IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC" BENCH: NEW DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.2484/Del/2023
[Assessment Year : 2017-18]

Manish Kumar Dubey, E-4, 2nd Floor, Gali No.3, East Chander Nagar, New Delhi-110051. ***PAN-AOTPD0936K***	vs	ITO, Ward -72(1), New Delhi.
APPELLANT		**RESPONDENT**
Appellant by	Shri Ravi Pratap Mall, Adv.	
Respondent by	Shri Sanjay Kumar, Sr.DR	
Date of Hearing	21.08.2024	
Date of Pronouncement	05.09.2024	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre ("NFAC"), Delhi dated 10.07.2023 for the assessment year 2017-18.

2. The assessee has raised following grounds of appeal:-

1. *"That the learned National Faceless Appeal Centre (NFAC) Delhi has erred both in law as well as on facts upholding the addition of Rs. 7,74,000/- made by the Assessing Officer as unexplained money u/s 69A of the Income Tax Act, 1961.*
2. *That the learned NFAC grossly erred in failing to appreciate that source of cash deposit made by the appellant was out of cash withdrawals made before demonetization and hence the addition sustained by the learned NFAC is unsustainable in law.*
3. *That the learned NFAC grossly erred in failing to appreciate that unless there is evidence to show that the amount withdrawn from the Bank had been spent by assessee somewhere else, explanation*

that cash withdrawn has been used to deposit in the bank account cannot be rejected.

4. *That the learned NFAC has erred in upholding the addition made by the learned assessing officer to the extent of Rs. 7,74,000/- on assumption and presumption without bringing any adverse material rebutting the submissions of the assessee."*

3. Facts giving rise to the present appeal are that the assessee filed his return of income at INR 6,86,910/- on 15.07.2017. Thereafter, the case of the assessee was taken up for scrutiny assessment. The basis for scrutiny was to verify the source of cash deposited by the assessee in his bank accounts maintained with different banks amounting to INR 12,74,000/-. The Assessing Officer ("AO") issued statutory notices to the assessee. In pursuance to the statutory notices, the assessee filed his explanation about the source of cash deposited in his bank accounts. The AO treating the explanation as not cogent, he added back the amount to the income of the assessee. Thus, he assessed the income of the assessee u/s 143(3) of the Income Tax Act, 1961 ("the Act") vide assessment order dated 06.12.2019 at INR 19,60,910/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee. Thereby, out of total addition, he sustained the addition of INR 7,40,000/- and rest of the addition was deleted.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Apropos to the grounds of appeal, Ld. Counsel for the assessee has filed brief synopsis and also made oral arguments re-iterating the submission made in the written submissions. He contended that the assessee in unequivocal terms, had explained the source of cash deposits in his bank account. He submitted that the assessee had taken loan from bank and had made the deposit out of various withdrawals. He submitted that the AO erroneously observed that the assessee could not explain about the amount as to what purpose it was withdrawn. He submitted that money could not be used for the purpose, it was withdrawn therefore, it was redeposited. For the sake of clarity, the relevant contents of the brief synopsis are reproduced as under:-

"May It please your honours:

1. *That the captioned appeal filed by the assessee is directed against an order of the learned CIT(A) dated 10.07.2023, whereby learned CIT(A) has partly allowed the appeal of the assessee wherein out of the total addition of Rs. 12,74,000/- made by the learned AO in the order of assessment dated 06.12.2019 passed u/s 143(3) of the Act, sustained the addition of Rs. 7,74,000/-.*
2. *The Appellant is an employee and has been regularly filing tax return and paying taxes as per law. For the year under consideration, the appellant had filed his e-return of income on 15/07/2017 returning total income of Rs. 6,86,910 after claiming deduction of Rs. 2,94,453 under Chapter VIA of the Income tax Act, 1961(Act).*
3. *Subsequently, the Applicant's case was selected for scrutiny and learned Assessing Officer (AO) required the assessee to explain the source of cash deposit of Rs. 12,74,000/- deposited during the demonetization period in the following bank account of the assessee:*

Bank	***Amount***
Axis Bank	*5,24,000.00*
Union Bank	*2,50,000.00*
HDFC Bank	*2,50,000.00*

SCB Bank	*2,50,000.00*
Total Cash deposit	***12,74,000.00***

4. *The appellant during the course of the assessment proceedings, submitted that cash deposit made in the bank account was out of cash withdrawal from banks of the appellant. The details of withdrawals made by the appellant from his bank accounts are tabulated hereunder:*

Date	***Bank***	***Amount (in Rs.)***	***See Page***
29-Jun-16	*SCB Bank (Pg 41-50 of PB)*	*9,50,000.00*	*See Page 41 of PB*
12-Jul-16	*SCB Bank (Pg 41-50 of PB)*	*7,50,000.00*	*See Page 42 of PB*
15-Jul-16	*SCB Bank*	*5,00,000.00*	*See Page 42 of PB*
18-Jul-16	*Axis Bank (Pg 23-29 of PB)*	*8,40,000.00*	*See page 24 of PB*
24-Oct-16	*Axis Bank (Pg 23-29 of PB)*	*5,00,000.00*	*See page 26 of PB*
Total withdrawal		***35,40,000.00***	

5. *The appellant also submitted that aforesaid cash was withdrawn for the purpose of purchase of a property and also for the purpose of his marriage.*

6. *It is submitted that the appellant has purchased a property vide sale deed dated 26.08.2016 (see page 66-79 of the PB). From the perusal of the same, it would be seen that market value of the property is Rs. 30,00,000/-, whereas value of the property for the purpose of stamp duty was Rs. 22,70,000/-, therefore the appellant has purchased the property much above the circle rate. The payment of the purchase of the property was made in the following manner (see page 72 of PB):*

Amount	***Bank***	***Mode of payment***	***See Page***
Rs.5,00,000	*HDFC Bank (Pg 30-40 of PB)*	*Vide Cheque debited on 28.06.2016*	*See page 33 of PB*
Rs.50,000	*HDFC Bank (Pg 30-40 of PB)*	*Vide Cheque debited on 28.06.2016*	*See page 33 of PB*
Rs.50,000	*HDFC Bank*	*Vide Cheque debited on*	*See page 33*

	(Pg 30-40 of PB)	*28.06.2016*	*of PB*
Rs.8,00,000	*Loan obtained from Axis Bank*	*Vide DD given by bank to the seller*	*See page 56-57 of PB*
Rs.8,00,000	*Loan obtained from Axis Bank*	*Vide DD given by bank to the seller*	*See page 56-57 of PB*
Rs.8,00,000	*Loan obtained from Axis Bank*	*Vide DD given by bank to the seller*	*See page 56-57 of PB*
Rs.30,00,000			

7. *It would thus be seen that consideration for the purchase of the property was paid from the bank account of the assessee and out of the loan obtained from the bank and only stamp duty was paid out of the amount withdrawn by the appellant.*

8. *Further to the aforesaid, it is submitted that since the appellant's marriage was scheduled to take place during the same year, as such, for the purpose of marriage he was keeping cash with him for making various expenses. It is submitted that marriage of the appellant took place on 01.12.2016, i.e. post demonetization.*

9. *It is submitted that since the demonetization was declared before the date of marriage as such, funds remained unutilized was deposited in the bank account of the appellant. It is respectfully submitted that till the demonetization, the appellant has withdrawn aggregate sum of Rs. 34,50,000/-, and some amount was utilized towards the stamp duty, and towards various expenses in relation to marriage, however amount remained with the appellant of Rs. 12,74,000/- was deposited in the bank account of the appellant.*

10. *That despite the aforesaid factual position, learned AO made the addition of aforesaid sum of Rs. 12,74,000/- u/s 69A of the Act on the ground that "withdrawals were made for the purpose of acquiring property and for the purpose of marriage. Both of these purposes are expense/investments in nature which results in outflow of cash and the claim of the assessee that the cash deposited was out of these cash proceeds contradict itself and no*

other documentary evidence was provided by the assessee in support of claim".

11. *In the appeal filed by the appellant, learned CIT(A), only accepted the deposit to the extent of Rs. 5,00,000/- on the ground that appellant has withdrawn a sum of Rs. 5,00,000/- on 24.10.2016, which is proximate to the date of deposit and sustained the addition of remaining sum by upholding the finding of learned AO that amount withdrawn was for expense/investments which result in out flow of cash.*

12. *From the aforesaid facts, it would be seen that in this case, assessee has made cash withdrawals to the tune of Rs. 35,40,000/- from June, 2016 to October, 2016 and out of the said sum he has deposited a sum of Rs. 12,74,000/-. It is submitted that learned CIT(A) has accepted the cash deposit to the extent of Rs. 5,00,000/- on the ground that same was withdrawn on 24.10.2016, however amount withdrawn by the appellant in the month of June and July, 2016 of Rs. 30,40,000/- out of which a sum of Rs. 7,74,000/- was lying with the appellant and deposited in the bank account was not accepted. Learned CIT(A) has completely failed to comprehend that in respect of purchase of property, the appellant has paid a sum of Rs. 6,00,000/- from his bank account, and sum of Rs. 24,00,000/- was paid by Axis Bank from whom the appellant has obtained a loan in respect of purchase of property. Further the marriage of the appellant also took place on 01.12.2016, i.e. post demonetization.*

13. *It is thus submitted that once the cash withdrawals are in excess of the cash deposits, then it becomes amply clear that the cash deposits in bank account are out of the available sources with the assessee. In fact, no material has been brought on record to controvert the explanation offered by the appellant. It is thus evident that amount lying with the appellant was out of cash withdrawals*

made from his bank account. Reliance is placed on the following judicial pronouncements:

a) <u>Jaya Aggarwal vs ITO [2018/92 taxmann.com 108 (Delhi HC)</u>

Section 68 of the Income-tax Act, 1961 Cash credit (Bank deposit) Assessment year 1998-99 Assessee withdraw certain amount of cash from her bank account Said withdrawal was to buy property for which earnest money in cash was to be paid - As deal could not be fructified, a part of such amount was re-deposited in same bank account Assessing Officer observed that sum was redeposited after more than 7 months, thus, treated same as unexplained cash credit and addition was made under section 68 Whether explanation given by assessee that deposit was made out of sum withdrawn earlier was not fanciful and sham story and it was perfectly plausible, thus, impugned additions under section 68 was to be deleted –

Held, yes

b) 'Harjeet Kaur v. ITO" [ITA No.2013/Del/2021 dated 25.10.2022]

4. I have considered rival submissions and perused the materials on record. As far as factual aspect relating to the issue in dispute is concerned, admittedly, the assessee had deposited cash in her bank accounts during the demonetization period. However, before the Assessing Officer, the assessee had explained that such deposits were out of cash withdrawals made earlier by her for the purpose of her daughter's marriage. The Assessing Officer has partly accepted assessee's contention on the reasoning that the entire cash deposited in the bank account could not have been available with the assessee, as, she must have utilized a

major part of it in the marriage of her daughter. However, while coming to such conclusion, the Assessing Officer has completely discarded assessee's contention that she did not incur much expenditure in the marriage as, firstly, it was a love marriage and secondly, it was performed in a Gurudwara in the presence of close relatives.

5. In my view, the explanation furnished by the assessee is believable, when the Assessing Officer has not brought on record any contrary material to demonstrate that the assessee must have incurred more expenditure in her daughter's marriage than what she claimed. In fact, it is not a case where the Assessing Officer has completely disbelieved assessee's contention that the cash deposits made in the bank accounts were out of withdrawals available with her. This is so because, though, amount of Rs.22,01,000/- was deposited during the demonetization period, however, ultimately, the Assessing Officer has added an amount of Rs. 12,01,000/-. Having considered overall facts and circumstances of the case, I am of the view that the addition made by the Assessing Officer is unsustainable. Accordingly. I delete the addition."

c) *Preeti Bharadwaj v. ITO' [ITA No. 78/DEL/2024 dated 22.03.2024]*

"4. I have heard rival contentions and perused the material available on record. I find that before the lower authorities the assessee had provided source of cash deposits in the bank account. The Revenue has not brought any material to controvert the claim of the assessee that the assessee was having cash in hand to make the impugned deposits. In the light of the case laws relied by the learned counsel for the assessee, I am of the considered view that when the assessee

has provided the source of cash deposits being cash withdrawals, in my view, the AO without bringing adverse material ought not have treated the same as unexplained. Therefore, I hereby direct the AO to delete the impugned addition. Grounds raised in this appeal are allowed."

d) 'Prem Chand Dalal v. DCIT' [ITA No. 1598/DEL/2022 dated 13.12.2022]

e) Smt. Perminder Kaur Matharoo vs. ITO [ITA No. 840/DEL/2021 dated 15.11.2022]

f) Om Parkash Nahar vs ITO [2022] 135 taxmann.com 377 (Delhi - Trib.)

g) ITO vs Deepali Sehgal [ITA No 5660/Del/2012] (Delhi Trib.)

h) Arihant Associates vs ITO [2024] 158 taxmann.com 7 (Raipur Trib.) (20-09-2023]

i) Abdul Razaak vs ITO [2023] 153 taxmann.com 180 (Chennai)

j) Sudhirbhai Pravinkant Thaker vs ITO [2017] 88 taxmann.com 382 (Ahmedabad - Trib.)

14. It is further submitted that the burden lies on the revenue to bring material on record, to suggest that the money withdrawn by the assessee has been utilized elsewhere for personal purposes or the money so withdrawn is not available with the assessee, as per the mandate of Delhi High Court in the case of CIT vs. Kulwant Rai reported in 291 ITR 36 (Del). With respect it is stated, that AO is an investigator and then an adjudicator and having not made any enquiry in respect of cash withdrawals so made by assesssee and her husband, he cannot draw and adverse inference against the assessee. Hence, availability of cash as a source of deposit cannot be rejected by the revenue. Relevant findings in the case of CIT vs. Kulwant Rai, 291 ITR 36 (Del) are extracted as under:

"14. The next ground taken up by the learned counsel for the revenue is with regard to the addition of Rs. 2.5 lakhs on account of cash amounting to Rs. 3,76,800 found in the bed room of the assessee at the time of search.

15. The assessee has not disputed this recovery. However, the case of assessee is that this represented cash remaining from the withdrawal from his bank account from time to time and a sum of Rs. 2 lakhs was received on 4-12-2000 by cheque No. 345947 and the assessee has furnished cash flow statement to this effect also.

16. This cash flow statement furnished by the assessee was rejected by the Assessing Officer which is on the basis of suspicion that the assessee must have spent the amount for some other purposes. The orders of Assessing Officer as well as Commissioner of Income-tax are completely silent as to for what purpose the earlier withdrawals would have been spent. As per the cash book maintained by the assessee, a sum of Rs. 10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs. 2 lakhs on 4-12-2000 and there was no material with the Department that this money was not available with the assessee. It has been held by the Tribunal that in the instant case, the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings. No material has been relied upon by the Assessing Officer or Commissioner of Income-tax (Appeals) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly, the Tribunal rightly held that the assessment of Rs. 2.5 lakhs is legally not sustainable under section 158BC of the Act and the same was rightly ordered to be deleted.

17. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of section 260A of the Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law.

18. Accordingly, the present appeal is, hereby, dismissed."

15. *It is further, submitted that though the assessee has given the reason of cash withdrawal, however it has been held by the Hon'ble Courts that even if the assessee did not explain the reasons for withdrawal of cash from his bank account, cannot be the basis to hold that the source of deposit of cash was not explained by the assessee. This legal position has been explained by Karantaka High Court in the case of S.R. Venkatraman vs. CIT reported in 127 ITR 807 (Kar), wherein it has been held that, once the assessee disclosed the source as withdrawals made on a given date from a given bank, it was not open to the revenue to examine as to what the assessee did with that money and it cannot chose to disbelieve the plea of the assessee merely on the surmise that it would not be probable for assessee to keep the money unutilized. Relevant finding of S.R. Venkatraman vs. CIT reported in 127 ITR 807 (Kar) are extracted as under:*

"There is some force in the argument of the learned counsel for the petitioner and the argument advanced by the revenue is, therefore, without any force. Once the petitioner-assessee disclosed the source as having come from the withdrawal made on a given date from a given bank, it was not for respondents Nos. 1 and 2 to concern themselves with what the assessee did with that money, i.e., whether he had kept the same in his house or utilised the services of a bank by

depositing the same. The ITO had only two choices before him. One was to reject the explanation as not believable for the reason that on his investigation no such pigmy deposit was ever made in the bank. In the alternative he ought to have called upon the assessee- petitioner to substantiate his claim by documentary evidence. Having exercised neither of the choices, it was not open to the ITO to merely surmise that it would not be probable for the assessee to keep Rs. 15,000 unutilised for a period of two years. The ITO should have given an opportunity to the assessee to substantiate his assertion as to the source of his capital outlay."

16. *It is respectfully submitted that the Ld. CIT(A) failed to recognize that addition cannot be sustained once the source of deposit was established as cash withdrawn earlier and the same is substantiated with the Pass Book of the Assessee. Without binging any adverse material on record intimating that the cash so withdrawn is not the same cash which was later deposited by the Appellant during the demonetization period the addition made merely stating the source of deposit as unexplained is a complete disregard of established position of law as can be referenced through the decisions cited above.*

17. *Hence, in view of the above burden of the appellant stands discharged once the bank account of the appellant clearly reflect the withdrawal of cash and there is no material which suggest that such sum has been utilized elsewhere, and hence addition sustained by the learned CIT(A) is unsustainable in law.*

18. *Lastly, it is stated that merely because there was a time gap between withdrawal of cash and cash deposit explanation of the assessee cannot be rejected. Reliance is placed on following judgments:*

    a) *ITO vs. Deepali Sehgal in ITA 5660/Del/2012 (Del Trib.)*

b) Smt. Krishna Agarwal vs. ITO in ITA 53/Jodh/2021 (Jodhpur Trib.)

It is therefore most humbly prayed that addition sustained by the learned CIT(A) of Rs. 7,74,000/- may kindly be deleted and the appeal of the appellant may kindly be allowed."

7. Ld. Sr. DR for the Revenue opposed these submissions of the assessee and supported the orders of authorities below. He submitted that there is no error in the order passed by the lower authorities as the assessee failed to offer any plausible explanation for the source of cash deposited in his bank accounts. He submitted that between the withdrawals from the bank and deposits, thereof is long period of gap which is unexplained as to why the assessee would keep money in cash, for such a prolonged period.

8. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. I find that Ld.CIT(A) has allowed the grounds raised by the assessee before him in part and sustained the addition to the extent of INR 7,40,000/- by observing as under:-

9.3. "Therefore, there is a merit in the Assessing Officer's contention that the purposes for which loan was obtained are expense/investments which result in out flow of cash. Further, looking into date on which withdrawals of cash done from the bank the amount of Rs.8,40,000/- was withdrawn on 18.07.2016 and an amount of Rs.5,00,000/- as cash withdrawal on 24.10.2016 and the deposits of cash was on 19.11.2016, 23.11.2016, 25.11.2016 and 28.11.2016. Looking at the proximity of these, only an amount of Rs.5,00,000/- was withdrawn on 24.10.2016 is the amount that may have gone got deposited on different dates during

demonetization period and there can be no reason to believe that the amount was withdrawn on 18.07.2016 was lying with the appellant for being spent for expenses. It stands to no reason as to how so much of cash was lying with the appellant as still he had to obtain another loan from ICICI bank on 01.09.2016.

9.4. Therefore, taking the explanation of the appellant as per facts and circumstances of the case, the appellant's explanation is that the amount of cash of Rs.5,00,000/- was re-deposited in the banks during the demonetization period is accepted and the explanation the amount of Rs.8,40,000/- was withdrawn on 08.07.2016 and re-deposited is rejected. Therefore the Assessing Office is directed to restrict the addition to Rs.5,00,000/-.

9.5. The Assessing Officer's reason is also correct with regard to invoking the provisions of section 69A of Income Tax Act, 1961. The appellant has riot given any other evidence for the source of Rs.7,40,000/- during demonetization period, hence, the action taken by the Assessing Officer u/s 69A of Income Tax Act, 1961 in this regard is sustained. The appellant gets relief of Rs.5,00,000/-."

9. From the above finding of Ld.CIT(A), it is clear that it is based purely on the basis of presumption and without giving any clear finding. As the lower authorities failed to bring any material on record suggesting that the money so withdrawn by the assessee was expended for any other purpose and such sum was not available with the assessee for redeposition. In my considered view, the assessee has given a plausible explanation with the supporting evidences about the deposition of cash in his bank accounts. The Revenue has not controverted the fact that the assessee had obtained loan and also there are withdrawals from the bank accounts. Ld.CIT(A) rejected the explanation merely because the assessee had obtained loan post withdrawal of cash

without giving any finding regarding usage of such cash by the assessee. Undisputedly, the AO has not brought any adverse material suggesting that the cash withdrawn by the assessee in the month of July, 2016 was in fact had been utilized for any other purpose. In view of these uncontroverted facts, I am of the considered view that the authorities below are not justified in making the impugned addition. Therefore, the AO is hereby, directed to delete the addition. Grounds raised by the assessee are accordingly, allowed.

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

Order pronounced in the open Court on 05th September, 2024.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI