

आयकर अपीलीय 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.887/JP/2024  
निर्धारण वर्ष / Assessment Year : 2017-18

Shri Sanjay Kumar Saini Qtr No. C-175, Sector-II A, Khetri Nagar Distt. Jhunjhunu	बनाम Vs.	The ITO Ward- Jhunjhunu Jhunjhunu
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AXJPS 7058 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rohan Sogani, CA  
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 17/09/2024  
उदघोषणा की तारीख / Date of Pronouncement: 18 /09/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 27 -11-2023, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2017-18 raising therein following grounds of appeal.

"1. In the facts and circumstances of the case and in law the ld. CIT(A) has erred in confirming the action of the AO in making additions of Rs.18.50lacs as unexplained money u/s 69A. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be

granted by deleting the addition of Rs.18.50 lacs made u/s 69A of the Income Tax Act, 1961

2. In the facts and circumstances of the case and in law the ld. CIT(A) has erred in confirming the action of the AO in invoking provision of Section 115BBE of the Income Tax Act. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the invocation of Section 115BBE as being not in accordance with the relevant rules.

2.1 The brief facts of the case are that the Assessee and his wife are doctors and the assessment in the case of assessee was completed under section 143 3 by making additions of Rs.18,50,000/-under section 69A of the Income Tax Act on account of unexplained cash deposit by the assessee.

2.2 Aggrieved by this order of assessment, the assessee filed an appeal, but remained unsuccessful, as the appeal filed by the assessee was dismissed.

2.3 Against the order of dismissal of appeal, the assessee has now preferred the present appeal before me on the grounds mentioned here in above.

2.4 At this stage my attention is drawn towards the application for seeking condonation of delay. Since there is delay of 116 days in filing the present appeal, therefore the assessee has relied upon his application for seeking condonation of delay where in it has been mentioned that for the purpose of filing the return of income the assessee had taken the services of a Chartered Accountant namely

Manish Mittal who is based in Jhunjhunu. It was further submitted that the said CA had provided his own email address with the income tax authorities. After the elapse of considerable period when the assessee had not heard anything from his chartered accountant with regard to the pendency of the appeal before Id. CIT(A) then the assessee contacted the present Chartered Accountant, who after enquiry had informed the assessee that the appeal has already been decided against the assessee by NFAC. Therefore after coming to know the decision of the appeal, the assessee without wasting any time had filed the present appeal before the Tribunal.

2.5 After having heard the Counsel for both the parties on the application for seeking condonation of delay and after going through the documents placed on record I am of the view that the provisions of Section 5 of the Limitation Act of 1963 has enabled the Tribunal to do substantial justice to parties by disposing of matters on merits. Therefore in my view the expression sufficient cause employed by the legislature is adequately elastic to enable the courts or the tribunals to apply the law in a meaningful manner which sub serves the ends of Justice. That being the life purpose of the existence of the Institution of courts. Hence keeping in view, the facts and circumstances of the present case and also keeping in view the principles laid down by Hon'ble Supreme Court of India, I allow the present application and condone the delay of 116 days in filing the present appeals and admit the appeal for deciding it on merits.

3.1 The Ground No.1 raised by the Appellant relates to challenging the order of Ld CIT (A) in sustaining the additions made under section 69A of the Income Tax Act.

3.2 In this regard apart from reiterating the same arguments as were raised by the appellant before the revenue authorities, the Appellant also relied upon his written submissions and the same are reproduced here in below

““GROUNDS OF APPEAL

NO. 1: ADDITION AMOUNTING TO RS 18,50,000 U/S 69A

1. SUBMISSIONS

1. The assessee deposited cash totaling to Rs 20,00,000 in his ICICI Bank, Khetri Branch bearing account no. 673101540514. The said amount was deposited in two installments. Details are as under:

Date of Deposit	Amount in Rs
30.11.2016	11,50,000
08.12.2016	4,50,000
08.12.2016	4,00,000
Total	20,00,000

2. During the CIT(A) and assessment proceedings it was duly explained that the above cash was deposited out of earlier cash withdrawals from the bank account of the assessee and his wife. Details of earlier withdrawals being as under:

Date of Withdrawal	Name of Account holder	Bank Account Number with SBI, Khetri Branch	Amount in Rs
29.06.2015	Sujita Vishwanathan (wife of the assessee)	51031972787	8,00,000
04.07.2015	Sujita Vishwanathan (wife of the assessee)	51031972787	3,00,000
27.01.2016	Sanjay Kumar Saini	51051837289	5,40,000

3. Bank statements of the assessee and his wife evidencing the above entries of cash withdrawal & other cash withdrawals are enclosed [PB 1-9]

4. The cash withdrawn amounting to Rs 11,00,000 (as indicated above in table) by the wife of assessee was gifted to the assessee on his birthday i.e., 15.08.2015. Gift deed evidencing the same is enclosed [PB 10]

5. The demonetization was announced by the Government of India on 8<sup>th</sup> November, 2016 which demonetized currency notes (SBN) of Rs 500 and Rs 1000. However, these notes could be deposited in bank and the depositor was supposed to explain the source to tax authorities.

6. After the said sudden announcement, there were large queues in the banks for cash deposits and withdrawals. Government also repeatedly made public announcements for keeping restrain and avoid long queues at banks.

7. The assessee deposited the first installment of cash amounting to Rs 11,50,000 on 30.11.2016 and within a week i.e., on 08.12.2016 deposited the balance amount of cash of Rs 8,50,000.

8. Ld. AO without any basis, out of the cash withdrawals of AY 2017-18, totaling to Rs 2,87,500, bifurcated Rs 1,37,500 as household expenses and balance Rs 1,50,000 as cash in hand. This was purely out of assumption of ld. AO (Para 3 (i) Page-2 of AO order) as no other explanation has been stated in this regard.

9. It is important to note that cash withdrawals are duly accepted by Ld. AO but he failed to prove that the same were utilized for some other purpose and were not available at the time of deposit. He further alleged that it is practically impossible to keep cash in hand for almost one and half year and is against the human nature (Para 3 (ii) Page-2 of AO order)

10. It is submitted that the cash withdrawals reflected in the bank are over and above the household expenses of the assessee.

11. It is submitted that the assessee has a single daughter who wanted to become a doctor by profession. She wanted to pursue her studies in some reputed medical college. Since the year 2013, there was inconsistency of holding of NEET exam and frequency of the next exam was not known to anybody.

12. Being a single child in the family of the assessee, not only her parents but her grandmother was also very keen for her admission in the medical college.

13. The assessee was under apprehension that for admission of his daughter, he would need cash for deposition of capitation fees. For this, he used to keep cash in hand by withdrawing cash from his bank account and also had collected money from his wife, mother, and other relatives.

14. Her daughter then took admission in Gomel State Medical University, Gomel. Copy of admission document enclosed as additional evidence [PB 11] Since his daughter took admission outside India, both the parents were skeptical about her stay. They wanted to make their daughter comfortable at Gomel University and till then they kept all the cash available with them as cash in hand. The cash was kept only for the purpose of safety of his daughter that even if she returns to India being non-adaptive to the culture outside India, he could get her admission in some other reputed college in India.

15. Due to sudden announcement of demonetization, the assessee had to deposit all the available cash in hand with him again in his bank account since there was no other option left with the assessee.

16. Thus, the total deposits of Rs 20,00,000 were from wife of Rs 11,00,000, earlier cash withdrawals of Rs 5,40,000, loan from his brother Rs 3,00,000 and part amount from old savings. The said amount was made available for ensuring admission by the relatives.

17. The amount of Rs 3,00,000 borrowed from his brother was also returned later on by the assessee through banking channel.

18. The fact that the cash has been withdrawn by the assessee is not disputed. Thus, there was cash available with the assessee which is evident from the bank statements of the assessee.

19. Ld. AO at Page-2 of his order stated that gift deed dated 13.11.2019 is an afterthought and prepared after getting departmental notices. It is submitted that the gift deed is a paper document to substantiate the fact that the cash was gifted by his wife to him but the fact that the cash was withdrawn cannot be denied. The fact that the same is gifted by his wife is also not disputed by ld. AO.

20. Therefore, Id. AO has failed to prove that cash has been used elsewhere and merely on the basis of assumption has added the cash deposits as unexplained money of the assessee. Reliance is placed on the following decisions:

- Hon'ble ITAT Mumbai Bench in the case of Jaspal Singh Sehgal vs. ITO [2017] 83 taxmann.com 246 (Mumbai – Trib.), wherein it is held as under:  
*“... (ii) The lower authorities refused to give benefit of cash withdrawn from the bank on the ground that the assessee could not establish that the cash withdrawn has not been used anywhere else. In our opinion approach of the lower authorities is not fair and justified. The assessee has submitted detailed cash summary showing inflow and outflow of the cash for the entire year. In our opinion the assessee cannot be directed to prove the negative. It is a burden upon the AO to prove that cash has been utilized elsewhere by the assessee before he rejects the claim of the assessee. Unless any such contrary material is brought on record by him to prove that cash has been utilized elsewhere by the assessee, he should give benefit of cash withdrawn by the assessee from the bank account against the amount of cash deposit into the bank account of the assessee, especially when the cash has been withdrawn and deposited in the same financial year, even if the bank from where cash was withdrawn and bank where the cash was deposited are different. Thus, after considering entire facts and circumstances of the case, we direct the AO to give set off of entire amount of cash withdrawn from the Axis Bank and PMC Bank...”*
- Hon'ble ITAT Kolkata Bench in the case of Siddhartha Bhargava vs. Hon'ble CIT Kolkata [2017] In ITA No. 2508/Kol/2017, wherein it is held as under:  
*“...Having heard both the parties, we note that the Ld. CIT (A) has taken note that the assessee had filed the cash flow statement and copies of the bank statement before the AO and that he (AO) has scrutinized the same and thereafter only has made the addition. The Ld. CIT (A) after having gone through the cash flow statement vis-a-vis the bank statement of the assessee noted from the extract of the cash book that as on 01.04.2011 being the first day of the relevant previous year, the assessee was having cash balance of Rs.44,99,361/-. Out of the opening cash balance of Rs.44, 93,361/- the assessee deposited Rs.40 lakh in his PNB account in the month of April and May, 2011. Further, the Ld. CIT(A) records the fact that in order to verify the 3 ITA No. 2508/Kol/2017 Siddhartha Bhargava, AY- 2012-13 cash balance brought from the preceding years, he had gone through the extract of the cash book/cash flow statement for the immediate previous two years and on verification of these cash flow statements, the Ld. CIT (A) found that the opening cash in hand as on 01.04.2010 of Rs.41,31,861/- and as on 01.04.2009 it was Rs.8,19,071/-. It was also taken note by the Ld. CIT (A) that cash balance accounted in the assessee's books arose out of the withdrawal made by him from his own account in PNB and HSBC bank. The Ld. CIT (A) noted that these two bank accounts were duly reflected by the assessee in his personal balance sheet which has already been*

*examined by the AO. After conducting his own scrutiny, the Ld. CIT (A) has confirmed that out of the total deposit of Rs.71, 16,000/- made during the relevant year Rs. 40 lakh were deposited in the month of April and May, 2011 and that these deposits were made out of the cash balance brought forward from the earlier year. It was also noted by the Ld. CIT (A) that in the assessment year under consideration, the assessee had withdrawn Rs.27,25,000/- from his accounts maintained in PNB and HSBC and out of these withdrawals, the remaining cash balance was deposited to the tune of Rs.31,16,000/- . Thus, the Ld. CIT (A) has recorded a finding of fact as under: "On examination of the cash flow statement for the year under consideration, as also for the earlier two years and cross verifying it with the entries in the bank statements, I find that the entries are recorded in the disclosed bank accounts of the assessee which showed that sufficient cash withdrawals were made by the assessee from his bank account to cover the cash deposit." This finding of fact made by the AO after examination of the cash flow statement for the year under consideration as also for the earlier two years after cross verifying it with the entries in the bank statement could not be dislodged by the departmental representative before us. In such a scenario, we are inclined to uphold the action of the Ld. CIT (A) and dismiss the ground of appeal of the revenue..."*

21. From the bank statements, it is evident that there was enough cash available with the assessee. Thus, it can be concluded that the cash withdrawals were enough to cover the amount of cash deposits made by the assessee and no amount remains unexplained on the part of the assessee.

22. The aforementioned factual and legal position was submitted before the Id. CIT(A). However, the same was completely ignored by the Id. CIT(A) and simply doubted the gift deed so prepared, as submitted by the assessee, regarding the gift having been received from his wife. The Id. CIT(A) ignored the fact that the amount was received by the assessee from no one else but from his own wife. The fact that the gift amount had been received by the assessee from his wife had also not been disputed by the lower authorities.

23. The Id. CIT(A) stated that he did not agree with the factual position submitted before him and during the course of assessment proceedings, which indicated that the cash amount had been withdrawn by the assessee on account of uncertainties surrounding the admission of the assessee's daughter. Even otherwise, the evidences submitted clearly established that the assessee's daughter intended to seek admission to a college, either in India or abroad. For this purpose, the assessee had withdrawn the cash from his bank account, along with his wife.

24. Subsequently, when the daughter of the assessee secured admission to a college outside India, there remained uncertainties regarding whether she would be able to continue her



education abroad or might have to return to India if she found it difficult to adapt the surroundings or circumstances abroad. To address these uncertainties, the assessee had withdrawn the amount along with his wife. Thereafter, when demonetization was announced, the entire amount was deposited back into the bank account.

In view of the above treating the cash deposits amounting to Rs 18,50,000 to be unexplained is invalid and deserves to be deleted. Relief may please be granted by deleting the said addition of Rs 18,50,000 under Section 69A.

#### GROUND NO. 2: INVOKING THE PROVISIONS OF SECTION 115BBE

##### 1. SUBMISSIONS

1. The provisions of section 115BBE cannot be invoked for any and every addition made to the income of the assessee.
2. In the present case, cash deposits amounting to Rs 18,50,000 are treated to be unexplained and are added to the total income of the assessee.
3. It is submitted that the cash deposits are out of earlier cash withdrawals and are duly reflected in the bank statements of the assessee. The bank statements are evident to prove the same and therefore the deposits cannot be termed as unexplained. Once the addition cannot be made under Section 69A, invoking the provisions of section 115BBE is also unjustified.

In view of the above, application of Section 115BBE, by the Id. AO, to for taxing the said amount of Rs. 18,50,000 is illegal and deserves to be quashed. Hence, on such amount, there cannot be any applicability of Section 115BBE''

3.3 On the other hand Id. DR relied upon the orders passed by the revenue authorities and submitted that this ground raised by the appellant deserve to be dismissed as appellant could not satisfactory prove the source of deposit of money in the bank.

3.4 I have heard the counsel for both the parties and have also gone through the documents placed on record, judgement cited before me and also the orders passed by the revenue authorities. From the records, I noticed that the assessee had deposited total cash of Rs. 20 lacs in his ICICI Bank. The said amount was deposited on two occasions and the details of which are as under:-

<b>Date of Deposit</b>	<b>Amount in Rs</b>
30.11.2016	11,50,000
08.12.2016	4,50,000
08.12.2016	4,00,000
<b>Total</b>	<b>20,00,000</b>

The source of the said cash deposited were out of earlier cash withdrawals from the bank account of the assessee and his wife and in this regard the details of earlier withdrawal are as under.

<b>Date of Withdrawal</b>	<b>Name of Account holder</b>	<b>Bank Account Number with SBI, Khetri Branch</b>	<b>Amount in Rs</b>
29.06.2015	Sujita Vishwanathan (wife of the assessee)	51031972787	8,00,000
04.07.2015	Sujita Vishwanathan (wife of the assessee)	51031972787	3,00,000
27.01.2016	Sanjay Kumar Saini	51051837289	5,40,000

From the documents, I noticed that the cash withdrawal amounting to Rs.11.00 lacs by the wife of the assessee was gifted to the assessee on his birthday and in this regard a gift deed has been placed on record evidencing the same. It is an important fact that cash withdrawals are duly accepted by the AO, but he failed to prove that the same were utilised for some other purpose and were not available with the assessee at the time of deposit. The only objection raised by the AO at page number 2 of his order is that the gift deed is an afterthought and prepared after getting departmental notices. In this regard, I am of the view that no written gift deed was required by the wife for giving her withdrawal amount to her

husband. In the present case the fact that the cash was withdrawn and gifted by the wife of the assessee was not denied by the AO. Even otherwise the assessee has categorically mentioned that he has a single daughter

“11. It is submitted that the assessee has a single daughter who wanted to become a doctor by profession. She wanted to pursue her studies in some reputed medical college. Since the year 2013, there was inconsistency of holding of NEET exam and frequency of the next exam was not known to anybody.

12. Being a single child in the family of the assessee, not only her parents but her grandmother was also very keen for her admission in the medical college.

13. The assessee was under apprehension that for admission of his daughter, he would need cash for deposition of capitation fees. For this, he used to keep cash in hand by withdrawing cash from his bank account and also had collected money from his wife, mother, and other relatives.

14. Her daughter then took admission in Gomel State Medical University, Gomel. Copy of admission document enclosed as additional evidence [PB 11] Since his daughter took admission outside India, both the parents were skeptical about her stay. They wanted to make their daughter comfortable at Gomel University and till then they kept all the cash available with them as cash in hand. The cash was kept only for the purpose of safety of his daughter that even if she returns to India being non-adaptive to the culture outside India, he could get her admission in some other reputed college in India.”

However due to sudden announcement of demonetization the assessee had to deposit all the available cash in hand with him again in his bank account as there was no other option left with the assessee under the peculiar circumstances. The assessee has successfully proved on record by supporting documents that the total deposit was out of earlier cash withdrawal from the bank account of the assessee and his wife. On the contrary, the AO has failed to prove that cash withdrawal has

been used by the assessee elsewhere and merely on the basis of assumptions, has added the cash deposits as unexplained money of the assessee. In this regard I place Reliance on the following decisions:-

- **Hon'ble ITAT Mumbai Bench** in the case of **Jaspal Singh Sehgal vs. ITO [2017] 83 taxmann.com 246 (Mumbai – Trib.)**, wherein it is held as under:  
*“... (ii) The lower authorities refused to give benefit of cash withdrawn from the bank on the ground that the assessee could not establish that the cash withdrawn has not been used anywhere else. In our opinion approach of the lower authorities is not fair and justified. The assessee has submitted detailed cash summary showing inflow and outflow of the cash for the entire year. In our opinion the assessee cannot be directed to prove the negative. It is a burden upon the AO to prove that cash has been utilized elsewhere by the assessee before he rejects the claim of the assessee. Unless any such contrary material is brought on record by him to prove that cash has been utilized elsewhere by the assessee, he should give benefit of cash withdrawn by the assessee from the bank account against the amount of cash deposit into the bank account of the assessee, especially when the cash has been withdrawn and deposited in the same financial year, even if the bank from where cash was withdrawn and bank where the cash was deposited are different. Thus, after considering entire facts and circumstances of the case, we direct the AO to give set off of entire amount of cash withdrawn from the Axis Bank and PMC Bank...”*
- **Hon'ble ITAT Kolkata Bench** in the case of **Siddhartha Bhargava vs. Hon'ble CIT Kolkata [2017] In ITA No. 2508/Kol/2017**, wherein it is held as under:  
*“...Having heard both the parties, we note that the Ld. CIT (A) has taken note that the assessee had filed the cash flow statement and copies of the bank statement before the AO and that he (AO) has scrutinized the same and thereafter only has made the addition. The Ld. CIT (A) after having gone through the cash flow statement vis-a-vis the bank statement of the assessee noted from the extract of the cash book that as on 01.04.2011 being the first day of the relevant previous year, the assessee was having cash balance of Rs.44,99,361/-. Out of the opening cash balance of Rs.44, 93,361/- the assessee deposited Rs.40 lakh in his PNB account in the month of April and May, 2011. Further, the Ld. CIT(A) records the fact that in order to verify the 3 ITA No. 2508/Kol/2017 Siddhartha Bhargava, AY- 2012-13 cash balance brought from the preceding years, he had gone through the extract of the cash book/cash flow statement for the immediate previous two years and on verification of these cash flow statements, the Ld. CIT (A) found that the opening cash in hand as on 01.04.2010 of Rs.41,31,861/- and as on 01.04.2009 it was Rs.8,19,071/-. It was also taken note by the Ld. CIT (A) that cash balance accounted in the assessee's books arose out of the withdrawal made by him from his own account in PNB*

*and HSBC bank. The Ld. CIT (A) noted that these two bank accounts were duly reflected by the assessee in his personal balance sheet which has already been examined by the AO. After conducting his own scrutiny, the Ld. CIT (A) has confirmed that out of the total deposit of Rs.71, 16,000/- made during the relevant year Rs. 40 lakh were deposited in the month of April and May, 2011 and that these deposits were made out of the cash balance brought forward from the earlier year. It was also noted by the Ld. CIT (A) that in the assessment year under consideration, the assessee had withdrawn Rs.27,25,000/- from his accounts maintained in PNB and HSBC and out of these withdrawals, the remaining cash balance was deposited to the tune of Rs.31,16,000/- . Thus, the Ld. CIT (A) has recorded a finding of fact as under: "On examination of the cash flow statement for the year under consideration, as also for the earlier two years and cross verifying it with the entries in the bank statements, I find that the entries are recorded in the disclosed bank accounts of the assessee which showed that sufficient cash withdrawals were made by the assessee from his bank account to cover the cash deposit." This finding of fact made by the AO after examination of the cash flow statement for the year under consideration as also for the earlier two years after cross verifying it with the entries in the bank statement could not be dislodged by the departmental representative before us. In such a scenario, we are inclined to uphold the action of the Ld. CIT (A) and dismiss the ground of appeal of the revenue..."*

Therefore taking into consideration the entire facts and circumstances and also discussion made by me and also while taking into constitution the legal preposition, I am of the view that from the documentary evidences in the shape of bank statement it is evident that there was enough cash available with the assessee. Therefore I can safely conclude that the cash withdrawals were enough to cover the amount of cash deposits made by the assessee and thus in the circumstances no amount remained unexplained on the part of Assessee. Therefore considering the totally of the facts and circumstances, I direct the AO to delete the additions made under section 69A of the Income Tax Act. Thus Ground No. 1 raised by the assessee stands allowed.

4.1 Since by allowing ground number 1, I have deleted the addition therefore in my view there is no need to dispose off Ground No. 2 as the same is consequential in nature.

5.0 In the result, the appeal filed by the appellant stands allowed with no orders as to cost.

Order pronounced in the open court on 18 /09/2024.

Sd/-  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 18 /09/2024

\*Mishra

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

1. The Appellant- Shri Sanjay Kumar Saini, Jhunjhunu
2. प्रत्यर्थी / The Respondent- The ITO, Ward- Jhunjhunu
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 887/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar