

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL,
 INDORE BENCH, INDORE**
 चन्द्रमोहन गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
 AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

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| आ.अ.सं./ I.T.A. No. 752/Ind/2014 |
| निर्धारण वर्ष / Assessment Year: 2008-09 |

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| Shri Mahesh Kumar s/o Shri Heera Lal, Gram Sulakhedi, Post- Manglia, Distt. Indore | v. | Income Tax Officer 3(3) Indore |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |
| स्था.ले.सं./ PAN: AYPPM 2201 G | | |

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| अपीलार्थी की ओर से/ Appellant by | Shri S.S. Deshpande, CA |
| प्रत्यर्थी की ओर से/ Respondent by | Shri Mohd. Javed, Sr. D.R. |

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| सुनवाई की तारीख/ Date of hearing | 04-05-2017 |
| उद्घोषणा की तारीख/ Pronouncement on | 24-05-2017 |

आदेश /O R D E R

PER O.P. MEENA, AM.

1. This appeal filed by the assessee is directed against the order of learned Commissioner of Income-tax (Appeals)-I, Indore [in short “the CIT(A)”] dated 22-03-2014 pertaining to Assessment Year 2008-09, which in turn has arisen from the order dated 31-12-2010 passed by the ITO 3(3) Indore (in short “the AO”) under section 143 (3) of Income Tax Act,1961 (in short ‘the Act’). The sole ground taken by the assessee is as under: :-

On the facts and circumstances of the case:-

1. The learned Commissioner of Income-tax (Appeals) has erred in confirming the addition made by the learned Assessing Officer of Rs. 1,32,76,000/- on account of unexplained sources of deposit in bank account.

Factually, there is no unexplained source of deposit in account. The assessee sold his agriculture income in Rs. 150.00 lacs and deposited the sale proceed given by the buyer in his own account. The sold land is agriculture land and is not a capital assets u/s. 2(14) of Income Tax Act, 1961 hence, profit earned on the sale of the above land is not taxable under any head of Income Tax Act, 1961.

It is therefore, prayed that the order for addition on account of unexplained source of deposit in bank account made by the learned Commissioner of Income-tax (Appeals) may kindly be deleted and further the assessment order made by Learned Assessing Officer may kindly be deleted.

- 2.** Succinctly, facts as culled out from the orders of lower authorities are that the assessee is individual agriculturist. The assessee has filed his return of income on 30-03-2009 declaring total income of Rs. 1, 39,770/- showing interest under the head income from other source. As per AIR information, the assessee has deposited Rs. 50 Lakh in his bank; consequently, his case was selected under scrutiny assessment. The source of bank deposit was explained as receipts of sale consideration as per agreement to sale entered in to on 23-08-2007 (PB-22) with Shri Vrindavan Patel and Shri Bane Singh for sale of agricultural land of 3.070 Hectares, situated at village Sulakhedi, Tehsil Sanwer, Distt. Indore. As adumbrated in agreement to sale, the assessee is to receive an amount of Rs. 5 lakhs in cash and Rs. 145 lakhs by cheques. On enquiry; from Bank of India, Manglia, it was noticed that the assessee has received Rs. 21 Lakh by cheque from Shri Bane Singh, Rs. 22 lakhs each from Bhagwat Singh and

Shri Rajendra Singh brothers of Shri Bane Singh, Rs. 32.76 Lakhs i.e. (Rs. 5.76 Lakh + Rs. 10 Lakh + Rs. 25 Lakh + Rs. 2 Lakh) from Shri Pop Singh and Rs. 25 Lakh from Shri Mangi Lal by cheques totaling to Rs. 132.76 Lakh during the period from 03-10-2007 to 05-10-2007. Thereafter, the assessee executed a Power of Attorney on 03-10-2007 in favour of Shri Varindavan Patel and Shri Bane Singh S/o Shri Nirbhay Singh to deal with the said agricultural land in question in any manner they like and sale the same to any person (copy placed at Paper Book page No 17 to 21). Thereafter, the Power of Attorney holder have sold this land for a consideration of Rs. 30.70 Lakhs vide sale agreement dtd. 10-12-2007 to Smt. Kiran w/o Shri Kamal Bhatia and Smt. Kavita Tuteja w/o Shri Kamal Tuteja. The sale deed dated 10-12-2007; was got registered on 06-04-2010 with Sub Registrar by Shri Varindavan Patel and Shri Bane Singh, the Power of Attorney holder. In order to ascertain the truth, the AO examined the assessee on oath, who deposed before him that he has received a sum of Rs. 1.50 crores on sale of his agricultural land from the buyers. However, on examination to buyer, it was found, that they were not able to explain the nature of transaction and amount paid. Shri Bane Singh has stated that the cheques were given as loan and land was sold as per instruction of Shri Mahesh Kumar (the assessee) and gave evasive reply about the account from where cheques were given to the assessee. In view of these facts and circumstances, the AO doubted the agreement to sale

depicting the sale amount of Rs. 1.50 Crores as amount of Rs. 30.70 Lakh only was received by the seller, being the assessee, as per final sale deeds, hence, the AO treated the amount of Rs. 1,32,67,000/- as unaccounted income of the assessee from undisclosed income.

3. Being aggrieved, the assessee filed an appeal before the Ld. CIT (A). The Ld. CIT (A) observed that the registered sale deeds dated 10-12-2007 showing sale consideration of Rs. 30.70 Lakhs will get precedence over the original agreement to sale dtd. 23-08-2007 which was not registered. Ld. CIT (A) also observed that difference in sale consideration shown in two agreements namely Rs. 1.50 crore vs. Rs. 30.70 Lakh put a big question mark on the source of cheque deposit and why Power of Attorney holder would incur loss of Rs. 1.20 crore. In view of the same, since Rs. 30.70 lakhs is transacted in cash, the source of deposit of cheques of Rs. 1,32,76,000/- in bank account of the appellant becomes unexplained, especially when both Power of Attorney holder were examined by the AO wherein they failed to own up the land transaction and also failed to give any source of payment of such cheques. Hence, addition of such amount was held to be confirmed. The Ld. CIT (A) noted that the certificate regarding distance of land from municipal limits issued by Patwari stated that when the land sold in year 2007-08 it was situated beyond 8 K.M. from municipal limits whereas at present the land is within 8 K.M. due to inclusion of 29 villages in municipal corporation. Therefore, the Ld. CIT (A), vide order sheet

noting dated 30-07-2014 and 08-08-2014 asked the assessee to provide a certificate from Tehsildar regarding exact distance from municipal limits as existed in F.Y. 2007-08, but the appellant failed to provide the same.

4. Being, aggrieved the assessee filed this appeal before the Tribunal. The Ld. A.R. for the assessee submitted that as per agreement to sale dtd. 23-08-2007, the assessee had received an amount of Rs. 1.50 crore by various cheques and credited in his bank account between 03-10-2007 to 05-10-2007. The cheques worth Rs. 65 lakhs have been cleared from the accounts of Shri Bane Singh, Rajendra Singh, and Bhagwat Singh brothers (PB-39 to 43) and the balance amount was cleared from Shri Pop Singh (PB-44). Shri Bane Singh was examined on oath by the AO, but he stated that he gave it as loan to the assessee. He further stated that on instruction of the assessee the said land was sold. Similarly, Shri Varindavan Patel has also stated that he does not know about Power of Attorney and the signature on Power of Attorney are not of him. The Ld. CIT (A) has heavily relied on statement of Power of Attorney holder. However, circumstantial evidence are to be considered, which provide that the assessee has received sale consideration of Rs. 150 Lakhs. The assessee is agriculturist, has no source of income and only interest income is shown from these very receipts received on account of sale of land. The Ld. A.R. relied in the case of CIT v. P. K. Noorjahan [1999] 237 ITR 570 (SC)/ 103 Taxman 382/ 155 CTR 509 (SC) where the facts of the case

were that a Muslim lady purchased the land for Rs. 25,901/- and explained that same were out of her savings from income from properties left by her first husband. The addition was made as undisclosed income. It was held that it was not possible for the assessee to earn the amount invested in the properties and hence, the explanation of the assessee has to be accepted. The Ld. A.R. further relied in the case of Mrs. Malini Ramnath Rele v. ITO [1994] 49 ITD 43(Mum)/ 48 TTJ 295 (Mum) (T M) wherein the facts were that that cash of Rs. 4 Lakh found in search which was claimed to be out of the property sold for Rs. 5 Lakh, but in the sale deed, the consideration was mentioned at Rs. 1 lacs and the purchaser has denied to have paid any extra payment. Therefore, it was treated as income from undisclosed sources. The matter came before Tribunal and it was referred to TM who has held that the circumstantial evidence has to be considered, as the assessee being widow women of 65 years old is not expected to earn an income from undisclosed sources.

- 5.** On the other hand, the Ld. Sr. D.R. relied on the orders of lower authorities and submitted that said land was sold at lesser amount of Rs. 30.70 Lakh as per registered sale deed. Hence, it could not be believed that the said land was sold for Rs. 150 lakhs on the basis of agreement to sale.
- 6.** We have heard the rival submissions of both the parties and perused the material available on record. We find that as per agreement to sale dtd. 23-08-2007 (PB-22)

entered between the assessee and Shri Vrindavan Patel and Shri Bane Singh, the amount of Rs. 150 Lakhs are duly mentioned therein in which amount of Rs. 145 Lakh was to be received by cheques and Rs. 5 Lakh by cash. The assessee has received the amount of Rs. 132.76 Lakh by way of cheque and the balance amount by way of cash on various dates. The amount of Rs. 65 Lakhs was received from Shri Bane Singh Rajput and his brothers by way of cheques (PB-39 to 43) and cheques from Shri Pop Singh (PB-44) received balance amount of Rs. 67.76 Lakhs. Thus, total amount of Rs. 1, 32,76,000/- has been credited in the bank account of the assessee during the period from 03-10-2007 to 05-03-2007. The assessee has executed the Power of Attorney on 03-10-2007 (PB18 to21) in favour of the Shri Vrindavan Patel and Shri Bane Singh Rajput to deal with the land in any manner they like can sale it to any other person. We find that the above-mentioned cheques have been received and credited in the bank account of the assessee during the period between 03-10-2007 to 05-10-2007 after signing of agreement to sale on 23-08-2007 (PB-22 to 26) and execution of the Power of Attorney on 03-10-2007(PB-18 to 21) in favour of Shri Varindavan Patel and Shri Bane Singh Rajput. In view of agreement to sale and Power of Attorney, the land in question was sold to Smt. Kiran Bhatia and Smt. Kavita Tuteja by the Power of Attorney holder Shri Varindavan Patel and Shri Bane Singh Rajput through registered sale deeds signed and executed on 10-12-0-2007 (PB-27 to 35)

with Deputy Registrar Sanwer. This sale deed was registered on 06-04-2010 (PB-27 to 35) showing as apparent consideration of Rs. 30,70,000/- which was received in cash. Thus, the circumstantial documentary evidence clearly established that the amount of Rs. 1,32,76,000/- received by cheques during the period between 03-10-2007 to 05-10-2007 was on account of sale of agricultural land admeasuring 3.070 Hectares situated at village Sulakhedi, by the assessee. Therefore, we are of considered view that in such circumstances, the lower authorities were not justified in treating the same as unexplained cash credit us 68/ 69A of the Act, based on sale consideration of Rs. 30.70 Lakh shown by the sellers of Power of Attorney holder of the land. We find that the assessee has received the consideration by cheques and executed Power of Attorney in favour of buyer and handed over the possession of land, thus, transfer of land was completed on 05-10-2007 within the meaning of section 2(47) (v.) of the Act. Therefore, the assessee was not concerned, if the said land was sold at lower price later on ; by the Power of Attorney holders. Whether the Power of Attorney holders have deliberately shown lower sale consideration is also not known, as the sale consideration was received in cash and not by cheques whereas the assessee has received sale consideration by cheques, therefore, sale consideration received by cash may be to avoid tax thereon. This is also evidenced from the statement of Power of Attorney holder, when they gave

evasive reply and avoided even own up land transaction, whereas documentary evidence in shape of registered sale deed (PB-27) shows that the Power of Attorney holders sold the impugned land. According to AO, the amount mentioned in registered sale deeds is at Rs. 150 Lakh is not genuine sale consideration; hence, the claim of the assessee is not true. However, we note that the AO has examined Shri Bane Singh on oath, in which he stated that the amount of Rs. 65 lacs was given to the assessee as loan and not as sale consideration, but his reply regarding his signature on agreement to sale and Power of Attorney was evasive. Therefore, his statement cannot be considered on face value as correct. Further, we do not find any reason that the assessee who is an agriculturist would need such huge amount of loan, especially, when he is not doing any business. In fact, the AO has posed a question No. 30, of the statement of Shri Bane Singh by asking him that he (Bane Singh) knows the answer of all question, but deliberately avoiding the answer and giving false reply, hence, asked as to why he should not be prosecuted for telling lie and avoiding answers. This means that the AO also knew that sale consideration shown in agreement to sale dtd. 23-08-2007 was correct and sale consideration shown in registered sale deeds dtd. 10-12-2007/26-04-2010 was understated. Ongoing through the statement of Shri Bane Singh and his bank account, it is seen that, Shri Bane Singh has received a sum of Rs. 34 Lakh on 26-12-2007 and Rs. 40 Lakh on 13-03-2008, meaning thereby,

that these amount were received in lieu as advance and deposited in bank account of buyers for impending sell by them to ultimate buyers, which was on account of sale of agricultural land from Smt. Kavita and Smt. Kiran. Similarly, in his statement, Shri Vrindavan Patel also gave evasive reply in connection of the impugned sale transaction of land. These facts suggest that the ultimate buyers of agricultural land deliberately understated sale consideration received by the Power of Attorney holders for which the assessee could not be held responsible and penalized on the misdeeds done by others. Therefore, it appears to us that the assessee has insisted the payment by cheques, that is why the amount of sale consideration was received by cheques and same stand credited in bank account of the assessee during the period when agreement to sale and Power of Attorney was signed. We further find that the assessee is an agriculturist and has no other source of income, therefore, it cannot be said that the amount received from the Power of Attorney holders was from his undisclosed sources of income. The Ld. A.R. has relied in the case of CIT v. P. K. Noorjahan [1999] 237 ITR 570 (SC)/ 103 Taxman 382/ 155 CTR 509 (SC) where the facts of the case were that a Muslim lady purchased the land for Rs. 25,901/- and explained that same were out of her savings from income from properties left by her first husband. The addition was made as undisclosed income. It was held that it was not possible for the assessee to earn the amount invested in the properties and hence, the

explanation of the assessee has to be accepted. The facts of this case are squarely applicable to present case as the assessee being an agriculturist and has no apparent source of any income other than sale of agricultural land. The Ld. A.R. further relied in the case of Mrs. Malini Ramnath Rele v. ITO [1994] 49 ITD 43(Mum)/ 48 TTJ 295 (Mum) (T M) wherein the facts were that that cash of Rs. 4 Lakh found in search which was claimed to be out of the property sold for Rs. 5 Lakh, but in the sale deed, the consideration was mentioned at Rs. 1 lacs and the purchaser has denied to have extra payment made. Therefore, it was treated as income from undisclosed sources. The matter came before Tribunal and it was referred to Third Member who has held that the circumstantial evidence has to be considered, as the assessee being widow women of 65 years old is not expected to earn an income from undisclosed sources. Therefore, considering the circumstantial documentary evidences on record, and statement of Power of Attorney holder recorded by the AO, we have no hesitation to hold that the amount of Rs. 1,32 76,000/- is received by the assessee is on account of sale of agricultural land. In view of this matter, the AO is directed to treat the same as capital receipts on account of sale of agricultural land being long-term capital gain.

- 7.** We further find the CIT (A) has noted that the assessee has filed a certificate from Patwari regarding distance of land from municipal limits. Therefore, the CIT

(A) has asked the assessee vide order sheet noting dtd. 30-07-2014 and 08-08-2014 to produce a certificate from Tehsildar to establish that land in question was beyond 8 km from municipal limits. However, the assessee has failed to produce the necessary certificate. Therefore, this aspect whether the land was situated beyond 8 KM from municipal limits remained unverifiable. Therefore, we deem it fit to restore this issue to the file of the AO for the purpose of limited verification whether the land in question was within Municipal limits or beyond Municipal limits, as prescribed based on a certificate for competent authority. If the land in question is found within 8 KM from Municipal limits, than the assessee would be liable to long-term capital gain calculated as per law and if land were beyond 8KM from Municipal limits, than no liability on account of long-term capital gain would arise.

8. In the light of above facts and circumstances, the addition of Rs.1,32,76,000/- made on account of unexplained cash credit is deleted and issue of distance from municipal limits is set-aside to the file of the AO for limited purpose of verification. Accordingly, the appeal of assessee is partly allowed.

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

10. The order pronounced in the open Court on 24.05.2017

Sd/-

(C.M. GARG)

Sd/-

(O.P. MEENA)

JUDICIAL MEMBER ACCOUNTANT MEMBER

Dated: 24th May, 2017/opm