

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : B : NEW DELHI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.498/Del/2025
Assessment Year : 2012-13

Shri Ashok Kumar,
74, Uday Park,
New Delhi – 110 048.

Vs. ITO,
Ward 30(2),
New Delhi.

PAN: ABCPK7690K

(Appellant)

(Respondent)

Assessee by : Ms Mansi Jain, Advocate &
Shri Siddharth Bajaj, Advocate
Revenue by : Shri Rajesh Kumar Dhanesta, Sr. DR
Date of Hearing : 13.11.2025
Date of Pronouncement : 26.11.2025

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 26.11.2024 of the Commissioner of Income-tax (Appeals), NFAC, Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.CIT(A), Delhi-10/11113/2019-20 arising out of the appeal before it against the order dated 31.12.2019 passed u/s 143(3) of the Income Tax Act, 1961

(hereinafter referred as 'the Act') by the ITO, Ward 30(2), Delhi (hereinafter referred to as the Ld. AO).

2. Heard the rival contentions and perused the records. Ground no 1 to 3 are general and need no specific adjudication. **Ground No.4** concerns with the addition u/s 69A of the Act of Rs.16,41,000/-on account of cash deposits in the bank. The AO has rejected the contention of the assessee that the cash was deposited out of cash withdrawal from the bank only. The A.O. was of the view that once having withdrawn cash, where was the need for assessee to once again withdrawal of cash thus it has to be assumed that previous withdrawals were consumed. The Ld. CIT(A) has upheld the action of the AO. He has stated that cash book has not been filed by the assessee.

2.1 The case canvassed by Id. AR is that assessee had filed a bank book before the A.O., which was again produced before the CIT(A). The Id. AR has contended that from the details of cash deposited and withdrawn placed at PB Pg. 8, it is clear that during the year assessee had withdrawn an amount of total Rs.62,38,000/- out of which an amount of Rs. 16,41,000/- was deposited. Even the reason for withdrawal has been explained. The cash was withdrawn for investing in property, but, since the deal could not materialize, some amount out of this was deposited. Copy of bank statement is placed at PB Pg. 9-12 and the Copy of bank book is at PB Pg. 13-18.

2.2 We are of the considered view that when assessee gives an explanation of cash deposits being out of cash withdrawals then without first disturbing the cash statement on mere assumption of previous withdrawals were consumed the deeming income provisions cannot be invoked. The initial burden of deposit once discharged on the basis of assertion that deposit are out of withdrawals only then onus was on AO to rebut it by some material evidence or circumstances. Bald allegation is not sufficient. There is no force in the contention of ld. DR that assessee required to do mapping of the cash withdrawal and deposits because not maintain regular books of accounts such exercise instead should be from the AO, to rebut lack of funds for redeposit. The ground is accordingly sustained.

3. **Ground No.5:** This ground relates to the addition of Rs.10,00,000/- made on account of gift received from mother in law. The AO has made the impugned addition by making addition on account of gift of Rs.10,00,000/- taken from Smt. Urmila Arora, the mother in law of the assessee. The Ld. CIT(A) has further sustained the addition made by the AO. The ld. AR has contended that the confirmation is placed at PB Pg. 19 and copy of bank statement of Smt. Urmila Arora is placed at pg. PB pg.20.

3.1 Ld. AR contended that from the bank statement, though it is not disputed that an amount of Rs. 10,00,000/- were deposited a few days before the gift to assessee, however, the amount deposited is through cheque. The transaction

cannot be doubted on these facts as it is only on availability of funds, a person decides to give money to another person.

3.2 Though Id. DR has submitted that assessee was supposed to establish source of source of gift, but to our mind in case of gifts received from family members stand on different footing then commercial borrowing. The confirmation from mother in law was sufficient and AO could have enquired the matter further but on mere preponderance disbelieving the gift from mother in law, as not genuine is not justified. The ground is sustained.

4. **Ground No.6:** This ground relates to the addition of Rs.33,49,777/- made on account of disallowance of exemption under section 54B as enhanced by the CIT(A). AO not dealt with the issue of exemption under section 54B of the Act. The CIT(A) has held that the A.O. had made addition on account of sale of property amounting to Rs.1,10,00,000/- which he could not find in assessee's bank account. The CIT(A) though understood the bank details and deleted the addition made by the A.O., however, disallowed the exemption of Rs.33,49,777/- claimed by the assessee under section 54B against the same capital gains.

4.1 The Id. AR has contended that the CIT(A) has enhanced the income of the assessee without giving notice to the assessee in this regard. Non issue of such notice is fatal to the enhancement made by the CIT(A). Reliance is placed on the following case laws:

- Daurau Farm LLP vs. ACIT, ITA 979/Del/2023, dt. 04.06.2025
- Yusuf Khan Vs. ITO, ITA 3507/Del/2024, dt. 30.04.2025
- Indian Railway Finance Corporation Ltd. Vs. DCIT (2025) ITR (Trib)
161
- Mandeep Singh Anand Vs. ACIT, ITA 3069/Del/2022, dt. 12.01.2024

4.2 It was contended that the allegation of the CIT(A) that the assessee had failed to provide documents with respect to purchase of property, for which it is submitted that the issue of 54B was not there with the CIT(A) or even before the A.O., therefore the documents could not be filed. It was submitted that otherwise also, the CIT(A) cannot enhance the income by introducing a new source of income. Reliance is placed on:

- (i) CIT vs. Rai Bahadur Hardutroy Motilal Chamaria; (1967) 66 ITR 443 (SC)
- (ii) Gurinder mohan singh Nindarjog Vs CIT (2012)348 ITR 170 (Del)
- (iii) Hari Mihan Sharma vs. ACIT (2019) 71 ITR (Trib) 18 (ITAT-Del)

4.3 Ld. DR has defended the issue by submitting that matter can be resored to AO.

4.4 We are of considered view that AO had examined the issue from the perspective of deeming income provisions as source of sales consideration of Rs.1,10,00,000/- was not found genuine. Thus where ld.CIT(A) has found that

assessee is not entitled to exemption under section 54B of the Act then same leads to enhancement of income and certainly assessee should have been given an opportunity for show cause for enhancement. Thus we are inclined to sustain the ground.

5. As a consequence to determination of ground no. 4-6 in favour of assessee the appeal is allowed.

Order pronounced in the open court on 26.11.2025.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 26th November, 2025.

Rohit. Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi