

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORESHRI B.R. BASKARAN, ACCOUNTANT MEMBER

**ITA NO.4351/MUM/2023
Assessment Year 2017-18**

Rajan Krishnamurthy Iyer,
803, Silver Arch, Shastri Nagar,
Andheri West, Mumbai – 400 053.
PAN:AADPI-3431-N

- Appellant

Vs.

Commissioner of Income Tax(Appeals)/
ITO-Ward 34(2)(6),
Mumbai.

- Respondent

Assessee by : Ms. Aarti Sathe &
Ms. Aasavari Kadam
Revenue by : Shri Suni Mathew, Sr.DR
Date of Hearing : 30/04/2024
Date of Pronouncement : 15/05/2024

ORDER

The assessee has filed this appeal challenging the order dated 27-12-2019 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2017-18. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.17.55 lakhs made by the AO u/s 68 of the Act.

2. The facts relating to the case are stated in brief. It came to the notice of the AO that the assessee has deposited demonetized currency notes aggregating to Rs.17.55 lakhs in his bank accounts maintained with HDFC bank and ICICI Bank during the demonetization period relevant for AY 2017-18. The assessee has explained the sources of deposits as past withdrawals made by him from the very same bank accounts. It was further submitted that the assessee is a non-resident working abroad since 2014 and the deposits were made into the bank accounts out of his foreign income. The assessee also furnished the details of his withdrawals made from the bank accounts earlier. However, the AO did not accept the

explanations so given by the assessee and accordingly made addition of Rs.17.55 lakhs u/s 68 of the Act.

3. Aggrieved by the order passed by the Assessing Officer, the assessee carried the matter in appeal before the CIT(A). The First Appellate Authority noticed that there was a time gap of seven months to ten months between the dates of withdrawal and dates of deposit. Accordingly, the Ld CIT(A) confirmed the addition made by the AO. In this regard, he took support of decision rendered by Hon'ble Punjab & Haryana High Court in the case Smt. Kavitha Chandra vs. CIT (2017) 81 taxmann.com 317, wherein the claim of redeposit of cash was not accepted. Aggrieved, the assessee has filed this appeal.

4. The ld.A.R of the assessee submitted that the assessee is a Non Resident Indian and he has made withdrawals of amounts from his bank accounts during the period from January 2016 and March 2016. Since the assessee did not maintain books of accounts, he has prepared a cash flow statement depicting date-wise the withdrawals and deposits of cash from various banks. Referring to that cash flow statement, the Ld A.R submitted that the assessee was having cash balance of Rs.21,20,000/- as on 01/04/2016. Thereafter, during the period from 01/04/2016 to 05/11/2016 also, the assessee has made cash withdrawals and accordingly, the assessee was having cash balance of Rs.18.95 lacs as on 08/11/2016 i.e. the day on which the demonetization was announced. From the above said cash balance available on hand, the assessee has deposited a sum of Rs.17.55 lakhs in his bank accounts. Accordingly, the ld.A.R submitted that the sources of above deposits have been duly explained by the assessee. The ld.A.R further submitted that the CIT(A) did not accept

the explanations of the assessee, only for the reason that there is a time gap of seven to ten months between the dates of withdrawals and dates of deposits. The ld.A.R submitted that the assessee, being Non Resident Indian, was not regularly available in India and hence, he was constrained to keep money at home in order to meet emergency requirements like medical expenses of dependents, household expenses, house renovation expenses etc. The ld.A.R further submitted that the Assessing Officer has not brought on record any material to show that the money so withdrawn by the assessee has been spent away. Accordingly, the Ld A.R submitted that, in the peculiar facts of this case, the time gap pointed out by the CIT(A) should not be the reason to reject the explanations of the assessee. In support of her contentions, the ld.A.R placed reliance on the following decisions:-

(a) Jaya Aggarwal vs. ITO, (2018) 92 taxamann.com 108(Del)

(b) ACIT vs. Beldev Raj Charla, (2009) 121 TTJ 366 (Del-ITAT)

(c) Jantakal Veera Bhadrappa vs. ITO (ITA No.711/Bang/2021 order dated 25/05/2022.

(d) Sh. Mohd Manzoor vs. ITO (ITA No.166/Asr/2022 dated 21-09-2023)

5. The ld. Departmental Representative, however, supported the order passed by the Tax Authorities.

6. I heard rival contentions and perused the record. The uncontroverted fact is that the assessee is a Non-Resident Indian working abroad since 2014. It is stated that the assessee has been withdrawing funds from NRO Accounts maintained with ICICI Bank and HDFC Bank and also depositing cash into these bank accounts.

The assessee has prepared two cash flow statements, viz., one for the period from 01/01/2016 to 31/03/2016 and another one for the period from 1.4.2016 to 31.3.2017. The opening cash balance as on 1.1.2016 has been taken as Rs.1.00 lac. Considering the status of the assessee, in my view, the above said amount is reasonable. Thereafter, cash withdrawals and deposits made from/into the Bank accounts during the period from 1.1.2016 to 31.3.2016 has been chronologically incorporated and the cash balance as on 31/03/2016 has been arrived at Rs.21.30 lacs. In the second statement, the cash transactions have been incorporated chronologically and the cash balance as on 8.11.2016 has been arrived at Rs.18.95 lacs, i.e., upto the date on which demonetization was announced.

7. With regard to the necessity to keep cash balance at home, we have noticed that the assessee is Non-Resident Indian working abroad and hence it is quite possible that he has kept cash balance at home in order to meet emergency requirement like medical bills, house hold expenses, renovation expenses etc. However, the Id CIT(A) has rejected the availability of cash only for the reason there was time gap of 7 months to 10 months between the dates of withdrawals and dates of deposits. However, considering the peculiar facts of the present case, I am of the view that the time gap noticed by Ld CIT(A) may not be relevant. As submitted by Id.A.R, I notice that the Assessing Officer has not brought on record any material to show that the cash withdrawn by the assessee has been spent away. Accordingly, I am of the view that the cash flow statement prepared by the assessee duly explains the sources of deposits of Rs.17.55 lacs made into bank accounts during the demonetisation period. Since the

issue under consideration involves factual aspects, I do not deem it necessary to examine the case laws relied upon by the assessee and Ld CIT(A).

8. However, I notice that the assessee has furnished copies of all the three bank accounts for the period from 1.4.2016 onwards only. In respect of ICICI Bank (036601005397), the bank statement for the period from 29-01-2015 to 30-03-2016 has been furnished. The statements of remaining two bank accounts for the period from 1.1.2016 to 31.3.2016 have not been furnished either before the tax authorities or before the Tribunal. However, the assessee is relying on those statements in order to claim that he was having cash balance of Rs.21,20,000/- as on 31.3.2016. Further, I notice that the cash flow statements prepared by the assessee have not been verified by anyone. Accordingly, I am of the view that both the cash flow statements require verification at the end of the AO by comparing them with the relevant bank statements. Hence, for the limited purpose of verification of cash flow statements with the relevant bank accounts, I restore this issue to the file of the AO. Accordingly, I set aside the order passed by CIT(A) and restore the issue to the file of the Assessing Officer with the direction to verify the cash flow statements prepared by the assessee with the bank statements. If the cash balance available with the assessee as on 8.11.2016 as per the cash flow statement was found to be more than the amount of deposits made during the demonetization period, then the AO is directed to delete the addition of Rs.17.55 lacs made in the hands of the assessee.

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

Order pronounced in the open court on 15th May, 2024.

Sd/-

(B.R. Baskaran)
Accountant Member

Mumbai, Date : 15th May, 2024

VM.

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "SMC" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai