

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1599/Mum./2021

(Assessment Year : 2017-18)

Ajit Bapu Satam

4th Floor, Pratipada Off Veer Savarkar Marg

Dadar (West), Mumbai 400 028

PAN – ABEPS4975M

..... Appellant

v/s

Dy. Commissioner of Income Tax

Circle-2(1), Mumbai

.....Respondent

Assessee by : Dr. K. Shivaram a/w

Ms. Neelam Jadhav

Revenue by : Shri Mehul Jain

Date of Hearing – 06/06/2022

Date of Order – 29/08/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 29/07/2021, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by learned Commissioner of Income Tax (Appeals)-49, Mumbai, [*"learned CIT(A)"*], for the assessment year 2017-18.

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

"1. The Id CIT(A) erred in confirming addition of cash deposited in HDFC Bank account of Rs 22,00,000/- u/s 69A of the Act. The Id AO failed to appreciate that the same was out of withdrawals made earlier from the very same bank account.

2. *The Id CIT(A) erred in confirming addition of the cash of Rs 25,00,000/- deposited in bank account of M/s Nivara Builders & Developers and later on transferred to the assessee u/s 69A of the Act. The Id AO failed to appreciate that the cash was deposited in the bank account of a separate entity and did not belong to the assessee. Further, the transfer of Rs.25,00,000/- from the firm to the assessee was a separate transaction and had no link to the deposit of cash.*

3. *The appellant prays that the above additions made may be deleted."*

3. The issue arising in ground No. 1, raised in assessee's appeal, is pertaining to addition of Rs. 22,00,000, on account of cash deposited in bank account of the assessee.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and had filed his return of income on 31/03/2018, declaring total income of Rs. 54,81,110. During the year, assessee has declared income under the heads – income from profits and gains from business of profession, income from capital gain and income from other sources. During the course of assessment proceedings, it was observed that the assessee has made cash deposits of Rs. 20 lakhs in his HDFC bank account between 09/11/2016 to 30/12/2016 (i.e. during the demonetisation period). The assessee was asked to produce source of substantial cash deposited during the demonetisation period along with supporting documents. In reply, assessee submitted that the cash deposited during the aforesaid period was out of cash withdrawals from the HDFC bank account made during 28/07/2016 to 04/11/2016 totalling to Rs. 21 lakhs. The assessee further submitted that the cash withdrawal was lying with him and was not used anywhere else. The Assessing Officer ('AO') on the basis of

AIR information, issue notice under section 133(6) of the Act to the HDFC bank and called for various information pertaining to the assessee and the disputed transaction, which was responded by the concerned bank. The AO vide order dated 24/12/2019, passed under section 143(3) of the Act did not agree with the submissions of the assessee and observed as under:

"5.
.....

The assessee's submissions were not found acceptable. There is no need to withdraw cash from bank accounts and keep it lying in home. If the cash was withdrawn for a particular purpose then why were there more withdrawals at a regular frequency of around 10-15 days without first utilizing the cash already at hand. The assessee has not shown any business in which the cash withdrawn was being utilized. Hence, we can conclude that the cash withdrawn was not lying utilised at home but was being used elsewhere for business purposes or some other purposes. No business prudent person will unnecessarily keep withdrawing money from bank at regular intervals and store it at home.

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7. Assessee's submissions have been carefully perused but the same have not been found acceptable. Assessee submitted that, the cash deposited in HDFC Bank account amounting to Rs.20,00,000/- was lying with the him. However, the assessee has not furnished any details of the sources of cash stated to be lying with him such as nature of the said cash and the reasons why he has kept such huge cash with him. The assessee further failed to corroborate with documentary evidences that the cash withdrawals were the same that deposited during demonetisation period. The assessee failed to give cogent explanation regarding the source of such Money found in his bank accounts. Therefore, the explanation given by assessee regarding the money deposited during demonetisation period is not acceptable. The same is treated as unexplained money."

5. Accordingly, the AO treated the cash deposit during the demonetisation period as unexplained money and added the same to the total income of the assessee under section 69A of the Act. In appeal before the learned CIT(A),

the assessee reiterated the submissions made during the course of assessment proceedings. The learned CIT(A), vide impugned order dated 29/07/2021, dismissed the appeal filed by the assessee on this issue, by observing as under:

"7.2.2. Vide Ground no. 2, the assessee has challenged the addition of Rs 20,00,000/- in respect of deposit made in HDFC Bank account. The contention of the assessee is that the amount which was deposited in the HDFC Bank was out of cash withdrawal from the same bank account during the period 28.07.2016 to 04.11.2016 totaling amount of Rs. 21,00,000/-. The claim of the assessee is that the cash withdrawn was lying with him and was not used anywhere else. I have given due consideration to the submission of the assessee. However, there cannot be any two opinion about the fact that no one withdraws cash from his bank account to keep it lying at his home to be deposited again in the same bank account. There has to be a reason for withdrawal of cash and re-depositing the same which could be non-utilization of cash so withdrawn for any specific reason. However, It is not even the case of the assessee that the cash was withdrawn for making payment in respect of any transaction which did not materialize and therefore, the same was deposited back in the bank account. The assessee did not make any such contention neither any evidence in this regard was furnished either at the time of assessment or at the time of appeal. The submission of the assessee is that the cash was withdrawn from the bank account and was kept at his residence which was deposited back due to demonetization without being specific as to the reason for the same. The assessee did not furnish any explanation as to why this cash was withdrawn and why it was lying at his residence. As mentioned previously, a person having bank account will not simply withdraw money and keep it at his residence without any purpose. It is, therefore, evident that the cash which was withdrawn on multiple dates in small amount from 28.07.2016 to 28.10.2016 was utilized by the assessee for the purpose which the assessee did not choose to explain and the money which was deposited during the demonetization could not be held as the cash so withdrawn by the assessee. I, therefore, do not find any informative in the findings of the Ld.AO on this account. Ground no. 2 is accordingly Dismissed."

Being aggrieved, the assessee is in appeal before us.

6. During the course of hearing, Dr. K. Shivaram ('learned Sr. Counsel'), appearing for the assessee, by referring to the HDFC bank account statement, forming part of the paper book from page No. 6 to 8, submitted that cash was withdrawn by the assessee on various occasions which due to

declaration of demonetisation on 08/11/2016, was deposited in his very same bank by the assessee on 10/11/2016. The learned Sr. Counsel further submitted that the cash of Rs. 20 lakh, deposited by the assessee in HDFC bank account is duly corroborated by the withdrawal from very same bank of even higher amount.

7. On the other hand, Shri Mehul Jain, learned Departmental Representative (*'learned DR'*) vehemently relied upon the orders passed by the lower authorities and submitted that the assessee has failed to establish the link between the cash withdrawn and deposited in the bank.

8. We have considered the rival submissions and perused the material available on record. In the present case, the Revenue has treated the cash deposited by the assessee during the demonetisation period in its bank account as an unexplained money and added the same to the total income of the assessee under section 69A of the Act. It is the plea of the assessee that the cash which was withdrawn by the assessee from the bank was deposited in the very same bank account. Before the learned CIT(A), assessee provided the following details of cash withdrawal from the HDFC bank account;

<i>Date of Cash Withdrawal</i>	<i>Amount (Rs.)</i>	<i>Name of Branch</i>
28.07.2016	2,50,000/-	Matunga (West)
30.08.2016	10,00,000/-	Matunga (West)
12.09.2016	3,00,000/-	Matunga (West)
23.09.2016	1,50,000/-	Matunga (West)
24.10.2016	1,50,000/-	Matunga (West)
28.10.2016	1,50,000/-	Matunga (West)
<i>Total</i>	<i>20,00,000/-</i>	

9. From the perusal of the statement of bank account maintained with HDFC Bank, Martunga (West) branch, Mumbai, forming part of the paper book, the above details are fully substantiated. We also find that apart from the aforesaid cash withdrawals, the assessee also withdrew amount of Rs. 2,25,000 on 04/08/2016 as well as amount of Rs. 28,500 on 29/09/2016. Further, it is also evident that all the above cash withdrawals have been made through cheque by the assessee. Thus, as on the date of declaration of demonetisation i.e. 08/11/2016, the assessee has withdrawn an amount of Rs. 22,53,500 from the HDFC Bank, Martunga (West) branch. As per the assessee, the cash which was withdrawn was kept at his residents and due to demonetisation, the assessee deposited the old bank notes into Martunga (West) branch amounting to Rs. 20 lakh on 10/11/2016. From the above, it is evident that the amount withdrawn by the assessee was much more than the amount deposited in the very same bank account due to demonetisation. Further, in the present case, the Revenue has not brought anything on record to show that the cash which was withdrawn by the assessee was already utilised for any other purpose. Surprisingly, the learned CIT(A) has also doubted the reason for re-depositing the cash, even during the demonetisation period. The Revenue merely presumed that the cash withdrawn by the assessee from 28/07/2016 till 28/10/2016 was utilised by the assessee, without bringing anything on record. Further, in this regard, it is relevant to note following observations of the coordinate bench of Tribunal in *Jaspal Singh Sehgal vs ITO*, [2017] 83 Taxmann.com 246 (Mumbai-Trib.):

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(ii) Cash withdrawn from Axis Bank of Rs.9,73,000/- and from PMC Bank of Rs.2,33,100/-: The lower authorities refused to give benefit of cash withdrawn from the bank on the ground that the assessee could not establish that the cash withdrawn has not been used anywhere else. In our opinion approach of the lower authorities is not fair and justified. The assessee has submitted detailed cash summary showing inflow and outflow of the cash for the entire year. In our opinion the assessee cannot be directed to prove the negative. It is a burden upon the AO to prove that cash has been utilized elsewhere by the assessee before he rejects the claim of the assessee. Unless any such contrary material is brought on record by him to prove that cash has been utilized elsewhere by the assessee, he should give benefit of cash withdrawn by the assessee from the bank account against the amount of cash deposit into the bank account of the assessee, especially when the cash has been withdrawn and deposited in the same financial year, even if the bank from where cash was withdrawn and bank where the cash was deposited are different. Thus, after considering entire facts and circumstances of the case, we direct the AO to give set off of entire amount of cash withdrawn from the Axis Bank and PMC Bank."

10. Further, in another decision, in Sudhirbhai Pravinkant Thaker vs ITO, [2017] 88 Taxmann.com 382 (Ahemdabad-Trib.), the coordinate bench of the Tribunal held that when the assessee has demonstrated that he had withdrawn cash from the bank and there is no findings by the authorities below that this cash available with the assessee was invested or utilised for any other purpose, in that even, it is not open to the authority to make the addition on the basis that the assessee has failed to explain the source of deposits. As regards the decision of Hon'ble Punjab and Haryana High Court in Smt. Kavita Chandra vs CIT: [2017] 81 Taxmann.com 317 (Punjab & Haryana) relied upon by the learned DR is concerned, we find that the same is factually distinguishable. As in that case, the amount of cash deposit was much more than the withdrawal by the taxpayer from its bank account.

11. Thus, in view of the above, we find no reason to sustain the addition made by the lower authorities, particularly when both cash withdrawal and deposit are duly substantiated from the bank statement of the very same branch. Accordingly, we direct the AO to delete the addition of Rs. 22 lakh made under section 69A of the Act. As a result, ground No. 1 raised in assessee's appeal is allowed.

12. The issue arising in ground No. 2, raised in assessee's appeal, is pertaining to addition of Rs. 25,00,000, on account of cash deposited in the bank account of the partnership firm i.e. Nivara Builders and Developers.

13. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the course of assessment proceedings, it was observed that cash amounting to Rs. 33,87,500, was deposited in bank account of Nivara Builders and Developers in Bharat Co-operative Bank Ltd, during demonetisation, wherein assessee was one of the partner. It was further observed that on 11/11/2016, cash amounting to Rs. 25 lakhs was deposited in the aforesaid account. And on 16/11/2016, the same amount of Rs. 25 lakh was transferred to the assessee. Accordingly, the AO vide order passed under section 143(3) of the Act treated the cash deposited amounting to Rs. 25 lakh, in the bank account of the aforesaid firm, as the unexplained money of the assessee and added the same to the total income of the assessee under section 69A of the Act. In appeal, learned CIT(A) dismissed the appeal filed by the assessee on this issue, by observing as under:

"7.2.2. Vide Ground no. 3, the assessee has challenged an addition of Rs. 25,00,000/- being cash deposited in the bank account of M/s. Nivara Builders and Developers where the assessee was a partner. The claim of the assessee is that the amount was deposited in the bank account of M/s. Nivara Builders and Developers and not in the assessee's bank account. Further, the assessee retired from the said firm, hence enquiry if any should have been made in the hands of the said firm. The AO has mentioned in the assessment order that on perusal of bank account in respect of M/s. Nivara Builders and Developers with The Bharat Co-op. Bank (Mumbai) Ltd., it was found that on 11.11.2016 cash amounting to Rs. 25,00,000/- was deposited in the said account. Thereafter on 16.11.2016 the same amount of Rs. 25,00,000/- was transferred to the assessee. The AO has noted that the cash deposited in the account of the firm was belonging to the assessee which was routed back to him immediately after deposit. The AO has further noted that M/s. Nivara Builders and Developers has no income or significant business activity shown in its ITR to justify such a large cash transaction. The assessee has also failed to furnish any documentary evidence which can prove that why such huge amount is credited in his bank account from the firm immediately after the deposit of cash in the firms account during demonetization. It is not in dispute that the assessee was partner in the said firm M/s. Nivara Builders and Developers. The assessee claimed that he has retired, but he did not mention the date of retirement i.e. whether he had retired from the firm before the cash was deposited in the firms account. In any case, it is an undisputed fact that the assessee has a close association with the firm. On perusal of the firm's account it is found that cash amounting to Rs. 25,00,000/- was deposited in The Bharat Co-op. Bank (Mumbai) Ltd. in the account of the firm on 11.11.2016 and the amount was transferred to the assessee on 16.11.2016. It is pertinent to note that the credit balance in the firm's account prior to deposit of cash was only Rs. 32,024.53 and hence there is no dispute about the fact that Rs. 25,00,000/- received by the assessee was sourced from the cash deposit made in the account of the firm. The assessee did not make any effort to explain the source of cash deposited in the firm's account and therefore, he cannot be said to have discharged the onus of explaining the source of Rs. 25,00,000/- transferred to his account from the account of the firm when it represented deposit of cash in the firm's account. In the given facts of the case do not find any informative in taxing Rs.25,00,000/- in the hands of the assessee. Ground no. 3 is accordingly Dismissed."

Being aggrieved, the assessee is in appeal before us.

14. We have considered the rival submissions and perused the material available on record. From the perusal of the statement of bank account of Nivara Builders and Developers maintained with Bharat Co-operative Bank Ltd, forming part of the paper book at page no. 10 to 12, it is evident that on

11/11/2016, Rs. 25 lakh was deposited in cash and on 16/11/2016, same amount was transferred to the assessee by way of cheque. As per the assessee, the transfer of Rs. 25 lakhs was a repayment of capital as the assessee had resigned from the firm. From the perusal of aforesaid bank statement, it is evident that after the transfer of Rs. 25 lakh to the assessee a further cash deposit of Rs. 887,500 was made in the bank account of the firm on 17/11/2016. From the aforesaid bank statement, for the period from 01/04/2016 to 25/01/2017, it is also evident that apart from the above, money was also transferred to the assessee on 29/04/2016, 19/05/2016, 13/06/2016 and 20/06/2016. The Revenue merely on the basis that equivalent amount of cash amount deposited in the bank accounts of the firm was transferred within few days to the assessee came to the conclusion that the said cash is unexplained money of the assessee. In the present case, nothing has been brought on record by the Revenue to support the above presumption. There is also no examination into the financials and business of the firm. Nor the statement of any other partner has been recorded, which could support the presumption reached by the Revenue. Be that as it may, it is pertinent to note that the transaction of cash deposit is made in the bank account of the firm, which is undoubtedly a separately assessed entity and also file its return of income. Thus, the aforesaid transaction of cash deposit was required to be examined in the hands of the firm rather than the assessee, which was one of the partners in the said firm. Further, it is also not the case of Revenue that in the assessment of firm it has been found that the cash belongs to the assessee. Therefore, in view of the above, we find no

reason to sustain the addition in the hands of assessee on the basis of cash deposited in the bank account of the firm, which is a separate assessable entity. Accordingly, we direct the AO to delete the addition of Rs. 25 lakhs made under section 69A of the Act. As a result, ground No. 2, raised in assessee's appeal is allowed.

15. In the result, appeal by the assessee is allowed.

Order pronounced in the open Court on 29/08/2022

Sd/-
S. RIFAUR RAHMAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 29/08/2022

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