IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "SMC-C", BANGALORE

Before Shri George George K, Judicial Member

IT(IT)A No.99/Bang/2022 : Asst.Year 2017-2018

Ms.Karishma Sharma Kailash Building No.21 Kodichikkanahalli Main Road Kaveri Nagar, Bommanahalli Bangalore – 560 068. **PAN : BALPS6030E.**	v.	The Income Tax Officer, International Taxation Ward 2(1), Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Ravi Shankar, Advocate
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 08.08.2022		**Date of Pronouncement : 12.08.2022**

O R D E R

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 29.11.2021. The relevant assessment year is 2017-2018.

2. The solitary issue raised is whether cash deposit of Rs.14.41 lakh can be considered as unexplained?

3. The brief facts of the case are as follows:

The assessee is a NRI. For the assessment year 2017-2018, the return of income was filed declaring total income of Rs.2,95,670. The assessment was selected for limited scrutiny for the purpose of examination of source of cash deposits during the demonetization period. During the relevant financial year, the assessee had deposited cash of Rs.14,41,500 in her ICICI Bank account. The assessee was

asked to explain and submit evidences to prove the source of these deposits. The assessee's father, the Power of Attorney holder, in response to the show cause notice appeared along with AR and filed details called for. The Assessing Officer was of the view that the assessee was not able to submit any substantial evidence to explain the source of these cash deposits. Accordingly, the A.O. brought to tax amount of cash deposits amounting to Rs.14,41,500 u/s 69A of the I.T.Act. The gist of the A.O.'s reasoning read as follows:-

- *The value of the property as per registered sale deed 14.08.2013 was Rs.27,00,000/- and the source remains explained only to the extent of Rs.27,00,000/- which is received through cheque.*

- *Further, assessee has not furnished confirmation from the buyer for having paid sale consideration ofRs.12,00,000/- over and above the registered value to consider her claim.*

- *Cash book submitted by the assessee is not reliable since the assessee has not shown cash in hand in the returns filed in any of the assessment years.*

- *It is also not clear as to why the amount was not deposited immediately and why it was kept in hand and deposited during demonetisation period.*

- *The assessee claimed that out of Rs.18,00,000/- received she has spent only Rs.3,59,000/- since financial year 2013-14 and deposited cash of Rs.14,41,000/- is not reliable since on many occasions the assessee has incurred expenditure through cash as could be seen from the cash book prepared by her.*

- *It is apparently clear that the cash deposits made in the bank accounts during demonetisation period, are unexplained and from undisclosed sources, the same was not offered for taxation purposes.*

4. Aggrieved by the order of assessment, the assessee preferred appeal before the first appellate authority. The CIT(A) held that the return of income filed by the assessee for assessment year 2014-2015 was not subject to verification u/s 143(3) of the I.T.Act. It was further held that undervaluation of the sale consideration of the property resulted in lower revenue to the stamp duty authority. The CIT(A) decided the issue against the assessee and confirmed the view taken by the A.O. The relevant finding of the CIT(A) reads as follows:-

> *"6. The submissions made by the assessee are examined w.r.t. to the grounds of appeal and the addition made to the returned income. The appellant had made a cash deposit of Rs.14,41,500/- during the demonetization period. This cash deposit made was subjected to scrutiny verification for AY 2017-18. The AR for the appellant had contended that a flat belonging to the appellant had been sold per a registered sale deed on 14.8.2013. This flat had actually been sold for Rs.44,70,000/- whereas the sale deed had reflected only an amount of Rs.27,00,000/-. The appellant claims that she had received the balance consideration of Rs.17,70,000/- in cash and the total consideration-of Rs.44,70,000/- had been shown in the capital gains computation of return of income filed for AY 2017-18 voluntarily by the appellant well before the due date. The appellant has also claimed that the agreement to sale dated 24.4.2013 had in fact noted the sale consideration at Rs.39,00,000/- and an additional amount of Rs.6,00,000/- vide cheque to be returned to the' buyer. The appellant claims that this cash amount of Rs.17,70,000/- had been kept by appellant's father living in Bengaluru. While the appellant has lived in Middle East with her husband, it is claimed that the cash amount was kept by her father in Bengaluru for three years and deposited into the bank account during demonetization period. The appellant had submitted a copy of the return for AY 2017-18 and copy of the agreement of sale in support of her claim that she had in fact received the additional sale consideration of Rs.17,70,000/- in cash during August 2013.*

7. The contention of the appellant is further examined. It is seen that the appellant is revealing these facts only after the cash deposits during demonetization period were enquired into. The L TCG declared for AY 2014-15 did not result in any taxable income. There was no opportunity for revenue to verify the difference between the sale consideration reflected by the appellant and the understated sale consideration in the hand of the buyer of the property. To this extent the appellant has abetted the evasion of correct amount of stamp duty by registering a property worth Rs.44,70,000/- at only Rs.27,00,000/-. The appellant has also enabled and abetted the evasion of taxable income of Rs.17,70,000/- in the hands of the buyer. The appellant cannot now be allowed to plead ignorance of the offences committed in AY 2014-15 to explain the cash deposit made during AY 2017-18. Moreover, the maintenance of cash by the appellant or on behalf of the appellant for a period of; three years is also not considered reasonable and acceptable. The appellant was not prevented from depositing the cash amounts into the bank account in August 2013 itself. Why this was not done is unexplainable. On account of the cumulative reasons as above, I am of the considered opinion that the appellant has failed to establish the source of cash deposited during Demonetization period. The grounds of appeal taken cannot be supported."

5. Aggrieved by the order of the CIT(A), the assessee has preferred the present appeal before the Tribunal by raising the following grounds:-

"1. The order of the learned Commissioner of Income Tax (Appeals) in so far as it is against the appellant is opposed to law, equity and weight of evidence, probabilities, facts and circumstances of the case.

2. The appellant denies herself liable to be assessed to a total income of Rs.17,36,670/- as against the total income returned by the appellant of Rs.2,95,670/- for the AY 2017-18 on the facts and circumstances of the case.

3. The learned CIT(A) was not justified in confirming the additions of Rs. 14,41,000/- as being unexplained money, on the facts and circumstances of the case.

4. The authorities below failed to appreciate that the cash deposited of Rs.14,41,000/- was out of sale of property, which has been declared in the return of income and could not

be considered as unexplained, on the facts and circumstances of the case.

5. The authorities below failed to appreciate that the circumstances leading to the registration of the property at a lower value, has been explained in detail and .when the said receipt has been admitted to be higher, in the return of income, no preponderance could have been made that the appellant did not have the source to deposit the money into the bank account, on the facts and circumstances of the case.

6. The learned CIT(A) was not justified in stating that since no verification of the return for AY 2014-15, was carried out, the explanation of having received cash could not be accepted, is without basis, when the appellant has admitted to have received a higher value for sale of property, on the facts and circumstances of the case.

7. The authorities below were also not justified in failing to accept the fact that three other properties sold within a year, by the appellant and her mother, have also been offered at the same price, which would demonstrate that the market value of the property, was accurate and hence no inference could have been made that the cash was not arising out of the sale of the capital asset, on the facts and circumstances of the case.

8. The authorities below failed to appreciate that the provisions of section 69A of the Act were not attracted, since the source of the cash deposited, has been explained as arising out of capital asset and already offered in the return of income, which has not been rebutted by the revenue, on the facts and circumstances of the case.

9. The appellant denies herself to pay interest under section 234B of Rs. 3,62,571/- and under section 234D of Rs.1,944/- in view of the fact there is no additional liability to additional tax as determined by the learned Assessing Officer.

10. The Appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.

11. For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered."

6. Grounds 1, 2, 10 and 11 are general in nature and no specific adjudication is called for, hence, grounds 1, 2, 10 and 11 are dismissed. The ground 9 is with regard to levy of interest u/s 234B and 234D of the I.T.Act. The above grounds are consequential and no specific adjudication is called for, hence, the same is dismissed. The grounds 3 to 8 are interrelated. The grounds 3 to 8 relate to addition made by the A.O. u/s 69A of the I.T.Act amounting to Rs.14,41,000 being the cash deposits made by the assessee in ICICI bank account. The assessee has filed voluminous paper book running into 389 pages, enclosing therein the copies of the notices and replies submitted before the lower authorities, copies of the sale deed in respect of flats (sold by assessee as well as her mother), copy of the sale agreements, computation of income, etc. The learned AR has also filed a short synopsis to buttress the contention of the assessee that the source of cash deposits are not unexplained. The learned AR stated that the assessee has acquired two house properties, being flats in the residential complex known as Platinum City in the financial year 2008-2009. The mother of the assessee had also purchased two flats in the same residential complex. It was stated that the said flats were not fetching rent regularly and the assessee was incurring interest cost on the loans taken. Therefore, the assessee has decided to sell the properties and one of flat was sold in the assessment year 2013-2014. It was stated that the two flats belonging to assessee's mother was also sold during the assessment year 2013-2014. The details of the flats sold by the assessee and

her mother during the assessment year 2013-2014, are as under:-

Name	Property	Page No.	Value
Assessee's flat dated 08.03.2013	No.7, 11th Floor, "E" Block	203-217	44,00,000
Indu Sharma (Mother) dated 04.02.2013	No.5, 10th Floor, "E" Block	233-245	43,25,000
Indu Sharma (Mother) dated 05.02.2013	No.5, 12th Floor, "E" Block	246-259	43,25,000

7. It was stated that the second flat of the assessee was agreed to be sold for a consideration of Rs. 45 Lacs (agreement of sale dated 24.04.2013). It is stated that the assessee entered into an agreement to sell for Rs. 39 lacs and an additional consideration of Rs.6 Lacs payable in cash. It was submitted that, the purchaser has however insisted for registering the property for Rs.27 lacs as per the guidance value and paid the balance consideration in cash, after deducting Rs.30,000/- on account of expenditure incurred during registration. Thus, according to the learned AR, the assessee has received Rs. 17,70,000/- in cash and the balance of Rs.27 lacs through banking channels, totalling to Rs.44,70,000/-. It was stated that the assessee has computed the long term capital loss and offered the entire receipts of Rs. 44.70 lacs as consideration received. It was submitted that the cash received from the sale of the house property was available with the father of the assessee and not deposited into the bank account and a small portion of the same was used for personal uses of the assessee on her visit to India. The balance cash which was lying with the father of

the assessee was deposited during the demonetisation period.

8. The DR on the other hand has contended that the assessee has not filed confirmation from the purchaser that the sale consideration was partly paid in cash, which was the reason why the A.O. has made the additions in the first place. It was also argued that the holding of the cash for over three years was unlikely and explanation of the assessee should not be accepted. The learned DR has relied upon a judgment of the Hon'ble Punjab & Haryana High Court in the case of Naresh Kumar v. CIT, Patiala in ITA No.382/2015 dated 27.09.2016 and supported the orders of the AO and the CIT(A).

9. The learned AR in his rejoinder submitted that the confirmation though not obtained, the assessee has demonstrated that the payments received as advance and subsequently at the time of sale are all reflecting in the bank account of the purchaser and buttressed by the sale agreement which was at a higher value of Rs.45 lakh. It was stated that the Revenue cannot disregard the value of adjacent properties sold by the assessee and her mother, which was in the range of Rs.44 lakh (sold in immediately preceding assessment year, namely A.Y.2013-2014). Thus, it was submitted that the Revenue cannot have two stands in adopting the sale consideration at a lower value, when the sale consideration for the assessment year 2014-2015 was disclosed as Rs.44,70,000 in the return of income itself.

Further, in respect of the case law relied upon by the learned DR, the learned AR submitted that the facts are not similar, since the assessee is a resident, doing business and has presumptively offered income and hence the reliance placed on the judgment of Hon'ble Punjab & Haryana High Court (supra) is not applicable to the present facts of the case. The assessee has also placed reliance upon the judgment of the Hon'ble jurisdictional High Court in the case of Smt.Padmavathi v. ITO, Raichur, in ITA No.414/2009 (judgment dated 06.10.2010) wherein it was held as follows:-

> *"11. Question 3: In so far as cash deposit in two loan accounts as set out above is concerned, the material on record discloses that the assessee had Rs. 7,00,000/- in cash on 20/08/2003 having withdrawn the same from his bank account. The said Rs.7,00,000/- has suffered tax. No doubt, the deposit in the two loan accounts was made on 29.09.2003 and on 25.11.2003. the authorities have disbelieved the case of the assessee on the ground that there is a gap of40 days or more between the withdrawal of the amount from the bank account and re-deposit of the same in the loan account. Secondly, on the ground that, it is risky to keep large amount of cash on hand. Thirdly, they are of the view that the explanation offered such as having borrowed a gold loan, yet another loan of Rs. 2,00,000/- and sale of paddy, are not established by proper evidence. In this context, it s useful to refer to a judgement of this court in S R VENKA TA RATNAM v CIT, KARNATAKA -1 AND ANOTHER reported in 127 ITR 807, where a single judge held;*
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> > "Once the petitioner-assessee disclosed the source as having come from the withdrawal made on a given date from a given bank, it was not for respondents Nos. 1 and 2 to concern themselves with what the assessee did with that money, i.e., whether he had kept the same in his house or utilised the services of a bank by depositing the same. The ITO had only two choices before him. One was to reject the explanation as not believable for the reason that on his investigation no such pigmy deposit was ever made in the bank. In the alternative he ought to have called upon the assessee-petitioner to substantiate his claim by documentary evidence. Having exercised neither of the choices, it was not open to the ITO to merely surmise that it would not be probable for the assessee to keep Rs.15,000 unutilised for a period of two years. The ITO should have

given an opportunity to the assessee to substantiate his assertion as to the source of his capital outlay."

12. In this instant case, it is not in dispute that the assessee withdrew a sum of Rs. 5,00,000/- on 18.08.2003 and Rs.2,00,000/- on 20.08.2003 from her savings account. She is an agriculturist and she had agricultural income. Once she has demonstrated that she was in possession of Rs.7,00,000/- cash plus agricultural income on her hands, if after 40 days a cash deposit was made to the extent of Rs.5,20,000/- towards loan account, it cannot be said that the source of the said deposit was not properly explained. Merely because there is a delay of 40 days from the date of withdrawal of the money from the bank account to the date of deposit in the loan account. Once money is shown to be in the account and withdrawn, what the assessee did with the money till it was actually deposited, is not the concern of the department. As long as the source is explained and established and when the money is withdrawn from a savings bank account and paid to discharge loan by deposit into a loan account, it is not possible to hold that the source is not explained. In the interregnum period, if the very same money is utilised for other purpose and thereafter it is appropriated towards discharge of a loan, that cannot be held against the assessee. In that view of the matter, the finding recorded by the tribunal is erroneous and requires to be set aside."

10. During the course of hearing, a query was posed to the learned AR to explain the reason for not making deposit into the bank account of the assessee. The learned AR has submitted that the sale was itself through her father (POA) and the cash received by her father has been in his possession ever since. It was stated that there has been no occasion to invest the money in cash and there have been no deposits into any account nor has there been an occasion to spend the entire money, since the assessee was an NRI and only drawings for personal use were made on her annual visits to India. It was stated that these facts are evident from the cash flow filed before the A.O. The learned AR stated that there is no dispute that the cash received was from the sale of

house property. Further, it was stated that the said money could have been spent as drawings over the period of three years, due to the unique situation where the assessee did not have access to the cash and admittedly, no deposits have been made in the accounts of the assessee nor has any investments been made in her name during the intervening period. Hence, it was submitted that the only preponderance is that the cash received from sale of property was available for making deposit into the bank account.

11. I have heard rival submissions and perused the material on record. The undisputed fact is that flat belonging to the assessee has been sold as per the registered deed dated 14.08.2013. According to the assessee, this flat was sold for Rs.44,70,000, whereas, the sale deed reflected only an amount of Rs.27,00,000. The assessee claims that she has received balance consideration of Rs.17,70,000 in cash. It is an undisputed fact that the assessee has entered into a sale agreement of the said flat for an amount of Rs.39,00,000 plus additional consideration of Rs.6,00,000, which is reflected in the agreement of sale dated 24.04.2013. Copy of the sale agreement is on record at pages 95 to 107 of the paper book filed by the assessee. It is an undisputed fact that the property sold by the assessee and her mother in the very same apartment complex in the earlier AY 2013-14 are in the range of 44 lacs (for each of the flats). The entire sale consideration which is in the range of Rs.44 lakh for each of

the flats, has been offered to tax by the assessee and her mother in their respective income tax returns, which find place in the paper book compilation filed by the assessee. It is also an undisputed fact that the assessee has in her return of income has declared the total sale consideration at Rs.44,70,000/- as being the full sale consideration for sale of property. The return of income filed by the assessee is prior to demonetization period. This demonstrates the bonafides of the assessee in declaring the entire receipts, i.e. both in cheque and cash. In view of the above, it is clear that FMV of flat sold is Rs.44.70 lakh as disclosed in the return of income filed by the assessee. Therefore, cash receipt of Rs.17,70,000 on sale of flat on 14.08.2013 cannot be brushed aside as untrue.

12. Further question is, why the delay in depositing the above cash receipt on account of sale of flat. In respect of the inordinate delay in depositing the cash into the bank account, the argument of the assessee is that the revenue has not brought anything on record to suggest that the cash was utilised or put to use in any other manner. It is further stated that the assessee was not present in India to spend the money and same was lying with her father. It was stated that only on annual visits to India, the assessee used to spend money for her personal purposes. The balance cash remaining with her father was deposited into bank account after demonetization (After assessee specifically came down to

India for depositing balance cash which was available with her father). The above submission of the assessee on surrounding circumstances, cannot be stated to be untrue. The sale of flat itself was through assessee's father, the Power of Attorney Holder. The cash was received by the assessee's father and has been in his possession. The assessee being an NRI visits India very rarely and spends money for her personal purposes on such visits. On perusal of the assessee's bank statement, I find that there is hardly any cash withdrawal for the period September 2013 (i.e., the period of sale of second flat) upto the date of cash deposits. Therefore, an inference can be drawn that a small portion of cash was utilized out of cash which was in the possession of the assessee's father, whenever she visits India. Moreover, the Revenue has not brought anything on record to suggest that the cash which was received for the sale of flat was utilized or put to use in any other manner. Further, the Revenue has not been able to bring on record that the assessee being an NRI, has any other source of income, not disclosed to the Department. Considering the overall facts, the surrounding circumstances and the explanation given by the assessee, I am of the view that the cash deposits are out of sale proceeds received by the assessee from the sale of the property and the same was available for making deposit to the extent of Rs.14,41,000 during the period of demonetization. Therefore, the addition made u/s 69A of the I.T.Act is hereby deleted. It is ordered accordingly.

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

Order pronounced on this 12th day of August, 2022.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 12th August, 2022.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A)-12, Bengaluru.
4. The CIT (International Taxation), Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore