

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 317/JP/2024
निर्धारण वर्ष / Assessment Years : 2017-18

Shri Harsh Agarwal 421 Harsh Villa, Mahaveer Nagar, Tonk Road, Jaipur	बनाम Vs.	The DCIT, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AHLPA 7505 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Tarun Mittal, CA
राजस्व की ओर से / Revenue by : Sh. Rajesh Kumar Meena (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 27/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 30/07/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-4, Jaipur dated 19/01/2024 [here in after Id. CIT(A)] for assessment year 2017-18 which in turn arise from the order dated 29.12.2019 passed under section 143(3) r.w.s. 144 of the Income Tax Act, by DCIT, Central Circle-01, Jaipur.

2. In this appeal, the assessee has raised following grounds: -

“1. On the facts and in the circumstances of the case Id.CIT(A) has erred in confirming the addition of Rs. 29,40,000/- made by Id.AO by holding the cash deposited by the assessee during the relevant year as being from unexplained sources, without affording adequate opportunity of being heard.

2. On the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in confirming the addition of cash deposited in the bank account of the assessee made by Id. AO by ignoring the details and explanation filed by the assessee and by holding the cash deposits during demonetization period as unexplained hence the addition so confirmed deserves to be deleted.

2.1. The Id. CIT(A) has further erred in confirming the action of Id.AO in observing adversely about heavy cash deposit during demonetisation period ignoring the fact that all the SBN was compulsorily required to be deposited in the bank during demonetisation period as per the directives of the Government related to Demonetisation Scheme and there was no ban for making multiple deposit of SBN during demonetization period.

2.2. That the Id.CIT (A) has further erred in confirming the addition made by Id.AO by treating the cash deposited in the bank account of the assessee as being from unexplained sources u/s 68 of the Income Tax Act, 1961 and invoking provisions of sec 115BBE of the Act. Appellant prays that since the cash so deposited in the bank are not the credit entries in the books of accounts, the addition so made u/s 68 is bad in law and the same deserves to be deleted, as well as consequent invoking of provisions of sec 115BBE of the Act is bad in law and deserves to be revoked.

3. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.”

3. Succinctly, the fact as culled out from the records is that the assessee e-filed return of income on 09.11.2017 declaring total income at Rs. 24,46,130/-. The case was selected for limited scrutiny assessment under CASS and accordingly, notice u/s 143(2) of the IT. Act, 1961 was

issued on 08.08.2018. Thereafter, notice u/s 142(1) along with specific questionnaire was issued on 25.04.2019 asking the assessee to file/upload requisite information. The A/R of the assessee furnished information and details in compliance to notices so issued. The Id. AO noted that he has examined on test check basis. From the details filed by the assessee the Id. AO noted that the assessee deposited a sum of Rs. 29,40,000/- in cash in Malviya Urban Co-operative Bank account during demonetization. The assessee was asked to file information and source of the cash deposited in the bank account. The assessee submitted the source of the money deposited is out of the withdrawal made by the assessee on 29.12.2015. Since the assessee was living abroad on demonetization the same were compulsorily required to be deposited in the bank account. The Id. AO did not consider this explanation and stated that the assessee is trying to label his unaccounted money as withdrawals from a bank account. The Id. AO noted that the assessee stated that he made withdrawals of Rs. 30 lacs from his bank account on 29.12.2015 and he continue to hold this money for almost a year's time and the same was deposited on 17.11.2016. The Id. AO found this explanation of the assessee both factually incorrect as well as ill-logical. In the bank account of the assessee the credit was received on 29.12.2015 and the same date cash was withdrawn in cash.

The assessee's bank account is running in thousands of money only. The assessee received credit from Gemini Commerce Private Limited and same date transfers have been made to various entities of those other credits. The Id. AO noted from the bank statement that this account maintained is active and the credit and debit entries are regularly done by the assessee. The submission of the assessee that he is living abroad is nothing but an afterthought. The passport of the assessee shows that he frequently comes to India. If the assessee is not in India then who undertakes transaction in his bank account of deposit of cash and making the RTGS on 04.03.2016, 18.03.2016, 04.04.2016, 26.05.2016 and 09.09.2016, many more. Thus, the explanation given by the assessee is not correct. The income declared by the assessee in the year under consideration is only out of house property income. The Id. AO after perusing return of income of past year noted that the assessee discontinued business of jewellery. Further on examination of detailed filed by the assessee the Id. AO noted that the assessee has sold some gold jewellery stock to Shri Ratan Lal Agarwal. The assessee has not shown any income on this sale. Thus, Id. AO did not believe the source of deposit of cash of Rs. 29,40,000/- from earlier withdrawal and the same was added as unexplained stock u/s. 68 of the Act. Finally, AO completed the

assessment vide order dated 29.12.2019 at a total income of Rs. 53,86,130/-.

4. Feeling aggrieved from the order of the assessment, assessee preferred an appeal before the Id. CIT(A) challenging the finding and observation of the Id. AO. Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“5.1 I have considered the observations/findings of the AO in the assessment order for the year under consideration and the grounds of appeal. The appellant had made a cash deposit of Rs. 29,40,000/- in cash in Malviya Urban Co-Operative Bank account during demonetization (i.e. 09-11-2016 to 30-12-2016). During the assessment the appellant submitted that the source of the same is the withdrawal of the cash from its bank account almost one year back. The appellant has submitted that he had made withdrawal of Rs. 30 lacs from his bank account no. 0020311000005648 on 29-12-2015 and he held this money for almost a year's time only to redeposit it on 17-11-2016.

5.2 As noted in the assessment order, vide notice u/s 133(6) dated 23-10- 2019, bank statement of the assessee was called for and from the same it was noted that credit entry of Rs. 30 lacs was received on 29-12-2015 and on the same date Rs. 30 lacs was withdrawn in cash. From the bank statement it is clear that credit entries are regularly received in the bank account of the assessee and almost on the same date withdrawals are made of the same amount and the running balance of the bank account is never more than a few thousands. The assessee has conveniently omitted the fact that after withdrawal of cash from his bank account on 29-12-2015 in his bank account no. 0020311000005648 of Malviya Urban Corporative Bank, Jaipur, again a number of credit entries have been received from Gemini Commerce Pvt. Ltd. and on the same date transfers have been made to various entities.

5.3 Regarding the delay in depositing back the cash (if it was available) after a period of almost one year, in appellant's bank account various credit and debit entries appear on regular basis and cash has also been deposited and withdrawn on regular basis. The submission of the appellant during the assessment that he is living abroad is a fact which has been submitted as an afterthought towards the fag end of the assessment proceedings. The passport of the assessee reflects that the he has been travelling abroad very frequently and has been visiting India

frequently, so the submission of the assessee that he was not able to deposit cash during the entire year is not correct. The appellant was in India frequently from December, 2015 till November-2016 and could have deposited cash at any time during this period. If the appellant was living abroad from December-2015 till demonetization date then who was depositing cash in his bank account on 20-01-2016, 21-01-2016 and who was making RTGS payments running into lakhs on 04-03-2016, 18-03-2016, 04-04-2016, 26-05-2016, 09-09-2016 and many other dates. Thus it is clear that the appellant created a fictional story to try to unsuccessfully explain his out of books cash which was deposited during the period of demonetization.

5.4 Further, as noted in the assessment order, the appellant has filed his ITR for the year under consideration and has shown income from house property only. When the returns of previous years of the appellant are perused it has emerged that the appellant has discontinued showing the stock of his jewellery business. Further, when the details filed by associated persons like Shri Ratan Lal Agarwal during the assessment proceedings are studied it was found that during the year under consideration, the appellant has sold some of gold jewellery his stock to Shri Ratan Lal agarwal. However, the appellant has not shown any income from this sale. Thus, the assessee has clearly concealed the entire sale transaction. In light of these facts, it is evident that the cash deposit of the assessee is not explainable from past withdrawal. Therefore, the cash amounting to Rs. 29,40,000/- deposited by the assessee in Malviya Urban Co- operative Bank account during demonetization period is nothing but cash generated from unexplained sources and such credits are held to be unexplained in terms of sec. 68 of the IT Act.

5.5 The appellant has challenged invoking of section 68 on the ground that bank pass book is not books u/s 68 of the Act. The appellant is into regular business and it is not the case of the appellant that this transaction of cash deposit in the bank account was not reflected in the books of accounts. Alternatively, In case the same was not reflected in the books of accounts it clearly shows unaccounted cash with the appellant and taxable as per section 69A of the Act. It is held accordingly.

Furthermore there are judicial precedents as per which addition under section 68 of the Act can be made w.r.t. cash deposit in bank account. Hon'ble ITAT Delhi Bench in the case of Jagdish Prasad Sharma v. ITO IT Appeal No. 104 (Delhi) of 2015, dated 13-1-2020), following the later decision of the Bombay High Court in Arunkumar J. Muchhala v. CIT (2017) 85 taxmann.com 306/250 Taxman 362/399 ITR 256 (Bom.), has held that bank passbook is also the books of the assessee within the meaning of section 2(12A) and, therefore, addition u/s 68 can also be made, irrespective of whether credit entries are made in the books of account of the assessee or not. Similarly when the cash deposit during demonetization is found to be unexplained in terms of section 68 or 69A of the Act there cannot be any dispute regarding applicability of section 115BBE of the Act.

5.6 During the appellate proceedings, the appellant has not furnished any information/evidences to rebut the findings of the AO. It is specifically observed here that in spite of giving many opportunities of being heard to the appellant, as detailed above the appellant has chosen not to make any submissions or furnish any information to substantiate and plead the grounds of appeal. There is substantial evidence on record in support of the assessment order. Based on the material available on file and in absence of any new submission/finding and any other material for which the appellant was provided so many opportunities, I do not find any infirmity in the action of the Id. AO.

Accordingly, these Grounds of Appeal are dismissed.”

5. As the appeal of the assessee before the Id. CIT(A) was dismissed the assessee is in appeal before us on the ground as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, he relied upon written submissions to support the grounds so raised by the assessee. The written submission filed reads as follows:

“Brief facts of the case are that assessee is an individual and had filed Return of Income for the year under consideration on 9.11.2017 declaring total income at Rs. 24,46,130/-. Subsequently, case of assessee was selected for Limited scrutiny under CASS on following reason: “Cash deposit during demonetization period” Assessee furnished various details and information as sought by Id.AO during the course of assessment proceedings. After perusing such details, Id.AO completed assessment by making addition of Rs. 29,40,000/- on account of Cash deposit made by assessee during demonetization in his bank account with Malviya Urban Co-Operative Bank. Aggrieved of the addition so made, assessee preferred appeal before Id.CIT(A), who confirmed the order passed by Id.AO. Present appeal has been filed by assessee against the order so passed by Id.CIT(A).

With this background, ground-wise submission is made as under:

Grounds of Appeal No.1 to 2.2:

In these grounds of appeal, assessee has challenged the action of Id.CIT(A) in confirming the action of Id.AO in making addition of Rs.29,40,000/- u/s 68 of the Income Tax Act, by holding cash deposited during demonetization period as

unexplained and further in invoking provisions of section 115BBE of the Income Tax Act.

Brief facts pertaining to the grounds of appeal are that assessee is a Non resident Indian and during the year under consideration, on 17.11.2016, deposited cash of Rs 29,40,000/- in Malviya Urban Co-Operative Bank Account. Basically, assessee had withdrawn cash worth Rs.30,00,000/- from same bank account on 29.12.2015, which was kept at home to be used for medical emergency, if any arising to his father Sh. Ratan Lal Agrawal, who is aged about 64 years and suffers from partial disability and other age related health issues. During the course of assessment proceedings, Id.AO enquired about the source of cash deposited and it was submitted that cash was deposited out of withdrawal made on 29.12.2015 from his bank account (APB 28-29). In support of this, copy of bank statement showing cash so withdrawn was also submitted (APB 28-29). However, explanation of assessee was rejected merely for the reason that since assessee has visited India frequently, why the cash was not deposited earlier. Moreover, as there were other debit and credit entries in his bank account and withdrawals from this bank account on regular basis, Id.AO simply presumed that the cash was not deposited out of cash withdrawals earlier made.

As assessee stays out of India and was not available in India at the time when case was fixed for hearing before CIT(A), case could not be attended due to some lack of communication. It is also a matter of fact, initially case was fixed for hearing during COVID period in 2021 and proceedings were thereafter again taken up vide notice dated 24.11.2023 fixing the case on 11.12.2023. Thereafter, 3 more notices were issued, within a time gap of around 1 month, which could not be complied with and order was passed by Id.CIT(A) on 19.1.2024. Your honours would appreciate that the only issue involved in present appeal relates to cash deposited during demonetization, for which necessary documents were furnished before Id.AO. Assessee is merely furnishing 2 documents in addition to documents furnished before Id.AO, i.e. in the shape of "Disability certificate" of father of assessee and his Return of Income, wherein deduction u/s 80U is being claimed for past many years. It is submitted that documents being furnished now are merely clarificatory in nature and no new fact is being brought on record nor is any fresh investigation required in the matter. Hon'ble tribunal being final fact authority, it is requested that such additional evidences, which are being furnished alongwith application u/r 29 may please be admitted in the interest of justice.

With this background, at the outset, it is submitted that it is a settled position of law that bank statement cannot be considered "books of accounts" and for this very reason addition made by invoking provisions u/s 68 is not in accordance with law.

In this regard, Hon'ble Jaipur bench of ITAT its decision dated 28.1.2021 in the case of Dr. Vishan Swaroop Gupta vs ITO in ITA No.13/JPR/2020 has held as under:

9. After having gone through the facts and circumstances, we observe that credit in the 'bank account' of an assessee cannot be construed as a credit in the 'books' of the assessee, for the very reason that the bank account cannot be held to be the 'books' of the assessee. Though, it remains as a matter of fact that the 'bank account' of an assessee is the account of the assessee with the bank, or in other words the account of the assessee in the books of the bank, but the same in no way can be held to be the 'books' of the assessee. We have given a thoughtful consideration to the scope and gamut of the aforesaid statutory provision of Section 68, and are of the considered view that an addition made in respect of a cash deposit in the bank account of an assessee, in the absence of the same found credited in the 'books' of the assessee maintained for the previous year, cannot be brought to tax by invoking the provisions of Section 68 of the Act. In this respect, we draw strength from the decision of the Hon'ble Bombay High Court in the case of CIT Vs Bhaichand N Gandhi (1983) 141 ITR 67 (Bombay) wherein the High Court has held as under:-

"As the Tribunal has pointed out, it is fairly well settled that when moneys are deposited in a bank, the relationship that is constituted between the banker and the customer is one of debtor and creditor and not of trustee and beneficiary. Applying this principle, the pass book supplied by the bank to its constituent is only a copy of the constituent's account in the books maintained by the bank. It is not as if the pass book is maintained by the bank as the agent of the constituent, nor can it be said that the pass book is maintained by the bank under the instructions of the constituent. In view of this, the Tribunal was, with respect, justified in holding that the pass book supplied by the bank to the assessee in the present case could not be regarded as a book of the assessee, that is, a book maintained by the assessee or under his instructions. In our view, the Tribunal was justified in the conclusions at which it arrived."

We find that the aforesaid view of the Hon'ble Bombay High Court had thereafter been followed by a 'SMC' bench of the ITAT, Mumbai in the case of Smt. Manshi Mahendra Pitkar Vs. ITO 1(2), Thane (2016) 73 taxmann.com 68 (Mumbai Trib.) wherein it was held as under:

"I have carefully considered the rival submissions. In the present case the addition has been made by the income tax authorities by treating the cash deposits in the bank account as an unexplained cash credit within the meaning of section 68 of the Act. The legal point raised by the assessee is to the effect that the bank Pass book is not an account book maintained by the assessee so as to fall within the ambit of section 68 of the Act. Under section 68 of the Act, it is only when an amount is found credited in the account books of the assessee for any previous year that the deeming provisions of section 68 of the Act would apply in the circumstances mentioned therein. Notably, section 68 of the Act would come into play only in a situation Where any sum is found credited in the books of an assessee....., The Hon'ble Bombay High Court in the case of Shri Bhaichand Gandhi (supra) has approved the proposition that a bank Pass Book maintained by the bank cannot be regarded as a book of the assessee for the purposes of section 68 of the Act. Factually speaking, in the present case, assessee is not maintaining any books of account and section 68 of the Act has been invoked by the Assessing Officer only on the basis of the bank Pass Book. The invoking of section 68 of

the Act has to fail because as per the judgment of the Hon'ble Bombay High Court in the case of Shri Bhaichand N. Gandhi (supra), the bank Pass Book or bank statement cannot be construed to be a book maintained by the assessee for any previous year as understood for the purposes of section 68 of the Act. Therefore, on this account itself the impugned addition deserves to be deleted. I hold so."

We further find that a similar view had also been arrived at in a 'third member' decision of the Tribunal in the case of Smt. Madhu Raitani Vs. ACIT (2011) 10 taxmann.com 206 (Gauhati) (TM), as well as by the coordinate Benches of the Tribunal in the case of Mehul V. Vyas Vs. ITO (2017) 16 4 ITD 296 (Mum) and ITO, Barabanki Vs. Kamal Kumar Mishra (2013) 33 taxamann.com 610 (Lucknow).

10. We find that as stands gathered from the records , the addition aggregating to Rs. 4.03 lacs sustained by the Id. CIT(A) is in respect of the cash deposits in the bank accounts of the assessee, and not in any 'books' of the assessee for the year under consideration. We thus are of the considered view that in the backdrop of the aforesaid settled position of law, the addition made by the A.O in respect of the cash deposits of Rs.7,13,000/- in the bank accounts of the assessee by invoking Section 68 has to fail, for the very reason that as per the judgment of the Hon'ble Bombay High Court in the case of CIT Vs. Bhaichand N. Gandhi (1983) 141 ITR 67 (Bombay), a bank pass book or bank statement cannot be considered to be a 'book' maintained by the assessee for any previous year for the purpose of Section 68 of the Act. Therefore, on this count itself the impugned addition made and sustained deserves to be deleted and we direct to delete the same. Since we have quashed the addition on the ground that no such addition could have been validly made U/s 68 of the Act, therefore, we refrain ourselves to decide the other grounds wherein the assessee has assailed on merits the additions sustained by the Id. CIT(A)

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

So far as merits of the case are concerned, as stated above, it is reiterated that assessee being an NRI, was not regularly available in India and therefore had withdrawn cash, which was kept at home to handle any medical emergency, which may arise in his absence. So far as cash was withdrawn for keeping as emergency fund, there was no reason to deposit it back to the bank account, even if assessee visited India. Moreover, no evidence whatsoever has been brought on record by Id.AO so as to prove that cash withdrawn by assessee on 29.12.2015 was utilized elsewhere. Ld. AO merely on whims and fancies has rejected the plea of assessee that cash was deposited out of withdrawal made in earlier year. As stated above, father of assessee was suffering from partial disability, which at times would result in sudden medial complications coupled with other health issues. As stated above, documents in support of this contention are being submitted as additional evidences as stated above. It is therefore requested that cash deposited by assessee being out of cash withdrawn earlier is fully explained, more particularly when no evidence has been brought on record, which proves that cash withdrawn was utilized somewhere else. Your honours would further appreciate that assumption howsoever strong cannot be the sole reason to make addition without corroborating the same with documentary evidences. On the other hand, assessee has furnished all the

necessary evidences in support of submission made. In this regard, Reliance is placed on:

Hon'ble Jaipur ITAT in its decision dated 17.5.2023 in the case of Pawan Meena vs ITO in ITA No.410/JPR/2022 has held as under:

"10. We have considered the rival contentions and submission placed on record by both the parties and we have also gone through the various judgments relied upon. The Bench noted that it is not disputed by the Id. DR that the finding recorded by the Id. CIT(A) is no way related to the fact of the case of the assessee. He has simply stated the facts of some other case from para 5.1.4 onwards. Even the amount disputed by the assessee is not matching. Therefore, we are of the considered view that the Id. CIT(A) has not rendered to the justice to the assessee. The Bench also noted that whatever supporting documents filed by the assessee in his paper book is not disputed by the revenue stating that same were not placed on record. We have also observed that there is no comment about the source of cash withdrawal made by the assessee and the same is also clearly explained by the assessee. The Id. AO has also not recorded his finding that the cash available with the assessee is utilized by him. Based on this non-disputed fact placed before us we are of the considered view that the cash deposited by the assessee is nothing but the explained money sourced from the withdrawal of the bank account of the assessee to the extent of Rs. 50 lac and Rs. 10 lac sourced as gift received from his father. To support the gift the assessee has placed on record the affidavit of his father and the bank account of this father. The revenue has not recorded any finding about the explanation given by the assessee. From the paper book filed by the assessee we have observed that there is withdrawal of Rs. 25,00,000/- on 06.06.2016 and Rs. 25,00,000/- 16.06.2016. The Revenue has not disputed the source of the cash withdrawal. There is no whisper in the order about the utilization of the cash so withdrawn. The Id. AR of the assessee further submitted that the gift deed received from the father of the assessee clarified when the gift was made what is the source of the fund and in support of the contention the Id. AR of the assessee also filed the bank statement of the father of the assessee justifying the date of withdrawal. Therefore, we are of the considered view that the assessee has substantiated the source of cash deposited in the bank account as it is apparently evident from the set of evidence placed on record justifying the availability of cash out of withdrawal by him. Therefore, in the absence of contrary finding of utilization of this cash which is nothing but the re-deposit of the withdrawal made in the same financial year in the bank account to the extent of Rs. 60 lakhs are clearly explained by the set of evidence placed on record."

[2024] 159 taxmann.com 1585 (Delhi - Trib.) Mrs. Pushpa Rai v. Income-tax Officer*

Section 69A of the Income-Tax Act, 1961 - Unexplained moneys (Deposits during demonetization) - Assessment year 2017-18 - Assessee individual deposited cash of Rs. 15 lakhs during demonetization period in her bank account - Assessing Officer made addition on account of said cash deposit in terms of section 69A - It was noted that source of cash deposits was clearly explained by assessee from cash withdrawal made earlier which was reflected in same bank account - Further, assessee had also explained source of withdrawal of cash to be out of maturity proceeds of fixed deposits which was also evident from bank statement reproduced by assessee - Reason for holding said huge cash for a period of 14 months had been explained by assessee that she had to pay requisite fees to medical college to get admission for her son in

management quota within three days from date of intimation by college management - Whether, on facts, impugned addition made on account of cash deposit in terms of section 69A was to be deleted - Held, yes [Para 7] [In favour of assessee]

Hon'ble Bangalore bench of ITAT in the case of Col. Ranjan Sharma vs ITO in ITA No 101/Bang/2022 has held as under:

"4. I heard the parties and perused the record. The learned A.R. took me through the copies of bank account placed in the paper book. A perusal of the same would show that the assessee has withdrawn a sum of Rs.8,00,000/- from his bank account maintained with ICICI Bank on 05.06.2015. I notice that the assessee has withdrawn cash in small amounts in subsequent period also. Since the assessee is an aged person and retired from army, it is quite possible that the assessee had kept the money in cash with him in order to meet medical emergencies. The assessee is a pensioner and there is no other material to show that the cash of Rs.8,00,000/- withdrawn earlier had been spent away. Accordingly, in the facts and circumstances of the case, I am of the view that the explanation of the assessee that he has made the deposit of Rs.7,01,000/- out of the cash withdrawal made earlier is quite plausible. Accordingly in my view the sources for making deposits stand explained in this case.

5. Accordingly, I set aside the order passed by the learned CIT(A) and direct the AO to delete the addition of Rs.7,01,000/-."

Hon'ble Delhi High Court in the case of Jaya Aggarwal v. ITO (2018) 254 Taxman 398 / 165 DTR 97/ 302 CTR 241 (Delhi)(HC) has held as under:

S. 68 : Cash credits – Cash withdrawn from Bank was redeposited after seven months , addition cannot be made as cash credits .

Allowing the appeal of the assessee the Court held that; Cash withdrawn from Bank was redeposited after seven months, addition cannot be made as cash credits. Explanation given by assessee that deposit was made out of sum withdrawn earlier was not fanciful and sham story and it was perfectly plausible.(AY. 1998-99).

Hon'ble Lucknow bench of ITAT in its decision dated 30.11.2018 in the case of DCIT vs Smt. Veena Awasthi in ITA No. 215/LKW/2016 has held as under:

"8. We have perused the case record and heard the rival contentions. We find that addition has been made by the Assessing Officer, as is evident from his order, on the ground that he has come to the conclusion that cash deposits were from some other source of income which is not disclosed to the Revenue. Assessing Officer nowhere in his order has brought out any material on record to show that assessee is having any additional source of income other than that disclosed in the return nor Assessing Officer could spell out in his order that cash deposits made by the assessee was from some undisclosed source. All throughout Assessing Officer has raised suspicion on the behavioral pattern of frequent withdrawal and deposits by the assessee. There is no law in the country

which prevents citizens to frequently withdraw and deposit his own money. Documentary evidences furnished before the Revenue clearly clarifies that on each occasion at the time of deposit in her bank account, assessee had sufficient availability of cash which is also not disputed by the Revenue. Entire transaction of withdrawals and deposits are duly reflected in the bank account of the assessee and are verifiable from relevant records. Assessing Officer himself admitted that assessee had sufficient cash balance on each occasion at the time of deposit in her bank account on different dates during the assessment year under consideration. We have also examined the order of Id. CIT(A) and we find that his decision is based on facts on record and is supported by adequate reasoning and, therefore, we do not want to interfere with the order of Id. CIT(A) and accordingly we uphold the findings of the Id. CIT(A) sustaining relief granted to the assessee.

9. In the result, appeal of the Revenue is dismissed.”

In view of above, it is submitted that cash deposited by assessee is fully explained and that addition of Rs.29,40,000/- made by Id.AO deserves to be deleted.

It is further submitted that Id.AO has observed that assessee has discontinued showing the stock of jewellery business in the current year. Id.AO has further observed that from assessment record of Sh. Ratan Lal Agrawal, it is observed that during the year under consideration, assessee has sold some of gold jewellery to Sh. Ratan Lal Agrawal, which has not been shown his sale. Even Id.AO has went on to conclude that assessee has concealed entire sale transaction. In this regard, at the outset it is submitted that the case was selected for Limited Scrutiny for verification of Cash deposited during demonetization, thus this issue was outside the purview of Scrutiny.

However, without prejudice to above, it is submitted that gold jewellery as discussed by Id.AO was held as “Investments” and not as “Stock in Trade”, therefore sale thereof was shown under the head “Capital Gains” and not Business Sales. Kind attention of your honours is invited to the Computation of Total Income (APB 06-10), which stood furnished before Id.AO, wherein sale of both gold and silver jewellery are shown under the head “Capital Gains”. Thus allegation of Id.AO that assessee has concealed sale transaction is absolutely baseless and shows casual approach. It is therefore submitted that such observations of Id.AO deserve to be ignored.”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records :

S.No	PARTICULARS	PAGE NOS.
1.	Copy of Return of Income Acknowledgement and Computation of Total Income filed u/s 139(4) of Income Tax Act, 1961 for the A.Y. 2016-17.	1-5
2.	Copy of Return of Income Acknowledgement and Computation of Total Income filed u/s 139(4) of Income Tax Act, 1961 for the A.Y. 2017-18.	6-10
3.	Copy of Return of Income Acknowledgement and Computation of Total Income filed u/s 139(1) of Income Tax Act, 1961 for the A.Y. 2018-19.	11-14
4.	Copy of Notices issued during the course of assessment proceedings.	15-23
5.	Copy of replies filed during the course of assessment proceedings.	24-27
6.	Copy of Bank Statements of Malviya Urban Cooperative Bank Limited	28-29
7.	Copy of Passport of Assessee.	30-45

7. The Id. AR of the assessee submitted that the Id. AO in the show cause notice stated that the money is redeposited into the bank account after 2 years. That averment is not correct it is only 10 months within the money was redeposited and that too on account of demonetization. As the stock of jewellery is duly recorded in the ITR filed and placed on record at page 10 of the paper book filed. The assessee source of the ultimately withdrawal not doubted the bank statement showing withdrawal and redeposit of the same is placed on record. The fact that the assessee is NRI is evident from the passport. The purpose of keeping the cash is the father of the assessee was not well and therefore, it was kept as cash on hand for medical exigencies. As regards the non-compliance before the Id.

CIT(A) the Id. AR of the assessee submitted that the assessee stays out of India and was not available in India at the time when case was fixed for hearing before CIT(A), case could not be attended due to lack of communication. It is also a matter of fact, initially case was fixed for hearing during COVID period in 2021 and proceedings were thereafter again taken up vide notice dated 24.11.2023 fixing the case on 11.12.2023. Thereafter, 3 more notices were issued, within a time gap of around 1 month, which could not be complied with, and order was passed by Id. CIT(A) on 19.1.2024. The issue involved in present appeal relates to cash deposited during demonetization, for which necessary documents were furnished before Id. AO. Assessee is merely furnishing 2 documents in addition to documents furnished before Id. AO, i.e. in the shape of "Disability certificate" of father of assessee and his Return of Income, wherein deduction u/s 80U is being claimed for past many years as additional evidence. The application so moved by the assessee reads as under :

Kindly refer to the appellate proceedings in progress in the case of above stated assessee.

In this regard, the humble appellant presents this application under Rule 29 of the Income Tax Appellate Tribunal Rules. 1963 with the following facts for your kind consideration.

(Relevant to Grounds of Appeal Nos. 01 to 2.1):

1. That, the assessee is a Non resident Individual and the case of assessee was selected for limited scrutiny under CASS and assessment was completed vide order dated 29.12.2019 after making addition of Rs.29,40,000/- on account of cash deposited by assessee in Malviya Urban Co-Operative Bank account during demonetization;
2. That, the cash was deposited out of cash of Rs.30,00,000/-, withdrawn from the same bank account on 29.12.2015;
3. That, since assessee stays out of India and his father Sh. Ratan Lal Agrawal aged about 56 years, who stays in India, who is suffering from partial disability as well other age related health issues, the cash so withdrawn was kept at home to deal with medical emergency, if any.
4. That, the cash so withdrawn remained unutilized and was deposited back in bank again on 17.11.2016, due to the demonetization scheme announced by the Government of India and implementing ban on Specified Currency Notes.
5. That, the fact of such partial disability is evident from the disability certificate issued to assessee's father Sh. Ratan Lal Agarwal along with other relevant documents;
6. That, assessee's father Sh. Ratan Lal Agarwal has been regularly claiming deduction u/s 80U of the Income Tax Act, 1961 while computing his total income;
7. That, in order to clarify the above factual position, assessee is submitting Disability Certificate issued to his father on 14.09.1990 along with other relevant documents relevant to AY 2016-17 & 2017-18 of his father for your honours kind consideration;
8. That, documents being furnished alongwith this application are merely to clarify the factual position already available on record and no new fact is being brought on record, however as the above documents are being furnished for the first time, the same are being filed as additional evidence alongwith prayer to admit the same.
9. That, an affidavit in support of the facts mentioned above is being submitted along with this application.

Therefore, in the background of abovementioned facts, it is submitted that the Disability Certificate furnished herewith along other relevant documents of Sh. Ratan Lal Agarwal goes to the root of the main issue involved in the present appeal, therefore, it is prayed that in the interests of justice and proper adjudication of appeal may please be admitted.

As it is seen that documents being furnished now are merely clarificatory in nature and no new fact is being brought on record nor is any fresh investigation required into the matter and as the tribunal being final fact-finding authority, he prayed that such evidence, are in support of the contentions be accepted in support of the claim. Based on that aspect of the matter he prayed that though before the Id. CIT(A) the case is not argued by but he has not considered the facts which were already available on record.

8. Per contra, the Id. DR representing the revenue supported the order of the lower authority. He also submits that the Id. CIT(A) has granted almost 6 opportunity to the assessee but the assessee did not avail themselves of that opportunity. The assessee also does the economic transaction but so does not deposit the cash into the bank account.

9. In the rejoinder the Id. AR of the assessee submitted that the cash was kept for medical exigence and was kept for 10 months only and that too was deposited on account of demonetization. Even though all the details of those other transactions were made available, and it has not taken adverse cognizance of the matter.

10. We have heard the rival contentions and perused the material placed on record. In this appeal the assessee vide ground no. 1, 2, 2.1 and 2.2 challenged the addition of Rs. 29,40,000/- being the amount of deposit of cash into the bank account which was considered as unexplained cash credit chargeable to tax at special rate. The brief facts related to the disputed is that the assessee is a Non resident Indian. In the year under consideration on 17.11.2016, assessee deposited cash of Rs 29,40,000/- in Malviya Urban Co-Operative Bank Account. When the assessee was called upon to establish the source of cash so deposited into the bank account he submitted that he has withdrawn cash worth Rs.30,00,000/- from same bank account on 29.12.2015, which was kept at home to be used for medical emergency, if any arising to his father Shri Ratan Lal Agrawal, who is aged about 64 years, suffers from partial disability and other age related health issues. During assessment proceedings, Id. AO enquired about the source of cash deposited and it was submitted that cash was deposited out of withdrawal made on 29.12.2015 from his bank account. In support of this, copy of bank statement showing cash so withdrawn was also submitted. However, explanation of assessee was rejected merely for the reason that since assessee has visited India frequently, why the cash so withdrawn was not deposited earlier. Moreover, as there were other debit

and credit entries in his bank account and withdrawals from this bank account on regular basis, Id. AO concluded that the cash was not deposited out of cash withdrawals earlier made and made the addition. Before the first appeal so filed by the assessee, we noted that it is a matter of fact, initially case was fixed for hearing during COVID period in 2021 and proceedings were thereafter again taken up vide notice dated 24.11.2023 fixing the case on 11.12.2023. Thereafter, 3 more notices were issued, within a time gap of around 1 month. These notices so issued in one month time remained unattended as the assessee was not in India and ultimately order was passed on 19.1.2024 by Id. CIT(A) confirming the view of the Id. AO.

11. The Bench noted that the issue in this case revolves as to decide whether the withdrawal cash by the assessee on 29.12.2015, holding of cash for around 10 month and again re-deposit the same on 17.11.2016, because of demonetization is plausible reason or not. The bench noted withdrawal of cash of Rs. 30 lac on 29.12.2015 was made by the assessee because his father aged 64 ill and the money was kept as medical exigencies. His father was also disabled person. Thus, holding cash for 10 months by the assessee cannot be considered as not reasonable. The bench also noted that revenue has not challenged the source of withdrawal

of cash by the assessee, by placing a bank statement on record. The other small transaction done by the assessee also not viewed adversely and not commented upon by the Id. AO. No question whatsoever were raised on that various transaction on different dates executed no adverse inference drawn on it. Now, the withdrawal of cash and holding it for 10 months by the assessee and again redepositing of the same is to be considered as plausible explanation of the assessee or not. The Id. AO through the Id. DR did not object to the submission of the assessee explaining the reasons for the withdrawal of cash by the assessee. That cash withdrawal has also not been claimed by the assessee as invested elsewhere, merely there was period of more than 10 months of holding cash was not considered by the lower authority. On this aspect of the matter the bench noted that when the assessee has explained the source of cash deposited and that source is also considered by the revenue, merely the on the presumption and assumption that the assessee, might have used that cash elsewhere cannot be considered as basis to sustain the addition in the case of the assessee. The purpose of withdrawal is also explained that the father of the assessee was ill aged 64 years the same were kept for medical exigencies. His father being a disabled person and aged that was kept by the assessee. We get support of our view from the decision of Hon'ble

Delhi High Court in the case of Jaya Aggarwal v. ITO (2018) 254 taxmann

398/165 DTR 97/302 CTR 241 (Delhi) (HC) wherein the court held

S. 68 : Cash credits – Cash withdrawn from Bank was redeposited after seven months , addition cannot be made as cash credits .

Allowing the appeal of the assessee the Court held that; Cash withdrawn from Bank was redeposited after seven months, addition cannot be made as cash credits. Explanation given by assessee that deposit was made out of sum withdrawn earlier was not fanciful and sham story and it was perfectly plausible.(AY. 1998-99).

In the light of the discussion so recorded we direct the Id. AO to delete the addition of Rs. 29,40,000/- made in the hands of the assessee. Since all the grounds of appeal are related to cash deposit, we deleted that addition each ground need not be discussed separately. Based on these observations the appeal of the assessee is allowed.

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

Order pronounced in the open court on 30/07/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 30/07/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Shri Harsh Agarwal, Jaipur

2. प्रत्यर्थी / The Respondent- The DCIT, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 317/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar