

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

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA no.1102/Mum./2022
(Assessment Year : 2017-18)

Shri Shail Jayesh Shah
14/41, Navjeevan Society
Lamington Road, Mumbai 400 008
PAN – CMNPS3399P

..... Appellant

v/s

Income Tax Officer
Ward-20(3)(3), Mumbai

.....Respondent

Assessee by : Shri Subodh Ratnaparkhi
Revenue by : Shri Purnesh Gururani

Date of Hearing – 11/10/2022

Date of Order – 02/01/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 21/03/2022, passed under section 250 of the Income Tax Act, 1961 (*'the Act'*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*'learned CIT(A)'*], for the assessment year 2017-18.

2. In this appeal, the assessee has raised the following grounds:

"On the facts and in law,

1. *The Hon. CIT(A) erred in confirming the addition of Rs.6,00,000/-, made u/s 69A r.w.s. 115BBE of the IT Act 1961, as unexplained money on account of cash deposited in the bank account with Kotak Mahindra Bank, Mumbai when the source of such cash deposit was from opening cash in hand and withdrawals from bank accounts of the appellant, all of which stood well explained with supporting evidences and therefore the addition as unexplained money was not justified and bears to be deleted.*

2. *The appellant craves leave to add, alter, amend and/or vary the grounds of appeal at any time before the decision of the appeal."*

3. The only grievance of the assessee is against the addition of Rs.6 lakh, on account of cash deposited in the bank account during the demonetisation period.

4. The brief facts of the case as emanating from the record are: The assessee is an individual and is a professional architect doing consulting activities. During the year under consideration, the assessee earned income from salary, profits and gains of the business, capital gains, and income from other sources. The assessee filed its return of income on 29/07/2017, declaring a total income of Rs.8,61,560. During the assessment proceedings, it was observed that the assessee has deposited cash of Rs.6 lakh, in its bank account during the demonetization period. Accordingly, the assessee was asked to explain the source of the cash deposited along with documentary evidence. In response thereto, the assessee submitted that the cash of Rs.6 lakh was deposited on 01/12/2016, in its bank account maintained with Kotak Mahindra Bank. As regards the source of cash deposit, the assessee provided the following details:

"4. The assessee had deposited cash of Rs.6,00,000/- on 01.12.2016 in Kotak Bank only.

Source of Cash Deposit:

Cash withdrawal from Kotak Ban on 18.10.2016	Rs.1,00,000/-
Cash withdrawal from HDFC Bank on 26.04.2016 to 08.10.2016	Rs.40,000/-
Cash on hand as per Return filed on 05.08.2016	Rs.4,96,031/-

	Rs.6,36,031/-"
	=====

5. The Assessing Officer did not agree with the submissions of the assessee and vide order dated 25/12/2019, passed under section 143(3) of the Act made the addition of Rs.6 lakh under section 69A of the Act. The relevant findings of the Assessing Officer are as under:

"5. The details and submission of the assessee was perused but found not satisfactory on the following reasons:

a) The assessee has not provided the source and documentary evidence in respect of actual opening cash in hand as on 31.03.2016 at Rs.4,96,031/-.

b) The Income offered by the assessee during the this year and last year is mainly professional Income, Salary Income and interest income. All these incomes are credited in Bank and even TDS is deducted. The same can be verified from 26AS submitted by the assessee. When the income is through bank the assessee has not proved from where the cash was generated.

c) The total expenditure claimed during the whole year is only Rs.1,92,780/-. Even, it is assumed that the entire expenditure is incurred in cash, then what was the need of heavy cash in hand of Rs.4,96,031/-. Further inspite of having huge cash in hand and no requirement of expenses, the assessee has again withdrawn the cash of Rs.1,40,000/-.

In view of the above discussion, it is very clear the theory of the assessee that cash deposited is out of cash in hand as on 31.03.2016 and out cash withdrawals is an afterthought and tailer made. In fact, the amount deposited in unaccounted income of the assessee. Accordingly, the contention of assessee that the cash deposited is out of cash in hand as on 31.03.2016 and out cash withdrawals is rejected and cash deposited amounting to Rs.6,00,000/- is treated as unexplained money and taxed u/s 69A of the Act. The tax is computed in terms of Section 115BBE of I.T. Act, 1961 @ 60% plus surcharge and penalty proceedings u/s.271AAC of the I.T. Act is initiated in respect of addition made u/s 69A amounting to Rs.6,00,000/-."

6. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee and, inter-alia, held that from the details submitted by the assessee it is seen that as per the cash book the cash in hand as on 01/11/2016 is Rs.5,25,114, which does not tally with the cash deposited by the assessee on 01/12/2016. The learned CIT(A) further held that the assessee has not been able to prove the nature and source of cash deposited during the demonetization period. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative (*'learned AR'*) submitted that the cash of Rs.6 lakh was deposited out of Rs.1 lakh withdrawn on 18/10/2016, from the Kotak Mahindra Bank, Rs.40,000, withdrawn on various dates from the HDFC Bank and Rs.4,96,031, opening cash in hand for the year under consideration. The learned AR further submitted that the opening cash in hand of Rs.4,96,031, which is carried forward from the preceding year, was declared by the assessee in its return of income for the assessment year 2016-17 and the same has been accepted by the Revenue. The learned AR further submitted that the cash was withdrawn from time to time as the grandmother of the assessee was unwell.

8. On the contrary, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

9. We have considered the rival submissions and perused the material available on record. In the present case, the cash amounting to Rs.6 lakh deposited by the assessee during the demonetization period was added in the

hands of the assessee by treating the same as unexplained money under section 69A of the Act. As per the assessee, the sum of Rs.6 lakhs was deposited by him on 01/12/2016, in its bank account maintained with Kotak Mahindra Bank. As regards the source of cash deposit, the assessee submitted that Rs.1,40,000, is out of the cash withdrawal from its bank account maintained with Kotak Mahindra Bank and HDFC Bank. Further, the remaining amount of Rs.4,96,031, is the opening cash in hand for the year under consideration. We find from the copy of the income tax return for the assessment year 2016-17, which was filed by the assessee on 05/08/2016, that the assessee had closing cash in hand of Rs.4,96,031, and the said amount was also disclosed by the assessee while filing its return of income in Part A-BS(6). As per the assessee, its return for the preceding assessment year has been accepted by the Revenue. It is pertinent to note that there is no material available on record contrary to the aforesaid submission of the assessee. Further, the submission of the assessee that Rs.1 lakh was withdrawn in cash by the assessee from its bank account maintained with Kotak Mahindra Bank on 18/10/2016 and Rs. 40,000, has been withdrawn in cash on various dates from its bank account maintained with HDFC Bank is duly corroborated from the copy of bank statements of Kotak Mahindra Bank and HDFC Bank, forming part of the paper book from pages 9-20.

10. From the copy of the bank statement of Kotak Mahindra Bank, we find that assessee had deposited Rs.6 lakh in cash in 600 old currency notes of Rs. 1000 denomination on 01/12/2016. At a glance, it may appear that since the assessee had sufficient cash in hand amounting to Rs. 6,36,031, therefore, the

aforesaid deposit of cash would have been made on 01/12/2016, out of the said balance. At the same time, we cannot be oblivious to the fact that the assessee had also incurred certain expenses in cash. From the perusal of the cash book of the assessee for the year under consideration, forming part of the paper book from pages 4-7, we find that as on 01/11/2016, the assessee had an opening balance of Rs.5,25,114. It cannot be disputed that the demonetisation was declared on 08/11/2016, and therefore the cash available with the assessee till that day can only be in old currency notes. Further, from the cash book, it is evident that after 08/11/2016, assessee withdrew total cash of Rs.1,12,000 (Rs.60,000 + Rs.2,000 + Rs.2,000 + Rs.24,000 + Rs.24,000) on various dates from its bank accounts maintained with Kotak Mahindra Bank, HDFC Bank, and Syndicate Bank. The assessee also has shown to have incurred an expenditure of Rs.27,453, in cash in November 2016. Thus, as on 01/12/2016, the assessee had an opening balance of Rs.6,09,661. It is pertinent to note that after 08/11/2016, the old currency notes were not legal tender and thus any cash which was withdrawn by the assessee after that date can only be in the new currency or the valid currency. Therefore, the cash withdrawn after 08/11/2016, cannot be said to have been in old currency notes which were available for deposit with the assessee on 01/12/2016. Hence, cash in hand till 08/11/2016, can only be in old currency notes which can be considered to have been deposited by the assessee on 01/12/2016. As noted above, as per the cash book, the opening balance as on 01/11/2016 was only Rs.5,25,114. Since the assessee had deposited Rs.6 lakh in cash in 600 old currency notes of Rs. 1,000, denomination on 01/12/2016, therefore, we are of the considered view that the source of deposit of only Rs.5,25,114, in

old currency notes can be said to have been satisfactorily explained by the assessee. Therefore, to this extent, the AO is directed to delete the addition. As regards the balance amount of Rs.74,886, the assessee has not given any satisfactory explanation and thus, the addition is upheld to an extent of Rs.74,886. Accordingly, the sole ground raised by the assessee is partly allowed.

11. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 02/01/2023

Sd/-
GAGAN GOYAL
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 02/01/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai