

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA Nos.257 & 258/Bang/2024
Assessment Years : 2011-12

<p>Shri Muthaiah Sannasurayya, 1762/13, Dhatri, 1<sup>st</sup> Stage, 2<sup>nd</sup> Cross, Opp: St. Johns High School, Shivakumar Swamy Badavane, Davangere-577 005.</p> <p>Present Address: No.2000/A-24, 15<sup>th</sup> Cross, Taralabalu Badavane, Davangere-577 004.</p> <p><b>PAN – BEXPS 3420 N</b></p>	Vs.	<p>The Dy. Commissioner of Income Tax, Central Circle- 1(3), Bengaluru.</p>
APPELLANT		RESPONDENT

Assessee by	:	Shri V Srinivasan, Advocate
Revenue by	:	Shri Suresh Babu K.N, Addl. CIT (DR)

Date of hearing	:	19.06.2024
Date of Pronouncement	:	20.06.2024

**ORDER**

**PER SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

The present appeals of the assessee are arising from the orders passed by the CIT (A)-11, Bangalore dated 24/01/2024 in DIN No. ITBA/ APL/M/ 250/2023-24/100600831861(1) and Din number ITBA/ APL/M/ 250/2023-24/106014686 (1) dated 25.01.2024 for AY 2011-12, in respect of the proceedings u/s 143(3) and proceedings u/s 271AAA respectively. So far as the appeal in respect of the proceedings u/s 271AAA is concerned the same is consequential, hence we proceed to

decide the main appeal that is in respect of the proceedings of 143(3) of the Income Tax Act( hereinafter referred to as Act).

2. The assessee is a salaried employee working under Karnataka Forest Department, searched by Income-tax department on 25/10/2010 (relevant to AY 2011-12). Thereafter, the case of the impugned assessment year, being searched year, was selected for scrutiny u/s 143(3). During the course of assessment proceedings, the AO observed that during the course of search, cash of Rs.4,06,700/- was found from the premises of the assessee. During the course of assessment proceedings the AO enquired about the source of this cash. In response the assessee vide his letter dated 21.03.2013, explained that the amount was collected from the members of Zilla Panchayat, in order to arrange a tour for them. The assessee was to arrange tickets and other arrangements for the members of Zilla Panchayat. The Ld AO discarded the submissions of the assessee on the ground that assessee failed to file any documentary evidence to prove his averments Accordingly, the AO added this amount to the returned income of the assessee and framed the assessment.

3. Aggrieved with the order of the AO, the assessee filed appeal before the Id. CIT(A) and reiterated the submissions made before the AO. Before CIT(A) assessee raised an alternative argument by pointing out that assessee was a salaried employee and deriving income from salary from past many years and there have been withdrawals from his bank account which were the ultimate source of the cash found during serach. However the CIT(A) dismissed the appeal of assessee observing that bank withdrawals were minimal.

4. Aggrieved with the order of the Id. CIT(A), the assessee preferred an appeal before us.

5. The Id. Counsel for the assessee Shir V Srinivasan appeared and emphatically argued that there was sufficient cash withdrawals with assessee on the date of search and those withdrawals may kindly be treated as source of the impugned cash . The counsel for the assessee, drawn the attention of the bench towards bank statements and annexed paper book page 11.

6. The Id. DR relied upon the order of the authorities below and contended that the cash was withdrawn by the assessee in the financial year 2009-10. However, the impugned year is financial year 2010-11 relevant to the assessment year 2011-12.

7. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the bank statement filed by the assessee, (**annexed in Paper Book at Page 11**). We find that approximately Rs 4,85,000/- have been withdrawals by the assessee starting from December 2009 to May 2010, which means when the last financial year i.e. 2009-10 relevant to AY 2010-11 was about to expire there was sufficient cash with the assessee till the date of search i.e 25.10.2010. The amount found during the course of search is Rs 4,06,700/- which is below the amount of withdrawals. Therefore, we are of the view that the impugned cash cannot be treated as unexplained cash. So far as, argument of the Revenue, that no prudent person will keep a cash for such a long period. We do not find any force because admittedly, it is the case of search and even after search, department has not been able to prove that the cash withdrawals by the assessee has been utilized somewhere else and the impugned cash is generated from some other source. Further Hon'ble Karnataka High in the case of **Smt. P Padmavathi Vs. ITO in ITA No.414 of 2009**, in para 11 of the judgment has observed that time gap between the withdrawal and the

deposit of the same in the bank account would not be a ground for treating the amount as unexplained cash. The relevant observations of the lordships are as under:-

*“11. Question 3: In so far as the cash deposit in two loan accounts as set out above is concerned, the material on record discloses that the assessee had Rs.7,00,000/- in cash on 20.8.2003 having withdrawn the same from his bank account. The said Rs.7,00,000/- has suffered tax. No doubt, the deposit in the two loan accounts was made on 29.9.2003 and on 25.11.2003. The authorities have disbelieved the case of the assessee on the ground that there is a gap of 40 days or more between the withdrawal of the amount from the bank account and re-deposit of the same in the loan account. Secondly, on the ground that, it is risky to keep large amount of cash on hand. Thirdly, they are of the view that the explanation offered such as having borrowed a gold loan, yet another loan of Rs.2,00,000/- and sale of paddy are not established by proper evidence.”*

*It is in this context, it is useful to refer to a judgment of this Court in the case of S.R VENKATARATNAM Vs. COMMISSIONER OF INCOME-TAX, KARNATAKA-1 AND ANOTHER reported in ITR (127) 1981 Page 807. where a learned Single Judge held as under:*

*“Once the petitioner assessee disclosed the source as having come from the withdrawal made on a given date from a given bank, it was not 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. The ITO had only two choices before him. One was to reject the explanations not believable for the reason that on his investigation no such deposit was ever made in the bank. In the alternative he ought to have called upon the assessee-petitioner to substantiate his claim by documentary evidence. Having exercised neither of the choices, it was not open to the ITO to merely surmise that it would not be probable for the assessee to keep Rs.15.000/- unutilized for a period of two years. The ITO should have given an opportunity to the assessee to substantiate his assertion as to the source of his capital outlay.”*

*12. In this case, it is not in dispute that the assessee withdrew a sum of Rs.5,00,000/- on 18.8.2003 and Rs.2,00,000/- on 20.8.2003 from her savings account. She is an agriculturist and she had*

*agricultural income. Once she: demonstrated that she was in possession of Rs.700,000/- cash plus agricultural income on her hands, if after 40 days, a cash deposit is made to the extent, of about Rs.5,20,000/- towards loan account, it cannot be said that the source of the said deposit is not properly explained. Merely because there is a delay of 40 days from the date of withdrawal of the money from the bank. Account to the date of deposit in the loan account. Once money is shown to be in the account and withdrawn what the assessee did with that money till it was actually deposited, is not the concern of the Department. As long as the source is explained and established and when the money is withdrawn from a savings bank account and paid to discharge loan by deposit into a loan account, it is not possible to hold that the source is not explained. In that interregnum period, if the very same money is utilized for other purpose and thereafter, it is appropriated towards discharge of a loan that cannot be held against the assessee. In that view of the matter, the finding recorded by the Tribunal is erroneous and requires to be set aside. Therefore, the said substantial question of law is also held against the revenue and in favour of the assessee.”*

8. Further assessee relied on the judgment of this tribunal in the case of Shambanna Jattappa in ITA Number 556/Bang/2022, dated 28.12.2022, wherein the coordinate Bench has observed as under:-

*“6.1 The short question before me is with regard to addition of Rs.3,96,000/- deposited into bank account. According to the AO, the assessee has not explained the source of deposit of this amount to the assessee’s bank account. The assessee explained before us that assessee has placed necessary evidence before the lower authorities that assessee having salary income which has been regularly deposited into bank account and also withdrawn from SB account from HDFC & Canara banks. The total cash withdrawn by assessee was Rs.13,72,500/- during the financial years 2015-16 & 2016-17. Out of which the assessee explained that Rs.6.46 lakhs was used to redeposit only bank account during the demonetization period. However, the AO considered only Rs.2.5 lakhs available to assessee ITA No.556/Bang/2022 Shambanna Jattappa Hadimani, Hubli Page 7 of 8` to redeposit to bank accounts and this is not based on any material evidence. There was no evidence brought on evidence by the AO that the assessee is left with only Rs.2.5 lakhs out of Rs.13,72,500/- withdrawn by assessee from various bank*

*accounts. Unless and until the AO brought on record any material that assessee has spent balance amount of Rs.11,22,500/-, which has been withdrawn in earlier financial year 2015-16 & 2016-17, it is not possible to hold that the said amount is not available to assessee to redeposit into bank account. Considering the quantum of withdrawals made by the assessee in earlier financial years, I am of the opinion that the amount of Rs.3.96 lakhs addition sustained by the AO has been sourced by the earlier withdrawals and due credit to be given. Accordingly, considering the meagre amount of Rs.3.96 lakhs, which addition is made by the AO, the amount withdrawn by assessee on earlier occasion has been unutilized and available to the assessee to redeposit to the bank account and according to me the source has been explained by the assessee by earlier withdrawals and the addition sustained by the Id. CIT(A) is deleted.”*

9. In view of the above judgments of the Hon'ble High Court and ITAT, we are of the firm view that cash found was duly explained cash and hence no addition is permissible in the eyes of law.

10. In view of the above we allow the appeal of the assessee.

11. So far as ITA No.258/Bang/2024, the same is appeal of the assessee against the levy of penalty u/s 271AAA of the Act and the same is consequential. As we have allowed the quantum appeal, this appeal is also treated as allowed.

12. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in court on 20<sup>th</sup> day of June, 2024

Sd/-

**(CHANDRA POOJARI)**  
Accountant Member

Sd/-

**(SHRI PRAKASH CHAND YADAV)**  
Judicial Member

Bangalore,  
Dated, 20<sup>th</sup> June, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore