

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

BEFORE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1105/PUN/2024  
निर्धारण वर्ष / Assessment Year : 2017-18

Rajshri Vishnu Wagh, Maruti Chowk, A/P Ambe Dindori, Janori, Tal. Dindori, Dist. Nashik- 422206. PAN : ADOPW7595D	Vs.	ITO, Ward-1(1), Nashik.
Appellant		Respondent

Assessee by : Shri Pramod S. Shingte  
Revenue by : Shri Akhilesh Srivastava

Date of hearing : 03.09.2024  
Date of pronouncement : 10.10.2024

**आदेश / ORDER**

**PER VINAY BHAMORE, JM:**

This appeal filed by the assessee is directed against the order dated 03.05.2024 passed by Ld Addl./JCIT(A)-2, Vadodara for the assessment year 2017-18.

2. The appellant raised the following grounds of appeal :-

"1. *On the basis of the facts and in the circumstances of the case and as per law, the order passed by CIT (A) may please be set aside as the same is passed ex parte and without discussing the merits of the case.*

2. *On the basis of the facts and in the circumstances of the case the CIT (A) is not justified in confirming the addition of Rs.1,00,000/- made u/s. 69 of the Act made by AO on account of cash deposited in bank account. The AO is not justified in making impugned addition on account of cash deposited in bank account when the claim of the appellant that the same was deposited out of the cash withdrawn from bank account is not disputed by the AO.*
3. *The appellant craves for the addition to, deletion, alteration, modification of the above grounds of appeal.”*

3. The facts of the case, in brief, are that the assessee is an individual and did not file its return of income for the period under consideration. Under operation clean money, the Department gathered a list of assesseees who had deposited substantial cash in their bank accounts during demonetization period but have not filed their return of income for the period under consideration. The available data reveals that the assessee had made cash deposits of Rs.12,00,000/- between 09.11.2016 to 31.12.2016, but has not filed income tax return. The notice u/s 142(1) was issued to the assessee. During the course of assessment proceedings, the assessee was asked to explain the source of cash deposits of Rs.12,00,000/- into her bank accounts. The assessee vide e-compliance dated 09.07.2019 explained that she has deposited cash amount of Rs.6,00,000/- only, in the bank account maintained with The Nashik

District Central Co-operative Bank Ltd. She also furnished copy of her bank statement. The cash deposits of Rs.6,00,000/- was made on 13.11.2016 out of cash Rs.6,69,000/- withdrawn from the same bank on 12.08.2016. The said amount of Rs.6,69,000/- was received on maturity of fixed deposit which was purchased in earlier year on 09-07-2015 for Rs.5,13,430/-. The assessee further explained that her total income was below taxable limit, therefore, return of income was not furnished for the assessment year 2017-18. To verify the facts stated by the assessee, the Assessing Officer issued notice u/s 133(6) of the IT Act to The Nashik District Central Co-operative Bank Ltd & enquired the correct amount of cash deposited by the assessee in her bank account during the demonetization period. In response, the bank vide letter dated 04.09.2019 has clarified that the assessee is having account no.3720682000014252 with the bank and has deposited only Rs.6,00,000/- during the relevant period. The other reported bank account no.3720682000014250 relates to one Ahire Mhalsa Parshram & not related to the assessee. The bank has also furnished bank account statement of both the reported accounts. Later it was

found by the Assessing Officer that the assessee has transferred Rs.5,00,000/- to Shri Digamber S. Goverdhane on 08.03.2017 and Rs.1,00,000/- to Shri B.T. Sonawane on 02.07.2018. The assessee was requested to submit the details of these payments made after the demonetization period. The assessee explained that the payment of Rs.5,00,000/- was made to Shri Digamber S. Goverdhane on account of commission/remuneration in connection with sale of land belonging to her father/brother and the payment of Rs.1,00,000/- made to Shri B. T. Sonawane is repayment of advance of Rs.1,00,000/- received by her during the financial year 2009-10. The Assessing Officer issued summons u/s 131 of the IT Act to Shri Digamber S. Goverdhane and Shri B.T. Sonawane requiring them to appear before him in the income tax office. In response, Shri Digamber S. Goverdhane appeared and confirmed the transaction but Shri B.T. Sonawane did not appear in the income tax office. The Assessing Officer held that the assessee has failed to prove her onus in support of the receipt of cash from Shri B. T. Sonawane, & therefore failed to explain source of cash deposits of Rs.1,00,000/- made during the demonetization period with supporting

documentary evidence, therefore, the cash deposits of Rs.1,00,000/- is treated as unexplained money u/s 69A of the IT Act and added to the total income of the assessee. The assessment order dated 16.12.2019 was passed u/s 144 of the IT Act determining the total income of the assessee at Rs.1,00,000/-.

4. Being aggrieved with the above assessment order, the assessee preferred first appeal before the ld. Addl./JCIT(A)-2, Vadodara. The ld. Addl./JCIT(A)-2, Vadodara issued notice of hearing on 29.02.2024, 07.03.2024, 11.03.2024 and 22.04.2024. Since the assessee remained absent, ld. Addl./JCIT(A)-2, Vadodara dismissed the appeal for want of prosecution as well as without discussing the merits of the case. It is this order against which the assessee is in appeal before this Tribunal.

5. The ld. AR submitted before us that the order passed by the ld. Addl./JCIT(A)-2, Vadodara is not correct. It was submitted that the ld. Addl./JCIT(A)-2, Vadodara has not given proper opportunity of hearing to the assessee to explain his case and also pointed out the fact that out of 4 notices, three hearing notices were issued only with in an intervals of 7 days and 5 days, which itself proves the

inadequacy of proper opportunity of hearing. On merits it was contended that before the Assessing Officer, assessee has already explained the source of cash deposit in her bank account. It was further submitted that the AO wrongly understood that the amount of Rs.1,00,000/- was received from Shri B. T. Sonawane during the period under consideration, whereas the same was received during F. Yr. 2009-10. It was submitted that even the order passed by the Assessing Officer is unwarranted, illegal and bad in law, looking to the fact that during the period under consideration i.e. assessment year 2017-18, income upto Rs.2,50,000/- is non-taxable. But, the Assessing Officer erred in determining the total income of Rs.1,00,000/- as taxable income. On the basis of all the above facts, it was requested before us to set-aside the order passed by the Id. Addl./JCIT(A)-2, Vadodara and quash the order of Assessing Officer.

6. Ld. DR relied on the orders passed by subordinate authorities and requested to confirm the same.

7. We have heard Ld. Counsels from both the sides and perused the material available on record. We find that the Assessing Officer

at first believed that the assessee has deposited Rs.12,00,000/- in her bank account but later on it was discovered by the Assessing Officer that the assessee has only deposited Rs.6,00,000/- in her bank account. This deposit of Rs.6,00,000/- was made by the assessee from the withdrawal of cash Rs.6,69,000/- on 12.08.2016 from same bank account. This amount pertains to maturity of fixed deposit purchased in the earlier year by the assessee, therefore, the question of source of cash deposits was clearly explained by the assessee before the Assessing Officer. Thereafter, the Assessing Officer doubted the payments made by the assessee to one Shri Digamber S. Goverdhane of Rs.5,00,000/- on 08.03.2017 and another payment of Rs.1,00,000/- to Shri B. T. Sonawane on 02.07.2018. Shri Digamber S. Goverdhane appeared before the Assessing Officer and accepted to receive Rs.5,00,000/- from the assessee in connection with commission/remuneration for sale of land belonging to father/brother of the assessee. It is not understood by us that the notice was issued on the basis of cash deposited in bank accounts during the demonetization period and when the sources of cash deposits were duly explained by the assessee before the Assessing

Officer then question of addition on account of cash deposits does not arise, but the Assessing Officer on the basis of payment of Rs.1,00,000/- transferred to Shri B. T. Sonawane on 02.07.2018 treated the same payment as unexplained money u/s 69A of the IT Act. We find that in the Financial Year 2009-10 the assessee received an amount of Rs.1,00,000/- as advance from Shri B. T. Sonawane which was returned to Shri B. T. Sonawane on 02-07-2018 i.e. after the period under consideration. Therefore, there was no occasion before the Assessing Officer to make the addition on the basis of above payment during the period under consideration. We further find force in the argument of the ld. counsel of the assessee that the total income of the assessee was determined at Rs.1,00,000/- which is admittedly/apparently below the taxable income limit of Rs.2,50,000/-. Even otherwise the assessee has explained the source of cash deposit successfully. Considering the totality of the facts, we are of the considered opinion that the Assessing Officer committed grave error in making addition of Rs.1,00,000/- as taxable income and further imposing tax u/s 115BBE of the IT Act @ 60%. We therefore set-aside the

*ex-parte* order passed by Id. Addl./JCIT(A)-2, Vadodara & delete the addition of Rs.1,00,000/- made by the Assessing Officer. Thus, the grounds of appeal raised by the assessee are allowed.

8. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on 10<sup>th</sup> day of October, 2024.

Sd/-  
**(G. D. PADMAHSHALI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 10<sup>th</sup> October, 2024.

*Sujeet*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Addl./JCIT(A)-2, Vadodara.
4. The Pr. CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.