

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'C', NEW DELHI**

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER  
AND  
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 738/Del/2015  
Assessment Year: 2007-08

Sh. Giani Ram, Vill.- Deoki, P.O.- Bikaner, Dist. - Rewari, Haryana	<b>Vs.</b>	ACIT, Income Tax Officer, Rewari
<b>PAN : BLQPR1171K</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Naveen Gupta, Advocate
Respondent by	Sh. Amrit Lal, Sr.DR

Date of hearing	07.03.2017
Date of pronouncement	28.03.2017

**ORDER**

**PER O.P. KANT, A.M.:**

This appeal by the assessee is directed against order of the learned Commissioner of Income-tax (Appeals), Rohtak, for assessment year 2007-08, rising following grounds:

- i. That the order of the learned CIT(A) is against law and facts.*
- ii. That the learned CIT(A) erred in confirming the addition of Rs.53,37,000/- made by the learned AO by treating the cash deposit in the bank account as unexplained.*
- iii. That the learned CIT(A) erred in confirming the addition of Rs.53,37,000/- although admittedly the appellant had no other source of income other than agriculture.*

iv. *That the appellant craves leave to add or alter any of the Grounds of appeal.*

2. The facts in brief of the case are that on the basis of information of cash deposits in bank account of the assessee, received from Annual Information Return (AIR) for the financial year concerned, the Assessing Officer issued notice under section 148 of the Income-tax Act, 1961 (in short ~~the Act~~) after recording reasons to believe that income of the assessee escaped assessment. There was no compliance of the notice. subsequently, the Assessing Officer issued various notices under section 142(1) of the Act as under which also remained un-complied with except on 18/01/2013, when the assessee alongwith his son attended and sought adjournment.

S.No.	Date of issue of notice u/s 142(1)	Date fixed for hearing	Status of compliance
1.	26/10/2012	Calling for return of income	No compliance
2.	23/11/2012	11/12/2012	No compliance
3.	08/01/2013	18/01/2013	Assessee and his son attended.
4.	Adjoined to	22/01/2013	No compliance
5.	08/02/2013	27/02/2013	No compliance

2.1 The Assessing Officer issued a final show cause notice on 12/03/2013, fixing the case on 18/03/2013, which also remained uncomplied with. In view of the limitation for completion of the assessment, the Assessing Officer completed the assessment and held the cash of Rs.1,32,40,000/- deposited in the bank account maintained with Bank of Rajasthan Limited, Rewari as follows on various dates as unexplained :

on 18/05/2006	Rs.67,00,000/-
on 29/08/2006	Rs.1,40,000/-
on 1/12/2006	Rs.64,00,000/-
Total	Rs.1,32,40,000/-

2.3 The Assessing Officer accordingly completed the assessment under section 144/147 of the Act on 28/03/2013.

2.4 Aggrieved, the assessee filed appeal before the Ld. Commissioner of Income-tax (Appeals) and submitted that deposit of Rs.1,40,000/- and Rs.64,00,000/- were out of the cash withdrawals from bank . The deposit of Rs.67,00,000/- was explained as out of sale of agriculture lands by the assessee and his sons. The assessee submitted following additional evidences alongwith application under Rule 46A of the Income Tax Rules, 1962, for admitting these additional evidences before the learned CIT(A):

- (i) *Copy of four sale deeds (two of the assessee and two of his sons)*
- (ii) *Copy of bank statement*
- (iii) *Copy of complete narration of each and every entry of bank account*
- (iv) *affidavits of the assessee and his sons*
- (v) *a certificate regarding actual price of agriculture land in the village year 2006 certified by the Numberdar and Chowkidar of the village*

2.5 The Ld. CIT-A forwarded these additional evidences to the Assessing Officer and after getting remand report, he accepted the cash deposits of Rs.1,40,000/- & Rs.64,00,000/- as explained. In respect of Rs.67,00,000/- the claim of the assessee of sale of agriculture lands by

him and his sons, was examined by the Assessing Officer in remand proceedings and he noted that in relevant sale deeds, only cash amount of Rs.13,63,000/- was recorded as sale consideration. The Assessing Officer also summoned the purchasers and recorded their statements. The purchasers stated that no extra or any hidden payment in cash was made except the sum mentioned in the sale deeds. In view of the evidences, the Ld. CIT(A), sustained the addition of Rs.53,37,000/- and deleted the balance additions.

2.6 Aggrieved, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. Before us, the Ld. counsel of the assessee filed paper book containing pages 1 to 40 and submitted that the assessee is an illiterate agriculturist and he was not aware of the amounts recorded in sale deeds and he deposited the entire sale consideration received on sale of agricultural lands into his bank account. The learned counsel referred to affidavits of the assessee and his sons filed in the paper book. He also referred to affidavit of the village numberdar, wherein he has claimed the prevalent market rate of land in the village at Rs. 20.00 lakhs per acre and certified that sale consideration of Rs. 80 lakhs was received by the assessee. In view of the affidavit of numberdar, the learned counsel contended that the assessee received sale consideration of Rs. 80 lakhs as per prevalent market rate of the land, irrespective of the sale amount mentioned in the sale deeds. The Ld. counsel relying on the judgment of the Hon<sup>ble</sup> Supreme Court in the case of CIT Vs. P.K. Noorjahan 237 ITR 570 (SC) submitted that *ITO has discretion in the matter of treating the unexplained source of investment as income of assessee and he is not obliged to treat unexplained source of investment as income under s. 69 in every case*. The learned counsel also relied on the judgment of the Hon<sup>ble</sup> Allahabad High Court in the case of CIT Vs. Intezar Ali, 372 ITR

651 (All). The assessee also referred to decision of the Tribunal in the case of DCIT, Central Circle-6, Hyderabad Vs. MPB Kutumba Rao reported in 43 taxmann.com 205 (Hyderabad- Trib), and decision of Tribunal Ahmadabad bench in the case of Gopalbhai V Bhoiwala versus ITO in ITA No. 3008/AHD/2009.

4. On the contrary, Ld. Senior Departmental Representative relied on the finding of the lower authorities and submitted that sons of the assessee are not illiterate as can be seen from the signature put up on the affidavits. He further contended that the claim of the assessee that he was not aware of the sale amount recorded in the sale deed was completely wrong because in the sale deeds it is duly mentioned that all the terms of the agreement were read before the purchaser and seller, who after listening and understanding correctly put up their signature in presence of witnesses. He further submitted that the sale deeds were executed before the registration authority i.e. Deputy/Joint Registrar Office, who has also mentioned that money was exchanged as recorded in the sale deed. The learned DR further submitted that the assessee intentionally did not cooperate before the Assessing Officer so that any action in the hands of purchasers on the basis of the claim of the assessee would be barred by limitation. He contended that had the affairs of the assessee were clean, he would have informed the registration authorities regarding the sale consideration received by him more than the sale amount recorded in sale deeds, but he did not. He further distinguished the decisions relied upon by the Ld. counsel of the assessee. He also submitted that affidavits of the assessee and his sons as well as affidavit of the village numberdar need not be accepted as correct, even if not denied specifically by the lower authorities. According to him, in view of statement of the purchasers of land, who have completely denied of having paid any extra or hidden amount other

than what was mentioned in the sale deed, the claim of the assessee that the amount deposited in bank account was part of sale consideration cannot be accepted and considered as satisfactory to explain the deposits of Rs.53,37,000/-, which has been sustained by the Ld. CIT-A as unexplained investment.

5. We have heard the rival submissions and perused the relevant material on record. The issue in dispute before us is whether the amount of Rs.53,37,000/- out of the amount of Rs.67,00,000/- deposited in the relevant bank account on 18/05/2006, is out of the sale consideration of lands sold by the assessee and his sons or not. The sale deeds of said land are available on page 4 to 23 of the paper book. Details of sale transactions, stamp duty, name of purchasers, etc. mentioned in these deeds, are summarized as under:

Page No. of paper book	Name(s) of sellers	Name(s) of purchasers	Sale amount recorded in the deed	Mode of receipt of sale consideration
4 to 8	Assessee	Narinder Kumar HUF	Rs.6,81,500/-	Received through draft No. 008430 dated 17/05/2006 HDFC bank Revari
9 to 12	Assessee	Smt Kanchan Devi	Rs.6,81,500/-	Rs. 6,50,000/- received through bank draft No. 226513 dated 17/05/2006 and Ruby 31,500 in cash
13 to 17	Sons of assessee	Smt Hemalatha Agrawal	Rs.6,81,500/-	In cash
18 to 22	Sons of assessee	Satender kumar , HUF	Rs.6,81,500/-	In cash

6. On perusal of back sides of page no. 4, 9, 13 and 18 of the paper book, we find that the registration authority has recorded that both the seller and purchaser were present before him and both parties accepted

the facts of the document after listening and understanding the same and accepted the fact of exchange of the sale amount recorded in the sale deed. In the sale deeds also it is clearly mentioned that both parties have read, listened and understood the contents of the deed.

7. Further, the assessee did not co-operate with the Assessing Officer and explained the source of deposits and only before the first appellate authority, the assessee made a claim that the cash deposits was out of sale of lands. The matter was then remanded to the Assessing Officer and he recorded the statement of the purchasers, wherein they denied of giving any extra or hidden money other than what was recorded in the sale deeds.

8. We also note that the assessee has not informed to the registration authority about any sale amount received in excess of the sale consideration recorded in the sale deeds. The assessee also did not file any return of income declaring sale of land as agriculture income. We observe that the assessee did not file return of income or disclosed the source of cash deposit before the Assessing Officer even specifically asked by the Assessing Officer under the notice issued under section 148 and 142 (1) of the Act respectively . It is also not in dispute that those notices were not served on the assessee as on one occasion the assessee alongwith his son attended before the Assessing Officer and sought adjournment but subsequently did not comply with the assessment proceedings.

9. In such circumstances, the claim of the assessee that actual amount transacted was more than the amount recorded in the sale deed, cannot be accepted.

10. The Ld. counsel of the assessee claimed that the affidavit of the assessee and his sons and affidavit of the village numberdar, remained uncontrolled and, therefore, the same must be accepted as true and

reliable. This claim of the assessee cannot be accepted in view of the decision of the Hon'ble Allahabad High Court in the case of Lrs. Ramratan Others Vs. CIT, Kanpur and others reported in 142 ITR 618 (All), where in the case of a recovery of tax, affidavits filed after a gap of 15 years asserting that notice of demand not served, the Hon'ble High Court held that it is neither a rule of prudence nor a rule of law that the statements made in an affidavit, which remains uncontroverted, must invariably be accepted as true and reliable.

11. In the case of CIT Vs. P K Noorjahan (supra) cited by the Id. counsel of assessee, the assessee was of very young age and purchased two properties and source of which was explained as financed from out of the savings from the income of the properties which were left by her mother's first husband. This contention of the assessee was not accepted by the Assessing Officer and investment was held as unexplained. The Hon'ble High Court observed *that having regard to her age and in the circumstances in which she was placed, she could not be credited with having made any income of her own and held that a discretion has been conferred on the ITO under s. 69 of the Act to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the said discretion has to be exercised keeping in view the facts and circumstances of the particular case.*

12. Facts and circumstances of the present case are different from the above case cited by the assessee as in the present case, the assessee is of matured age and the purchasers of land have denied of giving any extra money to the assessee.

13. In the case of CIT Vs Intezar Ali (supra), cash of Rs.77,80,000/- was deposited in the bank account, which the Assessing Officer held as unexplained. However, the Tribunal found that the assessee himself

made the complaint to the registration authority that sale deed was registered at a value below the amount, which he had actually received and deposited entire amount of bank account and filed a voluntarily return of income. The Hon'ble High Court upheld the finding of the Tribunal and dismissed appeal of the Revenue. Whereas, in the instant case, the assessee neither informed to the registration authority about any amount received more than what was recorded in the sale deed nor filed any voluntary return of income declaring agriculture income. The assessee in the instant case not only avoided filing of return of income but also not complied to the notices issued for filing of return of income as well for explaining the source of cash deposits. The fact of the case cited by the assessee are distinguishable and thus the ratio of the said decision cannot be followed in the case of the assessee .

14. In the case of DCIT Vs. MPB Kutumba Rao (supra), the CIT-A sustained the addition of Rs.50,30,000/- said to have been received from two concerns on the ground that the assessee could not explain the source of this amount and directed to assess the same as unexplained income of the assessee. Before the Tribunal, the assessee submitted that this amount was received from sale of agriculture property and due credit to be given for the same. The Tribunal following the decision in the case of Intezar Ali (supra) directed the Assessing Officer to treat the sale consideration received by the assessee only from the sale of agriculture property unless any contrary evidence is brought on record by the Department. We have already discussed the facts of the case of Intezar Ali (supra) and distinguished from the facts of the instant case. Further, in the instant case, contrary evidence in the form of statement of the purchasers, denying of making any extra payment other than what was recorded in the sale deed, has been brought on record by the Department. In such circumstances, the ratio in the case of MPB

Kutumba Rao (supra) cannot be applied over the facts of the case of the assessee.

15. Further, in the case of Gopalbhai V Bhoiwala (supra), the Assessing Officer noted discrepancy in the sale of castor seed oil, paddy and wheat and accordingly held the amount of Rs.1,50,000/- as income from non- agriculture source, out of the agriculture income of Rs.7,75,200/- declared by the assessee. The Tribunal held that the income from interest on FDR and postal monthly income from the known sources was specific and ascertained, therefore the assessee would have been left with agriculture income which is exempt. In the instant case, facts are entirely different from the above cited case by the assessee.

16. In view of our discussion above, we are of considered opinion that the assessee has failed to explain the source of the cash amount of Rs.53,37,000/- deposited in the bank account and accordingly, we uphold the finding of the Ld. CIT-A on the issue in dispute. The grounds of the appeal are accordingly dismissed.

17. In the result, the appeal of the assessee is dismissed.

The decision is pronounced in the open court on 28<sup>th</sup> March, 2017.

Sd/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Dated: 28<sup>th</sup> March, 2017.  
RK/(D.T.D)

Sd/-  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi