposit in the bank account for deciding afresh after taking into consideration the additional evidences filed by the assessee and the Board Instructions No. 3/2017 (F.No. 225/100/2017/ITA-II) dated 21.02.2017.

Needless to say that adequate opportunity be provided to the assessee during the course set aside proceedings. Therefore, the appeal of the assessee is allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 08.05.2024.

Sd/-
(VIKAS AWASTHY)
Judicial Member

Sd/-
(AMARJIT SINGH)
Accountant Member

Place: Mumbai
Date: 08.05.2024
n.p

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.