

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC-1": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.1423/Del./2020
Assessment Year 2017-18

Leela Devi C/o Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, New Delhi. PAN No. BLKPD7965F	vs.	ITO Ward 35(8) New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Kapil Goel, Advocate
For Revenue :	Shri Prakash Dubey, Sr. DR

Date of Hearing :	05.01.2021
Date of Pronouncement :	01.02.2021

ORDER

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-13, New Delhi dated 25.02.2020 for AY 2017-18, challenging the addition of Rs. 15 lakhs on account of unexplained cash deposit in bank account u/s 69A of the IT Act.

2. I have heard Ld. Representatives of both the parties through Video Conferencing and perused the material on record.

3. Briefly the facts of the case are that return of income was filed by the assessee on 25.03.2018 declaring total income of Rs. 3,03,940/-. The assessee is an individual having income from house property and income from other sources. The assessee has made cash deposit of Rs. 15 lakhs with HDFC Bank during demonetization period (09.11.2016 to 30.12.2016). The assessee has submitted that cash deposited during the demonetization period includes life time savings and part of cash withdrawal from bank account in earlier years for personal security and other household expenditure. The assessee further stated that her withdrawal during FY 2014-15 was Rs. 14,50,000/-. The reply of the assessee was not found tenable, therefore, cash deposit of Rs. 15 lakhs in bank account is treated as income from undisclosed sources and added to the income of the assessee u/s 69A of the Act read with section 115BBE of the Act.

4. The assessee challenged the addition before Ld. CIT(A). The submissions of the assessee are reproduced in the appellate order in which the assessee made similar submissions that cash was deposited in three installments of Rs. 5 lakhs each on 19.11.2016, 24.11.2016 and 29.11.2016. It was submitted that there was a matrimonial dispute between the assessee's son and her daughter-in-law after the marriage which was performed in June, 2012. However, the

daughter-in-law deserted the assessee's son in November, 2013. The assessee's son has filed a divorce petition in Family Court, Rohini on 18.10.2014. The assessee has taken a bank loan of Rs. 25,16,722/- in June, 2014 for settlement of matrimonial dispute. The assessee has withdrawn cash amounting to Rs. 18 lakhs from the bank account in FY 2014-15 from 16.06.2014 to 15.11.2014 in the anticipation of settlement of matrimonial dispute, details of which are noted in the impugned order. However, the matrimonial dispute was not settled till the demonetization, therefore, cash of Rs. 15 lakhs lying at the house was deposited in the bank account. The source of the above cash deposit is explained as above. Ultimately, the matrimonial dispute was settled vide statement dated 17.08.2019 for a total sum of Rs. 23 lakhs out of which Rs. 7 lakh was paid to the daughter-in-law on 21.08.2019 and balance amount of Rs. 16 lakhs was paid to daughter-in-law in two installments. The assessee, therefore, explained that cash deposit is from these sources. The Ld. CIT(A), however, did not accept the explanation of the assessee and dismissed the appeal of the assessee.

5. The findings of Ld. CIT(A) in para 4.4 of the order are reproduced as under:

“4.4 A perusal of the above facts highlights that the explanation offered regarding the source of cash deposit before the AO was that these were her life

time savings and part of cash was withdrawn from the bank in the earlier years for personal security and other household expenditures. However, during appeal it was stated that the money deposited during the demonetization period was the withdrawal of cash from the bank in FY 2014-15 and earlier years household savings. The cash was withdrawn in anticipation of settlement of a matrimonial dispute of the appellant's son and his spouse. It was stated that a divorce petition was filed on 18.10.2014. It is also stated that a bank loan of Rs. 25,16,722/- was taken for settlement of matrimonial dispute and the appellant withdrew Rs. 19,00,000/- between 16.06.2014 to 24.10.2014 in anticipation of settlement of matrimonial dispute. As has been rightly pointed out by the O, the appellant's explanation does not appear to be acceptable or tenable. While the claim that the money withdrawn was out of the bank loan taken (no documentary evidence produced in this regard), the explanation regarding the cash deposit of Rs. 15 lacs during demonetization period i.e. after more than two years is highly improbable. Further, the fact that a loan was taken in anticipation of settlement of matrimonial dispute, it is obvious that the loan liability is only incurred when the liability is to be discharged without further delay. The fact that Rs. 19 lacs was withdrawn and not utilized is beyond reasoned untenable. It is also not clarified as to when the loan was repaid and the interest liability which accrued thereon. Considering that the petition was filed in October, 2014 and the final order of settlement was passed on 21.08.2019 i.e. a gap of nearly five years, it cannot be the case that the appellant withdrew money and held on as cash in hand for two years in anticipation of settlement of the matrimonial dispute and on account of demonetization the same amount

money was withdrawn to the extent of Rs. 15 lacs was deposited therefrom. Hence, the appellant's explanation is not maintainable and is accordingly rejected. Consequently, the addition of Rs. 15 lacs u/s 69A r.w.s. 115BBE as unexplained money is hereby confirmed."

6. Ld. Counsel for assessee reiterated the submissions made before authorities below and relied upon certain decisions of different benches of the Tribunal, copies of which are filed in the Paper Book and also relied upon the judgment of Punjab & Haryana High Court in the case of Shiv Charan Dass Vs. CIT 126 ITR 263.

7. On the other hand, Ld. DR relied upon the orders of the authorities below and submitted that when Rule of preponderance of probability is applied to the facts of the case, it is clear that assessee failed to explain the source of the cash deposit in her bank account during demonetization period, therefore, appeal of the assessee may be dismissed.

8. I have considered the rival submissions and perused the material on record. It is not in dispute that assessee made cash deposit of Rs. 15 lakhs in her bank account during demonetization period. The assessment year under appeal is 2017-18 and the assessee deliberately filed the return of income belatedly on 25.03.2018. The assessee explained before AO the source of the cash deposit in the bank account

was life time savings and cash withdrawn from the bank in earlier years for personal security and other household expenditures. However, assessee has not filed any further details before AO. The money which was withdrawn from June, 2014 to November, 2014. As per explanation of the assessee this amount would have been expanded by the assessee for personal security and other household expenditure and would not have been available to the assessee for making cash deposit in her bank account in November, 2016. Assessee has failed to explain before the authorities below that from year June, 2014 till November 2016, what was her source to make household expenditures. In absence of these details Ld. DR rightly contended that when Rule of preponderance of probability is applied to the facts of the case, whatever amount was withdrawn by assessee from her bank account in the year 2014 must have been incurred by her on household expenditures. As regards, the matrimonial dispute between son of the assessee and her daughter-in-law, divorce petition was filed in October, 2014 and according to explanation of the assessee, she has taken loan of Rs. 25,16,722/- in June, 2014 for settlement of the matrimonial dispute. If the same amount was withdrawn of Rs. 18 lakhs in year 2014, it was not connected with matrimonial dispute of the son of assessee because the divorce matter was settled in August, 2019 only and assessee has paid first installment of

Rs. 7 lakhs in August, 2019 and, thereafter, the balance amount was to be paid in two installments. Thus, it is a story created by assessee for withdrawing the amount for settlement of the matrimonial dispute which has no connection whatsoever with the money withdrawn from the Bank. It may also be noted that the amounts withdrawn earlier in year 2014 from the bank account of the assessee was in ten installments of Rs. 1 lakh to Rs. 3 lakh respectively. When the matrimonial dispute was not settled till August, 2019, there was no reason for the assessee to keep the cash at home. When assessee made cash deposits of Rs. 15 lakhs in three installments in her bank account in November, 2016, would lead to irresistible conclusion that assessee was keeping unaccounted cash money of Rs. 15 lakhs with her at the time of demonetization period and the assessee realizing that such currency cannot be used anywhere, she deposited same in her bank account and purposely the return of income was filed belatedly on 25.03.2018 after expiry of the period provided u/s 139(1) for filing of the return of income within the period of limitation. The decisions relied upon by Ld. Counsel for assessee are thus, clearly distinguishable from the facts of the case because the explanation of the assessee does not inspire any confidence of this court to accept the explanation of the assessee. There is a contradiction in the explanation of the assessee made before AO as well as before Ld. CIT(A).

Considering the totality of the facts and circumstances, I am of the view that assessee failed to explain the source of cash deposit in her bank account during demonetization period. Thus, assessee failed to explain the sources, therefore, no interference is called for in the matter.

9. In the result, the appeal of assessee is dismissed. Order pronounced in the open Court on 01.02.2021.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 01.02.2021
*Kavita Arora

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.