

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER

I.T.A. No. 284/Mum/2024
Assessment Year: 2017-18

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|--|----|--|
| Ilyas Abdul Gaffar, Mumbai Flat No. 20, White Rose Apartment Dutta Marg, Four Bungalow Andheri West Mumbai - 400053 [PAN: AACPG9427B] | Vs | Jurisdiction Ward, 23(1)(1), Mumbai |
| अपीलार्थी/ (Appellant) | | प्रत्यर्थी/ (Respondent) |

| | |
|---------------|-------------------------------|
| Assessee by : | Shri Anil Sathe, A/R |
| Revenue by : | Shri Akshay Tapadiya, Sr. D/R |

सुनवाई की तारीख/**Date of Hearing** : 24/07/2024
घोषणा की तारीख /**Date of Pronouncement**: 29/07/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dt. 28/11/2023 by NFAC, Delhi, pertaining to AY 2017-18.

2. The sum and substances of the grievance of the assessee is that, the Id. CIT(A) erred in confirming the addition of Rs. 40.33 Lakhs being cash deposits as unexplained money u/s 69A of the Act.

3. Representatives were heard at length. Case records carefully perused and the relevant documentary evidence duly considered in light of Rule 18(6) of the ITAT Rules, 1963.

4. The assessee filed his return of income on 08/12/2017 declaring total income at Rs. 11,73,600/-. The return was selected for scrutiny assessment under CASS and accordingly statutory notices were issued and served upon the assessee.

5. The bone of contention is the cash deposited during the demonetization period in the three bank accounts, namely, Bank of Maharashtra, Punjab National Bank and Yes Bank. The assessee was issued a showcause notice to showcause as to why the cash deposited in the bank account should not be added u/s 69A of the Act. The assessee filed details of cash deposits in the banks, which is as under:-

“5.2. In response to the show cause, the assessee has submitted the details of cash deposit in banks. The details are as under:-

| Sr. No. | Name of the Bank | Account No. | Amount (Rs.) |
|---------|---------------------------------|------------------|--------------|
| 1 | Bank of Maharashtra | 60031771016 | 4,18,000 |
| 2 | Punjab National Bank | 0082000100175468 | 25,000 |
| 3 | Yes Bank | 001085800004124 | 35,65,000 |
| 4 | Yes Bank | 001090100024008 | 25,000 |
| 5 | Punjab National Bank(Term Loan) | 008200NE00001596 | 42,65,000 |
| 6 | Punjab National Bank(Term Loan) | 008200NE00001480 | 6,95,000 |
| Total | | | 89,93,000 |

[This space is left blank intentionally, P.T.O.]

5.2.1. The assessee has also submitted the details of cash withdrawals from Banks which are as under:-

| Sr. No. | Name of the Bank | Account No. | Amount (Rs.) |
|---------|----------------------|------------------|--------------|
| 1 | Bank of Maharashtra | 60031771016 | 1,24,000 |
| 2 | Punjab National Bank | 0082000100175468 | 24,000 |
| 3 | Yes Bank | 001085800004124 | 1,17,31,000 |
| 4 | Yes Bank | 001090100024008 | 33,96,000 |
| Total | | | 1,52,75,000 |

6. The assessee also explained the source of cash deposit and cash withdrawal from the preceding and subsequent years, which reads as under:-

| Sr. No. | FY | Deposits | Withdrawal |
|---------|---------|-------------|-------------|
| 1 | 2015-16 | 38,31,500 | 2,06,54,000 |
| 2 | 2016-17 | 89,93,000 | 1,52,75,000 |
| 3 | 2017-18 | 33,35,500 | 95,55,000 |
| Total | | 1,61,60,000 | 4,54,84,000 |

7. After perusing the details, the AO accepted the contention of the assessee partly to the extent of Rs.49.60 Lakhs but considered the balance of Rs.40.33 Lakhs as unexplained money u/s 69A of the Act which was confirmed by the Id. CIT(A).

8. We have given a thoughtful consideration to the orders of the authorities below. The tabulation of monthly withdrawals/deposits of cash balance can be understood from the following chart:-

| CASH WITHDRAWAL | | | | | CASH DEPOSIT | | | | | | | Closing Cash Balance at the end of the month | | | |
|-----------------|---|---|------------------------------------|--|--|--------------|--|---|------------------------------------|--|--|--|--|---|-----------|
| Month | Yes Bank Account 00108580000 4124 | Yes Bank Account 00109010002 4008 | Bank of Maharashtra 60031771016 | Punjab National Bank 00820001 00175648 | Total of Cash withdrawn from all the Banks | Month | Yes Bank Account 00108580000 04124 | Yes Bank Account 00109010 0024008 | Bank of Maharashtra 60031771016 | Punjab National Bank 00820001 00175648 | Punjab National Bank 008200NE0 0001596 | | Punjab National Bank 008200NE 00001480 | Total of Cash Deposits in all the Banks | |
| Apr-16 | 53,00,000 | | | | 53,00,000 | Apr-16 | | | | | | | | - | 53,00,000 |
| May-16 | 8,00,000 | | | | 8,00,000 | May-16 | | | 2,000 | | | | | 2,000 | 60,98,000 |
| Jun-16 | 8,95,000 | | | | 8,95,000 | Jun-16 | 5,00,000 | | 1,20,000 | | | | | 6,20,000 | 63,73,000 |
| Jul-16 | 46,000 | | | | 46,000 | Jul-16 | 10,75,000 | | 1,02,500 | | | | | 11,77,500 | 52,41,500 |
| Aug-16 | 14,65,000 | | 1,00,000 | | 15,65,000 | Aug-16 | 1,00,000 | | 22,000 | | | 80,000 | | 2,02,000 | 66,04,500 |
| Sep-16 | 6,00,000 | 14,00,000 | | | 20,00,000 | Sep-16 | | | 1,43,000 | | | | | 1,43,000 | 84,61,500 |
| Oct-16 | 8,50,000 | 19,00,000 | | | 27,50,000 | Oct-16 | 8,81,000 | | 6,000 | | 9,00,000 | 1,00,000 | | 18,87,000 | 93,24,500 |
| Nov-16 | 80,000 | | | 24,000 | 1,04,000 | Nov-16 * | 5,90,000 | 25,000 | | 25,000 | 24,65,000 | 5,15,000 | | 36,20,000 | 58,08,500 |
| Dec-16 | 1,00,000 | 48,000 | | | 1,48,000 | Dec-16 * | 2,00,000 | | | | 9,00,000 | | | 11,00,000 | 48,56,500 |
| Jan-17 | 95,000 | 48,000 | 24,000 | | 1,67,000 | Jan-17 | | | | | | | | - | 50,23,500 |
| Feb-17 | 13,00,000 | | | | 13,00,000 | Feb-17 | 60,000 | | | | | | | 60,000 | 62,63,500 |
| Mar-17 | 2,00,000 | | | | 2,00,000 | Mar-17 | 1,59,000 | | 22,500 | | | | | 1,81,500 | 62,82,000 |
| Total | 1,17,31,000 | 33,96,000 | 1,24,000 | 24,000 | 1,52,75,000 | Total | 35,65,000 | 25,000 | 4,18,000 | 25,000 | 42,65,000 | 6,95,000 | | 89,93,000 | |

* CASH DEPOSITED DURING DEMONETIZATION PERIOD

9. A perusal of the above clearly shows that the assessee was having sufficient cash available with him. We are of the considered view that since the high denomination notice of Rs.1,000/- and Rs.5,00/- were declared to be illegal tenders, the public was left with no choice but to deposit the same during the period 08/11/2016 to 31/12/2016. Therefore, the allegation of the AO that, why did the assessee deposit the cash in the bank accounts, does not hold any water. However, all that the AO had to see was that whether the assessee was sufficiently in a position to hold the cash. The factual position exhibited elsewhere clearly show that the assessee was having sufficient funds withdrawn from the bank account which was subsequently deposited in the bank accounts. The explanation of the assessee that, the cash which was withdrawn was kept at his residence and due to demonetization, the same was deposited in the old bank notes, seems to be a very logical and acceptable reason. It appears that the AO has simply presumed that

the cash withdrawn by the assessee was utilized by the assessee without bringing anything on record.

10. We are of the considered view that once the withdrawal of cash from bank accounts has been partly accepted by the AO himself, then we do not find any reason to not accept the withdrawals in totality. Considering the facts of the case in totality, we are inclined to accept that the assessee was having sufficient cash balance for making deposits as demonstrated in the chart exhibited elsewhere. We accordingly direct the AO to delete the impugned addition.

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

Order pronounced in the Court on 29th July, 2024 at Mumbai.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 29/07/2024

Sd/-

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai