

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "G" Bench, Mumbai.

Before Shri Satbeer Singh Godara (JM) & Shri Omkareshwar Chidara (AM)

I.T.A. No. 2253/Mum/2024 (A.Y. 2017-18)

Sidhesh Mohan Pai 404 Silver Line S.B. Marg, J.B. Nagar Andheri East Mumbai-400 059. PAN : AGEPP5296K (Appellant)	Vs.	ITO, Ward-22(3)(3) Room No. 303 3 rd Floor, Pirmal Chamber, Lal Baug, Parel Mumbai-400 012. (Respondent)
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Assessee by	Shri Ajay R. Singh & Shri Akshay Pawar
Department by	Shri Manish Ajudiya
Date of Hearing	15.07.2024
Date of Pronouncement	26.08.2024

ORDER

Per Omkareshwar Chidara (AM) :-

In the above captioned appeal, the learned Assessing Officer (Ld. AO for short) made an addition of Rs. 48,60,000/- u/s. 69A as unexplained money. The appellant has stated before the Ld. AO and the Learned Commissioner of Income Tax (the Ld. CIT(A) for short) that the source of the above money deposited in his bank account is withdrawal of cash from HDFC Bank account. Disbelieving the version of appellant, the Ld. AO made the above addition.

2. During the year under consideration, the Revenue received certain information relating to cash deposits made by the appellant to the tune of Rs. 48,60,000/- during demonetization period i.e. between 8th November to 31st December 2016 in two bank accounts of the appellant with HDFC Bank. As reply to the query of sources of cash deposit to Rs. 48.6 lakhs, the appellant

has submitted that he withdrew an amount of Rs. 72,16,700/- from the above two bank accounts of HDFC bank and deposited back an amount of Rs. 45,65,000/-. The appellant has submitted that these cash withdrawals were done from his bank account as he had planned to purchase an immovable property which ultimately did not materialize. The appellant's reply was not satisfactory in the opinion of Ld. AO and hence, a show-cause letter was issued to the appellant vide letter dated 3.12.2019 as to why cash deposit of Rs. 48.6 lakhs should not be treated as unexplained money. The Ld. AO was not satisfied with the reply of the appellant by stating that while purchasing a property, a person is not allowed to make payment by cash as it violates provisions of Income Tax Act. Secondly, during the month of October, 2016 appellant withdrew only Rs. 1,94,000/- and also there is huge discrepancy of cash deposits compared to cash withdrawals. The Ld. AO has also mentioned that the appellant is salaried person with no other source of income cannot make such huge cash deposits. The appellant vide his letter dated 7.12.2019 had submitted that he incurred loss of Rs. 62,67,778/- from the futures and options segment of shares and the same was not reflected in the Return of Income. The Ld. AO was of the view that these cash withdrawals might have been used to settle the account with the broker. As the appellant has failed to provide family details and monthly expenditure, the Ld. AO is of the view that part of cash withdrawals might have been utilised towards household expenses. Thus, the Ld. AO gave credit to the tune of Rs. 1,94,000/- being cash withdrawals in the immediately preceding month of demonetizing period and the balance of Rs. 46,66,000/- was added to the total income of the appellant as unexplained money u/s. 69A of the Act.

3. Aggrieved by the addition made by the Ld. AO, the appellant filed an appeal before the Ld. CIT(A). Main ground taken by the appellant was disposed off by the Ld. CIT(A) with following reasoning :

The appellant has challenged the addition made by the AO, stating that the addition was made on the basis of assumption that cash withdrawals could be on account of settling his account with the broker and prayed that the addition of Rs.46,66,000/- u/s. 69A should be deleted. The above said claim of the appellant is not acceptable as there was huge discrepancies of cash deposits as compared to cash withdrawal. Further, the saying of the appellant that the cash withdrawal of Rs.72,16,7007-upto October, 2016, was for the purpose of purchase of property is not acceptable because keeping such a huge amount in hand for buying property in cash is not justified as per I T Act.

The appellant has also not disclosed the details of the property so purchased Out of cash withdrawal and if at all the property was not purchased then why there was huge discrepancies of cash deposits as compared to cash withdrawal.

The appellant being a salaried person, having returned income only to the tune of Rs.25,11,628/- for the year under consideration, had deposited such a huge cash of Rs.48,60,000/- only during demonetization period, raise, a question on credibility of genuineness of cash deposits.

During the course of assessment period the appellant admitted that he incurred a huge loss of Rs.62,67,778/- from the F&O segments but the same was not shown in the return of income filed by him. The huge loss so incurred by the appellant, needed setting off, which the appellant perhaps had done with the broker out of cash withdrawals.

Therefore, considering facts and circumstances of the case, inference can safely be drawn that the cash deposits made by the appellant during demonetization period was independent out of undisclosed sources of income of the appellant which had no relation with the cash withdrawals. Hence, the appeal of the appellant dismissed in this respect.

4. During the appellate proceedings the appellant has reiterated the submissions made before the Ld. AO and pleaded that cash deposits in the HDFC bank are out of cash withdrawals made from two accounts of HDFC bank prior to demonetization period. The Ld. CIT(A) has just reproduced the order of the Ld. AO and confirmed the addition without examining the basic facts relating to cash withdrawals are utilized for depositing the same into HDFC bank account. Like the Ld. AO, the Ld. CIT(A) also disbelieved version of the appellant who has stated that the cash was withdrawn from the HDFC bank account from purchasing a property which could not be materialized and the same cash was utilized for depositing the money into HDFC bank account.

5. The appellant filed an appeal before the ITAT, Mumbai and pleaded before the Bench that the addition made by the Ld. AO and confirmed by the Ld. CIT(A) is totally baseless and without giving any reasoning and hence the addition should be deleted. Per contra, Ld. DR has argued that the addition made by Ld. AO should be upheld.

6. Heard both sides. From the orders of the Ld. AO and the Ld. CIT(A), it is observed that the facts were not properly examined regarding cash deposits made during demonetization period. Simply based on certain assumption and presumption, addition u/s. 69A of the Act could not be made by the Ld. AO and could not be sustained by the Ld. CIT(A). The Ld. CIT(A) has mentioned that the appellant had huge loss of Rs. 62,67,778/- while trading in shares and the cash withdrawals might have been utilized for settling broker's account. The Ld. AO should have examined the broker's account and find out whether such cash was utilized for settling broker's account to discharge loss sustained by the appellant. The source of paying huge amount of Rs. 62.67 lakhs to the broker had to be examined in the light of the observation made by the Ld. AO and the Ld. CIT(A). Since the facts submitted by the appellant were not examined by lower authorities, it is decided to sent the matter back to the Ld. CIT(A). The Ld. CIT(A) is directed to examine all facts relating to cash withdrawals, cash deposits and also source for paying loss sustained by the appellant to the broker and other attendant facts. The Ld. CIT(A) is directed to obtain a report from Ld. AO in this regard and take a decision on merits.

7. The appeal of the appellant is allowed for statistical purposes.

Order pronounced in the open court on 26th August, 2024.

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 26.08.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai