

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE  
SHRI S RIFAUZ RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 3030/Del/2023  
Asstt. Year: 2021-22

Rita Singh, H-1, Zamrudpur Community Centre, Kailash Colony, New Delhi 110 048 PAN ABKPS4308J	Vs.	ACIT, Central Circle-2, New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Salil Agarwal, Advocate Shri Shilesh Gupta, CA Shri Madhur Agarwal, Advocate
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	16.04.2024
Date of pronouncement:	25.04.2024

**ORDER**

**PER VIMAL KUMAR, JM**

This appeal is against order dated 28.08.2023 of the Learned Commissioner of Income Tax (Appeals) through which appeal was partly allowed with the directions to Learned Assessing Officer to recompute the capital gains in the hands of the appellant taking Rs. 2,14,26,649/- as cost of acquisition against assessment order dated 30.12.2022 of the office of the Asstt. Commissioner of Income Tax.

2. Brief facts of the case are that on 31.03.2022 assessee filed return of Income tax of Rs. 65,22,770/-. On 27.06.2022 the case was picked for scrutiny assessment vide issuance of notice under section 143(2) of the Act. 1961. On 7.12.2022 notice u/s 142(1) of the Act was issued to the assessee. On 28.12.2022 reply was filed by assessee, wherein, it was submitted that assessee has deposited Rs. 75,98,000/- in bank accounts during year under consideration out of cash in hand from withdrawal made by the assessee in the following assessment years as follows-

Assessment Year	Cash Withdrawals from Bank (Rs.)
2019-20	11,99,000/-
2020-21	35,50,000/-
2021-22	14,25,000/-
Total	61,74,000/-

3. Further, it is submitted that husband of the assessee late Sh. J.K. Singh passed away in September, 2019 who also had cash in hand from withdrawals from bank which was deposited in the bank account of the assessee after his demise.

4. On 30.12.2022 the Learned AO passed the assessment order u/s 143(3) of the Act, 1961 whereby, addition was made of Rs.75,98,000/- u/s 69A of the Act, 1961 representing cash deposited from alleged unexplained sources.

5. On 31.5.2023 appeal being preferred by before Learned CIT (A), the cash deposited of Rs. 75,98,000/- in the bank account of the assessee was out of cash in hand from withdrawals made by the assessee and her husband from AY 2018-19 to 2021-22 and entire amount of cash deposited is duly explained from the cash withdrawals made by assessee and her husband. Further, details of income declared by the appellant and her husband in preceding 5 assessment years are as follows:

Sr. No.	Assessment Year	Total income declared by the assessee (Rs.)	Total income declared by her husband (Rs)
1.	2020-21	78,93,620	1,78,100
2.	2019-20	2,47,81,440	1,39,25,600
3.	2018-19	4,88,05,340	3,01,35,070
4.	2017-18	4,29,82,590	2,75,04,650
5.	2016-17	4,16,09,210	2,72,46,480

6. The burden of the appellant stood discharged once the details of cash withdrawals were submitted from the bank. The assessee further relied on various case laws including, CIT vs Kulwant Rai 291 ITR 36 (Del), S.R. Venkata Ratnam vs. CIT 127 ITR 807 (Kar) and others.

7. On 28.08.2023 Learned CIT (A) passed the order upholding the addition of Rs. 75,98,000/- u/s 69A of the Act made by the Learned Assessing officer. Hence the appeal.

8. Learned Counsel for the assessee submitted that the assessee had made submissions before the Learned CIT(A) which are as follows:-

Sr. No.	Assessment Year	Total income declared by the assessee (Rs.)	Total income declared by her husband (Rs)
1.	2020-21	78,93,620	1,78,100
2.	2019-20	2,47,81,440	1,39,25,600
3.	2018-19	4,88,05,340	3,01,35,070
4.	2017-18	4,29,82,590	2,75,04,650
5.	2016-17	4,16,09,210	2,72,46,480

9. Learned Counsel for the assessee submitted that the cash withdrawals to the tune of Rs. 81,06,500/- by the assessee and her husband from AY's 2018-19 to 2021-22 are not disputed by the AO (kindly refer to pages 47-49 of paper book) and cash deposits are to tune of Rs. 75,98,000/- (Kindly refer to pages 21-24 of paper book). Once the cash withdrawals are in excess of the cash deposits, then it becomes amply clear that the cash deposits in bank account are out of the available sources with the assessee. Even otherwise, the burden lies on the revenue to bring material on record, to suggest that the money withdrawn by the assessee has been utilized elsewhere for personal purposes or the money so withdrawn is not available with the assessee, as per the mandate of Delhi High Court in the case of CIT vs. Kulwant Rai reported in 291 ITR 36 (Del).

10. Learned Counsel for the assessee submitted that the mere fact, that the assessee did not explain the reasons for withdrawal of cash from his bank account, cannot be the basis to hold that the source of deposit of cash was not explained by the assessee. This legal position has been explained by Karantaka High Court in the case of S.R. Venkatraman vs. CIT reported in 127 ITR 807 (Kar), wherein it has been held that, once the assessee disclosed the source as having come from withdrawals made on a given date from a given bank, it was not open to the revenue to examine as to what the assessee did with that money and it cannot chose to disbelieve the plea of the assessee merely on the surmise that it would not be probable for assessee to keep the money unutilized.

11. Learned DR submitted that assessee and her husband relied on cash withdrawals for about four years. The Learned AO as well as Commissioner of Income Tax (Appeals) rightly rejected the explanation as unacceptable because no ordinary man would withdraw the amount and keep the same in cash and later on deposit the same. The authorities have rightly doubted the explanation furnished by the assessee and doubted the source of cash deposits. Therefore appeal may be rejected.

12. From examination of record in light of aforesaid rival contention it is crystal clear that in para No. 9 appellant has shown cash deposited was out of cash in hand available which was withdrawn by the assessee and her late husband during the

year 2019-20 to 2021-22. In para 10 reference is made to date wise withdrawal of money by the assessee and her husband. The date wise cash withdrawals from the bank by assessee and her husband was held to be not justifiable by holding that cash withdrawals must have been used for incurring personal expenses. The deposit of cash on multiple occasions and no evidence was furnished that the same cash was deposited in assessment year 2021-22. The assessee had not given any plausible explanation in respect of transactions.

13. From the above it is evident that cash withdrawals to the tune of Rs. 81,06,500/- by the assessee and her husband from assessment years 2018-19 to 2021-22 are not disputed by the Learned AO and Learned CIT(A). Once the cash withdrawals are in excess of the cash deposits, then it is amply clear that the cash deposits in the bank account were out of the available sources of the assessee. The burden lies on the revenue to bring material on record to suggest that the money withdrawn by the assessee was utilized elsewhere for personal purposes or the money so withdrawn was not available with the assessee as per the mandate of Hon'ble Delhi High Court in the case of CIT vs. Kulwant Rai (supra). In view of the above material facts apparent on record and well settled principle of law the passing of impugned orders is not just fair and reasonable and deserved to be set aside.

14. No other point was argued.

15. In the result appeal of the assessee is allowed. Impugned Assessment Order dated 30.12.2022 of the Learned Assessing Officer and order dated 28.08.2023 of the Learned Commissioner of Income Tax (Appeals) are set aside.

**Order pronounced in the open court on 25<sup>th</sup> April, 2024.**

sd/-

**(S RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

sd/-

**(VIMAL KUMAR)  
JUDICIAL MEMBER**

Dated: 25/04/2024

***Veena***

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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