

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 78/DEL/2024

Assessment Year: 2017-18

Preeti Bhardwaj, K-74A, Hauz Khas, Delhi-110016. PAN- AAGPB1362C	<u>Vs</u>	Income-tax Officer, Ward-29(3), Noida.
APPELLANT		RESPONDENT
Assessee represented by	Shri R.S. Singhvi, CA; & Shri Satyajeet Goel, CA	
Department represented by	Shri Om Parkash, Sr. DR	
Date of hearing	20.03.2024	
Date of pronouncement	22.03.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 15.12.2023, pertaining to the assessment year 2017-18. The assessee has raised following grounds of appeal:

“1.1 That on the facts and circumstances of the case, the CIT(A) was not justified in upholding the addition of Rs. 29,60,000/- made u/s 69A of the Income Tax Act, 1961 without appreciating the submissions filed and the facts of the case.

1.2 *That there is direct nexus between cash withdrawals from bank account and subsequent cash deposits therein, the impugned addition made by the Assessing officer is arbitrary and without any basis.*

2.1 *That on the facts and circumstances of the case and in law, the Assessment order passed by converting limited scrutiny proceedings into full scrutiny without mandatory compliance of guidelines issued by CBDT is illegal and without jurisdiction.*

2.2 *That notice u/s 143(2) was issued for the purpose of limited scrutiny of verification of cash tax payments and the issue of other cash deposits being not part of reasons for issuing limited scrutiny notice, the impugned Assessment order passed without converting limited scrutiny into regular/full scrutiny by obtaining prior approval of Pr. CIT is not in accordance with mandatory CASS guidelines issued by CBDT.*

2.3 *That the Assessing Officer having not followed the proper procedure to convert the limited scrutiny proceedings into complete scrutiny proceedings, the Assessment Order is illegal and is liable to be quashed for disregarding the compulsory CBDT Instruction No. 5/2016*

3. *That the orders passed by the lower authorities are not sustainable on facts and same are bad in law.*

4. *That the appellant craves leaves to add, alter, amend, forgot any of the grounds of appeal at the time of hearing.”*

2. Apropos to the grounds of appeal, learned counsel for the assessee has filed a brief synopsis and reiterated the contents of the same. For the sake of clarity, the submissions of the assessee are reproduced as under:

“1.1 The Appellant is a senior citizen and has filed the ITR declaring an income of Rs. 20, 1, 640 / (- u) / h Capital gains and Other sources. Subsequently, the case of the appellant was selected for limited scrutiny for verification of payment of tax in cash and thereafter, an assessment order dated / 12/2019 u/s 143(3) of the Act was passed after making the aggregate

*addition of Rs. 29, 60000 / (- o) * n the alleged ground of unexplained money u / s 69A of the Income Tax Act, 1961 being Rs. 16,10,000/- as cash deposits in the bank account and Rs. 13,50,000/- as tax paid through cash.*

1.2 The Appellant against the said Assessment Order filed an appeal before the CIT(A), New Delhi who vide order dated 15/12 / 2023 has upheld the addition made in the Assessment order.

1.3 The Appellant against the CIT(A) Order has filed an appeal before the Hon'ble ITAT, New Delhi and raised following grounds:

1.1 That on the facts and circumstances of the case, the Assessment Order passed by ITO, Ward 29(3) is illegal and without jurisdiction as the same is total disregard to the provisions of section 120 r.w.s. 127 of the Income Tax Act, 1961.

1.2 That the Notice u/s 143(2) having been issued by the ACIT, Circle 32(1), New Delhi, the passing of assessment order by m 0- Ward 29(3) in absence of valid transfer of case u/s 127 of the Income Tax Act, 1961 is invalid and bad in law.

1.3 That the Assessment order passed without issue of valid notice u/s 143(2) of the Act is illegal and void-ab-initio.

2.1 That on the facts and circumstances of the case, the CIT(A) was not justified in upholding the addition of Rs. 29 ,60,000/ made u/s 69A of the Income Tax Act, 1961 without appreciating the submissions filed and the facts of the case.

2.2 That there is direct nexus between cash withdrawals from bank account and subsequent cash deposits therein, the impugned addition made by the Assessing officer is arbitrary and without any basis.

3.1 That on the facts and circumstances of the case and in law, the Assessment order passed by converting limited scrutiny proceedings into full scrutiny without mandatory compliance of guidelines issued by CBDT is illegal and without jurisdiction.

3.2 That notice u/s 143(2) was issued for the purpose of limited scrutiny of verification of cash tax payments and the issue of other cash deposits being not part of reasons for issuing limited scrutiny notice, the impugned Assessment order passed without converting limited scrutiny into regular/full scrutiny by obtaining prior approval of Pr. CIT is not in accordance with mandatory CASS guidelines issued by CBDT.

3.3 That the Assessing Officer having not followed the proper procedure to convert the limited scrutiny proceedings into complete scrutiny proceedings, the Assessment Order is illegal and is liable to be quashed for disregarding the compulsory CBDT Instruction No. 5/2016.

4 That the orders passed by the lower authorities are not sustainable on facts and same are bad in law.

2.1 The first ground raised by the Appellant is regarding the impugned addition of Rs. 29,60,000/- made by the Assessing Officer on the alleged ground of unexplained money u/s 69A of the Income Tax Act, 1961 without considering the explanation and documentary evidences furnished during the course of assessment proceedings.

2.2 At the outset, it is submitted that the Appellant is an old lady aged around 72 years and have multiple health issues. Moreover, the Appellant's husband is bed ridden for quite some time and as such both the Appellant and her husband need regular medical assistance. The Appellant for the purposes of medical treatment and support has withdrawn the cash from time to time aggregating to Rs. 54,50,000/- from her personal bank account. However, due to demonetization, subsequently deposited Rs. 16,10,000/- in her SBI bank account and has also paid self-assessment tax amounting to Rs. 13,50,000/- in cash. The details of date-wise cash withdrawn and cash deposits/tax payment by the Appellant are as under:

From SBI Bank A/c No. 56712:

From HDFC Bank A / c No. 3466:

Date of Withdrawal *Amount*

Date of Withdrawal *Amount*

08-01-2016 11,00,000

28-04-2016 5,00,000

12-01-2016	2,00,000	24-05-2016	2,50,000
19-01-2016	3,50,000	31-05-2016	3,00,000
22-01-2016	4,00,000	24-06-2016	1,50,000
25-01-2016	4,00,000	27-06-2016	3,00,000
30-01-2016	3,00,000	Total	15,00,000
16-02-2016	5,00,000		
19-07-2016	2,00,000		
Total	39,50,000		

<i>Date of Cash Deposit in SBI Account</i>	<i>Amount</i>	<i>Date of Tax Payment by Cash</i>	<i>Amount</i>
18-11-2016	10,00,000	25-11-2016	13,50,000
19-11-2016	6,00,000		
25.11.2016	10,000		
Total	16,10,000	Total	13,50,000

2.3 On perusal of above details, it is clear that the Appellant had sufficient cash balance available with her before the date of cash deposit/tax payment and as such the action of the lower authorities in making the arbitrary addition without considering the prior withdrawals is illegal and not warranted under law. Further, the Appellant in order to substantiate the cash withdrawals has duly enclosed herewith the bank statements along with the copies of self-cheques and a bank certificate at Paper Book Page 8 - 41 .

2.4 The Assessing Officer cannot doubt the source of cash merely because there was some time gap between withdrawal of cash and its re-deposit in the bank account unless there is evidence for use of such cash for other purpose. It will be appreciated that the cash withdrawal was for bonafide personal and medical use and redeposit of cash was due to announcement of demonetisation scheme and as such there is no justification for treating the same as unexplained. Further, the only source of income of the assessee is bank interest and capital gain and as such presumption regarding available cash being treated as undisclosed income is highly arbitrary and misconceived in the absence of any finding or corroboration.

2.5 In this connection, reference may be made to the following judgments enclosed in the Case Law- Paper Book:

a) *Jaya Aggarwal vs ITO [2018] 92 taxmann.com 108 (Delhi HC)*

Section 68 of the Income-tax Act, 1961 Cash credit (Bank deposit) Assessment year 1998-99 Assessee withdraw certain amount of cash from her bank account Said withdrawal was to buy property for which earnest money in cash was to be paid - As deal could not be fructified, a part of such amount was re-deposited in same bank account - Assessing Officer observed that sum was redeposited after more than 7 months, thus, treated same as unexplained cash credit and addition was made under section 68 Whether explanation given by assessee that deposit was made out of sum withdrawn earlier was not fanciful and sham story and it was perfectly plausible, thus, impugned additions under section 68 was to be deleted - Held, yes

b) *Om Parkash Nahar vs ITO [2022] 135 taxmann.com 377 (Delhi - Trib.)*

Section 69A of the Income-tax Act, 1961 Unexplained moneys (Cash deposits during demonetization) - Assessment year 2017-18 Assessee was a retired Government Servant, deriving income from pension, bank interest and also earning rent from property as a Karta of HUF - He had deposited cash of Rs. 63.63 lakhs in his bank account during demonetization Assessee explained that he was in habit of withdrawing money and keeping in form of cash at home and amount was deposited out of withdrawals from same account from time to time made during years 2014, 2015 and 2016, because of his serious illness and old age Assessing Officer however, disbelieved assessee and made additions to income of assessee Commissioner (Appeals) gave part relief and restricted addition to Rs. 44.13 lakhs after holding that cash of Rs. 19.50 lakhs withdrawn from account could be held to be out of money withdrawn from bank account, which was deposited after demonetization - It was found that assessee had no source of income apart from rental or pension income and some interest amount and same income earned regularly had been withdrawn regularly leaving very less cash in bank account and even after household withdrawal, there was a huge amount available with assessee in form of cash Whether in absence of any adverse material, it could not be presumed that cash deposited by assessee was out of some undisclosed source and thus, addition as sustained by

Commissioner (Appeals) was to be deleted Held, yes [Para 10] [In favour of assessee)

c) ITO vs Deepali Sehgal [ITA No 5660/Del/2012] (Delhi Trib.)

8. In view of above we noted that the AO, in his remand report could not bring out any fact that the cash withdrawn from Saving Bank Account and partnership overdraft account was used for other purpose anywhere else then, merely because there was a time gap between withdrawal of cash and its further deposit to the bank account, the amount cannot be treated as income from undisclosed sources u/s 69 of the Act in the hands of the assessee. The AO rejected the explanation of the assessee on hyper technical basis which is not acceptable. On careful perusal of the decisions relied by the Ld. D.R. we are of the view that the facts of the present case are clearly distinguishable as in the present case the explanation offered by the assessee is reliable and acceptable on the touchstone of the prudence of an ordinary man but merely on the ground that the act of assessee created huge interest liability on partnership firm does not enable revenue authorities to consider the cash withdrawn and its deposit to same bank account after a substantial gap of time, as unexplained income u/s 69 A of the Act. Hence, we reach to a conclusion that the AO made addition without any legal and justified reason which was rightly deleted by the CIT(A). Hence, both the grounds of the assessee are being devoid of merits and dismissed.

d) Arihant Associates vs ITO [2024] 158 taxmann.com 7 (Raipur Trib.) (20-09-2023)

Section 69A of the Income-tax Act, 1961 Unexplained moneys (Cash deposits) - Assessment year 2017-18 Assessee-firm made cash deposits totalling Rs. 33 lakhs in its bank account during demonetization period and claimed that cash deposits were sourced out of opening cash in hand of Rs. 52.47 lakhs available in its books of account on 1-4-2016 which, in turn, was sourced out of sale proceeds of agricultural land situated at Village 'C' that was sold by assessee at fag end of immediately preceding year and was received in tranches, i.e. over period 25-2-2016 to 4-3-2016 Assessing Officer rejected assessee's claim on ground that there was a substantial time gap between date of availability of cash with assessee and deposit of

same in its bank account in month of November 2016 - It was noted that though there was a time gap of 7 months in depositing cash in bank account of assessee- firm, but at same time, it was not case of department that as cash in hand of Rs. 52.47 lakhs was utilized/invested somewhere else by assessee-firm, therefore, availability of same with assessee-firm for making cash deposits in its bank account could not be accepted Whether since Assessing Officer had neither established that cash in hand of Rs. 52.47 lakhs available with assessee-firm on 1-4-2016 was thereafter utilized by it for making any other investment or was exhausted towards incurring any expenditure, there was no justification on his part in summarily rejecting assessee's explanation that cash deposits made in its bank account during year were sourced out of same - Held, yes - Whether, therefore, explanation of assessee as regards source of cash deposits of Rs. 33 lakhs in its bank account was to be accepted and, impugned addition made by Assessing Officer under section 69A was to be deleted - Held, yes [Para 15] [In favour of assessee]

e) Abdul Razaak vs ITO [2023] 153 taxmann.com 180 (Chennai)

Section 68, read with section 115BBE, of the Income-tax Act, 1961 - Cash credit (Demonetization) Assessment year 2017-18 Assessee's case was selected for scrutiny assessment for verification of cash deposit made by him during demonetization to tune of Rs. 15.08 lakhs in savings bank account Assessee explained that he had withdrawn a sum of Rs. 15 lakhs from his savings bank account in March 2015 to meet important emergency expenses Assessing Officer treated cash deposit of Rs. 15.08 lakhs as unexplained and to be taxed under section 115BBE-It was noted that assessee has made withdrawals of Rs. 20,67,100 from his bank account on several dates ranging from Rs. 5,000 to Rs. 2,00,000 and further an amount of Rs. 15,00,000 was withdrawn in March, 2015 i.e., total available fund with assessee in cash was Rs. 42,38,100 before demonetization i.e., 8-11-2016 Whether taking into consideration entire withdrawals of family and also giving weightage to family expenses, demonetized cash deposit of Rs. 15 lakhs was to be treated as explained and thus, addition made by Assessing Officer was to be deleted - Held, yes [Para 5] [In favour of assessee)

f) Sudhirbhai Pravinkant Thaker vs ITO [2017] 88 taxmann.com 382 (Ahmedabad - Trib.)

Section 68 of the Income-tax Act, 1961 Cash credit (Bank deposit) Assessment year 2008-09 When assessee had demonstrated that he had withdrawn cash from bank and there was no finding by authorities below that this cash available with assessee was invested or utilized for any other purpose, it was not open to authority to make addition on basis that assessee failed to explain source of deposits [In favour of assessee)

2.6 In light of the above submission, we may request your Honor to kindly delete the impugned addition of Rs. 29,60,000/- as the cash deposits/tax payment are fully supported from the cash withdrawals made by the Appellant.

3.1 The second ground raised by the Appellant is challenging the jurisdiction of the Assessing Officer in making addition of Rs. 16,10,000/- on account of

3.3 In the light of legal and factual position above, your Honor will appreciate that the assessment order was passed without jurisdiction and same is against the mandatory CASS guidelines issued by CBDT. Accordingly, the assessment being illegal and without jurisdiction, same is required to be quashed.”

3. On the other hand, learned DR opposed the submissions and supported the orders of the authorities below.

4. I have heard rival contentions and perused the material available on record. I find that before the lower authorities the assessee had provided source of cash deposits in the bank account. The Revenue has not brought any material to controvert the claim of the assessee that the assessee was having cash in hand to make the impugned deposits. In the light of the case laws relied by the learned

counsel for the assessee, I am of the considered view that when the assessee has provided the source of cash deposits being cash withdrawals, in my view, the AO without bringing adverse material ought not have treated the same as unexplained. Therefore, I hereby direct the AO to delete the impugned addition. Grounds raised in this appeal are allowed.

5. Appeal of the assessee is allowed.

Order pronounced in open court on 22nd March, 2024.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**