

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL
MEMBER**

&

SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 103/Mum/2024

(A.Y. 2017-18)

Anandi Arvind Belsekar C-907, Omkar Alta Monte, Off W. Express Highway, Malad East, Mumbai-400097	Vs.	ITO, Ward 31(1)(1), R. No. 603, Kautilya Bhavan, C-41 to C-43, G-Block, Bandra(E.), Mumbai-400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AHIPB0063D		
Appellant	..	Respondent

Appellant by :	Shri S. G. Goyal
Respondent by :	Shri Nagnath Pasale

Date of Hearing	27.05.2024
Date of Pronouncement	28.06.2024

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-42 [hereinafter referred to as “CIT(A)”] dated 27.12.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the Assessment Year [A.Y.] 2017-18.

2. The assessee has raised following grounds of appeal:

“1) The Ld. CIT(A) erred in not taking cognizance that the ITO Wd. 4(4), Thane was not justified in assuming jurisdiction while issuing notice u/s 142(1) of the income tax to the appellant and nor was the AO Wd. 31(1)(1),

Mumbai justified in assuming jurisdiction without an order being passed u/s 120, 124 and 127(1) by the prescribed Authorities and communicating the change of incumbency due to transfer of jurisdiction from Thane to Mumbai under Section 129 of the Act;

2) The Ld. CIT(A) erred in upholding the contention of the AO that the assessee has not filed return of income in response to the notice u/s 142(1) issued;

3) The Ld. CIT(A) erred in upholding the AO's failure to issue the mandatory notice under section 143 (2) under the Income Tax Act;

4) The Ld. CIT(A) erred in upholding validity of order passed u/s 144 of the Act despite the appellant having furnished its response to every single notice(s) issued under section 142(1) of the Act and which are stated to be so in the order passed by the AO;

5) The Ld. CIT(A) erred in upholding the AO's contention in rejecting the Affidavit filed by the appellant explaining the source of cash deposit made in bank account during the course of Asst. proceedings and treating the same as unexplained money u/s 69A without assigning any reason and/or cross examination of the executor thereof in case of doubt;

6) The Ld. CIT(A) erred in not appreciating the fact that the money deposited by the appellant in her bank account was before the 'Operation Clean Money' phase began and that the same was without the AO having cross examining the appellant and the lenders (family members of the appellant) and/or by issue of notice under sec. 133(6) and thus in violation of the established judicial precedents;

7) The Ld. CIT(A) erred in upholding action of AO for not-allowing deductions/reliefs claimed under Chapter VI-A of the Act.

8) The Ld. CIT(A) failed to give the appellant an opportunity of personal hearing before passing the impugned order now in appeal.”

3. Brief facts of the case are that the assessee is a senior citizen drawing pension from Sir J J Group of Hospitals. Since, her income was below the taxable limit for the year under consideration, no return was filed. It was

noticed by the department that a sum of Rs. 15,00,00/- had been deposited in her bank account on 08.11.2016, the day before the start of Operation Clean Money (OCM). Accordingly, based on information received from the bank, notice u/s 142(1) was issued calling for her return on 13.03.2018, for verification of source of cash deposit under OCM. In response, the return was filed by the assessee as per the acknowledgment dated 19.11.2019. However, the AO wrongly mentioned in the assessment order that the assessee had failed to file the return in response to u/s 142(1) of the Act. In response to a final show cause notice dated 06.11.2017 issued by the AO proposing to pass best judgment assessment u/s 144 of the Act, the assessee's counsel furnished requisite details on 26.11.2019. It was submitted that the cash deposits were out of withdrawals made by the assessee and her family members from time to time and the same was deposited in the account before demonetization was announced on 08.11.2016 with effective from 09.11.2016. The affidavits of assessee's husband Shri. Arvind Balsekar, Son Shri Kiran A. Balsekar and daughter in law Ms. Kirti K. Balsekar were also filed in support of the claim that source of cash of Rs. 15,00,000/- deposited in the account was contribution by the family members as under:

<i>Name and relation</i>	<i>Contribution</i>
<i>Shri Arvind Balsekar (Husband)</i>	<i>5,50,000/-</i>
<i>Shri Kiran A. Balsekar (Son)</i>	<i>4,00,000/-</i>
<i>Ms. Kirti K. Balsekar (Daughter in law)</i>	<i>2,00,000/-</i>
<i>Anandi A. Balsekar (Assessee)</i>	<i>3,50,000/-</i>
<i>Total</i>	<i>15,00,000/-</i>

The copies of bank statements of the above persons were also submitted in support of the claim. However, the AO proceeded to make the addition after rejecting the affidavits without any examination/cross-examination of the assessee and/or family members and disregarding the assessee's claim that the money was deposited before the demonetization took place, out of the funds kept at home as contingency fund, as she suffered from various medical conditions.

4. We have considered the rival submissions. It is seen that AO and Ld. CIT(A) have rejected the explanations given by the assessee, merely on the basis of suspicion. The affidavits and copies of bank accounts submitted by the assessee have been rejected without giving proper opportunity for examination/cross-examination of the family members. We, therefore, hold that the addition of Rs. 15,00,000/- under OCM on account of cash deposited by the assessee a day before the demonetization was not justified and the same is accordingly directed to be deleted.

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

Order Pronounced in Open Court on 28.06.2024

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Place: Mumbai

Date 28.06.2024

ANIKET SINGH RAJPUT/STENO

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

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

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

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