

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : COCHIN**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 15/Coch/2024
Assessment Year : 2017-18

Kolangara Moidu, No. 1, Shahaniya House, Purakkad P.O., Meladi, Kozhikode – 673 522. PAN: ALIPM4614R	Vs.	The Income Tax Officer, Ward – International Taxation, Kozhikode.
APPELLANT		RESPONDENT

Assessee by	:	Shri M.V. Venugopal, CA
Revenue by	:	Smt. Leena Lal, Snr.AR

Date of Hearing	:	03-10-2024
Date of Pronouncement	:	11-11-2024

ORDER

PER BENCH

This is an appeal filed by the assessee challenging the order of the Ld. CIT(A), Bangaluru – 12 dated 07/11/2023 in respect of the A.Y. 2017-18.

2. The brief facts of the case are that the assessee is a NRI and the AO treated the deposits made during the demonetisation period as unexplained credits. The assessee explained the fact that he is a NRI and he maintained two bank accounts one in Catholic Syrian Bank and other in Federal Bank and during the FY 2016-17, he has deposited a total sum of Rs. 84,85,000/- to the above accounts and on 29/08/2016, the assessee gave a cash cheque

to his brother Shri C. Kunhammed for Rs. 23,90,000/- in order to do some joint business. The said cheque was encashed on 29/08/2016 itself and since the business venture was not materialised, the said amount was returned back to the assessee. In the meanwhile, the demonetisation came into effect and therefore the assessee had deposited the said amount on 10/11/2021. The assessee explained the said facts but the AO had not accepted the case of the assessee and treated the said deposits as unexplained cash credits. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and also produced the copy of the bank statements in support of his contention that the amount was actually withdrawn by the assessee's brother and later on, in view of the demonetisation, the cash was deposited into the bank account. The Ld.CIT(A) had dismissed the appeal on the ground that no details of the proposed joint business was given and also details about the amount that was spent out of the sum given to his brother.

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

“1. The order of the learned CIT(A) is opposed to law and facts of the case.

2. The learned Assessing Officer ought to have issued a pre assessment notice before making an addition of Rs.10,82,000/- and the learned CIT(A) ought to have considered this fact.

3. There was no justification for the learned Assessing Officer to conclude that the appellant had no source to the extent of Rs.10,82,000/-. Therefore the learned CIT(A) ought to have directed the addition to be deleted.

4. The appellant prays that the entire addition of Rs.10,82,000/- may be deleted.”

4. At the time of hearing, the Ld.AR filed the written submissions and also filed a petition for accepting the additional evidence enclosed in the paper book filed by the assessee. The Ld.AR submitted that the bank statements as well as the certificate issued by the bankers would establish

the fact that there was a cash withdrawal on 29/08/2016 which was subsequently handed over to the assessee which in turn was deposited into the bank account of the assessee and therefore the details for the cash deposits were clearly borne out from the records and prayed to allow the appeal.

5. The Ld.DR relied on the orders of the lower authorities and prayed that the bank certificate was not produced before the AO as well as before the Ld.CIT(A) and therefore prayed to dismiss the appeal.

6. We have heard the arguments of both sides and perused the materials available on record. We have also gone through the application filed by the assessee to accept the documents filed in the paper book. The documents are nothing but the supporting documents such as bank account statements and the certificate issued by the bankers and therefore we are accepting the additional documents. Moreover the department had also not raised serious objections against the additional documents.

7. Now coming to the merits the only dispute raised by the assessee is about the cash deposits made during the demonetisation period. In support of their argument, the assessee filed a paper book enclosing the statements of the Catholic Syrian Bank, NRO account and NRE account and also the certificate dated 11/09/2024 issued by the said bank confirming the withdrawal of cash on 29/08/2016 from the NRE account.

8. We have also perused the statements and found that the cash was deposited on 10/11/2016 whereas the cash was withdrawn by the brother of the assessee on 29/08/2016 through a cash cheque. Further, the assessee is a NRI and had sufficient funds in his accounts and also proved that he had given a cash cheque and the cash was withdrawn by the brother of the assessee and in view of the non-materialisation of the business project, the said sum was returned back to the assessee which was deposited by the assessee in view of the demonetisation scheme. The above

said facts cannot be brushed aside since the assessee was able to show that there were sufficient cash for depositing the same into his account and therefore the addition made u/s. 68 of the act is not warranted. We have also found that even though all the details were produced by the assessee before the Ld.CIT(A), the Ld.CIT(A) had confirmed the assessment on some other reasons which are not proper,. We, therefore, are of the view that the order of the lower authorities are not correct and hence we are setting aside the order of the Ld.CIT(A) as well as the AO and allow the appeal filed by the assessee.

9. In the result, the appeal filed by the assessee is allowed.
Order pronounced in the open court on 11th November, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 11th November, 2024.
/MS /

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| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Cochin