

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

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.31/Ahd/2024
निर्धारण वर्ष /Assessment Year : 2017-18

Rajendra Gadhia Plot No.672 Pachasheel Park Sector No.21 Gandhinagar - 382 021	<u>बनाम/</u> <u>v/s.</u>	The Income Tax Officer Ward-1, Int.Tax. Ahmedabad
स्थायी लेखा सं./PAN: BCPPG 3929 Q		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Parimalsingh B. Parmar, AR
Revenue by :		Shri Surendra Kumar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 03/10/2024
घोषणा की तारीख /Date of Pronouncement: 10/10/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal by the assessee is directed against the order dated 09/11/2023 passed by the Commissioner of Income Tax (Appeals)-13, Ahmedabad [hereinafter referred to as "CIT(A)"], pertaining to the assessment year 2017-18. The appeal is based on several grounds, but the primary dispute revolves around the addition of Rs.12,00,000/- made by the Assessing Officer [hereinafter referred to as "AO"] under Section 69A of the Income Tax Act, 1961 [hereinafter referred to as "the Act"], as unexplained money.

Facts of the Case:

2. The assessee is an NRI, settled in the USA for several years. He filed his return of income for the assessment year 2017-18, declaring total income of Rs.27,270/-. During the demonetization period, the assessee made cash deposits of Rs.6,00,000/- each in his ICICI Bank account on 2nd and 3rd December 2016 totalling to Rs.12,00,000/-. The case was selected for scrutiny, and the AO questioned the source of these cash deposits. The assessee explained that the funds were accumulated from cash withdrawals from his bank accounts with ICICI Bank and State Bank of India (SBI) over the years and from the money left over from USD withdrawals made from his Bank of America (BOA) account during his visits to India between 2012 and 2015. The assessee also submitted that the cash corpus was given to family members for social and medical purposes, and that his brother, Shri Mahesh Gadhia, acted as the custodian of these funds. During demonetization, the family returned the money, which was then deposited in the bank. The AO, however, was not convinced by the explanation. The AO held that there was no credible evidence to substantiate the nexus between the earlier withdrawals and the cash deposits made during demonetization. The AO added Rs.12,00,000/- as unexplained income under Section 69A of the Act and also initiated penalty proceedings under Section 271AAC of the Act.

2.1. The assessee filed an appeal before the CIT(A), reiterating the explanations regarding the source of the cash deposits. The assessee furnished Bank statements from ICICI Bank, SBI, and Bank of America, affidavit from Shri Mahesh Gadhia and a detailed cash flow statement

showing the withdrawals and the alleged use of funds by family members. During the appellate proceedings, the CIT(A) referred the matter back to the AO, who submitted a remand report. The AO reiterated the lack of documentary evidence, particularly the absence of receipts or documentation regarding the conversion of foreign exchange (USD) to Indian Rupees. The AO emphasized that any such conversion should be documented, typically through authorized forex dealers, which the assessee failed to provide. In response to the remand report, the assessee rebutted the AO's findings, asserting that the cash withdrawals from his ICICI and SBI accounts, along with USD brought from the USA, were the sources for the deposits made during demonetization. The assessee argued that the AO had failed to bring any contrary evidence or concrete proof to dispute the existence of the cash withdrawals or to demonstrate that the funds had been used elsewhere. The assessee further argued that the affidavit of Shri Mahesh Gadhia, his brother, should have been given more weight, as it confirmed the custodianship and return of the funds during demonetization. After reviewing the remand report and the assessee's rebuttal, the CIT(A) upheld the AO's findings. During the appellate proceedings before the CIT(A), the assessee relied on several judicial precedents to support his case. The CIT(A) concluded that the judicial precedents cited by the assessee did not apply to the facts of this case due to absence of evidence regarding the foreign exchange conversion, significant timing gaps between the cash withdrawals (2012-2015) and the cash deposits (2016), and inconsistencies in the cash flow statement and the affidavit provided by the assessee's brother, which did not provide sufficient details to substantiate the explanation that the cash was retained and later deposited. Based on these factors, the CIT(A) upheld the addition of Rs.12,00,000/- under Section 69A of the Act.

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

- 1) *The learned CIT (A) has erred both in law and on facts of the case in confirming the addition of cash deposit of Rs.12,00,000/- made in respect of unexplained Money under section 69A of the Income Tax Act, 1961.*
- 2) *The learned CIT (A) has erred both in law and on the facts of the case in holding that there was no nexus between the cash withdrawal and subsequent deposit in bank account.*
- 3) *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
- 4) *The learned CIT (A) has erred in law and on facts of the case in confirming the action of the learned AO in initiating penalty u/s 271 AAC (1) of the I. T. Act, 1961.*
- 5) *The learned CIT (A) has erred in law and on facts of the case in confirming action of the Id. AO in charging interest u/s. 234A, 234B, 234C of the Act.*

The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.

4. During the course of hearing before us, the Authorised Representative (AR) of the assessee reiterated that the cash deposited were out of cash withdrawals from assessee's own bank account in India and USA. The AR further argued that the funds were parked with the family members and placed a copy of the affidavit of the brother of assessee to this effect. The AR also submitted the copy of statement showing cash withdrawals from ICICI Bank and SBI along with statement of foreign currency in USD brought in India which was withdrawn from assessee's own bank account with Bank of America. The AR placed reliance on some judicial precedents.

5. The Departmental Representative (DR) relied on the orders of the AO and the CIT(A) and specifically pointed out that there are inconsistencies in the amounts explained by assessee before the AO and the CIT(A).

6. We have heard the rival parties and perused the material available on records. The primary submission by the assessee was that the source of Rs.8,30,000/- out of the Rs.12,00,000/- deposit came from cash withdrawals made over the years from his ICICI and SBI bank accounts. The assessee argued that he had made several cash withdrawals from his ICICI and SBI accounts between 2012 and 2015. The assessee claimed that the cash withdrawals were not immediately deposited back into the bank but were retained in hand for family and personal use. The cash was purportedly kept by his brother, Shri Mahesh Gadhia, as a custodian of the funds. The cash was intended for social and medical expenses for family members. The assessee further submitted that during the demonetization period in December 2016, the family members returned the borrowed amounts, and the entire sum was deposited in his ICICI Bank account. He argued that this explained the source of Rs.8,30,000/- of the Rs.12,00,000/- deposited during demonetization. The assessee provided the bank statements from ICICI and SBI accounts showing the cash withdrawals, an affidavit from Shri Mahesh Gadhia affirming that he held the funds as custodian and returned them during demonetization and a cash flow statement explaining the withdrawals and the deposits made during the demonetization period. The affidavit stated that these funds were returned to the assessee during demonetization and subsequently deposited into his ICICI Bank account. The affidavit also mentioned that the funds were partially used by family members for social and medical purposes and were returned when

demonetization occurred. The affidavit confirmed the timing of the return of the funds, which took place during the demonetization window, explaining the large cash deposits made in December 2016.

6.1. The second submission made by the assessee was that Rs.3,70,000/- of the deposited amount came from leftover foreign currency (USD) that he had withdrawn from Bank of America during his visits to India. The assessee submitted that he had withdrawn USD from his Bank of America account during his visits to India between 2012 and 2015. He contended that a portion of these funds, after being converted into Indian Rupees, remained unspent and was deposited in December 2016 during demonetization. The assessee provided bank statements from Bank of America showing the USD withdrawals made during his visits to India.

6.2. The assessee also rebutted the findings of the remand report submitted by the AO. In his rebuttal, the assessee stated that the AO had not disputed the cash withdrawals from ICICI and SBI in the remand report. These withdrawals were accepted as legitimate, and therefore, the AO had no grounds to disbelieve that the withdrawals were retained and later deposited during demonetization. The assessee pointed out that the AO failed to present any evidence showing that the withdrawn cash was used for other purposes (e.g., investments, personal expenses). Therefore, the presumption should be that the cash was available for deposits during demonetization.

6.3. After considering the detailed submissions of the assessee, we conclude that the cash withdrawals from ICICI and SBI, totalling to Rs.8,30,000/-, were sufficiently documented. There is no evidence on record

that the withdrawn funds were used for any other purposes, and the Department has not provided contrary evidence. Therefore, the Tribunal concludes that the withdrawals from these accounts should be treated as the source for Rs.8,30,000/- of the deposits during demonetization. Judicial precedents, such as, judgement of Jurisdictional High Court in the case of **Shailesh Rasiklal Mehta reported at (2009) 176 taxmann.com 270 (Gujarat)**, support this conclusion by establishing that once cash withdrawals are demonstrated, the burden shifts to the Department to disprove their availability for subsequent deposits.

6.4. Regarding the claim that Rs.3,70,000/- of the deposits came from USD conversions, we concur with the CIT(A)'s findings that the absence of forex receipts is a critical flaw. We cannot accept the assessee's claim without documentary evidence from an authorized money exchanger. The conversion of foreign currency to INR is a highly regulated process, and the failure to provide documentation creates a significant evidentiary gap.

6.5. In light of the discussions above and the judicial precedents, we conclude that the addition of Rs.12,00,000/- is reduced to Rs.3,70,000/-, as Rs.8,30,000/- has been satisfactorily explained through documented cash withdrawals. The remaining amount of Rs.3,70,000/-, claimed to be sourced from USD conversion, is sustained under Section 69A of the Act due to the lack of dependable evidence and explanations.

7. Grounds relating to penalty u/s. 271AAC of the Act and Interest Charged u/s. 234A, 234B, and 234C of the Act are consequential to our findings on the primary addition. As the addition has been reduced to

Rs.3,70,000/-, the penalty under Section 271AAC of the Act and the interest under Sections 234A, 234B, and 234C of the Act will be recalculated based on the revised assessed income. The AO is directed to re-compute the penalty and interest accordingly.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 10th October, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 10/10/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A) - (NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजोकट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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