

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA No. 1124/Bang/2024
Assessment Years: 2017-18

Sri Police Gowdru Ramesh, 19/A, 2 nd Block, Veerabhadreshwara Nilaya, Nasaveshwaranagar, Chilur Post, Honnali Tq., Davangere – 577 230.	Vs.	The Income Tax Officer, Ward – 1, Davangere. .
PAN – AKSPR 1815 L		
APPELLANT		RESPONDENT

Assessee by	:	Shri Narendra Sharma, Advocate
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Dept.

Date of hearing	:	06.08.2024
Date of Pronouncement	:	19.08.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 08/04/2024 in DIN No. ITBA/NFAC/S/250/2024-25/1063962295(1) for the assessment year 2017-18.

2. The only issue raised by the assessee is that the Id. CIT(A) erred in confirming the addition of Rs. 18,00,000/- repressing the cash deposits during the demonetization period as unexplained money u/s 69A r.w.s. 115BBE of the Act.

3. The necessary facts are that the assessee in the present case is an individual and filed his return of income @ Rs. 3,53,970/- under the

head 'income from salary'. There was cash deposit in the bank account of the assessee amounting to Rs. 26,76,850/- during the year under consideration, the source of which was not explained by the assessee. Therefore, the AO treated the same as unexplained money u/s 69A of the Act.

4. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who deleted the addition made by the AO in part by observing as under:

“6.0. The submission of the appellant is duly considered. In the additional ground, the appellant contends that learned A.O. is not justified in assessing the entire Cash deposits made by the Appellant in his Bank accounts for the period from 1/4/2016 to 31/3/2017 when this assessment for the AY 2017-18 was selected for LIMITED SCRUTINY to verify the sources of cash deposits made in during the “DEMONITISATION PERIOD ie FROM 9/11/2006 TO 31/12/2016 and the said action of the Learned AO is contrary to the CBDT INSTRUCTIONS Instruction No..20/2015 wherein it was instructed to all Assessing Officers that the Questionnaire under section 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only to the specific reasons/issues for which case has been picked up for scrutiny and further, the scope of enquiry shall be restricted to the 'Limited Scrutiny' issues.

6.1 In this respect, I find from the assessment order that the case was selected for limited scrutiny to examine cash deposited during the demonetization period. Thus, I agree with the contention of the appellant that the Ld AO should have considered the cash deposited during the demonetization period only. From the submission of the appellant, it is seen that total cash deposited during the demonetization period is only Rs 18 lakh. Accordingly, I direct the Ld AO to delete the addition of Rs 8,76,850/- (Rs26,76,850-Rs18,00,000). Additional ground of the appellant is allowed.

7.0 With regard to the addition of Rs ;18,00,000/- (cash deposited during the demonetization Period) the appellant has stated that the said amount was withdrawn by his father from his bank on 12.08.2016 and this amount was later gifted to the appellant, which was subsequently deposited in the bank account during demonetization period. I find that there is ,a significant gap of three months between the cash withdrawn and cash deposited in this case. It is not expected that the same cash would be kept in the possession of

the appellant for three months without utilizing the same or depositing it in the bank account. Therefore, it is difficult to agree with the contention of the appellant on this account. Further the appellant has produced only a letter from his father that the cash of Rs 18,00,000/- is gifted by him to the appellant. There is no gift deed which is notarized or attested. Also, the appellant has not produced any documentary evidence to show that the father of the appellant has 12 acres of cultivable land. No bills and vouchers regarding sale of crop produced and sold is uploaded. Under the circumstances, I find that this argument of the appellant is only an afterthought. Further from the plain reading of section 115BBE, I find that is held to be applicable from the assessment year 2013-14. Thus, I hold that Ld AO is correct in addition of Rs 18,00,000/- (being the cash deposited during the demonetization period) u/s 69A of the Act and has correctly invoked the provisions of section 115BBE of the Act. This ground of the appellant is dismissed.”

5. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

6. The Id. AR before us filed a paper book running from pages 1 to 22 and submitted that the sum of Rs. 18,00,000/- was deposited in the bank account out of the cash received from the father. To this effect, the Id. AR has filed the confirmation of the father of the assessee placed at page 15 of the paper book. The Id. AR further filed the bank statement of the father of the assessee demonstrating that there was cash withdrawal from his bank account. As per the Id. AR, the cash withdrawal from the bank account of the father was not utilized for any other purposes except for giving the gift to the assessee being the son out of love and affection. Thus, the Id. AR contended that the amount of cash deposit cannot be treated as unexplained money u/s 69A of the Act.

7. On the other hand, the Id. DR contended that the assessee during the assessment proceedings has submitted a list of the persons from whom the cash was received. Now the Id. AR contends that the assessee has received a sum of Rs. 18,00,000/- from his father alone. As per the Id. DR, the issue needs to be verified whether the cash was

received only from the father alone or not and, therefore, the matter can be set aside to the file of the AO for necessary verification as per the provisions of law. The Id. DR in support of his contention has referred to the orders of the ITAT vide letter dated 7-08-2024 which are available on record.

8. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the source of cash deposit in the bank account of the assessee was justified having received cash from the father but the Id. CIT(A) disagreed with the contention of the assessee on the ground that there was a time gap between the cash withdrawal from the bank account of the father vis-à-vis the cash deposited in the bank account of the assessee. As per the Id. CIT(A), no prudent person will do so by holding such huge cash in hand at his residence. In this regard, we note that the apprehension given by the Id. CIT(A) is plausible, but such addition cannot be sustained based on the apprehension unless it is brought on record that the cash withdrawn by the father of the assessee was utilized for some other purposes, such as, investment or personal expenses instead of giving to the son, being the assessee. Undeniably, no prudent person will keep the cash at home but in our considered view the same cannot be a ground for making the addition in the hands of the assessee. We note that Hon'ble Karnataka High Court in ITA No. 414 of 2009 in the case of Smt. P Padmavathi Vs. ITO dated 6th October 2020, has held as under:

"12, In this case, it is not in dispute that the assessee withdrew a sum of Rs.5,00,000/- on 18.8.2003 and Rs.2,00,000/- on 20.8.2003 from her savings account. She is an agriculturist and she had agricultural income. Once she demonstrated that she was in possession of Rs.7,00,000/- cash plus agricultural income on her hands. If after 40 days, a cash deposit is made to the extent of about Rs.5,20,000/- towards loan account, it cannot be said that the source of the said deposit is nto properly explained. Merely because there is a delay of 40 days from the date of withdrawal of the money

from the bank account at the date of deposit in the loan account. Once is shown to be in the account and withdrawn what the assessee did with that money will lit was actually deposited, is not the concern of the Department. As long as the source is explained and established and when the money is withdrawn from a savings bank account and paid to discharge loan by deposit into a loan account, it is not possible to hold that the source is not explained. In that interregnum period, if the very same money is utilized for other purposes and thereafter, it is appropriated towards discharge of a loan, that cannot be held against the assessee. In that view of the matter, the finding recorded by the Tribunal is erroneous and requires to be set aside. Therefore, the said substantial question of law is also held against the revenue and in favour of the assessee."

9. In the absence of any information contrary to the arguments advanced by the Id. Counsel for the assessee that the source of cash deposit was representing the money received from the father, who has withdrawn from the bank, we are not convinced with the findings of the Id. CIT(A).

10. Regarding the contention of the Id. DR, we note that the assessee has been taking only one stand with respect of Rs. 18 lacs that it was received from the father only. There were other receipts of cash from other parties as explained by the assessee but the same has been deleted by the Id. CIT-A which is not in dispute. Therefore, we do not find any merit in the contention of the Id. DR of the Revenue. Accordingly, we set aside the finding of the Id. CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal filed by the assessee is hereby allowed.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in court on 19th day of August, 2024

Sd/-

Sd/-

(SOUNDARARAJAN K)

(WASEEM AHMED)

Judicial Member

Accountant Member

Bangalore

Dated, 19th August, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore