

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'A' BENCH, HYDERABAD.**

**BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.294/Hyd/2023		
Assessment Year: 2018-19		
Smt. Madhuvalli Lakamraju, California, USA. C/o. B. Narsing Rao & Co., Chartered Accountants, Jubilee Hills, Hyderabad. PAN : ACZPL9709J.	Vs.	ADIT (Int Taxn)-1, Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri K.C. Devdas. C.A.	
Revenue by:	Ms. TH. Vijaya Lakshmi, CIT-DR	
Date of hearing:	30.08.2023	
Date of pronouncement:	31.08.2023	

ORDER

Per Shri Laliet Kumar, J.M.

This appeal is filed by the assessee, feeling aggrieved by the directions issued by the Income Tax Officer (OSD) & Secretary (DRP-1), Bengaluru invoking proceedings u/s 144C(5) of the Income Tax Act, 1961 for the A.Y 2013-14 on the following grounds :

"1 . The order of the Hon'ble DPR is erroneous in law as well as facts of the case.

2. The Hon'ble DPR without considering the information submitted, finalized the assessment proceedings u/s.147 r.w.s.144C(13) of the IT Act and therefore the assessment cannot be held as valid.

3. The Hon'ble DPR without considering the facts that there is a clear source for the cash deposits in the bank account are out of sate of securities. The Hon'ble DPR without considering the same has treated the cash deposits as undisclosed cash u/s.68 of the IT Act for the relevant

assessment year which is erroneous and therefore the same is liable to be deleted.

4. The Hon'ble DPR made the addition of Rs.35,76,500/- in respect of deposits in bank account from sale of securities without application of mind and such conclusion is not valid."

2. The appeal filed by the assessee is barred by limitation by 69 days. The assessee has moved a condonation petition explaining reasons thereof. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

3. The brief facts of the case are that assessee is a non-resident of individual has not filed the return of income for A.Y. 2013-14. The assessment in the case was reopened based on the information received from I & CI Wing with the prior approval of CIT(IT&TP), Hyderabad. Subsequently, notice u/s 148 of the Act was issued on 29.03.2021. Further, notices u/s 142(1) of the Act were issued to the assessee on 08/12/2021 and 04/01/2022 calling for information. However, there was no response from the assessee for the notices issued. Thereafter, a show cause notice was issued to the assessee on 23.03.2022 for which assessee has submitted information stating that the immovable property was purchased in Representative Capacity but not individual capacity for M/s Venpion Energy Systems Corporation(India) Private Limited and submitted the copy of sale deed.

3.1. However, with regard to the cash deposits, assessee submitted that that the cash deposits in the bank account were the cash withdrawal from previous year. However, from the verification of the bank statement and information furnished by the assessee,

the explanation offered by the assessee found not acceptable. As the assessee failed to disclose the cash deposits to the tune of Rs.36,27,000/-, the same was added as Unexplained Cash credits in the hands of assessee as per provisions of Section 68 of the Income Tax Act, 1961. Since, the assessee failed to disclose the cash deposits, the penalty u/s 271 (i)(c) of the IT Act was separately initiated for concealment of income and passed the draft assessment order.

3.2. Feeling aggrieved, the assessee has challenged the draft order dt.17.03.2022 before the DRP. Thereafter, the DRP after considering the explanation of the assessee, directed the Assessing Officer to delete the addition. Further, the DRP held that the remaining cash balance of Rs.50,500/- has to be given credit in the case of assessee and finally upheld the addition to an extent of Rs.35,76,500/- only. Thereafter, in confirming to the directions of DRP, assessment was completed u/s 147 r.w.s. 143(3) r.w.s. 144C(13) of the I.T. Act inter alia making additions of Rs.14,354/- in view of income returned by assessee and Rs.3,76,500/- u/s 68 of the Act.

4. Feeling aggrieved with the findings of DRP, the assessee is now in appeal before us.

5. The contention of the ld. AR for the assessee is that the assessee and her husband were having the bank accounts and that during the Financial Years 2010-11 to 2012-13, her husband has withdrawn Rs.34,14,510/-, Rs.67,65,000/- and 44,77,000/-

respectively. As against the above said withdrawal, nil amount was deposited in F.Y. 2010-11 and Rs.2,40,000/- were deposited during the F.Y. 2011-12 and Rs.44,26,500/- were deposited during the F.Y. 2012-13. It is the contention of the Id. AR that the Revenue had accepted the cash deposits made by the husband of the assessee to an extent of Rs.43,78,500/- in F.Y. 2012-13. However, for the reasons best known to the Revenue, they made addition of Rs.35,76,500/- in the hands of the assessee before us despite the availability of cash withdrawal for the earlier financial years as captured by the DRP in Para 2.2.2. of his order. Our attention was drawn to the following table mentioned at Para 2.2.2. by the DRP, which is to the following effect :

Particulars	Amount in Rs.
Cash withdrawn during F.Y. 2010-11 to F.Y. 2012-13	1,46,56,510
Less : Cash deposited F.Y. 2011-12	2,40,000
Less : Cash deposited F.Y. 2012-13 [Till January, 2013]	80,53,500
Cash utilized	48,50,000
Balance cash in hand as on 31.01.2013	15,13,010

6. It was submitted by the Id. AR that once the availability of the cash was accepted in the hands of the husband of assessee, out of total cash of Rs.1,46,56,510/- based on earlier cash withdrawals from the bank accounts, then it is not permissible for the Revenue to deny the availability of cash out of the said cash withdrawal in the hands of the wife / assessee before us. It was the submission of Id. AR that once the assessee was able to demonstrate the availability of cash and had discharged her onus,

therefore, it is not permissible for the Revenue to make additions in the hands of the assessee. Our attention was drawn to pages 44 to 50 of the paper book wherein the ld. AR had mentioned that various judgments of the Tribunal and the Hon'ble High Courts accepting the above said argument.

7. Per contra, ld. DR relied upon the orders passed by the lower authorities. Our attention was drawn to para 2.2.4 of the DRP order and also para 5 of the assessment order.

8. We have heard the rival submissions and perused the material on record. Undoubtedly, an amount of Rs.34,14,510/-, 67,65,000/- and 44,77,000/- were withdrawn during the F.Ys. 2010-11 to 2012-13 totaling to Rs.1,46,56,510/-. As against the above said amount, the husband of the assessee deposited an amount of Rs.2,40,000/- in F.Y. 2011-12, Rs.44,26,500/- in F.Y. 2012-13 and also deposited 36,27,000/- in assessee's account where she is a primary account holder, totaling to Rs.82,93,500/-. Thus, the above-mentioned withdrawals and deposits of the cash by the husband of the assessee in his account has not been disputed by the Revenue, whereas, qua the wife / assessee's Bank account had been disputed. The above clearly shows the availability of the cash with the assessee and her husband, and when the version of the husband has been accepted by the Revenue in the same set of facts, which were forming part of same series of transactions. Hence, we are unable to understand as to why

different treatment has been given to the assessee, who was the wife and the beneficiary having a bank account with her husband.

9. In our view, once the assessee is able to demonstrate the withdrawal of cash by clinching and unrebutted evidence, then the same should have been accepted. Further, the Revenue has not brought out any evidence to the contrary to show that the cash withdrawals during the earlier assessment years were used for the purposes of other activities by the assessee or her husband. Moreover, when the assessee happens to be an NRI, and does not have any source of income or activity for which the cash can be utilized. Therefore, we do not find any reason to make the addition in the hands of the assessee. Accordingly, relying upon the decisions mentioned by the assessee on pages 44 to 50 of the paper book, we delete the addition. Thus, the appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 31st August, 2023

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 31st August, 2023

TYNM / SPS

Copy to:

S.No	Addresses
1	Smt. Madhuvalli Lakamraju, California, USA. C/o. B. Narsing Rao & Co., Chartered Accountants, Plot No.554, Road No.92, Jubilee Hills, Hyderabad.
2	ADIT (International Taxation) -1, Hyderabad.
3	Dispute Resolution Panel (DRP), Bengaluru
4	Director of Income Tax (IT & TP), Hyderabad
5	Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order