

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

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 3458/Del/2017 : Asstt. Year : 2012-13

Income Tax Officer, Ward-2(1), Gurgaon	Vs.	Sh. Hemant Kumar, P8/17, DLF City, Phase-III, Distt. - Gurgaon-122001
(APPELLANT)		(RESPONDENT)
PAN No. AAKPK9873D		

CO No. 159/Del/2022 : Asstt. Year : 2012-13

Sh. Hemant Kumar, P8/17, DLF City, Phase-III, Distt. - Gurgaon-122001	Vs.	Income Tax Officer, Ward-2(1), Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. AAKPK9873D		

**Assessee by : Dr. Rakesh Gupta, Adv. &
Sh. Somil Agarwal, Adv.**

Revenue by : Sh. Vivek Kumar Upadhyay, Sr. DR

Date of Hearing: 04.03.2024

Date of Pronouncement: 08.03.2024

ORDER

Per Bench:

The present appeal and Cross Objection has been filed by the Revenue and the assessee against the order of Id. CIT(A)-1, Gurgaon dated 30.03.2017.

2. The Revenue has raised only one ground which are as under:

"1. The Id. CIT(A) has erred on fact and in law in treating the cash receipts as explained receipts and not taxable receipts in absence of any documentary evidence."

3. The assessee has raised ground of Cross Objection which are as under:

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making aggregate addition of Rs. 1,35,50,000/- (Rs.85,00,000/- Rs.50,50,000/-) u/s 68 on the following grounds and that too without any basis/material and evidence available on record and without following the principles of natural justice.

- Rs.85,00,000/- on account of advance received against property.*
- Rs.50,50,000/- on account of capital introduction.*

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in exercising his jurisdiction in making an estimated addition of Rs.6,00,000/- on account of house hold expenses and that too without assuming jurisdiction as per law and without giving show cause notice to the appelland and in violation of principles of natural justice.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making aggregate addition of Rs.27,50,000/- on account of unsecured loan by treating it as alleged income of assessee u/s 68 of the Income Tax Act, 1961."

Cash Deposits:

4. As per the AIR, the assessee has deposited cash in the savings bank accounts maintained in different banks which are as under:

Sl. No.	Name of the Bank	Cash Deposited (Rs.)
1.	IOB	4,05,09,500/-
2.	Axis Bank	33,16,000/-
3.	Axis Bank	1,25,06,000/-
	Total	5,63,31,500/-

5. The assessee submitted the cash flow statement before the Assessing Officer which is as under:

Opening cash balance	36,107
Add: Cash withdrawn from bank	5,46,98,798
Less: Cash deposited in bank	5,92,11,500
Less: Cash expensed off	23,83,109
Add: Advance received from properties	85,00,000
Add: Capital through Vandana	50,50,000
Closing balance	63,46,963

6. The AO after received of the reply concluded the assessment making addition of Rs.5,63,31,500/- on this issue.

7. Aggrieved, the assessee filed appeal before the Id. CIT(A) who deleted the addition except to the tune of Rs.85,00,000/- which is on account of advance for purchase of property and Rs.50,50,000/- received as capital from Smt. Vandana and Rs.6,00,000/- on account of household withdrawals.

8. Aggrieved, the assessee as well as Revenue filed appeal before the Tribunal.

9. Before us, the Id. DR submitted that in absence of any correlation between the withdrawals and the deposits, the decision of the Id. CIT(A) giving set off to the amounts deposited from the withdrawals cannot be accepted. It was argued that the assessee had to prove that it is the same cash which has been withdrawn has been re-deposited into the account and the record do not show any such relation.

10. On the other hand, the Id. AR contended that he had withdrawn cash amounting to Rs. 5,46,98,798/- which were used for the purpose of making cash deposits in the bank account. It was argued that the AO has rejected the assessee's contention on the ground that no supporting evidence was furnished to establish that the said cash receipts were actually explained receipts and not taxable receipts and the Id. CIT(A) has duly accepted.

11. Heard the arguments of both the parties and perused the material available on record.

12. It is undisputed fact on record that the assessee had withdrawn cash amounting to Rs. 5,46,98,798/-. This fact has been recorded in the assessment order too. The assessee had filed cash book showing that the amount withdrawn from bank had been deposited again within a week in his bank before the lower authorities which we have duly examined. The AO has not pointed out any other expenditure or investment made from the cash withdrawn.

13. In these circumstances, we hold that the Id. CIT(A) has rightly held that the cash withdrawn cannot be held to be unaccounted. Reliance is being placed in this regard on the decision of the Co-ordinate Bench of ITAT, Chandigarh in ITA No. 123/Chd/2007 in the case of Sh. Bhupinder Singh Gill, and order dated 31.1.2014, in the case of Anil Gupta Vs. ITO in ITA No. 5643/Del/2013.

14. In the result, the appeal of the Revenue is dismissed.

15. With regard to CO No. 159/Del/2022 pertaining to the capital received from Smt. Vandana and the advance received in connection with proposed sale of property, both the parties fairly submitted that the matter needs verification and examination of the alleged transaction and documents thereof. Hence, in the interest of justice, the matter is remanded to the file of the Assessing Officer for appropriate enquiries as deemed fit. The AO shall afford an opportunity to the assessee to file the replies and evidences relied upon.

16. In the result, the appeal of the Revenue is dismissed and the Cross Objection of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 08/03/2024.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 08/03/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR