

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 238/JP/2024  
निर्धारण वर्ष/Assessment Year : 2017-18

Shri Ashok Choudhary D-4, Malviya Nagar, C-Scheme Jaipur – 302 001	बनाम Vs.	The ITO Ward- Jhalawar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABCPC 2556 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Rajeev Sogani, CA &  
Ms. Ruchika Sogani, Adv.

राजस्व की ओर से / Revenue by: Shri Rajesh Kumar Meena, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 28/05/2024  
उदघोषणा की तारीख / Date of Pronouncement: 10/06/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 15-02-2024, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2017-18 raising therein following the grounds.

“1. No evidence on which the AO relied while considering the money deposited as income of the assessee. The said action of AO is

unjustified as the cash deposited is generous and can be verified through the bank statement already submitted to the AD vide previous replies. The AO did not consider the same while issuing the order and created the said demand. The cash deposited was the one which was already withdrawn by the assessee for use but due to demonetization proved to be useless and thus the assessee had to re-deposit the cash balance into the bank. This also added to the hardship faced by the assessee in terms of unavailability of liquidity when needed

2. That the AO has erred in stating that assessee has deposited cash from undisclosed source. The said action of AO is unjustified in nature as cash withdrawn from bank and re-deposited after a gap of some time cannot be automatically drawn the conclusion that such cash deposit is unexplained investment u/s 69 as long as AO has in his possession some tangible material to prove that cash withdrawn was utilized for some other purpose. Therefore, the said addition by AO cannot be justified and the addition should be deleted. The assessee has submitted that a sum of Rs 24,00,000/- deposited in his bank account was actually money withdrawn from the bank on 11.11.2014 for purchase of agricultural land which assessee post his retirement intended to purchase however as no deal was done and suddenly demonetization happened and assessee has to deposit back the money.

3. The assessee has already submitted all the proof for withdrawal but the AO has not agreed to the proof and has considered the same as addition to income. The assessee has submitted the proof but the same was not considered by AO while issuing the order. Thus, the contention of AO is unjust and not in the nature of legal justice. There is no bar to hold cash by the assessee in his own possession in any quantum. So long as AO is not able to establish that cash withdrawn from bank a/c was utilized for some other purpose, re-deposit of the cash in the bank a/c again cannot be rejected.

2.1 During the course of hearing, the Id. AR of the assessee has filed the additional ground praying therein to accept the same under Rule 11 of Income Tax Appellate Tribunal Rules 1963 as under:-

#### ADDITIONAL GROUND

"In the facts and circumstances of the case in law, Id. CIT(A)/National Faceless Appeal Center (NFAC) has erred in confirming the action of the Id. AO in invoking the provision of section 115BBE for the addition made of Rs. 24,00,000 u/s 68 of the Act. The action of the Id. CIT(A)/National Faceless Appeal Center (NFAC) in confirming the actions of Id. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of section 115BBE".

The above ground is a legal ground. All relevant facts are available on record as they are emerging out of the assessment order passed by the Id. AO. No new facts are required to be evaluated nor any further enquiry is needed. The provisions of law are to be applied on the facts already available on record. The omission of the above ground was inadvertent

Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. [1998] 229 ITR 383 (SC) held that. Under section 254, the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first

time, so long as the relevant facts are on record in respect of that item. There is no reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner (Appeals). Both the assessee as well as the department have a right to file an appeal/cross objections before the Tribunal. There is no reason why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier..." (Emphasis Supplied)

We hereby make a prayer for admission of the above additional ground."

The Bench has does not find any infirmity in accepting the additional ground of appeal while disposing off the appeal of the assessee as mentioned in Form 36. Hence, the same is accepted to adjudicate upon this additional ground alongwith the grounds as mentioned in Form 36.

3.1 The brief facts of the case are that the assessee is an individual and he was working with Air India and Indian Airlines and retired as Senior Pilot. During the year under consideration, the assessee had earned income from rent and income from other services and further noted that the assessee during the demonetization period had deposited cash of Rs.24.00 lacs on 23-11-2016 in his bank account maintained with State Bank of India. It was specifically pleaded by the Id AR that said cash was deposited by the assessee out of cash withdrawn from the same bank account on 11-11-2014. In this regard, the Id. AR of the assessee withdrew the

attention of the Bench towards the statement of account placed on record by the assessee. It was also pleaded that the assessee after his retirement wanted to purchase the agricultural land and thus the assessee had withdrawn a sum of Rs.24.00 lacs from his bank account on 11-11-2024 to purchase the agricultural land. At the time demonetization period, the said cash of Rs.24.00 lacs was re-deposited back on 23-11-2016 as no deal was materialized for the purpose of purchasing the agricultural land. However, the AO rejected this plea raised by the assessee by holding that the assessee has invested the money withdrawn from bank elsewhere and deposited his unexplained income in his bank account during the demonetization period and thus the AO made addition u/s 68 of the Act and added the said amount to the total income of the assessee.

3.2 Aggrieved by the order of the AO, the assessee preferred an appeal before the Id CIT(A) who granted part relief of Rs.2,50 lacs based on the CBDT Instruction No.3/2017 dated 21-02-2017 and confirmed the remaining amount.

3.3 Now the assessee is before this Bench and the Id. AR of the assessee reiterated the same arguments as raised by him before the Revenue Authorities and further submitted that assessee's mother Smt.Teju Choudhary had an agriculture land at Village Shreebhalal Jagir, Khejdoli, Tehsil: Shremadhapur, Distt: Sikar and the assessee wanted to purchase agriculture land in the same area. Therefore,

he withdrew Rs.24.00 lacs from his bank account on 11-11-2024 to purchase agriculture land.

3.4 On the contrary, the ld. DR relied upon the orders passed by the Revenue Authorities and submitted that the assessee had deposited the amount of Rs.24.00 lacs in his bank account during the demonetization period out of his unexplained income. Therefore, the addition was rightly made by the AO and upheld by the ld. CIT(A).

3.5 After having gone through the facts of the case and after hearing both the parties at length and on perusal of the documents placed on record, orders passed by the Revenue Authorities and the judgements cited by the respective parties, the Bench found that it is an undisputed fact that the assessee had withdrawn amount of Rs.24.00 lacs from his bank account on 11-11-2024 and re-deposited the equal amount in his bank account on 23-11-2016. Thus, in this way, the source of deposit of cash in the bank account of the assessee stands fully proved. However, the contention of the assessee was rejected solely on the ground that the assessee had invested the money withdrawn from his bank account elsewhere and deposited his unexplained income in his bank account during the demonetization period but the AO has not provided any evidence on record to support his allegation that the assessee had invested the money withdrawn from the bank elsewhere and

deposited his unexplained income in his bank account during the demonetization period. Apart from above, no material has been brought on record by the AO or Id. CIT(A) to support their views. This shows that there is no evidence with AO or the Department that the assessee had in fact invested money elsewhere or spent otherwise or the amount withdrawn by the assessee was not available with him. Therefore, in such a scenario, the AO was not justified in making addition merely on the basis of assumption, presumption, conjecture or surmises. This view stands fortified by the decision of Hon'ble Karnataka High Court in the case of S.R. Venkata Ratnam vs CIT (1981) 127 ITR 807 wherein it is held that *there is some force in the argument of the ld counsel for the petitioner and the judgement advanced by the Revenue is, therefore, without any force. Once the petitioner assessee discloses the source as having come from the withdrawal made on a given date from a given bank, it was not possible for respondents Nos. 1 and 2 to concern themselves with what the assessee did with that money, i.e. whether he had kept the same in his house or utilized the services of a bank by depositing the same.* Similar view has also been taken by the Hon'ble Delhi High Court in the case of CIT vs Kulwant Rai (2000, 210 CTR 380 (Delhi) in which it has been observed that (CLC 3-8) *"The orders of Assessing Officer as well as Commissioner of Income- tax are completely silent as to for what purpose the earlier withdrawals*

would have been spent. As per the cash book maintained by the assessed, a sum of Rs. 10,000/- was being spent for household expenses every month and the assessed has withdrawn from bank a sum of Rs. 2 lacs on 4th December, 2000 and there was no material with the Department that this money was not available with the assessed. It has been held by the Tribunal that in the instant case the withdrawals shown by the assessed are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the Assessing Officer or Commissioner Income-tax (A) to support their view that the entire cash withdrawals must have been spent by the assessed and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lacs is legally not sustainable under section 158BC of the Act and the same was rightly ordered to be deleted." (CLC 7,8). Apart from this the Coordinate Bench of Tribunal in the similar facts and circumstances of the case has already taken the decision that earlier cash withdrawals from the bank account should be available to the assessee for depositing in the bank account as has been held in the case of Dheeraj Thakran vs ITO [2021] 129 taxmann.com 169 (Delhi Trib – CLC 9-20) and the same is mentioned as under:-

"23. The various other decisions relied on by the Id. counsel for the assessee also support his case that the earlier cash withdrawals from the bank account should be available to the assessee for deposit

in the bank account subsequently. Since, in the instant case, there is sufficient withdrawal from the bank account before such deposits were made, therefore, we accept the contention of the assessee regarding the source of Rs. 36,39,000/- withdrawn from the bank accounts to be re-deposited." (CLC 18,19)

Hemant Pandya v. ITO, (2023) 224 TTJ (Ind) 610, (CLC 21-34):

"12....(iv) Regarding cash withdrawal of Rs. 2,48,000/- from his own Bank A/c, we have perused copy of bank pass-book and find that the assessee has in fact made a cash withdrawal on 28.11.2017. Here the case of assessee is such that he made this withdrawal in anticipation of making a deal for purchase of property but the deal could not materialize and the money stood unutilized which was re-deposited in Bank A/c. We find that the explanation given by assessee is not found false by lower-authorities. Further, there is no evidence with the department that the assessee has in fact invested elsewhere or spent otherwise or that the withdrawn cash is not available with him. It has been held in various decisions that when the assessee has made deposits out of the earlier withdrawal of cash from the bank account and no material has been brought by the Revenue that such money is not available with the assessee, then, the AO is not justified in making the addition. Therefore, we accept the contention of the assessee that the cash withdrawal of Rs. 2,48,000/- made from own bank a/c was re-deposited." (CLC 31,32)

Therefore, considering the totality of the facts and circumstances of the case as discussed above, the Bench accepts the contentions of the assessee that cash withdrawal of Rs.24.00 lacs by the assessee from the bank for re-depositing during the demonetization period in his bank account and thus entire amount of addition made by the Revenue is deleted. Now as far as applicability of the provisions of

section 115BBE is concerned, in this regard, it is noted that provisions of Section 69A are not applicable; therefore, provisions of Section 115BBE cannot be invoked. Thus, keeping in view the above observation, the Bench deletes the above addition. Hence, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 10 /06/2024.

Sd/-

(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 10 /06/2024

\*Mishra

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

1. The Appellant- Shri Ashok Choudhary, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- Jhalawar
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 238/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar