

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 372/JP/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Shri Kesar Kadir Khan 4/58, Ramesh Marg, C-Scheme Jaipur – 302 001	बनाम Vs.	The ITO Ward 5 (3) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AMHPK 3586 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 07/05/2024
उद्घोषणा की तारीख / Date of Pronouncement: 06/08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 27-02-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2017-18 raising therein following grounds of appeal.

“1. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs.21.50 lacs u/s 69A of the Act by treating the cash deposit in the bank account during the demonetization period as unexplained.

2. The Id. CIT(A) has erred on facts and in law in taxing the alleged unexplained cash deposit in the bank account u/s 115BBE @ 60% instead of taxing the same @ 30% by ignoring that Section 115BBE substituted by Taxation Laws (Second Amendment Act), 2016 which received the assent of President on 15-12-2016 and made applicable from 01-04-2017 and not applicable for A.Y. 2017-18.

2.1 Apropos Ground No. 1 of the assessee, brief of the case are that the assessee is a salaried person working as an employee of JDA. He has filed the return on 23.02.2018 declaring total income of Rs.3,84,220/- (**PB 9-11**). The case of assessee was selected for scrutiny for limited purpose under CASS. The AO on verification of the bank statement observed that assessee has deposited cash of Rs.21,50,000/- (Rs.9,50,000/- on 21.11.2016, Rs.11,00,000/- on 25.11.2016 and Rs.1,00,000/- on 14.12.2016) with State Bank of India. The assessee explained that his wife was suffering from serious illness. For her treatment he disposed off a plot of land vide sale deed dt. 31.03.2016 for Rs.24,25,000/-. The sale proceeds were credited in the bank account on 02.04.2016 (**PB 35**). Out of this amount he withdrew Rs.24 lacs on 04.04.2016. Because of demonetization the left over amount of Rs.21,50,000/- was deposited back in the bank account between 21.11.2016 to 14.12.2016 in 3 trenches. However, AO did not find the reason adequate for withdrawing such huge amount and accordingly issued show cause notice requiring him to explain as to why amount of Rs.21,50,000/- should not be treated as unexplained u/s 69A of the Act and be added to the total income of assessee. In response to same assessee

furnished the reply on 28.11.2019 (**PB 16-17**) that his wife was suffering from serious illness since 2014 and he generated these funds in addition to salary income by disposing off properties and same was lying in bank but due to his wife's illness and shifting from one place to another, it was mandatory for him to keep cash in hand. He utilized Rs.2.50 lacs from 04.04.2016 to 21.11.2016 for various medical treatments of his wife but thereafter she suffered from cardiac and paralysis attack being the main reason to keep cash in hand. She finally expired on 07.09.2020. Copy of few medical documents along with death certificate is at **PB 19-34**. Along with that assessee produced details of fund utilisation from 01.04.2016 till 14.12.2016. As and when demonetization was announced, he deposited the whole amount in his SBI savings account. The AO observed that assessee had withdrawn cash of Rs.24,00,000/- and utilized the cash Rs.2.50 lacs during the period from 04.04.2016 to 21.11.2016. In seven months, the assessee utilized only Rs.2,50,000/- but there is no logic to withdraw such huge amount of money of Rs.24,00,000/- and keep it at home. The assessee stated that he had withdrawn the amount of Rs.24,00,000/- for medical treatment, but from perusal of bank statement of the assessee, it is found that he has never withdrawn considerable amount of money except withdrew amount to the extent of household expenses before and after the date of withdrawn of Rs.24,00,000/- i.e. 04.04.2016 while the assessee himself stated in his submission that his wife is suffering from serious

illness since 2014. If it were withdrawn for the purpose of medical treatment, he used to withdraw considerable amount of money regularly for the treatment but it was not so. Hence AO concluded that it was an afterthought in order to hide his source of income. Accordingly, he made addition of Rs.21,50,000/- u/s 69A of the Act by treating it as unexplained source of cash deposit in the bank account during demonetization period and taxed the same @ 60% u/s 115BBE.

2.2 In first appeal, the Id.,CIT(A) has dismissed the appeal of the assessee by observing as under:-

“5.1 I have carefully gone through the contentions made by the appellant as well as the AO. The assessment proceedings for A.Y. 2017-18 was finalized u/s 143(3) of the I.T. Act determining total income at Rs.25,62,290/-. It is observed that the appellant had deposited substantial cash in his bank account during the F.Y. 2016-17 relevant to the A.Y. 2017-18. However, the assessee had filed return of income on 22-02-2018 declaring a total income of Rs.3,84,220/- for the corresponding year as income from salary. Therefore, proceedings under the I.T. Act was initiated after recording the reason to believe that income to the tune of Rs.21,78,079/- chargeable to tax has escaped assessment.

6. During the proceedings, the appellant has not been able to file any concrete reasons or explanation for the nature and source of cash deposited total amount of Rs.45,75,000/- in his bank account and out of which the appellant had also withdrawn Rs.24,00,000/- from the bank a/c in the corresponding period and therefore the amount of Rs.21,50,000/- and bank interest amount at Rs.28,079/- is hereby added in return of income of the assessee and charged to income tax as unexplained money u/s 69A r.w.s. 115BBE trading undisclosed income under the head of other sources of the previous year relevant to the A.Y. 2017-18.

7. Judgement being stated due to lack of evidence, hence the decision is being given on merits. The total addition made by the AO of Rs.21,78,079/- is upheld. All the grounds of the appellant are quashed, and the appellant's appeal is dismissed.

8. For statistical purposes, the appeal is dismissed.''

2.3 During the course of hearing, the ld. AR of the assessee submitted the written submission by praying therein to delete the addition sustained by the ld.CIT(A)

Submission:-

1. The assessee is a Govt. employee in JDA working as Sr. Assistant in ACJM Court No.2 at JDA, Jaipur. His only source of income is income from salary. He inherited an ancestral immovable property situated at H-4/58, Ramesh Marg, C-Scheme, Jaipur measuring 254.51 sq. yd. from his forefathers. On this property through development agreement assessee got 55% share in the constructed property comprising of stilt floor and 3 floors thereon. The assessee's wife was suffering from serious illness since 2013. At that time she has brain hemorrhage due to Reumatic heart disease. This is evident from discharge summary dt. 11.06.2013 (**PB 19-24**). Due to this her left side was paralysed. She was under continuous medical treatment (**PB 25-27**). Because of her illness it was suggested to get the treatment from Mumbai. Accordingly assessee sold Flat No.G-1 at stilt floor measuring 800 sq. ft. on 31.03.2016 for Rs.24,25,000/-, This amount was credited in his bank account on 02.04.2016 out of which he withdrew Rs.24 lacs on 04.04.2016 (**PB 35**). However, the planning to get the treatment from Mumbai was deferred and the cash remained with the assessee. Thereafter the wife of assessee suffered from Breast Cancer and ultimately she expired on 07.09.2020. (**PB 28-34**).

2. Out of the amount of Rs.24,00,000/- which was withdrawn on 04.04.2016, assessee incurred expenditure of Rs.2,50,000/- for his wife's medical treatment at Jaipur and the balance unutilized money lying with him was deposited in the bank account after the date of demonetization as under:-

Date	Amount
21.11.2016	9,50,000/-
25.11.2016	11,00,000/-
14.12.2016	1,00,000/-

Total	21,50,000/-
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Thus the source of cash deposit made by the assessee is fully verifiable from the withdrawals made by him from the same bank account.

3. The AO has based his conclusion only on assumption and presumption holding that it was an afterthought to hide his source of income without pointing out what is that source of income. In fact the assessee has demonstrated with evidence that the source of deposit is out of withdrawals from the same bank account during the year under consideration itself. The lower authorities have not brought on record any evidence to controvert that withdrawals to the extent it was deposited back in the bank account has been used somewhere else. Hence it cannot be presumed that assessee has any undisclosed income which is deposited in the bank account. AO made the addition u/s 69A of the Act. This section uses the word 'may' and not 'shall'. In these circumstances, even if the source of cash deposit in the bank account is not found to be satisfactory explained, no addition can be made in the peculiar facts of the case as held by **Hon'ble Supreme Court in case of CIT Vs. Smt. P.K. Noorjahan (1999) 237 ITR 0570.**

4. It is submitted that in various cases it has been held that once the assessee has explained that source of cash deposit in the bank account is out of the earlier withdrawals made from the same bank account, the burden of proof is on the department to establish that cash has been utilised elsewhere if the explanation of assessee is not to be accepted. Reliance in this connection is placed on the following case laws:-

Muon Computing (P) Ltd. Vs. ITO ITA No. 7606/Del/2019 order dt. 04.08.2021 (Del.) (Trib.) (Case laws compilation PB 1-5)

Para 9 of this decision is reproduced as under:-

"9. There is no dispute with regard to the fact that Revenue has not brought any material suggesting that the withdrawal made by the assessee were utilized for making payments. It is also not brought on record that the amounts so withdrawn from the bank account was utilized for any other undisclosed purposes. Further, it is noticed that learned CIT(A) observed that despite having sufficient cash in hand, the assessee withdraw the amount. It is correct that the assessee has withdrawn higher amounts than the immediate preceding years but that cannot be sole reason for making addition purely on the basis of suspicion. Further, I failed to understand the reasoning of the AO that the amount was withdrawn to justify the cash deposits during demonetization period i.e., between 9th Nov., 2016 to 30th Dec., 2016. It is also seen that the cash was withdrawn much prior to such

event. So far observation regarding sharp increase in payable expenses is concerned, there is no finding by the AO that such expenses are bogus. Therefore, in my considered view, the addition has been made purely on the basis of suspicion. Such action of authorities below cannot be affirmed. I, therefore, direct the AO to delete the impugned addition. Thus, ground raised by the assessee in this appeal is allowed."

**Nand Kumar Taneja & Anr. Vs. ITO (2019) 55 CCH 0705 (Del.) (Trib.)
(Case laws compilation PB 6-9)**

Para 6 & 7 of this decision is reproduced as under:-

"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, 08.11.2016, 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 31.03.2016, 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.”

Krishna Agarwal Vs. ITO (2021) 63 CCH 0048 (Jodh.) (Trib) (Case laws compilation PB 10-20)

Para 14 of the decision is reproduced as under:-

“14. In this regard, it is noted that the assessee has explained that out of earlier year's cash withdrawals from her bank account which were available as cash balance as on 01/04/2016, the assessee had deposited a sum of Rs. 68,95,000/- in her bank account during the year under consideration. It has been submitted that the assessee has sold a property, transferred in her name after the death of her husband, for a consideration of Rs 1,31,45,200/- during the financial year 2015-16 and the sale consideration has been received in installments during the financial year 2014-15 and financial 2015-16 directly in her bank account which has been subsequently withdrawn from time to time and due to non-fulfillment of purpose for which the cash was withdrawn, it was again re-deposited in the bank account during the year under consideration. In this regard, it is noted that the assessee in her return of income for A.Y 2016-17 has disclosed sale consideration on sale of plot of land for Rs 1,31,45,200/- and offered capital gains to tax. The plot has been sold through a registered deed and the valuation has been determined at Rs 1,31,45,200/- by the stamp duty authority. Thus, the sale consideration equivalent to stamp duty value has been duly disclosed by the assessee and there is no finding that the assessee has received any amount over and above the declared sale consideration. Therefore, given that the sale consideration has been received directly in the assessee's bank account, the source of cash withdrawals in the earlier two years has been clearly demonstrated by the assessee and we see no reason but to accept the said explanation which is clearly demonstrated through the sale documentation and tax filings by the assessee”.

Neeta Breja Vs. ITO ITA No. 524/Del/2017 order dt. 25.11.2019 (Del.) (Trib.) (Case laws compilation PB 21-24)

The Hon'ble bench at Para 12 of its order held as under:-

“12. In the present case also the learned assessing officer or the learned CIT A did not show that above cash was not available in the hands of the assessee or have been spent on any other purposes. Further the coordinate bench in ACIT vs Baldev Raj Charla 121 TTJ 366 (Delhi) also held that merely because there was a time gap between withdrawal of cash and cash deposits explanation of the assessee could not be rejected and addition on account of cash deposit could not be made particularly when there was no finding recorded by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts. In view of above facts, the ground number 1 of the appeal of the assessee is allowed and orders of lower authorities are reversed.”

DCIT Vs. Veena Awasthi (2018) ITA No.215/LKW/2016 order dt. 30.11.2018 (Lucknow) (Trib.) (Case laws compilation PB 25-34)

The Hon'ble ITAT AT Para 8 of its order held as under:-

“8. We have perused the case record and heard the rival contentions. We find that addition has been made by the Assessing Officer, as is evident from his order, on the ground that he has come to the conclusion that cash deposits were from some other source of income which is not disclosed to the Revenue. Assessing Officer nowhere in his order has brought out any material on record to show that assessee is having any additional source of income other than that disclosed in the return nor Assessing Officer could spell out in his order that cash deposits made by the assessee was from some undisclosed source. All throughout Assessing Officer has raised suspicion on the behavioural pattern of frequent withdrawal and deposits by the assessee. There is no law in the country which prevents citizens to frequently withdraw and deposit his own money. Documentary evidences furnished before the Revenue clearly clarifies that on each occasion at the time of deposit in her bank account, assessee had sufficient availability of cash which is also not disputed by the Revenue. Entire transaction of withdrawals and deposits are duly reflected in the bank account of the assessee and are verifiable from relevant records. Assessing Officer himself admitted that assessee had sufficient cash balance on each occasion at the time of deposit in her bank account on different dates during the assessment year under consideration. We have also examined the order of ld. CIT(A) and we find that his decision is based on facts on record and is supported by adequate reasoning and, therefore, we do not want to interfere with the order of ld. CIT(A) and accordingly we uphold the findings of the ld. CIT(A) sustaining relief granted to the assessee.”

In view of above, considering the overall facts and circumstances of the case, it cannot be presumed that assessee has any undisclosed income which was deposited in the bank account and therefore, addition confirmed by Ld. CIT(A) be directed to be deleted.”

2.4 On the other, hand, the ld. DR supported the order of the ld.CIT(A)

2.5 The Bench has heard both the parties and perused the materials available on record including the written submission of the assessee. Brief facts of the case are that in this case the assessee filed the return of income on 22-02-2018 declaring total income of Rs.3,84,220/- for this year as income from salary, It is noted from the assessment order that the assessee is a salaried class and was an employee of JDA, Jaipur. The case of the assessee was selected for scrutiny assessment under CASS. During the course of assessment proceedings, the AO made the addition of Rs.21.50 lacs and Rs.28,079/- by observing as under:-

“On perusal of submission furnished by the assessee, it is noticed that the assessee had withdrawn cash of Rs.24,00,000/- and utilized the cash Rs. 2.50 Lacs during the period from 04.04.2016 to 21.11.2016. In seven months, the assessee utilized only of Rs. 2.50,000/- but there is no logic to withdraw of such huge amount of money of Rs. 24,00,000/- and keep it at home. The assessee stated that he had withdrawn the amount of Rs.24,00,000/- for medical treatment, but from perusal of bank statement of the assessee, it is found that he has never withdrawn considerable amount of money except withdrew amount to the extent of household expenses before and after the date of withdrawn of Rs.24,00,000/- i.e. 04.04.2016, while the assessee himself stated in his submission that "my wife is suffering from serious illness since 2014". If it were withdrawn for the purpose of medical treatment he used to withdraw considerable amount of money regularly for the treatment, but it was not so From this, it is proved that, It is totally after thought and concocted story for the purpose of hide his source of income. Therefore, it is inferred that it is totally unexplained source of cash deposit in bank account. Considering the facts, circumstances of the case and nature of income shown by the

assessee, cash deposited in the Bank Account during the demonetization period of Rs.21,50,000/- is added to the total income of the assessee treating the same as unexplained source of cash deposits in bank account during the demonetization period u/s 69A of the Act. Therefore, an addition of Rs.21,50,000/- is hereby made u/s 69A of the Act treating as unexplained source of cash deposit. The total Income assessed u/s 115BBE of the Act at the rate of 60%.

On verification of bank account, it is found that the bank has credited interest of Rs.28,079/-(Rs. 610 on 25.04.2016, Rs.63 on 25.07.2016, Rs. 123 on 25.10.2016, Rs.7,571 on 25.12.2016 and Rs. 19,712 on 25.03.2016). Considering the facts, circumstances of the case and nature of income shown by the assessee, interest received by the assessee during the Financial Year 2011-12 of Rs.28,079/- is added to the total income of the assessee treating the same as undisclosed income received from interest. Therefore, an addition of Rs.28,079/- is hereby made treating as undisclosed income.’’

In first appeal, the Id. CIT(A) has confirmed both the additions i.e. Rs.21,50,000/- and Rs.28,079/- making the total of Rs.21,78,079/- as made by the AO. It is noted from the records that the assessee is in appeal before the Bench for adjudication of the addition of Rs.21.50 lacs. It is noted from the records that the assessee is a Rajasthan Govt. employee and working in Jaipur Development Authority whose only source of income from salary. It is noted from the records that the assessee had inherited an ancestral immovable property situated at H-4/58, Ramesh Marg, C-Scheme, Jaipur measuring 254.51 sq. yd. from his forefathers. On this property through development agreement assessee got 55% share in the constructed property comprising of stilt floor and 3 floors thereon. The assessee's wife was

suffering from serious illness since 2013. At that time she has brain hemorrhage due to Reumatic heart disease which is evident from discharge summary dt. 11.06.2013 at Indowestern Brain & Spine Hospital, Jaipur (**PB 19-24**). Due to this her left side was paralysed. She was under continuous medical treatment of Dr. Bhawna Sharma, DM, Neurology (**PB 25-27**) who was subsequently suggested to get her treatment from Mumbai. Accordingly, assessee sold Flat No.G-1 at stilt floor measuring 800 sq. ft. on 31.03.2016 for Rs.24,25,000/-, This amount was credited in his bank account on 02.04.2016 out of which he withdrew Rs.24 lacs on 04.04.2016 and such transactions shows from his State Bank Account Bearing A/c No. 51101314050 (**PB 35**). The Id. AR of the assessee informed the Bench that the planning to get the treatment from Mumbai was deferred and the cash remained with the assessee. Thereafter the wife of assessee suffered from Breast Cancer and ultimately she expired on 07.09.2020 for which the assessee filed Death Certificate issued by Govt. of Rajasthan (Directorate of Economics & Statics),Civil Lines, Jaipur (**PB 28-34**). It is further noted that out of the amount of Rs.24,00,000/- which was withdrawn on 04.04.2016, assessee incurred expenditure of Rs.2,50,000/- for his wife's medical treatment at Jaipur and the balance unutilized money lying with him was deposited in the bank account after the date of demonetization as under:-

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Date	Amount
21.11.2016	9,50,000/-
25.11.2016	11,00,000/-
14.12.2016	1,00,000/-
Total	21,50,000/-

Hence, in view of the above facts, circumstances of the case, the Bench noted that the source of cash deposit made by the assessee is verifiable from the withdrawals made by him from the same bank account. Thus the Ground No. 1 of the assessee is allowed.

3.1 As regards, the Ground No. 2 of the assessee, the Bench does not feel to adjudicate upon being the same infructuous.

4.0 In the result, the appeal of the assessee is allowed with no order as to costs.

Order pronounced in the open court on 06/08/2024.

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 06 /08/2024

***Mishra**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Kesar Kadir Khan, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 5(3), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 372/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar