

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM

**ITA No. 383/Mum/2024**

(Assessment Year: 2017-18)

Smt. Minaxi Ramesh Dalal  
D Block, Bhangwadi, 38,  
Kalbadevi Road,  
Mumbai-400 002

Vs.

Income Tax Officer,  
Ward 23(2)(6)  
Room No.303, 3rd Floor,  
Earnest House,  
Nariman Point,  
Mumbai-400 021

**(Appellant)**

**(Respondent)**

**PAN No. AAGPD0811Q**

**Assessee by** : None  
**Revenue by** : Shri R.R. Makwana, DR

**Date of hearing:** 06.06.2024  
**Date of pronouncement :** 19.8.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No. 383/Mum/2024 is filed by Smt. Minaxi Ramesh Dalal (assessee /appellant), for A.Y. 2017-18, against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 30<sup>th</sup> November, 2023, wherein the appeal filed by the assessee against the assessment order passed under Section 144 of the Income-tax Act, 1961 (the Act) on 6<sup>th</sup> December, 2019, by the Income Tax Officer, ward 23(2)(6), Mumbai, was dismissed.
02. The assessee has raised following grounds of appeal:-

*"1. The Ld. CIT (A), NFAC, Delhi, erred in law and on facts in upholding an addition of Rs. 10,15,500/- made by the Assessing Officer as unexplained credit under section 69A r.w.s. 115BBE of the 1. T. Act, 1961, in respect of the cash deposited by the Appellant during demonetization period.*

*2. The Ld. CIT (A) erred in law and on facts in merely echoing the view of the AO without appreciating the submissions of the Appellant that the source of such cash deposits in bank account was the Appellant's past savings over a period of several years.*

*3. The Ld. CIT (A) erred in law and on facts in not considering the submissions of the Appellant in proper perspective.*

*4. The Ld. CIT (A) erred in law and on facts in not giving sufficient opportunity of being heard to the Appellant and hence the principles of natural justice are violated."*

03. Brief facts of the case shows that assessee is a 75 year old lady, who did not file any return of income. On the basis of data analytics, an information gathered on online verification for operation clean money, It was found that assessee has deposited ₹10,15,500/- in her bank account during demonetization period in cash . Out of the above sum, the cash deposit of ₹9,85,000/- was immediately transferred to a partner of another firm M/s Hira Traders. As the assessee did not file any return of income, did not respond to any notices. In response to show cause notice, assessee explained that she has income in last six years

amounting to ₹13,80,000/- . As She has undergone operation twice, she used to keep cash with her for emergency requirement and on demonetization, deposited the same in the bank account. The assessee explained her business of giving food in different households.

04. The learned Assessing Officer called for the bank statements from Axis Bank by issuing notice under Section 133(6) of the Act, wherein the sum of ₹9,85,000/- was deposited.
05. Explanation was rejected and Id Ago held that the amount of ₹13,80,000/- earned by him cannot be accepted. He further found that assessee has purchased gold of ₹9,50,000/- for her son's marriage and for which ₹9,85,000/- was deposited in the bank account on 17<sup>th</sup> November, 2016.
06. The assessee was further issued a show cause notice to explain the source of the money deposited. The assessee did not file any response and thereafter the learned Assessing Officer made an addition of ₹10,15,500/- to the total income of the assessee in assessment under Section 144 of the Act was issued on 6<sup>th</sup> December, 2019.
07. The assessee preferred the appeal before the learned CIT (A), wherein the assessee reiterated the facts of the case and further stated that sufficient opportunity of hearing was not given to the assessee. The assessee also explained that last show cause notice issued by the learned Assessing Officer could not be replied by the

assessee for the reason that the case of the assessee was transferred from one ITO to another and a fresh notice was given to the assessee. The assessee therefore contested that the learned assessing officer has failed to give sufficient opportunity of hearing to the assessee and thereafter making an addition of ₹ 1,015,500 is not good.

08. The learned CIT - A held that assessee was given sufficient notices for hearing but assessee did not come forward with proper explanation about the source of cash deposit in her bank account during demonetization period and therefore there is no infirmity in the order of the learned assessing officer. Further as the husband and the sons of the assessee are doing small activities, looking at the age of the assessee of 79 years suffering from different diseases, smallness of the business, he held that assessee does not have sufficient source to have an accumulated cash in hand of about ₹ 10.15 lakhs. Accordingly the order of the learned assessing officer is upheld.
09. Despite notice none appeared on behalf of the assessee, therefore, the appeal of the assessee is decided on the merits of the case as per information available on record.
010. The learned departmental representative vehemently supported the orders of the learned lower authorities.
011. We have carefully considered the contentions raised by the learned lower authorities and their assessment order. We find that assessee is a 79 years old lady who has



deposited cash in her bank account with axis bank, therefore, on enquiry, obtaining the explanation, it was found that assessee does not have the sufficient sources of funds to deposit the above amount in her bank account. The learned assessing officer and the learned CIT – A has categorically held that the sons and the husband of the assessee are doing small activities and further looking at the age of the assessee and smallness of the business of cooking explained, it is not possible to have accumulated such a huge sum of money in cash to be deposited in the bank account. However substantial question was not decided in favour of the assessee of not having a fair opportunity of hearing to the assessee. The assessee has stated categorically that on fifth September, 2019 assessee received a notice under section 142 (1) from income tax Of 18 (2) (1) and on 11 September 2019 the assessee's husband went to meet the consent income tax officer it was informed that the case has been transferred to ITO 18 (2) (5) and a fresh date of hearing was given by the ITO 18 (2) (1) of 20 September 2019 to furnish the details. On 18th September, assessee stated that she received the notice under section 142 (1) from another income tax Officer 18 (2) (2), Mumbai that assessee is required to give the complete details of M/s Hira Traders on 23 September 2019. The assessee is representative attended before the income tax officer on 23rd of September 2019 with above details but the learned assessing officer was not available and was asked to wait for the fresh notices. Assessee did not receive any notice



till 6th December 2019. Further it is the claim of the assessee that her husband attended before the assessing officer submitted certain details but same are not accepted so not taken on record. Therefore the order was passed by the learned assessing officer Ward 23 (2) (6), Mumbai on 6/12/2019. Therefore it is apparent that according to the assessee the notices were issued by different AO and husband of the assessee attended the proceedings but details were not taken on record. The reasoning given for rejecting the availability of cash in the hands of the assessee helps us in holding that age of the assessee, smallness of the business, low means, and changing jurisdictions, deserves that the assessee may be granted one more opportunity of hearing. The learned CIT – A did not consider this explanation at all. In view of this we restore the appeal of the assessee back to the file of the learned assessing officer once again to grant proper opportunity of hearing, consider the submission and decide the issue in accordance with the law and assessee is also directed to furnish the requisite information before the jurisdictional assessing officer within 90 days from the date of receipt of this order.

012. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19.8.2024.

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 19.8.2024



*Dragon*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai