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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **INCOME TAX APPEAL No.1235/2018 and CM No. 46157/2018**

Date of decision: 2nd November, 2018

SHASHI GARG

..... Appellant

Through Mr. S. Krishnan, Advocate.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX..... Respondent

Through: Mr. Asheesh Jain, Sr. Standing Counsel
for the Income Tax Department.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

SANJIV KHANNA, J. (ORAL):

This appeal by Shashi Garg the (appellant-assessee, for short) under Section 260A of the Income Tax Act, 1961 (the Act, for short) pertains to the Assessment Year ('AY' for short) 2011-12 and arises from the order of the Income Tax Appellate Tribunal ('Tribunal' for short) dated 26th March, 2018.

2. The appeal being belated and delayed by 59 days, an application C.M. No. 46157/2018 has been preferred by the appellant-assessee for condonation of delay. However, before issuing notice on this application, we have deemed it appropriate to examine the appeal on merits.

3. Findings in the impugned order of the Tribunal affirming addition of Rs.26,25,000/- sustained by the Commissioner of Income Tax (Appeals) are entirely factual.

4. Learned counsel for the appellant-assessee challenging the findings submits that they are perverse. The appellant-assessee had made withdrawals of more than Rs.75,50,000/- from her bank account in cash between 3rd June, 2009 to 3rd March, 2010. Hence, the source of cash deposit of Rs. 35,25,000/- in the bank account between 5th April, 2010 to 18th November, 2010, it is submitted, stood explained.

5. Aforesaid arguments fail to take into account compelling findings recorded by the Assessing Officer, who had queried and cross checked the submission by asking the appellant-assessee to explain the reason for said cash deposits for the AY 2011-12 (FY 2010-11). The appellant-assessee in response had asserted that cash was withdrawn for purchasing disputed property in Hargovind Enclave, Delhi-92, for consideration of Rs. 85,00,000/-. This deal was being negotiated through a real estate agent who had asked the appellant-assessee to be ready with 50% of the total price in cash. This explanation was rejected by the Assessing Officer for the following reasons:-

“3.1.7 Now, the assessee submits that a real estate agent advised her to keep the cash ready to the amount of at least 50% of the total price of the property (total consideration of Rs.85,00,000/-). Accordingly assessee withdrew the cash from her savings account and maintained balance in her hand.

Following has been observed form the bank statement of PNB for the F.Y. 2009-10:

S.No.	Date	Withdrawals	Deposits
1	02.04.2009	6,75,000/-	
2	06.04.2009		5,00,000/-
3	16.04.2009	5,00,000/-	
4	24.04.2009	3,00,000/-	
5	25.05.2009	2,00,000/-	
6	26.05.2009	4,00,000/-	
7	03.06.2009	9,00,000/-	
8	06.06.2009		1,00,000/-
9	09.06.2009	8,00,000/-	
10	25.06.2009		
11	07.07.2009	9,00,000/-	
12	08.07.2009	9,00,000/-	
13	10.07.2009	9,00,000/-	
14	30.07.2009		2,00,000/-
15	14.08.2009		9,00,000/-
16	18.08.2009		7,50,000/-
17	08.09.2009	9,00,000/-	
18	12.11.2009	4,00,000/-	
19	14.11.2009	3,50,000/-	
20	05.02.2010	8,00,000/-	
21	16.02.2010	1,00,000/-	
22	03.03.2010	9,00,000/-	
	TOTAL	99,25,000	32,50,000

3.1.8 Now, if the assessee was already advised by the real estate agent to keep ready 50 % of the total consideration which comes out to be approx. Rs. 42,50,000/- , why she withdrew the cash totaling to Rs. 99,25,000/- ? It is also quite surprising that assessee first withdraws the cash and then to maintain the balance in her hand equivalent to the

50 % of the total price of the property, she deposits back some amount. Had she been already advised to keep ready 50 % of the total consideration which comes out to be approx. Rs.42,50,000/-, she would have withdrawn only that much amount. First of all why would she withdraw the cash approx. morethan double the amount she was advised to keep ready in hand? Secondly, any prudent person would never withdraw the huge cash without any need just to keep it at home. It is also worth mentioning here that if we closely observe the pattern of withdrawals & deposits, on the date **10/07/2009** assessee was already having cash balance of Rs. 50,75.000/- in her hand which was any way more than the 50 % of total price of the property that she was advised to maintain in her hand, then why would she withdraw more cash to the tune of Rs. 99,25,000/- without any purpose or use?? AR of the assessee was countered with these questions during the proceedings but no explanation was offered in this regard.

3.1.9 Assessee was also asked, can she produce the real estate agent with supporting proofs regarding property deal? AR responded they can produce him but he will not be able to verify and establish the facts of property deal. Since assessee herself submits that the agent will not be able to prove anything in this regard, exercise would have been futile only.

3.1.10 Thus, it's quite apparent & logical to draw the conclusion that all these withdrawals were not meant for any property transaction. But these

withdrawals were for some other purpose which assessee does not want to reveal for the obvious reasons. Hence, the consequent cash deposits are not the same cash which assessee is saying that she has accumulated during the year, but this is unaccounted income of the assessee, source of which again the assessee does not want to reveal for the obvious reasons.

3.1.11 Now if we observe the cash deposits as reported in AIR information during the relevant financial year 2010-11 (A.Y. 2011-12), following pattern emerges: (Scanned copy of savings account in Panjab National Bank showing cash deposits during the F.Y. 2010-11)

05-04-2010	Less Deposit At: DELHI, RADHEY PURI			9,00,000.00	9,16,20847 Cr
05-04-2010	Paid to : TD PKG MKT P LTD	746119	9,00,000.00		16,20847 Cr
17-04-2010	Transfer from A/c 1504008700002092 VIDKRTS Retails Store Pvt. Ltd			10,800.00	27,008.47 Cr
20.04.2010	Transfer from A/c 1504008700002092 VIDKRTS Retails Store Pvt. Ltd			10,800.00	37,808.47 Cr
25.04.2010	NEFT From RELIANCE Lfie Insura			3,188.00	40,996.47 Cr
01.05.2010	PKG		35,000.00		5,996.47 Cr
04.05.2010	Cash Deposit at : Delhi, RadheyPuri			8,50,000.00	8,55,996.47 Cr
04.05.2010	PKG		8,50,000.00		5,996.47 Cr
07.05.2010	Cash Deposit at: Delhi, RadheyPuri			4,75,000.00	4,80,996.47 Cr
07.05.2010	Paid To : To PKG	746120	4,75,000.00		5,996.47 Cr

	Mkt. P. Ltd.				
19.05.2010	Cash Deposit at: Delhi RadheyPuri			5,00,000.00	5,05,996.47 Cr
19.05.2010	PKGMkt		5,00,000.00		5,996.47 Cr

Cummulative Totals: 19,73,65,317.00 19,73,71,323.47 5,996.47 Cr

23.10.2010	By CLEARING	714		200.00	7,090.41 Cr
04-11-2010	By CLEARING	535125		120.00	7,210.41 Cr
08-11-2010	By CLEARING	120420		1,525.00	8,735.41 Cr
18-11-2010	Cash deposit at DELHI RADHEY PURI			8,00,000.00	8,08,735.41 Cr
18-11-2010	CPR		8,00,000.00		8,735.41 Cr
19-11-2010	Cash Handling Chrg 10-11-2010 At Br. DELHI, RADHEY PURI		200.00		8,455.41 Cr
22-11-2010	By CLEARING	128737		1,360.00	9,815.41 Cr
23-11-2010	TFDVIDKRIS			40,000.00	49,815.41 Cr
23-11-2010	CPR		30,000.00		19,815.41 Cr
25-11-2010	ECS/POWER GRID CORPI1103950549 (MUMBAI COPe)			74,142.00	93,957.41 Cr
01-12-2010	CPR CAPITAL		70,000.00		23,957.41 Cr
01-12-2010	ADVANCE INDIA		15,000.00		8,957.41 Cr
01-12-2010	NEFT FROM RELIANCE LIFE INSURA			30,222.33	39,179.74 Cr
02-12-2010	ISO TRANSFER- 01-12-2010		5.00		39,174.74 Cr
07-12-2010	By CLEARING	514248		471.00	39,645.74 Cr

Cumulative Totals: 20,44,70,602.00 20,45,10,247.74
39,645.74 Cr

3.1.12 On perusal of above bank statement it was observed that assessee has deposited cash of Rs. 9,00,000/- in the month of April, Rs. 18,25,000/- in the month of May and Rs. 8,00,000/- in the month of November. Now for time being if we accept the explanation of the assessee that she had accumulated cash for purchase of property. Following questions still remains:

- i. The question remains when the deal was not materialized why did she deposit the cash first in the month of April, then in May & then in almost end of the year i.e. in the month of November? Why not in one or two lots in the month of April?
- ii. Why the accumulated cash was deposited in very specific amounts like, Rs.9,00,000/- in April, Rs. 8,50,000/-, Rs.4,75,000/- & Rs. 5,00,000/- in the month of May and then, Rs. 8,00,000/- in the fag end of the year, in the month of November ?
- iii. On 31.03.2010 assessee was having total cash deposits of Rs.66,75,000/-in hand (Rs.99,25,000-Rs. 32,50,000), then why assessee deposited back only Rs.35,25,000/- ? Where did the remaining amount go?

3.1.13 Hence, it's quite apparent & logical to draw the conclusion that all the cash deposits are unaccounted income of the assessee, sources of which assessee does not want to reveal for the very obvious reasons. Moreover when countered with the above discussed queries/questions, assessee did not give any explanation. Submission of the assessee is only an afterthought and that too to

avoid incidence of tax, which clearly indicate involvement of component of mens-rea. Submissions of the assessee are not at all tenable and rejected straight away. Hence, in view of the facts under consideration, sequence of events and above discussion, cash deposits of Rs.35,25,000/- has been considered unexplained cash credits within the mandate of section 68 of the I.T.Act,1961 and added back to the taxable income of the assessee. Penalty proceedings u/s 271(1)(c) of the I.T. Act are initiated separately for filing inaccurate particulars of income/concealment of income.

(Addition of Rs.35,25,000/-)"

6. Withdrawal in excess of Rs. 75,50,000/- pertains to the period relevant to the financial year ('FY' for short) 2009-10 whereas the cash deposits of Rs. 35,25,000/- which the appellant-assessee has to explain pertains to the period relevant to the FY 2010-11.

7. The Commissioner of Income Tax (Appeals) upheld the addition to the extent of Rs. 26,25,000/-. Addition to the extent of Rs. 9,00,000/- was deleted noticing the small time gap between the withdrawal of Rs. 9,00,000/- on 3rd March, 2010 and deposit of Rs. 9,00,000/- in cash on 5th April, 2010. Explanation of the appellant-assessee connecting the other cash withdrawals to cash deposits was rejected noticing the time difference between the withdrawals and deposits. The dates of withdrawal and deposits in cash, we observe, are not disputed and challenged. This reasoning has merit in view of rather illusionary explanation given by the appellant-assessee for making withdrawal of more than Rs.99,00,000/- in cash during

12 months from April, 2009 to March, 2010. Pertinently, the alleged deal did not materialize. Reasoning of the assessing officer was for additional reason confirmed by the Commissioner of Income Tax (Appeals).

8. Aforesaid factual findings have been upheld by the Tribunal, which is the final fact finding authority.

9. Burden to explain the source of cash deposit was on the appellant-assessee, who as per the finding has not been able to discharge this burden. The evidence on record is undisputed, and the inference and factual findings recorded we would observe are supported by cogent and weighty reasoning. Explanation of the appellant-assessee has been duly considered and not ignored. Implausible and lame justification for making cash withdrawals has exposed and dented the concocted explanation regarding source of the cash deposit. Factual findings are based on cumulative effect of all facts covering all essential points. We would not interfere with factual findings unless they are irrational and absurd, which no person acting judicially and properly instructed in the field of law of taxation would have passed.

10. In view of the aforesaid position, we are not inclined to issue notice in the present application for condonation of delay. Accordingly, the application for condonation of delay and the appeal are dismissed.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

NOVEMBER 02, 2018
MR