

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

समक्ष श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य एवं श्री मकरंद वसंतभाई महादेवकर, लेखा सदस्य के समक्ष।
BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

आयकर □ पील सं/ ITA No. 576/Ahd/2024
निर्धारण वर्ष/Assessment Year: 2017-18

Prashant Jitendra Desai, Legal Heir of Late Jitendra B. Desai, 34, Earth Bungalows, Akshar Chowk, Old Padra Road, Vadodara, Gujarat-390020 PAN: ACO PD 0409 Q	बनाम Vs.	DCIT, Circle 1(1)(1), Vadodara
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
निर्धारिती की ओर से / Assessee by :	Shri Sunil Talati, AR	
प्रत्यर्थी की ओर से / Revenue by :	Smt. Trupti Patel, Sr DR	

सुनवाई की तारीख/Date of Hearing : 20.08.2024
घोषणा की तारीख /Date of Pronouncement: 22.08.2024

आदेश/O R D E R

PER MAKARAND V. MAHADEOKAR, AM:

This appeal by the assessee, Late Jitendra Balvantrai Desai (through his legal heir Shri Prashant Desai), is directed against the order dated 31.01.2024 passed by the Addl./ Jt. Commissioner of Income Tax (Appeals), Panaji [hereinafter referred to as "CIT(A)"], for the Assessment Year (AY) 2017-18. The order under challenge upheld the addition of Rs.12,00,000 made by the Assessing Officer (AO) under Section 69A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") as per the order u/s 143(3) of the Act.

Facts of the Case

2. The original return for AY 2017-18 was filed on 09.10.2017, declaring an income of Rs.73,48,920/-. The return was revised on 09.03.2018, declaring an income of Rs.1,03,23,920/-. Later, the case was selected for scrutiny under

CASS. Accordingly, notices were issued u/s 143(2) and 142(1) of the Act. During the scrutiny assessment, the AO observed that the assessee had deposited Rs.12,00,000/- in cash on 20.12.2016 in his bank account with Central Bank of India. The AO rejected the assessee's explanation that the cash was accumulated over time from regular withdrawals and held the cash deposit as unexplained money, thereby adding the amount to the total income under Section 69A.

3. The assessee preferred an appeal before the CIT(A) before whom the assessee contended that the cash deposit was out of cash on hand, which was accumulated over a period of time. However, CIT(A) dismissed the appeal, upholding the AO's addition, citing a lack of credible evidence and inconsistency in the assessee's explanation.

4. Aggrieved by the order of CIT(A) the assessee is in appeal before us with following grounds of appeal:

"1. The order passed by the Learned CIT(A) Panaji, is bad in law, contrary to legal pronouncement and the same be quashed. The additions are unwarranted and same be deleted now.

2. a. The Ld. CIT(A) has erred in making addition of Rs. 12,00,000/- by invoking the provisions of section 69A of the act without appreciating the fact that the cash deposit was made out of cash available on hand with the appellant being accumulation of cash over a period of time out of withdrawals made throughout the year.

b. The appellant was a senior citizen having age of 71 years in the F.Y. 2016-17, looking to age factor and suffering from various ailments the appellant for his mental security was in habit of keeping the cash in hand with him at home for any medical emergency purpose. The same is also being apparent from the cash book produced in assessment proceedings wherein the regular cash withdrawals are made from the bank accounts are reflecting.

c. Hence the addition made by Ld. AO is unjust and uncalled for and Ld. AO be directed to delete the addition.

3. *The Learned AO has erred in charging interest under section 234A. It is submitted that charging of interest is not justified. It be held so now and same be deleted.*

Appellant craves for leave to alter/amend/withdraw/modify any of the above grounds before hearing."

5. As per the application from the son of assessee Shri Prashant Desai, he was admitted as legal heir of the assessee. Death Certificate of the assessee was placed on the records. The assessee, through his legal heir, submitted an application under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963, seeking admission of additional evidence. The evidence included a summary of cash withdrawals and deposits for the period from 01.04.2015 to 31.03.2017. The Authorized Representative (AR) of the assessee stated that these documents were not submitted before the AO because they were not specifically called for.

6. The additional evidence provided by the assessee, which includes the cash book entries and bank statements showing regular cash withdrawals, is crucial for a just resolution of the case. These documents were not previously submitted as they were not specifically requested by the AO. Given their relevance, we admit the additional evidence in the interest of justice.

7. The Departmental Representative (DR) agreed to accept the admission of additional evidence and legal heir.

8. Before us, the AR of the assessee explained the details of cash withdrawals and deposits in the bank account. As per the explanations, summary statements of cash withdrawals from the Central Bank of India Account No. 1324881483 and the cash book, total cash withdrawals during the F.Y. 2015-16 were Rs. 9,85,000/- and during the F.Y. 2016-17 were Rs.

7,30,000/- . As per the cash book produced before us, the opening balance as on 01.04.2016 was Rs. 8,62,415.29/- and the cash balance as on 01.12.2016 was Rs.12,70,415.29. The amount of Rs.12,00,000/- under question was deposited on 20.12.2016 on which there was sufficient balance in hand.

8.1 The AR placed reliance on various judicial precedents where similar issues regarding cash deposits during the demonetization period were addressed. The collective findings from these cases deals with credibility of explanation for cash deposits, time gap between withdrawal and deposit and consistency with cash book and financial records.

8.2 In case of **Rajan Gupta vs. ACIT (ITA No. 3309/Del/2023 dated 15-2-2024)** the Delhi Bench emphasized that when the assessee provides a consistent and plausible explanation for cash deposits, supported by documentary evidence such as a cash book, the explanation should be accepted unless the Revenue can prove otherwise. The Tribunal accepted the explanation that the cash deposits during the demonetization period were made from cash withdrawals and balances available with the assessee.

8.3 In case of **Prem Chand Dalal vs. ACIT (ITA No. 1598/DEL/2022 dated 13-12-2022)**: The Tribunal held that a time gap between cash withdrawal and subsequent deposit does not automatically render the deposit unexplained. Unless the Revenue provides evidence that the withdrawn cash was used for other purposes, the mere passage of time should not lead to an addition under Section 69A.

8.4 In case of **Shri Rajan Sharma vs. ITO (ITA No. 101/Bang/2022 dated 1-6-2022)**, the decision underscored that the explanation of cash being kept at home due to emergencies or personal reasons is valid, especially for elderly

or ill individuals. The Tribunal ruled in favour of the assessee, recognising the credibility of the explanation despite the time gap.

8.5 In case of **Preeti Bhardwaj vs. ITO (ITA No. 78/DEL/2024 dated 22-03-2024)**: The Delhi Bench found that where an assessee's cash deposits are consistent with prior withdrawals as recorded in the cash book and other financial records, such deposits should not be treated as unexplained. The Tribunal also highlighted the need for the Revenue to bring any adverse material to challenge the authenticity of the financial records before making an addition.

9. The DR relied on the order of lower authorities.

10. We have heard the rival contentions and perused the material on records. We have considered the observation of CIT(A) that the assessee did not report the cash deposits during the demonetization period in the return of income. While it is true that the assessee did not report the cash deposits in the specified column of his return, judicial precedents indicate that such an omission, on its own, is not sufficient to justify an addition under Section 69A. The key issue is whether the cash deposit can be satisfactorily explained through credible evidence, such as bank statements and cash books, rather than mere procedural lapses in reporting. The CIT(A)'s emphasis on the omission may have overlooked the fact that the assessee provided a detailed cash book and bank statements during the assessment proceedings, which adequately explained the source of the cash deposits. The CIT(A) did not give due consideration to the assessee's age and the consistent pattern of cash withdrawals, which is a key factor to find the explanations to be credible.

11. The assessee's explanation that the cash deposit of Rs.12,00,000/- was made from cash accumulated through regular withdrawals is plausible and

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consistent with the evidence provided. The assessee's age justify the retention of cash at home, further supporting the explanation. The AO and CIT(A) failed to provide any evidence that the cash was used for purposes other than those stated by the assessee.

12. In light of the above findings and judicial precedents, we hold that the addition of Rs.12,00,000/- under Section 69A is not justified. The AO is directed to delete the addition.

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

Order pronounced in the open Court on 22/08/2024 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER
(टी.आर.सेन्थिल कुमार, न्यायिक सदस्य)

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER
(मकरंद वसंतभाई महादेवकर, लेखा सदस्य)

Ahmedabad; Dated 22/08/2024

**btk*

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. □ पीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (□ पील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर □ पीलीय □ धिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशमुसड/ BY ORDER,

सहप्रक पंजीकार (Asstt. Registrar)
आयकर □ पीलीय □ धिकरण
ITAT, Ahmedabad