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2. We have heard the rival submissions made by the respective parties, we have also perused the relevant materials available on record.

3. The brief facts leading to the case is this that, the assessee is an individual, filed its return of income on 27.04.2007 declaring total income at Rs.1,20,570/-. Upon selection of the case under scrutiny, notice under Section 143(2) of the Act dated 28.08.2008 was issued followed by notice under Section 142(1) of the Act along with questionnaire dated 10.07.2009. Such scrutiny assessment was finalized under Section 144 of the Act on 29.12.2012 since the assessee did not respond to several notices issued by the Learned AO upon making addition of Rs.77 lacs under Section 68 of the Act to the total income of the assessee, which was appealed against but stood confirmed by the First Appellate Authority. Hence, the instant appeal.

4. The source of cash deposit of Rs.77 lacs in the account of the assessee lying with Bank of India has claimed to have been made out of cash withdrawals from the other Bank account with Kotak Mahindra Bank of the assessee, was found to be not acceptable. The assessee furnished copies of two Bank accounts along with cash flow statement. As to why aggregate cash of Rs.105.5 lacs was withdrawn over a period of half months from 16.09.2006 to 03.11.2006 from the account of Kotak Mahindra Bank and further why the said withdrawals was lying idle till the cash deposit of Rs.77 lacs from 24.03.2007 to 28.03.2007 i.e. after lapse of substantial period of five months from the date of cash withdrawal on 03.11.2006 explanation whereof was not found

satisfactory by the AO and the entire cash deposit of Rs.77 lacs was added to the total income of the assessee. Hence, the instant appeal before us.

5. The assessee made the following submissions by us;

“The appellant sold his house A-4, Meera isagh, New Delhi vide sale deed dt. 09.10.2006 for a total consideration of Rs. 1,09,00,000/- and received the entire money in his bank account. The appellant later on withdrew cash from his bank account maintained with Kotak Mahindra Bank, GK-II, New Delhi in the month from September 2006 to November 2006 to the tune of Rs. 105.50 Lakhs. The appellant withdrew this amount from his bank account to save the money from his two sons who had eyes on this money.

The appellant had planned to purchase a residential house out of this amount, but could not materialize the plan till the filing of his income tax return for the AY 2007-08 and decided to deposit the amount in capital gain account so that he can purchase the house later on. Therefore, the appellant deposited Rs. 77.10 Lakhs cash in his bank account maintained with Bank of India, Lajpat Nagar, New Delhi in the month of March 2007. Then, the appellant transferred Rs. 77 Lakhs to the capital gain account for exemption u/s 54. Copy of both the bank accounts depicting withdrawal & redeposit of cash and transfer of amount to capital gain account are enclosed for your reference.

The appellant could not purchase the residential house within the stipulated period mentioned u/s 54 and offered capital gain tax in the AY 2010-11.

The Hon'ble CIT(A) had not understood the transactions as house was sold during the AY 2007-08 and capital gain tax was paid during the AY 2010-11. The Hon'ble CIT(A) has mentioned in his order at Pt. 6.2 that the appellant was in possession of House No. A-4, Meera Bagh, New Delhi till the year relevant to AY 2010-11 as the capital gain tax was paid in the AY 2010-11. This is not correct. The appellant was owner of this house only till 09.10.2006.

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There were sufficient cash withdrawal from Kotak Mahindra Bank, but this addition has been confirmed by the Ld. CIT(A) on the basis that there is time gap of 5 months between the assessee's withdrawals and deposit of cash in bank account. That no addition u/s 68 can be made, merely, because there was a time gap between the cash withdrawals and cash redeposit in the bank, unless there is a finding given by the AO as well as the CIT(A), that the amount in question was actually used somewhere else."

6. The assessee has further relied upon the Bank Statement of both Kotal Mahindra and Bank of India, the sale deed dated 09.10.2006, the consideration whereof to the tune of Rs.109 lacs is mentioned at page 2 of the said sale deed appearing from pages 54 to 57 of the paper book filed before us. Apart from that, the cash flow statement showing withdrawals and deposit from 16.09.2006 to 28.03.2007 of both the accounts lying with Kotak Mahindra Bank and Bank of India respectively. Having regard to the facts and circumstances of the matter and having regard to the documents placed before us, we find that assessee has been able to justify the source of cash deposit to the tune of Rs.77 lacs in the Bank of India, Connaught Place, Circle Branch at New Delhi. The fact of selling of property and the consideration received thereof to the tune of Rs.109 lacs out of which cash deposit to the tune of Rs.105.5 lacs should have been considered by the Learned CIT(A). Needless to mention that all these documents were duly placed before the Learned CIT(A) which ought to have been verified in its proper prospective.

7. The Learned DR has not objected to the veracity of these documents neither could justify the stand taken by the authorities

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below in making addition of the deposit of Rs.77 lacs under Section 68 of the Act.

8. Merely because, there was a time gap between cash withdrawals and cash deposits in the Bank, the impugned addition to the tune of Rs.77 lacs made by the authorities below cannot said to be justified particularly, when subsequently, the same was deposited in the capital gain account of the assessee for exemption under Section 54 of the Act. The addition, therefore, not found to be sustainable. With the aforesaid observation we, therefore, delete the addition made by the authorities below.

9. In the result, appeal of assessee is, therefore, allowed.

This Order pronounced in Open Court on 30/05/2024

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated 30/05/2024

*Priti Yadav, Sr.PS**

Copy forwarded to:

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

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI