

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI**

**BEFORE SHRI N.K. SAINI, HON'BLE VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.987/Del/2016
Assessment Year: 2012-13**

**Mr. Chander Mohan Marwah, vs Asstt. Commissioner of Income-tax,
Flat No.14A, Tower No.19, Central Circle 7, New Delhi.
Belgravia Central Park-2,
Sector 48, Gurgaon.
PAN: AAMPM7548R
(Appellant) (Respondent)**

Assessee by: Shri Sandeep Ahuja, FCA
Shri Sarthak Ahuja, ACA
Respondent by: Ms Ashima Neb, Sr. DR

**Date of Hearing: 11.10.2018
Date of Pronouncement: 05 11.2018**

ORDER

PER NARASIMHA K. CHARY, JM

Aggrieved by the order dated 27.01.2016 passed by the learned Commissioner of Income-tax (Appeals)-23, New Delhi {for short "CIT(A)}, the assessee preferred this appeal.

2. Briefly stated facts are that the assessee is an individual deriving income from salary and interest from saving bank account. Search and seizure operation u/s 132 of the Income-tax Act, 1961 ("the Act") were

conducted on Marwah group of cases on 28.7.2011. A notice u/s 142(1) of the Act was issued on 15.5.2012 requiring the assessee to file the return of income for Asstt. year 2012-13. On 19.6.2012, the assessee filed the return of income declaring an income of Rs.2,30,350/-.

3. The assessee was asked to explain the source of cash of Rs.7,33,000/- found during the search and according to the assessee, a sum of Rs.2 lacs was left by his son one Mr. Rahul Marwah in August 2008, a sum of Rs.1 lac was left by his daughter Ms Kaitki Merwah in October 2009 whereas a sum of Rs.75,000/- was realized by the sale of old car of Ms Kawitki in June 2011, a sum of Rs.77,000/- was given by one Mr. Pushkar Kumar Marwah, son of the assessee in June 2010, a sum of Rs.50,000/- was realized on the closure of the non-resident accounts of Mr. Rahul Marwah and Pushkar Marwah and a sum of Rs.2.33 lacs was the cash reserve in hand from the savings of Mrs. Shanti Devi, mother of the assessee. Learned AO did not believe the version put forth by the assessee. By treating the entire cash of Rs.7.33 lacs as unexplained cash, learned AO added it to the income of the assessee.

4. Assessee preferred appeal before the learned CIT(A) by taking the very same plea of his mother keeping some cash and reserve, his children leaving some cash with him and put together all such amounts along with his own savings, it is Rs.7.33 lacs. Learned CIT(A) on an elaborate consideration of the facts and circumstances involved in this matter and in the light of the said withdrawals from the bank by his

children, reached a conclusion that a sum of Rs.2.75 lacs could be admitted as explained while the balance amount of Rs.4.6 lacs has to be brought to tax. In that exercise, learned CIT(A) treated Rs.75,000/- sourced from Ms Kaitki Marwah, Rs.1 lac from Mrs. Shanti Devi, Rs.50,000/- being the savings of the assessee and another Rs.50,000/- savings on behalf of wife of the assessee. In a nutshell, learned CIT(A) did not accept the cash of Rs.1 lac and Rs.2 lacs said to have been left by Ms Kaitki and Mr. Rahul Marwah respectively and a sum of Rs.1.3 lacs said to have been kept in hand by the mother of the assessee and Rs.27,000/- savings of the assessee.

5. Challenging the order of the learned CIT(A) in sustaining the addition to the tune of Rs.4.6 lacs, the assessee preferred this appeal stating that the children of the assessee are financially capable of providing the financial help to the parents and also in view of the old age of the mother of the assessee at 94 years and her health, there is no wonder of keeping such sum in cash with the assessee to meet the medical emergency, if any arise.

6. It is the argument of the learned AR that learned CIT(A) vide para 4.2.2. at page 15 of his order categorically accepted the financial capability of the three children of the assessee, considering their extant income as apparent from their returns of income, as such, there is no basis for the learned CIT(A) not to admit the cash of Rs.1 & Rs.2 lacs left by the daughter and son of the assessee respectively. So also it is the submission of the learned AR that a perusal of the cash flow statement

of the mother of the assessee, it is clear that as on the date of the search, the closing balance of the mother was Rs.6.08 lacs and on this score by not considering this fact, learned CIT(A) erred in sustaining the addition to the extent of Rs.1.33 lacs relatable to the mother of the assessee.

7. Per contra, it is the argument of the learned DR that the children of the assessee, who are NRIs in UK & USA for quite long time, during their visit to India for a period of 2 or 3 months during the years stayed with the assessee had withdrawn the amounts for their spending. Learned DR brought to our notice that it is too much to say that when Ms Kaitki Marwah stayed in India between 14.10.2009 and 2.11.2009 in one spell and again between 20.10.2010 and 11.11.2010 in another spell, spent only a sum of Rs.7200/- for her expenses and when she withdrew Rs.1,07,200/- during the financial year 2009-10, we cannot be belief that she left Rs.1 lac with the assessee by spending only Rs.7200/- for her expenses. So also learned DR submitted that Mr. Rahul Marwah was also in India in two spells i.e. between 6.8.2008 and 4.10.2008 and also between 15.3.2011 and 28.6.2011 and his withdrawals were Rs.3.13 lacs out of which the assessee claims that he left Rs.2 lacs with the father. Learned DR argued that while believing or disbelieving of these accounts furnished by the assessee, regard must be had to the common course of natural event, human conduct, public and private business in relations to the facts of this particular case.

8. We have carefully gone through the record. Learned CIT(A) had a fresh look at the facts and circumstances involved in this matter and he appreciated the material available on record to reach his conclusions in the following way:

“The appellant has also submitted the details of visits to India of his three children and their income tax returns evidencing their income. From the details submitted the following facts emerge.

- (i) Sh. Rahul Marwah visit in India between 06.08.2008 to 04.10.2008 and again between 15.03.2011 to 28.06.2011. He had withdrawn \$3808.60 equivalent to Rs.2,00,000/- on 07.08.2008 from his account with City Bank account no.9965067878 He also withdrew Rs.58,000/- on 10.04.2008 and Rs.55,000/- on 29.04.2009 which are not relevant considering his period of visit to India. He had stayed for nearly two month in August 2008 and three months in 2011 and it is likely that the money withdrawn in 2008 was for his expenses in India during his stay. Moreover, the money was withdrawn three years prior to the search and it is unlikely that the amount withdrawn was not spent by him and kept for three years with the appellant;
- (ii) It is true that the assessee had closed his sons, Rahul and Pushkars, nonresident bank account no.5-048935-003 held with Citi Bank on 29.10.2010 and the last withdrawal was Rs.55,000/- on 29.04.2009, but that was also more than two years prior to search;
- (iii) Ms. Kaitki Marwah had visited India between 14.10.2009 to 02.11.2009 and again between 20.10,2010 to 11.11.2010 and she had in encashed 1500 Pound equivalent to Rs 1,07,200/- on 14 10.2009 and having stayed for more than two weeks in 2009 it is not likely that she would have spent only Rs.7,200/- during her stay;
- (iv) The appellant has submitted delivery receipt dt. 03.06.2011 of sale of the car no DL 4CP 0202 in the name of Ms. Kaitki Marwah to one Sh. Jaswant Singh of Haryana but the amount of sale is not mentioned on the devilry receipt. Rs.75,000/- claimed to have been received on behalf of Ms. Kaitki Marwah two months prior to search may be considered to be lying with the appellant since the same was sold after to her visit in 2010; and,
- (v) Sh. Pushkar Marwah visited India between 25.12.2007.to 10.01.2008. The appellant claims to have encashed \$1500 equivalent to Rs.77,300/- on 16.06.2010 of the instrument given by Sh. Pushkar Marwah to the appellant Once again this money was encashed more than a year prior to search

4.2.2 There is no denying the financial capability of the three children of the appellant considering their extent of income as apparent from their returns of income. However, in their cash flow statements hardly any expenditure has been shown against the withdrawals - just Rs.7,200/- by Ms Kaitki Marwah in FY 2009- 10, Rs.5,000/- by Sh. Pushkar Marwah in FY 2007-08 and Rs. 1,61,612/- out of withdrawals of Rs.3,58,612/- by Sh. Rahul Marwah in FY 2008-09 and only Rs.5,000/- out of Rs.55,000/- withdrawn in FY 2009-10 - during their stay in India during those periods.

4.2.3 As regards Smt Shanti Marwah, she was in Kuwait till early eighties where her husband was working. Her bank statements and jewellery purchase during her stay in Kuwait are indicative of her substantially high financial status and capabilities. She had been withdrawing substantial amount from her foreign bank accounts as well as Indian accounts over the past years, her last withdrawal from her foreign accounts being 10100 GBP on 10.06.2010 and \$15000 on 10.06.2010, total being Rs. 13,96,210/- beside withdrawals of 8000 GBP on 19.10 2007 and 13000 GBP on 13.06.2008 equivalent, to Rs.6,52,960/- and Rs. 10,84,330/- as also Rs.3,56,000/- from her account with Merrill Lynch Int Bank Ltd., Singapore in January and March 2009. She also receives rent from the appellant and his wife in cash. Mrs. Manju Marwah is a director in M/s SPL Engineering Pvt. Ltd. and receives salary in cash from it and as per her cash flow statement she withdrew Rs.25,000/- in FY 2007-08, Rs.30,000/- in FY 2008-09, Rs.60,000/- in FY 2010-11 and there is no withdrawal in FY 2010-11 up to the date of search out of which she has paid rent to Smt. Shanti Devi as well As regards the appellant he also receives salary from M/s SPL Engineering Pvt. Ltd. out of which he has paid rent to Smt. Shanti Devi, but his bank account does not show any significant transaction.

4.2.4 Considering all the facts summarized above, and the old age of the appellant, his wife and his mother who stay together and their relative immobility/health problems and therefore need to maintain cash at home for any exigencies, the availability of cash with may be reasonably considered to be explained to the extent of Rs.75,000/- of Ms. Kaitki Marwah, about Rs.1,00,000/- of Smt. Shanti Devi Marwah, Rs.50,000/- each of the appellant and his wife Smt. Manju Marwah. Thus, Rs.2,75,000/- cash is considered to be explained. The addition to this extent is deleted, and the addition of the balance amount of Rs.4,58,000/- is confirmed as unexplained.”

9. Assessee assails the above finding of the learned CIT(A) to say that once the learned CIT(A) did not dispute the financial capability of the children and mother of the assessee, which once the particulars like bank accounts and cash flow statement are furnished, there is no reason for the disbelief of the same to their full extent by the learned CIT(A).

10. Learned CIT(A) found that both Ms. Kaitki Marwah and Mr. Rahul Marwah during their stay withdrew the amounts for their spending and it cannot be believed that they withdrew the amount only to keep the same with the assessee. It is argued before us by the learned AR that during the relevant period of the visit of the children during the year, there were considerable withdrawals to the tune of Rs.8,02,200/- by the family and it would be sufficient for the expenses @ Rs.66,850/- p.m. If we should accept this contention of the assessee, it remains that without having any need the children withdrew these amounts and since they have withdrawn the amounts, they kept substantial amounts like Rs.1 lac and Rs.2 lacs with their father. Having regard to the status of the assessee and their children and their living abroad as NRIs, we find it difficult to believe that for all her stay between 14.10.2009 and 21.1.2009 and 20.10.2010 and 11.10.2010 Ms Kaitki Marwah had the expenses only to the tune of Rs.7200/-. So also when Mr. Rahul Marwah spent almost 5 months in India and withdrew a sum of Rs.3.13 lacs, he spent only Rs.1.13 lacs and left the balance with his father and the entire amount was kept in cash with the assessee.

11. Plea taken by the assessee to keep huge amount in cash with them is that the probable medical emergency. No iota of evidence has been placed on record to show that there was in fact any need in the immediately preceding years to prompt the assessee to get such huge amount of Rs.7.33 lacs in cash. Now a day when the plastic currency and internet banking are available, keeping cash in house is not at all a probable event in view of the attendant threats and dangers involved in it. The assessee says that Rs.2 lacs by Mr. Rahul Marwah is kept in cash since August 2008 but when such cash is still available, Rahul Marwah withdrew the amount in 2009, and we cannot believe that he did not spend even a single pie during the visit in 2011. So also the sum of Rs.1 lacs said to have been kept by Ms Kaitki Marwah in October 2009. She did not spend even a single pie during her second visit in 2010. Keeping cash of Smt. Shanti Devi also does not inspire confidence in our mind to believe that there was apprehension of such great medical emergency which the parties cannot meet till they had recourse or access to bank or banking facilities.

12. As rightly argued by the learned DR while appreciating the material on record, it is not possible for the adjudicating authority not have regard to the common course of natural event, human conduct and public private business in relation to the facts of a particular case. On a careful perusal of the findings of the learned CIT(A), we find that though the assessee did not claim any saving in the hands of his wife, learned CIT(A) had granted relief to the maximum possible extent and by no parameters can we say that the approach of the learned CIT(A)

suffers any illegality or irregularity. Having regard to the facts and circumstances, we find that the reasoning given by the learned CIT(A) is impeccable and does not warrant any interference. Consequently, the appeal fails.

13. In the result, appeal of the assessee is dismissed.

Order pronounced in the Open Court on 5th November, 2018.

Sd/-
(N.K. SAINI)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 5th November, 2018

'VJ'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Asstt. Registrar

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