

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 4653/Mum/2023 (A.Y. 2017-18)

Vijay Yeshwant Pangam
25-C, B-wing, Flat No. 304,
RMMS Sector
Gokul Dham, Goregaon-E
Maharashtra-400 063.

Vs.

ITO, Ward 34(3)(7)
Kautilya Bhavan
C-41 to C-43
G-Block, BKC
Bandra East
Mumbai-400 051.

PAN : APEPP6032J
(Appellant)

(Respondent)

Assessee by
Department by
Date of Hearing
Date of Pronouncement

Shri Ravi Gupta
Shri R.R. Makwana
04.06.2024
24.06.2024

ORDER

1. This appeal is filed by the assessee against the appellate order passed by the National faceless appeal Centre Delhi (the learned CIT – A) for assessment year 2017 – 18 dated 22/11/2023 wherein the appeal filed by the assessee against the assessment order passed under section 144 of the income tax act, 1961 (the act) by the income tax officer Ward 34 (3) (7), Mumbai (the learned AO) was partly allowed.
2. Assessee is aggrieved with the same and is in appeal before us raising the solitary ground with respect to confirmation of the addition of Rs. 2,733,000/- under section 69A of the act on account of cash deposited in the bank account.
3. The brief fact of the case shows that assessee filed its return of income on 14/6/2017 declaring a total income of Rs. 821,210/-. The case was selected for limited scrutiny to verify large cash deposit during demonetization period. The assessee is a salaried individual. The assessee deposited in his greater Bombay cooperative bank Ltd and

PMC bank sum of Rs. 2,983,000 in cash. The assessee was asked to explain the cash deposit of Rs. 3,214,540/- in three different savings bank accounts. The assessee explained that the cash deposit is out of the cash withdrawals which have been done for the last five years. The learned assessing officer rejected the explanation of the assessee that why assessee would withdraw cash on numerous occasions and in deposit the same in the bank account. A further assessee has not replied to notices issued subsequently. Accordingly, the learned assessing officer held that the amount of deposit of Rs. 2,923,000 is the unexplained income of the assessee which is required to be added under section 69A of the act. Accordingly, the same was added in the assessment order passed under section 144 of the act dated 17/12/2019 determining the total income of the assessee at Rs. 3,804,210/-.

4. The assessee aggrieved with the order of the assessment preferred an appeal before the learned CIT - A. Before the learned CIT - no additional evidence was submitted. The learned CIT - A noted that assessee is a 64 year old person retired voluntarily from the greater Bombay cooperative bank is clerk and he was in habit of withdrawing the money and keeping in the form of cash at home due to the fact that there was no one in the family to take care and also for his personal mental and psychological security. This reply was considered by the learned CIT - A but as in form number 35 in column number 12 the assessee has opted that no further documentary evidence is required to be admitted he refused to consider this argument. He further noted that assessee has filed evidence starting from financial year 2012 - 13 that assessee has withdrawn cash from bank account and furnished his bank statement. However, the same was not considered for the reason that these cash withdrawals are for taking care of day-to-day expenses and other expenses of the assessee and therefore some are not acceptable. He further stated that the central board of direct taxes

has issued standard operating procedure regarding cash verification in demonetization period he granted deduction of only rupees to lakhs 50,000 to the assessee and confirmed the balance addition of Rs. 2,733,000/-.

5. The assessee is in appeal before us. The learned authorized representative submitted that the learned CIT – A has not admitted the additional evidence merely because in form number 35 in column number 12 the assessee has mentioned “No’ . However, during the course of appellate proceedings assessee submitted certain additional evidence that was not considered. Even the explanation of the assessee of having adequate cash on hand out of passed withdrawals was not considered. And therefore, the addition could not have been made but has been confirmed by the learned CIT – A.
6. The learned departmental representative vehemently supported the order of the learned AO as well as the learned CIT – A and submitted that assessee has been granted adequate relief. Further relief could not have been provided to the assessee in view of absence of any explanation.
7. We have carefully considered the rival contention and perused the orders of the lower authorities. The assessee is a retired employee of a bank. He has explained that the amount of Rs. 29 lakhs deposited in his bank account is out of the funds available with him out of his past withdrawn. Further he submitted certain additional evidence which was not considered by the learned CIT – F for the reason that in form number 35, the assessee stated that he does not want to press any further additional evidence. That may be the case when the appeal was filed but, the assessee has every right to adduce the additional evidence before the learned CIT – A subsequently. For this, the assessee should make an application and also the learned CIT – A is required to pass an order under rule 46A of the income tax rules. Merely because something is stated in form number 35, the assessee

cannot be prevented from adducing additional evidence subsequently till the disposal of the appeal. The learned CIT – A has prevented the assessee from producing additional evidence, which is not fair. Therefore, we restore the whole appeal back to the file of the learned CIT – A with a direction to the assessee to make an application for admission of additional evidence under rule 46A, the learned CIT – A must pass a speaking order either admitting or not admitting those evidence. If he admits, a necessary remand report is should be obtained from the assessing officer. Therefore, as the learned CIT – A has passed an order which is not in conformity with the provisions of rule 46A of the income tax rule, we restore the appeal back to the file of the learned CIT – A decide the issue considering the above finding. In the result all the grounds of appeal are allowed with above direction.

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

Order pronounced in the open court on 24th June , 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 24.06.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS