

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

Before Sh. N. K. Saini, AM And Sh. Kuldip Singh, JM

ITA No. 5186/Del/2013 : Asstt. Year : 2009-10

Bobby Ray, Dugai E Estate, Bhowali, Nainital	Vs	ITO, Golghar, Mallital, Nainital
(APPELLANT)		(RESPONDENT)
PAN No. AZDPR5407J		

Assessee by : Sh. Raja Kumar, Adv.
Revenue by: Sh. K. K. Jaiswal, DR

Date of Hearing : 09.10.2015	Date of Pronouncement : 12.10.2015
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ORDER

PER N.K. SAINI, A.M.

This is an appeal by the assessee against the order dated 17.06.2013 of the Id. CIT(A)-II, Dehradun.

2. Following grounds have been raised in this appeal:

“I. On the fact and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals), erred in confirming the addition of Rs. 11,00,000.00.

II. The Appellant respectfully, submits as under:-

1. The Learned Commissioner of Income Tax Appeals (CIT-A) has without going into the facts

has sustained addition aggregating to Rs. 11,00,000.00.

- 2. The ld. CIT-A has sustained the addition ignoring the fact that the appellant has no source of receipts except advance for sale of land and sale proceeds of land.*
- 3. That the order is bad in law, not in agreement with facts and is against the principles of natural justice.*

III. The Appellant craves leave to add, alter, amend, and/or to modify any Grounds of Appeal, if necessary.”

3. Facts of the case in brief are that the AO gathered the information from Sub-Registrar, Nainital that the assessee deals in sale of immovable properties which were inherited by him in Vill.- Kahalquira Patti Bhowali which is well within the limits of Municipal Corporation, Bhowali. The AO issued the notices u/s 142(1) and 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act) on 18.08.2011. As the assessee sought adjournment on the various dates, the AO therefore was of the view that the assessee had nothing in his coffer as an explanation about the source of income as well as the investment in the shape of FDRs amounting to Rs. 11,00,000/- in State Bank of India, Bhowali. He made the addition of Rs. 11,00,000/- by

passing the assessment order dated 20.04.2012 u/s 144/148 of the Act.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) who confirmed the action of the AO by observing as under:

“4.3 The facts have been considered. A very specific opportunity was provided to the Appellant to assist the AO in preparing his report (vide letter dated 13.02.2013 a part of which has been extracted in para 4 above). This opportunity was not availed and the source of the FDRs remains a mystery. In view of this fact the action of Ld. AO is upheld and all the grounds of appeal are dismissed.”

5. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that neither the AO nor the Id. CIT(A) had given proper opportunity of being heard to the assessee. Therefore, the addition made by the AO and sustained by the Id. CIT(A) without allowing the proper opportunity of being heard to the assessee was not justified. He requested to remand the issue back to the file of the AO.

6. In his rival submissions the Id. DR strongly supported the orders of the authorities below and further submitted that the assessee did not cooperate, therefore, the addition was rightly made by the AO as the assessee was not having any

explanation about the deposit in the FDRs account maintained with State Bank of India, Bhowali.

7. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the AO framed the assessment *ex-parte* u/s 144 of the Act and the Id. CIT(A) also sustained the addition without appreciating the fact in right prospective. In the present case, the department had not rebutted this contention of the assessee that the FDRs had been made out of the sale proceeds of the property already considered in the preceding assessment year 2008-09. However, the relevant facts are not available on the record, particularly it is not clear that how much amount the assessee received from sale proceeds of the property in the preceding year i.e. assessment year 2008-09. It is well settled that nobody should be condemned unheard as per the maxim "*audi alteram partem*". We, therefore, by considering the totality of the facts deem it appropriate to set aside this issue back to the file of the AO to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee. We also direct the assessee to cooperate and not to seek undue and unwarranted adjournment.

8. In the result appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 12/10/2015).

Sd/-

(Kuldip Singh)

JUDICIAL MEMBER

Dated: 12/ 10/2015

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(N. K. Saini)

ACCOUNTANT MEMBER

ASSISTANT REGISTRAR