

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.1155/Bang/2024
Assessment year : 2017-18

Govindappa Pedripad Sushila, Staff Nurse (Retd.), Maruthi Nilaya, 2 nd Cross, S I T Extension, Tumakuru – 572 102. PAN : BCMPS 9246M	Vs.	The Income Tax Officer, Ward 2, Tumkur.
APPELLANT		RESPONDENT

Appellant by	:	Shri B.S. Balachandran, Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel.

Date of hearing	:	24.07.2024
Date of Pronouncement	:	19.08.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 20.3.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18.

2. At the outset, we note that the appeal filed by the assessee is barred by limitation by 256 days. In this regard, the ld. AR submitted that assessee is an individual and was working as nurse in hospital at

Tumkuru and got retired in the month of May, 2015 and she was not aware of tax proceedings and her tax consultant was taking care of income tax proceedings. But due to oversight the appeal could not be filed within time before the ITAT.

3. Considering the rival submissions, we note that the assessee has reasonable cause in not filing the appeal within the stipulated time before the ITAT and therefore relying on the judgment of Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471, we condone the delay.

4. Briefly stated the facts of the case are that assessee filed return of income on 25.07.2017 declaring total income of Rs.2,85,110. The case was selected for scrutiny on the reason of cash deposits during the demonetisation period and statutory notices issued to the assessee. The assessee is a retired employee from State Govt. and her main source of income is from pension. The assessee submitted copy of return of income, statement of bank account, copy of Form 1 regarding declaration under PMGKY Rules, 2016 and other documents and details as called for in connection with scrutiny proceedings. It was noted that the assessee made cash deposits aggregating to Rs.40,40,000 during the demonetisation period and source of these cash deposits were withdrawal from her bank account out of gratuity and insurance amount and out of salary received from FY 2013-14 to 2015-16. Further the details of cash deposits were also asked with proper notes, evidence, cash deposits and withdrawals made. In response, the

assessee filed statement from FY 2013-14 to 7.9.2016, break-up of withdrawal being source of cash deposit. The assessee submitted the whole cash withdrawal from 10.7.2013 till 7.9.2016 as the source of cash deposits made during the demonetisation period. On perusal of bank statement it was noticed that assessee has frequently withdrawn money but the reason for withdrawal was not submitted. Further the assessee submitted once a withdrawal is made which remained unutilized, but subsequent withdrawal was not accepted by the AO. Show cause notice was issued to the assessee and assessee submitted further reply. After considering the entire facts of the case, the AO allowed Rs.5 lakhs towards cash deposits under PMGKY scheme and made addition u/s. 69A of Rs.35,40,000 and computed tax u/s. 115BBE of the Act.

5. Aggrieved from the above order the assessee filed appeal before the First Appellate Authority (FAA) and filed the details which were filed before the AO. The assessee relied on the judgement of Hon'ble Apex Court in the case of P. K. Noorjahan [1999]103 Taxman 382 (SC) wherein the Supreme Court held that the assessee had no sources and therefore impossible to generate black money.

6. The Id. FAA after relying on judgment of the Karnataka High Court in the case of S.R. Venkataraman v. CIT, 127 ITR 807 and judgments of the Tribunal in Neeta Breja (ITA No.524/Del/2017) & ACIT v. Baldev Raj Charla 121 TTJ 366 (Delhi) allowed cash deposits

in FY 2015-16 and 2016-17 to the extent of Rs.24 lakhs and confirmed Rs.11,40,000. Aggrieved, the assessee is in appeal before the ITAT.

7. The Id. DR reiterated the submissions made before the lower authorities and further submitted that assessee is living alone and there is no other source of income except pension and she got retired from State Govt. department and received retirement benefit. Before the lower authorities the details of break up were submitted out of which the Id. FAA has allowed Rs.24 lakhs withdrawn during the FY 2015-16 & 2016-17 after discussing the case law as source of cash deposits during the demonetisation period. However, the Id. FAA has not noted the entire cash withdrawn for these two years. The actual cash withdrawal in FY 2015-16 is Rs.24,50,000 and in FY upto 7.9.2016 it is Rs.50,000. However, the FAA has allowed only Rs.24,00,000. So there is a difference of Rs. 1 lakh which should also have been allowed by CIT(Appeals). He further submitted that source of cash withdrawn from FY 2013-14 upto 7.9.2016 is not rejected by the Id. FAA. Therefore he requested that the appeal should be allowed.

8. On the other hand, the Id. DR relied on the order of the lower authorities and submitted that the cash deposit since FY 2013-14 cannot be accepted. The assessee would have kept in physical form and after announcement of demonetisation period huge amount was deposited by the assessee is not acceptable in spite of having bank account. He submitted that the Id. FAA has rightly restricted the disallowance upto Rs.11,45,000.

9. Considering the rival submissions, we note that the assessee is a pensioner and got retired in 2015 and getting pension. She has deposited cash during the demonetisation period of Rs.40,40,000 out of which assessee got the benefit of Rs.5 lakhs under PMGKY scheme and rest amount of Rs.35,40,000 was confirmed by AO by not accepting source of cash as submitted by the assessee during the course of assessment proceedings. Therefore the rest amount was added as unexplained money. However, the Id. FAA has partially accepted after relying on the judgments noted to the extent of Rs.24 lakhs for cash deposits in FY 2015-16 & 2016-17. Now the dispute is only with regard to difference amount calculated by FAA of Rs.11,40,000 which was not accepted. In this regard, we note from the order of FAA as under:-

7.1 “As per the case laws discussed above, withdrawals made during 2015-16 and 2016-17 can be shown as source of cash deposits during demonetisation. Hence it is held that Rs.24,00,000 withdrawn during 2015-16 is acceptable as source of cash deposits. Cumulatively, out of Rs.35,45,000 cash withdrawals, Rs.11,45,000 is a reasonable amount for living expenses for 3 and half years and balance Rs.24,00,000 shall be accepted as source of cash deposited following above case laws. Hence the Rs.11,40,000 added u/s 69A is hereby sustained and Rs.24,00,000 is deleted. As a result, the appeal is partly allowed.”

10. The FAA has given relief of Rs.24 lakhs, accordingly balance of Rs.4,15,000 is to be confirmed for the financial year 2013-14. We also note from the bank statements produced before demonetisation period there is cash balance of Rs.7,54,203.13. The closing balance in her bank account is Rs.43,11,920.15 as on 25.03.2017. The assessee kept

the deposits in their bank account for more than 3 months. So it can be assumed that cash deposit during the demonetisation period belongs to the assessee. From the case law as relied by the FAA and in the present facts of the case, we partially accept the prayer of the assessee and cash withdrawn from FY 2014-15 to 07.09.2016 should be considered as cash were re-deposited. Accordingly the assessee gets relief of Rs. 7,25,000/-.

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

Pronounced in the open court on this 19th day of August, 2024.

Sd/-
(SOUNRARAJAN K.)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 19th August, 2024.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.