

आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसमसी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member&Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 801/Kol/2024
Assessment Year: 2017-18

Saroj Devi Banthia (PAN: ADFPB 4403 L)	Vs.	ITO, Ward-36(3), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	09.07.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	06.08.2024
For the Appellant/ निर्धारिती की ओर से	Shri Somnath Ghosh, Advocate Shri V. Tiwari, FCA
For the Respondent/ राजस्व की ओर से	Shri Nicholash Murud, Addl. CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-Addl./JCIT(A)-5, Mumbai (hereinafter referred to as the “Ld. CIT(A)”) dated 28.12.2023 for the AY 2017-18.

2. The only issue raised by the assessee in the various grounds of appeal is against the confirmation of addition of Rs. 10,00,000/- by the Ld. CIT(A) as made by the AO u/s 69A on account of unexplained money.

3. Facts in brief are that the assessee filed return of income on 10.07.2017 in ITR-2 declaring total income of Rs. 3,09,870/-. The case of the assessee was selected for limited scrutiny under CASS for the reason that the assessee has deposited cash during demonetization period into her bank account. The statutory notices were duly issued and served upon the assessee. The AO also issued notice u/s 142(1) along with questionnaire a couple of time which remained non-complied with. Thereafter the AO issued show cause notice on 1.11.2019 as to why the cash deposited into bank account of Rs. 10,00,000/- during the demonetization period with Kotak Mahindra Bank, Kankurgachi, Kolkata should not treated as unexplained money and added to the income of the assessee which was replied by the assessee by submitting that the said amount was deposited out of cash in hand available with the assessee comprising Rs. 9,00,000/- available as on 31.03.2016 and remaining Rs. 1,00,000/- out of withdrawals made during F.Y. 2016-17 before commencement of demonetization period. The assessee has uploaded the copies of balance sheet from FY 2011-12 to 2016-17 reflecting cash in hand position on the department portal and thus tried to explain the nature and sources of the impugned cash deposits. Pertinent to state that the assessee is engaged in the business of dealing of jute thereby earning by way of commission income besides interest and dividend on investments. The assessee filed before the AO the year-wise deposits and withdrawals from the bank from FY 2014-15 to 2016-17 corroborating that the assessee had cash in hand out of which the cash deposits were made into the bank account. The said explanation of the assessee did not find favour with the AO and he accordingly treated the said cash deposited as unexplained for two reasons namely : i) that reply/explanation of the assessee that the cash in hand was kept for medical emergency is not tenable and ii) that despite huge cash in hand the assessee has withdrawn the money during the year as well. Finally the AO added the said cash deposits as unexplained money u/s 69A of the Act to the income of the assessee thereby assessing the income at Rs. 13,09,870/- vide assessment order passed u/s 143(3) of the Act dated 20.12.2019.

4. In the appellate proceedings, the Ld. CIT(A) affirmed the finding of the AO by holding that the assessee could not prove her case with the corroborative evidences and therefore the AO was right in making the addition.

5. After hearing the rival contentions and perusing the material on record, we find that the assessee has regularly been filing the income tax returns with Department as the assessee has taxable income. The assessee derived income by way of commission on jute dealings besides the assessee has interest and dividend income from investments. We note that during the year, the assessee had deposited Rs. 10,00,000/- into her bank account which were stated to be deposited out of cash available with the assessee stated to be accumulated out of the withdrawals made from the bank account over a period of 3 years as well as during the year. The AO has also extracted the calculation of year-wise cash deposits and withdrawals at page no. 6 of the assessment order. We have also examined the year-wise balance sheet of the assessee in respect of preceding assessment years and find that in the balance sheet as on 31.03.2016, there was cash in hand of Rs. 9,00,000/- which was accumulated out of withdrawals from the assessee's bank account details whereof were also examined and verified by us from the bank statement available in the PB which were also filed before the AO. Besides we note that Rs. 1,00,000/- was deposited out of withdrawal made during the instant financial year from the bank account of the assessee before the commencement of demonization period. The AO has simply brushed aside the contentions made by the assessee of having kept and accumulated the cash in hand in order to meet any medical emergency and treated the money as unexplained money because the nature and source were available with the assessee. Only the reason to disbelief the explanation of the assessee was that that nobody would keep the money in hand to that extent. Similarly, the Ld. CIT(A) affirmed the order of AO. In our opinion, the assessee has fully substantiated the nature and sources of cash being accumulated out withdrawals from bank account of the assessee. Therefore in our considered view the source stood fully explained as the authorities below has not controverted the withdrawals from the bank accounts of the assessee or proved

otherwise that the cash was utilized elsewhere. The case of assessee finds support from the decision of Co-ordinate Bench in the case of Nand Kumar Taneja vs. ITO in [2019] 105 taxmann.com 390 (Del-Trib) wherein the Co-ordinate Bench has held as under:

“5. After hearing both the parties and on perusal of the reasoning given in the impugned order as well as material referred to before me at the time of hearing, I find that entire addition has been made on account of disbelieving the cash-in-hand recorded in books of accounts u/s 69A. The deeming fiction u/s 69A can be invoked, where in any financial year assessee is found to be the owner of any money, bullion, jewellery or other valuable articles and such money, bullion, jewellery or valuable articles is not recorded in the books of accounts and the source is not explained by the assessee. Here in this case, there is no dispute with regard to the fact that the assessee has been filing the income tax return along with the balance sheets, wherein source of income and cash has been disclosed and recorded. Hence in such a situation it is unfathomable as how provision of 69A can be invoked. For instance, right from the financial year 2013-14 to 2015-16, the balance sheets of the respective assesseees reflect huge cash-in-hand available with them, which is evident from the following details :-

Cash in hand as on:	31-3-2014	31-3-2015	31-3-2016
Sh. Nand Kumar Taneja:	Rs. 9,13,789/-	Rs.33,85,789/-	Rs. 62,31,326
Smt. Nita Taneja:	RS. 1,25,924/-	Rs. 18,17,925/-	RS. 25,000/-

6. Apart from that, the details of; opening cash, cash withdrawal, cash deposited, cash expenditure; closing cash in hand and increase cash in hand, in case of both the assesseees were given before the authorities below, which has been incorporated above in para 3 and 3.1. No discrepancy or any inquiry has been done by Assessing Officer to disapprove the cash disclosed in the books of account and balance sheet. The sole reason for disbelieving the assessee's explanation is that, firstly, no prudent person after withdrawing the cash will keep at home; and secondly, if there was an OD account having negative balance on which interest is being charged, then there was no need to keep such huge cash in hand at home. Such reasoning dehors any contrary material on record that the cash disclosed in the books of accounts has been invested somewhere else, then on mere surmise assessee's explanation cannot be discarded. If assesseees have genuine sources of income which are received through banking channels, out of which cash has been withdrawn and have been disclosed in the income tax return and in the balance sheet as cash-in-hand, then I am unable to apprehend how the provision of section 69A is applicable. Because the section can only be invoked where in any financial year the assessee is found to be the owner of any money, etc., which has not been recorded in the books of accounts and assessee offers no explanation. Here in these cases, Assessee's cash in hand duly stands recorded and source has been explained from the income deposited in the bank account and withdrawal, then in my opinion deeming provision of section 69A cannot be invoked. The reasoning given by the AO and Ld. CIT (A) is vague and based on surmise as to what a prudent person should have done. Once assessee has explained that being of senior citizen they have maintained such liquidity of cash out of their own disclosed income with them for certain contingencies, then without any material to controvert such an explanation, addition cannot be sustained. Assesseees before the lower authorities have filed following documents to substantiate the cash in hand with them:-

- a. *Income-tax Return with computation of total income.*
- b. *Balance Sheets for FY 2013-14, 2014-15 and FY 2015-16.*
- c. *Comparative Chart of cash movement FY 2013-14, 2014-15 and FY 2015-16.*
- d. *Cash book maintained by the assessee.*
- e. *Kotak Mahindra Bank Statement bearing A/c No. 6311509485*
- f. *Standard Chartered Bank: Statement of account.*
- g. *Bank: Book of Kotak Mahindra Bank.*
- h. *Bank Book of Standard Chartered Bank.*
- i. *Copy of all medical treatment documents.*

7. *All these documents have neither been rebutted nor there is any finding that cash-in-hand disclosed in the balance sheet was beyond the scope of their income or are not substantiated from the bank account. Simply because after the period of demonetization, that is, 8-11-2016, certain amount of cash has been deposited in the bank account, it does not mean that the cash-in-hand as on 31-3-2015 and 31-3-2016, duly shown in the balance sheet and disclosed to the department in the respective income tax return filed much earlier, is unexplained. Accordingly, in view of the above reasoning, addition made by the AO and sustained by the Ld. CIT (A) is directed to be deleted.*

8. *In the result both the appeals of the assessee are allowed."*

Considering the facts and circumstances and the decision of the coordinate bench ,we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

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

Order is pronounced in the open court on 6th August, 2024

Sd/-

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
 Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
 Accountant Member/लेखा सदस्य

Dated: 6th August, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Saroj Devi Banthia, C/o, S. N. Ghosh & Associates, Advocates, Sagar Mansion, 2, Garstin Place, 2nd Floor, Suite Nos. 202 & 203, Hare Street, Kolkata-700001
2. Respondent – ITO, Ward-36(3), Kolkata
3. Ld. CIT(A)- Addl./JCIT(A)-5, Mumbai
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata