

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA NO. 2014/MUM/2023 : A.Y : 2017-18

Seema Jethani
20th Floor, Willows Twin Tower,
LBS Marg, Mulund (West),
Mumbai 400 080.
PAN : AYFPJ4405M (Appellant)

Vs. Commissioner of Income Tax
(Appeals) NFAC, Delhi.
(Respondent)

**Appellant by : None
Respondent by : Shri Manoj Kumar Singh**

**Date of Hearing : 26/02/2024
Date of Pronouncement : 26/02/2024**

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 13-03-2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2017-18. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.38.07 lakhs relating to cash deposited into the bank account of the assessee.

2. None appeared on behalf of the assessee. The notices sent by the registry has also returned back by the postal department unserved with noting "left". Hence we proceed to dispose of the appeal ex-parte, without the presence of the assessee.

3. The appeal is barred by limitation by 20 days. The assessee has filed a petition requesting the bench to condone the delay. We heard Ld D.R on this preliminary issue. Having regard to the submissions made by the assessee, we are of the view that there was reasonable cause for the assessee in filing the appeal belatedly. Accordingly, we condone the delay and admit the appeal for hearing.

4. We heard Ld D.R and perused the record. The submission of the ld D.R is that the order passed by Ld CIT(A) does not call for any interference. The facts are stated in brief. The assessee filed her return of income for the year under consideration declaring a total income of Rs.21,60,630/-. It was taken up for limited scrutiny. It was noticed that the assessee has sold two properties and accordingly declared long term capital gains thereon. During the course of scrutiny proceedings, the AO examined the bank accounts maintained by the assessee with ICICI Bank and HDFC Bank. It was noticed that the assessee has made cash deposits aggregating to Rs.38.07 lakhs in both the bank accounts during the year relevant to the assessment year 2017-18. The assessee explained that she had withdrawn cash in the earlier two years in connection with the expected heart treatment of her husband. It was submitted that the above said cash withdrawals along with other withdrawals were used to make the above said deposits.

5. The AO examined the details of withdrawals made during the financial years 2014-15 to 2016-17. He noticed that the assessee has made withdrawals of big amounts ranging from Rs.50,000/- to Rs.9,50,000/- in FY 2014-15. However, the assessee has also withdrawn smaller amounts of Rs.20,000/- to Rs.30,000/- after withdrawal of big amounts. In FY 2015-16, the withdrawals were mainly of smaller amounts. In FY 2016-17 also, the withdrawals were smaller amounts only. Accordingly, the AO took the view that there was no necessity for the assessee to withdraw smaller amounts, when it is claimed that she was already having huge cash balance in hands. Accordingly, he rejected the claim of availability of cash balance. Further, the AO noticed that the assessee is having investments in the form of mutual fund

investments, fixed deposits etc. Hence the AO took the view that the assessee could not have kept huge cash balance in hand without earning any income. Accordingly, the AO rejected the claim of availability of cash balance out of past cash withdrawals. Accordingly, he assessed the aggregate cash deposits of Rs.38,07,000/- as income of the assessee.

6. The Id CIT(A) also confirmed the same.

7. The question that arises for our consideration is whether the past cash withdrawals can be considered to be the source for making deposits aggregating to Rs.38,07,000/- in FY 2016-17 relevant to AY 2017-18. We examined the details of cash withdrawn by the assessee, which has been given by the AO in the assessment order. The aggregate amount of cash withdrawn by the assessee in larger amounts (Amount exceeding Rs.50,000/-) is given below:-

F.Y	2014-15	-	Rs.36,90,000
F.Y	2015-16	-	Rs.12,75,000

			Rs.39,65,000
Less:-	Deposits of larger		
	Sums		4,48,000

			Rs.35,17,000
			=====

The case of the assessee is that cash balance to the tune of Rs.34,25,000/- was available with the assessee as on the beginning of the current year, i.e. as on 1.4.2016. The AO has not accepted the said claim for the reasons discussed earlier. The assessee had stated that she withdrew cash for anticipated heart surgery of her husband, but the said claim was rejected by the AO by observing that the prescription pertained to June, 2013 and August, 2015. We notice that major portion of cash was withdrawn by the assessee in Financial year 2014-15 and the assessee has also furnished medical bills relating to that period. Thus the reasoning given by the assessee for huge withdrawal is in a way corroborated by the medical bills. The AO has expressed the view that the assessee was withdrawing cash of smaller

amounts subsequently even when the cash balance was already available with her. Further, the AO has also observed that the assessee is in the habit of making investments and hence she could not have kept cash balance in hand. In our view, these are also surmises entertained by the AO. It is well settled proposition that the AO cannot direct the assessee the manner in which the funds are to be used by the assessee. Further, we notice that the AO did not bring any material on record to show that the earlier cash withdrawal was spent away and was not available with the assessee. Accordingly, we are of the view that the AO was not justified in rejecting the claim of availability of cash balance.

8. At the same time, it cannot also be said that the entire cash withdrawn by the assessee was kept intact by her, since the assessee did not bring any evidence to show that the entire withdrawals were available with her in cash. It is quite possible that the assessee would have spent some portion of cash balance. Under these set of facts, we are of the view that the cash balance that could be available with the assessee needs to be estimated. Accordingly, we estimate that 80% of the withdrawals made in bigger amounts mentioned above (FY 2014-15 and 2015-16) should be available with the assessee, i.e., 80% of Rs.35,17,000/- amounting to Rs.28,13,600/-. In FY 2016-17, the assessee has withdrawn Rs.1,75,000/- on 07-09-2016 (during the current year) and the same should be available with the assessee. Thus, the aggregate amount available with the assessee should be Rs.29,88,000/- (Rs.28,13,000/- + Rs.1,75,000/-). Considering the savings that could have been made from other withdrawals, we are of the view that a sum of Rs.30.00 lakhs can be considered to be available with the assessee for making the deposits of Rs.38,07,000/-. Barring the above, the remaining withdrawals, being smaller amounts, should be considered to have been spent away.

9. In view of the foregoing discussions, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to accept source to the tune of Rs.30.00 lakhs. Accordingly, the addition towards cash deposits made into

the bank account is sustained to the tune of Rs.8,07,000/-. We order accordingly.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 26th February, 2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, Date : 26th February, 2024

SSL

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "G" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai