

IN THE INCOME TAX APPELLATE TRIBUNAL, DIVISION BENCH, JODHPUR

HEARING THROUGH: VIRTUAL MODE

BEFORE: SHRI. LALIET KUMAR, JM & DR. MITHA LAL MEENA, AM

ITA No. 248/Jodh/ 2024
Assessment Year: 2017-18

Kapil Marlecha C/o Rajendra Jain Advocate, 106, Akshay Deep Complex, 5 th B Road, Sardarpura, Jodhpur	Vs.	The ITO Ward-3, Pali
PAN NO: ATHPM4783C		
Appellant		Respondent

Assessee by : Shri Rajendra Jain, Advocate
Revenue by : Shri Arvind Kumar Gehlot, Addl. CIT DR
Date of Hearing : 06/10/2025
Date of Pronouncement : 30/10/2025

आदेश/Order

PER LALIET KUMAR, J.M:

This appeal by the assessee is directed against the order of the Ld. CIT (Appeals), National Faceless Appeal Centre, Delhi dated 13.06.2022 for the Assessment Year 2017-18.

2. At the outset the Registry has pointed out that the present appeal is barred by limitation by 609 days.

3. After considering the condonation application filed by the assessee in the present appeal, we condone the delay for which sufficient cause is shown, and admit the appeal for adjudication.

4. Briefly, the facts of the case are that the assessee filed his return of income on 30.01.2018 declaring income of Rs.2,36,420/-. The case was selected for *limited scrutiny* on the issue of cash deposits during the demonetisation period.

4.1 The AO noticed cash deposits aggregating to Rs.17,38,500/- in three bank accounts between 09.11.2016 and 30.12.2016. Despite several notices u/s 142(1)

and a final show cause dated 25.11.2019, the assessee failed to furnish explanations or supporting documents.

4.2 Consequently, the AO completed the assessment u/s 144, treating the entire deposits as unexplained money u/s 69A and taxed under section 115BBE.

5. Against the order of the AO the assessee carried the matter before the CIT(A), NFAC. During the appellate stage also, repeated notices were issued, but the assessee failed to file proper written submissions. The CIT(A), therefore, upheld the addition in toto.

6. Aggrieved, the assessee is in appeal before this Tribunal.

7. During the course of hearing the Ld. AR submitted that although the assessee could not respond effectively at earlier stages, the cash deposits were duly explainable. It was contended that:

- A substantial part of the deposits came out of cash withdrawals from other bank accounts.
- Certain deposits were sourced from repayment of loans and interest received from identifiable parties.
- The AO and CIT(A) mechanically treated the entire sum as unexplained, without considering cash flow and without applying the principle of peak or availability of funds.
- It was also submitted by the AR that the wife of the assessee is suffering from a rare disease and the amount was earlier saved for her treatment, and thereafter, on account of demonetization, the same was deposited in the bank.

7.1 The Ld. AR further argued that while the assessee admits inability to explain the source of a portion of deposits, the addition of the entire

Rs.17,38,500/- is excessive. It was submitted that sustaining an addition of Rs.5,00,000/- would meet the ends of justice, while the balance deserves to be deleted.

7.2 The AR placed reliance on decisions of various benches of the Tribunal where part relief was granted in demonetisation-related cases considering cash withdrawals, reasonable cash availability, and the principle of peak credit.

8. The Ld. DR, on the other hand, strongly supported the orders of the lower authorities. It was submitted that:

- The assessee was given repeated opportunities during assessment and appellate proceedings, yet chose to remain non-compliant.
- No documentary evidence has been furnished to substantiate the claim of withdrawals or loan repayments. Mere oral submissions cannot discharge the burden cast under section 69A.
- In absence of verifiable evidence, the entire cash deposit of Rs.17,38,500/- has rightly been treated as unexplained money.

8.1 The DR therefore urged that the order of the CIT(A), confirming the full addition, be sustained.

9. We have considered rival submissions and perused the material available on record. It is not in dispute that the assessee deposited cash aggregating to Rs.17,38,500/- during the demonetisation window. The assessee admittedly failed to furnish proper explanations before the AO and the Ld. CIT(A).

9.1 However, on careful appreciation of facts, it emerges that the assessee had certain cash withdrawals from other bank accounts and claimed to have received repayments from parties. While no detailed confirmation is placed on record, the availability of cash withdrawals in bank statements cannot be altogether ignored.

9.2 It is a settled principle that where both cash deposits and withdrawals are reflected in bank accounts, only the *peak balance* should be considered unexplained, and not the entire turnover of deposits. The addition of the entire deposits without considering withdrawals results in double taxation of the same money.

9.3 In the present case, while the assessee has failed to substantiate the full source of deposits, it would be fair and reasonable to sustain an addition of Rs.5,00,000/- as unexplained cash deposits u/s 69A, while deleting the balance Rs.12,38,500/-.

9.4 In view of the above discussion:

- The addition of Rs.5,00,000/- u/s 69A r.w.s. 115BBE is sustained.
- The balance addition of Rs.12,38,500/- is directed to be deleted.

Accordingly, the appeal of the assessee is partly allowed.

10. In the result, appeal of the Assessee is partly allowed.

(Order pronounced in the open Court on 30/10/2025)

Sd/-
(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER
AG

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Copy of the order forwarded to :

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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar