

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.4845/MUM/2023
Assessment Year: 2017-18

Mohamed Iqbal Bawamiya Sayed, Shop No.7B, shamji Morarji Building , Champsi Bhimji Road, Mazgaon, Mumbai – 400010 (PAN : ANOPS1004K)	Vs.	Income Tax Officer – 6(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri K. Gopal, Advocate
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 10.07.2024
Date of Pronouncement : 23.07.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1057386954(1), dated 28.10.2023 passed against the assessment order by Assistant Commissioner of Income Tax, Circle – 6(3)(1), Mumbai, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 28.11.2019 for Assessment Year 2017-18.

2. The sole issue involved in the present appeal is in respect of addition of Rs.35,95,800/- u/s. 69A towards cash deposited in the bank account during the demonetisation period and invoking provisions of section 115BBE.

3. Brief facts of the case are that assessee filed his return of income on 01.08.2017 reporting total income at Rs.36,62,190/-. He is a Director in the companies, Jharokha Hotels & Properties Pvt. Ltd. and Kazi Hotels Pvt. Ltd. During the course of assessment proceedings, ld. Assessing Officer called for details and explanations in respect of the cash deposited in his bank account of Rs.35,95,800/-. According to the ld. Assessing Officer, assessee failed to explain the said cash deposits. Addition was made u/s. 69A which was subjected to tax as per section 115BBE. Aggrieved, assessee went in appeal before the ld. CIT(A), where written submissions were placed on record, which did not find favour with the assessee. The said appeal was dismissed. Aggrieved, assessee is in appeal before the Tribunal.

4. We have heard both the parties and perused the case records placed on record including Paper Book containing 133 pages. The moot point contended before us by the ld. Counsel is that assessee is a Director in the two companies, receiving Director's remuneration from them of Rs.75,000/- per month from each of the said companies. The entire remuneration received by the assessee is in cash every month, which aggregates to Rs.18,00,000/- each year. This has been offered to tax under the head 'Salaries' in the returns filed by the assessee. He claimed that after meeting the personal expenses, the said amount is accumulated year on year basis which was subsequently deposited in the bank account owing to announcement of demonetisation on

08.11.2016. In support of this claim, assessee had furnished before the ld. Assessing Officer, vide its submission dated 27.03.2017 the following documents:

- i. Copies of return of income filed for the last three years.
- ii. Copies of TDS certificates reflecting TDS done from the remuneration received by the assessee in the last three years.
- iii. Details of PAN and Jurisdictional Assessing Officers of the two companies from whom remuneration was received.

5. Ld. Counsel pointed out and laid emphasis on the fact that remuneration was received by the assessee in cash which otherwise is contrary to the provisions of section 40A(3) applicable in the case of the two companies and not the assessee. Ld. Counsel had taken the bench through the capital account and balance sheet of the assessee for the preceding four years, i.e., as on 31.03.2013, 31.03.2014, 31.03.2015 and 31.03.2016 to demonstrate that assessee had duly accounted for receipt of remuneration in cash from the two companies and had sufficient cash in hand in all these years which got accumulated and was deposited during the demonetisation period. Ld. Counsel also demonstrated from the bank statements of the assessee, placed in the paper book, about the fact of withdrawal of cash amounting to Rs.35,00,000/- during the financial year 2015-16 relevant to Assessment Year 2016-17 which is the immediately preceding year. Details of the said withdrawal are as under:

Date	Cheque No	Drawn	Amount Withdrawn by cash
04/01/2016	10022052	Self	5,25,000/-
05/01/2016	10022053	Self	4,75,000/-
27/01/2016	10022054	Self	2,00,000/-
28/01/2016	10022055	Self	3,00,000/-
17/02/2016	10022057	Self	5,00,000/-
18/02/2016	10022058	Self	5,00,000/-
22/02/2016	10022059	Self	5,00,000/-
23/02/2016	10022060	Self	500000/-
	TOTAL		35,00,000/-

5.1. Further to this, assessee had received remuneration from the two companies during the year in cash which was also available for deposit in the bank which comes to Rs.10,50,000/- from the period from April 2016 to October 2016. Thus, ld. Counsel asserted that deposit of cash during the demonetisation period is sufficiently explained with the availability of the cash withdrawn from the bank and salary income earned and received in cash, even if only the current year and the immediately preceding year is considered. According to him, there was no need for the assessee to deposit the cash in bank account but only for the reason of announcement of demonetization which had rendered the old currency notes invalid. In order to substantiate the genuineness of remuneration paid by the two companies and received by assessee, he referred to copies of Form no.16 issued by both the companies for deduction of tax at source on the remuneration paid by them to the assessee for the year under consideration as well as for the preceding three years. He also referred to the current bank account statement of the two companies as well as their ledger extracts for the three preceding years, as well as the current years, to demonstrate the availability of funds for making payment to the assessee. All these documents were placed before the ld. Assessing Officer in the course of assessment proceedings, which according to ld. Counsel had been ignored and addition made thereon.

5.2. From the perusal of the impugned assessment order, we note that ld. Assessing Officer had made the addition on account of failure of assessee to explain cash deposits made by him. Further, from the order of the ld. CIT(A), we note that he had rejected the contention of the assessee of he receiving salary in cash from the two companies. Since no proof of payment of salary in cash by the two companies and the ledger extracts in their books were not filed, ld. CIT(A) had assumed that 40% of the salary received during the year under consideration, up to the month of October 2016 was taken out for family maintenance and that assessee was left with only Rs.6,30,000/- available with him for making the deposit in the bank account.

5.3. We have also perused the material placed in the paper book as referred by the ld. Counsel and find that withdrawal of cash from the bank account and salary earned and received during the year up to October 2016 was available with the assessee for making deposit in the bank account. The act of deposit was triggered by the announcement of demonetisation in the month of November, 2016.

5.4. Important fact is that assessee is an individual earning Director's remuneration, i.e., income chargeable to tax under the head "Income from salaries". For earning the Director's remuneration, assessee had placed on record all the documentary evidences in the course of assessment proceedings not only for the year under consideration but also for the preceding three years. Further more, return for the immediately preceding year, i.e. Assessment Year 2016-17 was filed on 21.07.2016 which is prior to the date of the announcement of demonetisation.

5.5. In the preceding years also, assessee has duly reported his earning of remuneration (salary) from these companies in the returns filed by him, all placed on record. Mode of receipt of salary income has no bearing on its taxability in the hands of the assessee in the year under consideration through it could have an adverse effect in the hands of the payer which is not the issue before us. The submissions and documentary evidences placed on record by the assessee in the course of proceedings have not been refuted or controverted by the Id. Assessing Officer to be sham or bogus. Also, there is nothing brought on record to establish that the cash available with the assessee was utilised elsewhere. We find that assessee had filed details of cash withdrawal along with bank statement. We do not find any justification in not accepting the withdrawal of cash in the immediately preceding year as well as earning and receipt of remuneration in the current year which is duly supported by entries in the bank statement about the withdrawal. The onus to prove that assessee had spent his cash otherwise and not having cash in hand on the date of deposit is on the Revenue and assessee cannot be asked to prove the negative as to show how he had spent the money.

6. Considering the material fact that the assessee being an individual and receiving remuneration from the two companies in cash, we do not find any merit in the action of the lower authorities in making an addition on account of deposit of cash in the bank account during the demonetisation period, when the same was available out of the withdrawals of cash from the bank and remuneration earned and received during the year up to the period of demonetisation, without bringing any supporting material on record to suggest that the said cash so available has been used by the assessee elsewhere. We thus, delete

the addition so made. Grounds taken by the assessee in this respect are allowed.

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

Order is pronounced in the open court on 23 July, 2024

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 23 July, 2024

MP, Sr.P.S.

Copy to :

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- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai