

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE**

श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.409&410/Ind/2014

निर्धारण वर्ष/Assessment Year : 2008-09

1.Shri Sukhram Mukati 83/3, Khatipura, Sukhila, Indore PAN: CGVPS1260D 2. Shri Vishnu Mukati 83/3, Khatipura, Sukhila, Indore PAN: AYPPM 2047Q	V.	1. Income Tax Officer 3(3) Indore 2. Income Tax Officer 3(3) Indore
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent
अपीलार्थी की ओर से/Appellant by		Shri Shailendra Singh Solanki, CA
प्रत्यर्थी की ओर से/Respondent by		Shri R.P. Mouraya, JCIT
सुनवाई की तारीख/Date of hearing		09-08-2017
उद्घोषणा की तारीख/Date of pronouncement		22-08-2017

आदेश / O R D E R

PER O.P.MEENA, ACCOUNTANT MEMBER

1. These two appeal filed by two separate Assessee`s and are directed against the separate orders of Learned Commissioner of Income-tax (Appeals)-I, Indore [in short CIT(A)] dated 14-02-2014 pertaining to Assessment Year

2008-09, which in turn has arisen from the separate orders dated 30-12-2010 passed by the ITO 3(3) Indore (in short “the AO”) under section 143 (3) of Income Tax Act ,1961 (in short ‘the Act’). Shri Sukhram Mukati in I.T.A. No. 409/Ind/2014 for the assessment year 2008-09, has taken following revised grounds of appeal:-

1. That the learned CIT (A) erred in not allowing deduction claimed under section 54B that by holding that lands are not registered in assessee`s name. The non allowance so made being illegal and wrong, the require to be now allowed.

2. That the learned CIT (A) erred in making addition of Rs. 58, 72,000 under section 68 read with section 69A without verifying the facts of the case. The addition so made being illegal and wrong, the same required to be deleted.

3. That the learned CIT (A) erred in making addition of Rs. 8, 80,000 under section 69 without pinpointing any unexplained deposit. The addition so made being illegal and wrong, the same required to be deleted.

2. Shri Vishnu Mukati in I.T.A. No. 410/Ind/2014 for the assessment year 2008-09, has taken following revised grounds of appeal:-

1. That the learned CIT (A) erred in not allowing deduction claimed under section 54B that by holding that lands are not registered in assessee's name. The non allowance so made being illegal and wrong, the require to be now allowed.

2. That the learned CIT (A) erred in making addition of Rs. 56,00,000 under section 68 read with section 69A without verifying the facts of the case. The addition so made being illegal and wrong, the same required to be deleted.

3. That the learned CIT (A) erred in making addition of Rs. 27, 66,000 under section 69 without pinpointing any unexplained deposit. The addition so made being illegal and wrong, the same required to be deleted.

3. Since, facts in both appeals are identical being father and son, both appeals were heard together and being disposed-of by common order for the sake of brevity and convenience. We are considering the facts in the case of Sukhram Mukati as lead case, the findings and our decision of which would mutatis mutandis apply to the case of Vishnu Mukati.

4. Ground no. 1 relates to denying deduction u/s. 54B of the Act by the CIT (A).

5. Succinctly, facts as culled out from the orders of lower authorities are that the assessee is an old uneducated farmer engaged in agricultural activities for years along with his family members. The assessee has filed his return of income on March 6, 2009 declaring total income of Rs.46,845 with agricultural income of Rs. 1,16,500. There was an AIR information received by the AO showing that the assessee had made cash deposits of Rs.68,30,000 in his bank account with SBI Indore. Hence, case was selected under scrutiny. During the assessment year under consideration, the assessee has sold his ancestral agricultural land (held for more than 30 years) admeasuring 0.506 hectares situated at Khasra No. 30/5, 32/1 & 33/1 situated at village Kumedi, Tehsil Sanwer and District Indore to M/s. Mehdid Developers Pvt. Ltd., Ring Road Indore, through its director Shri Saifi Raja, for a total consideration of Rs. 56,71,000 out of which Rs. 8, 21, 000 received by cheques, deposited in bank account on September 8, 2007, and cleared on September 11, 2007,

and Rs. 48,50,000 received by cash and deposited in bank account on September 6, 2007. However, the sale deed registered on September 6, 2007, (PB-22 to 33) showed sale consideration of Rs. 8,21,000 only and there was no mention of any cash payments, therefore, the AO treated the said cash deposit as unexplained and made addition accordingly.

6. Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A), wherein it was claimed that the amount of cash of Rs. 48,50,000 was received on account of sale of agricultural land and claimed the same as deduction under section 54B of the Act on the ground that long-term capital gain so earned at Rs. 47, 28,001 (PB-50) has been invested in purchase of agricultural land in the name of his wife Smt. Shyamu Bai (Rs.33,32,026), son Shri Jitendra (Rs.3,14,250) and son's wife Smt. Komal (daughter in law) copy of purchase deeds (PB-51 to 123) filed. However, CIT (A), relying on the decisions in the case of Kalya [2012] 251 CTR 174 (Raj), Jai Narain [2008] 306 ITR 335 (P&H) and Gnata Vijay Laxmi [2013] 37 taxmann.com 263 (Vishakhapatnam-Trib) has denied the deduction under

section 54B on the ground that name of the appellant does not appear in purchase deeds of new agricultural lands. Accordingly, the AO was directed to work out capital gain on entire amount of sale consideration of Rs. 56,71,000 and no deduction under section 54B would be available.

7. Being, aggrieved the assessee filed this appeal before the Tribunal. The ld. Counsel for the assessee submitted that the learned CIT (A) has accepted that cash receipt of Rs. 48,50,000 and cheque receipts of Rs. 8,21,000 are part of sale consideration in respect of sale of agricultural land and treated the same as long-term capital gain earned from sale of agricultural land, and deleted the addition of Rs. 48,50,000 made by the AO as unexplained cash credit though he has not mentioned it in his order in clear terms. The Ld. CIT (A) has denied the deduction under section 54B on the ground that new agricultural land purchased is not in the name of the assessee. The learned counsel for the assessee relying on the decisions in the case of CIT v. Kamal Wahal [2013] 351 ITR 4(Del); [2013] 214 Taxman 287(Del); [2013] 30 taxmann.com 34(Del), ACIT v. Deepak Kumar Dhawan [I.T.A. No. 150/Ind/2013 A.Y. 08-09-

Indore-Trib] (PB54), Ghanshyam Mali v. ITO [I.T.A. No. 547/Ind/2013 A.Y. 08-09 dated 10.08.2015-Indore Tribunal] (PB60) and Pr. CIT v. Balmukund Meena [ITA118of 2016 Dtd. 16.02.2017] (MP-High Court) contend that the issue is covered in favour of the assessee hence, deduction under section 54B is allowable even if the investment in new assets is made in the name of wife, son and close relative, so long the nature of land sold and purchase made is same.

8. We have heard the rival submissions of both the parties and perused the material available on record. We find that the assessee had sold an ancestral agricultural land from total consideration of Rs. 56,71,000, against which Rs. 48,50,000 were received in cash. The AO treated the same as unexplained, however, the Ld. CIT (A) treated it part of sale consideration though not in clear terms and directed the AO to compute long-term capital gain on Rs. 56,71,000. We also observe that the only source of income of the assessee is from agricultural income and there is apparently no other source of income; from which the assessee can earn so much amount in cash and that too in

one go. We also find that the sale of ancestral agricultural land was effected on September 06, 2007 (PB22) and cash of Rs. 48.50 lakhs was deposited on September 06, 2007 only along with cheque amount of Rs. 8.21 deposited on September 07, 2007. Thus, there is circumstantial evidence, which lean in favour of the assessee that on the day of sale of agricultural land, the assessee had received cash and cheque of Rs. 56.71 lakhs. Hence, we hold the cash deposit of Rs. 48.50 Lakh as explained which the Ld. CIT (A) has also held like such and by directing the AO to treat it as long-term capital gain earned on sale of agricultural land under consideration. No appeal on this issue is filed by the Department, meaning thereby that the source of cash deposit of Rs. 48.50 lakhs; stands explained/accepted. With regard to claim of deduction under section 54B, we find that the CIT (A) has not allowed this on the ground that new land was not purchased in the name of the assessee, but in the name of his wife, son and son's wife. However, admittedly fact is that the new land was purchased during the period 12.10.2007 to 30.03.2008, i.e. within the stipulated time prescribed

under section 54B of the Act. However, the issue revolves around the allowability of deduction under section 54B of the Act. The CIT (A) has denied the deduction as the new agricultural land in question was purchased in the name of wife, son and daughter in law. We find that the wife of the assessee, son and daughter in law are residing with the assessee and have and all are engaged in agricultural operations. The land sold was ancestral agricultural land. Family is using the new agricultural land purchased. The only dispute raised by the Revenue that land was not registered in the name of family members. This fact was also not disputed that the assessee was an old man and illiterate person. The assessee was not having any other source of income. It is not the case of the Revenue that sale proceeds were used for any other purposes or beyond the stipulated period. In view of these facts and circumstances, it cannot be said that the capital gain/ sale proceeds were in any way were misused for any other purpose contrary to provisions of law. This view is also supported by decision in the case of CIT v. Kamal Wahal [2013] 351 ITR 4(Del);

[2013] 214 Taxman 287(Del); [2013] 30 taxmann.com 34(Del) wherein it was held that

“4. The assessing officer while completing the assessment took the view that under Section 54F, the investment in the residential house should be made in the assessee's name and in as much as the residential house was purchased by the assessee in the name of his wife, the deduction was not allowable. He reduced the deduction and computed the capital gains accordingly.

5. On appeal, the CIT (Appeal) accepted the assessee's contention based on the judgment of the Madras High Court in CIT v. V. Natarajan [\[2006\] 287 ITR 271/154 Taxman 399](#) and that of the Andhra Pradesh High Court in Mir Gulam Ali Khan v. CIT [\[1987\] 165 ITR 228/\[1986\] 28 Taxman 572](#).

6. The revenue preferred an appeal before the Tribunal questioning the decision of the CIT(Appeals). The Tribunal, however, by the impugned order, agreed with the decision of the CIT (Appeals) and in doing so followed the judgment of the Madras and Andhra Pradesh High Courts cited supra and also another judgment of the Karnataka High Court in DIT, International Taxation v. Mrs. Jennifer Bhide [\[2011\] 203 Taxman 208/15 taxmann.com 82](#). It also noted the judgment of the Bombay High Court in Prakash v. ITO [\[2008\] 173 Taxman 311](#) in which a

contrary view was taken but preferred the view taken by the Madras and Karnataka High Courts adopting the rule laid down by the Supreme Court in CIT v. Vegetable Products Ltd [\[1973\] 88 ITR 192](#) which says that if a statutory provision is capable of more than one view, then the view which favours the tax payer should be preferred. The Tribunal also observed that Section 54F being a beneficial provision enacted for encouraging investment in residential houses should be liberally interpreted.

7. We have no hesitation in agreeing with the view taken by the Tribunal. Apart from the fact that the judgments of the Madras and Karnataka High Courts (supra) are in favour of the assessee, the revenue fairly brought to our notice a similar view of this Court in CIT v. Ravinder Kumar Arora [\[2012\] 342 ITR 38/\[2011\] 203 Taxman 289/15 taxmann.com 307](#). That was also a case, which arose under Section 54F of the Act. The new residential property was acquired in the joint names of the assessee and his wife. The income tax authorities restricted the deduction under Section 54F to 50% on the footing that the deduction was not available on the portion of the investment, which stands in the name of the assessee's wife. This view was disapproved by this Court. It noted that the entire purchase consideration was paid only by the assessee and not a single penny was contributed by the assessee's wife. It also noted that a purposive

construction is to be preferred as against a literal construction, more so when even applying the literal construction, there is nothing in the section to show that the house should be purchased in the name of the assessee only. As a matter of fact, Section 54F in terms does not require that the new residential property shall be purchased in the name of the assessee; it merely says that the assessee should have purchased/constructed "a residential house".

8. *This Court in the decision cited alone also noticed the judgment of the Madras High Court (supra) and agreed with the same, observing that though the Madras case was decided in relation to Section 54 of the Act, that Section was in pari materia with Section 54F. The judgment of the Punjab and Haryana High Court in the case of CIT v. Gurnam Singh [\[2010\] 327 ITR 278/\[2008\] 170 Taxman 160](#) in which the same view was taken with reference to Section 54F was also noticed by this Court.*

9. *It thus appears to us that the predominant judicial view, including that of this Court, is that for the purposes of Section 54F, the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. It is moreover to be noted that the assessee in the present case has not purchased the new house in the name of a stranger or somebody*

who is unconnected with him. He has purchased it only in the name of his wife. There is also no dispute that the entire investment has come out of the sale proceeds and that there was no contribution from the assessee's wife.

10. *Having regard to the rule of purposive construction and the object which Section 54F seeks to achieve and respectfully agreeing with the judgment of this Court, we answer the substantial question of law framed by us in the affirmative, in favour of the assessee and against the revenue.*

9. In the instant case also, we find that the entire investment is made by the assessee which has been made out of sale proceeds and that there was no contribution from other family member. It is moreover to be noted that the assessee in the present case has not purchased the new asset in the name of a stranger or somebody who is unconnected with him. He has purchased it only in the name of his wife, son and daughter in law. Therefore, its case is covered by above decision; accordingly, we hold that deduction is 54B is allowable to the assessee. Further reliance is placed on the decision of Hon`ble Jurisdictional High Court in the case of Pr. CIT v. Balmukund Meena [I.T.A.118 of 2016 Dtd. 16.02.2017] (MP-High Court) wherein the Hon`ble High Court has held as:

"The issue before us revolves around allowability of deduction under [sections 54B](#) and [54F](#) of the Act. The

land in question was purchased by the assessee in the name of his son. The learned Assessing Officer disallowed the deduction on the ground that the land is in the name of the son of the assessee, so the deduction cannot be allowed, specially when the land was purchased by Sh. Gurnam Singh out of the sale proceeds of agricultural land and since Palwinder Singh was bachelor and was not having any independent source of income was dependent upon his father even for livelihood. The conclusion of the learned Assessing Officer is available on page 4 of the assessment order. Before coming to a conclusion, we are supposed to analyze [section 54B](#) which is applicable where the capital gains arise from the transfer of capital asset and was being used for agriculture purposes which was invested in the purchase of any other land and again being used for agricultural purposes. There is no dispute to the fact that the assessee sold his agricultural land and then purchased other agricultural land out of the sale proceeds and got registered some portion of the land in the name of his only son who was a bachelor at the relevant time. If the 'ikrarnama'/ agreement is analyzed which is available at page 9 of the paper book, it clearly speaks that "The purchaser is at liberty to execute the sale deed in the name of any member of his family. He is also at liberty to execute as many as sale deeds as he desires...." If the contents of the

'ikrarnama'/agreement to sale is analyzed one undisputed fact is oozing out that the sale proceeds of the agricultural land were in fact used to purchase another agricultural land. [Section 54B](#) speaks about transfer of capital asset being land within a specified period and another land is purchased for agricultural purposes, then it shall be dealt with in accordance with the provision of this section. It is not the case of the revenue that the capital gain was not utilized by the assessee for the purchase of new asset before the date of furnishing the return of income under [section 139](#). In fact, if the facts as detailed in the 'ikrarnama' are analyzed, the capital gains was utilized by the assessee for purchasing the new asset. [Section 54B](#) is applicable as per the provision of clause 2 of the section. The only dispute raised by the revenue is that the land was got registered in the name of his son. This fact is not disputed that the assessee was an old and illiterate person and never filed any return. At the same time, he was not having any other source of income also. It is not the case that the sale proceeds were used for any other purposes or beyond the stipulated period. This fact was also not disputed that the son of the assessee was bachelor and was not having any other source of income and was totally dependent upon his father.

Undisputedly, the earlier land which was sold, also belonged to the assessee and the sale proceeds were

also used for purchasing agricultural land. The possession of the said land was also taken by the assessee. The only objection raised by the revenue was that the said land was registered in the name of his son. In view of these facts, it cannot be said that the capital gains! sale proceed were in any way misused for any other purposes contrary to the provisions of law."

We have heard the counsel for the revenue and gone through the aforesaid impugned order. In our opinion, from the impugned order, no substantial question of law is arising for consideration of this Court as the ITAT while recording a pure finding of fact has dismissed the appeal of the revenue. Undisputedly, in this case the assessee had sold the agricultural land which was being used by him for agricultural purposes. Out of sale proceeds of the said sale, the assessee has purchased other piece of land (land in question) in his name and in the name of his only son, who was bachelor and dependent upon him, for being used for agricultural purposes within the stipulated time. Further, it is not the case of the revenue that from the sale proceeds of the agricultural land earlier owned by the assessee, the land in question was purchased for any other purpose than the agricultural purpose. Undisputedly, the purchased land is being used by the assessee only for agricultural purpose and merely because in the sale deed his only son was also shown as co-owner, the ITAT has rightly come to the conclusion that it does not make any difference because the purchased land is being used by the assessee for agricultural purposes. It is not the case of the revenue that the said land is being used exclusively by his son. In our view, a pure finding of fact has been recorded by the ITAT which does not require any interference in this appeal.

4. No substantial question of law is involved in this appeal.â A similar view has been taken by the High Court of Delhi in the case of [Commissioner of Income-tax-XII vs. Kamal Wahal](#), reported in 2013 (30)

taxmann.com 34 (Delhi). Paragraph Nos. 8, 9 and 10 of the aforesaid judgment read as under:- 8. This Court in the decision cited alone also noticed the judgment of the Madras High Court (*supra*) and agreed with the same, observing that though the Madras case was decided in relation to [Section 54](#) of the Act, that Section was in *pari materia* with [Section 54F](#). The judgment of the Punjab and Haryana High Court in the case of *CIT Vs. Gurnam Singh : (2010) 327 ITR 278/[2008] 170 Taxman 160* in which the same view was taken with reference to [Section 54F](#) was also noticed by this Court.

9. It thus appears to us that the predominant judicial view, including that of this Court, is that for the purposes of [Section 54F](#), the new residential house need not be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. It is moreover to be noted that the assessee in the present case has not purchased the new house in the name of a stranger or somebody who is unconnected with him. He has purchased it only in the name of his wife. There is also no dispute that the entire investment has come out of the sale proceeds and that there was no contribution from the assessee's wife.

10. Having regard to the rule of purposive construction and the object which [Section 54F](#) seeks to achieve and respectfully agreeing with the judgment of this Court, we answer the substantial question of law framed by us in the affirmative, in favour of the assessee and against the revenue. The appeal is accordingly dismissed with no order as to costs. The Tribunal while dismissing the appeal of the Revenue has held that the assessee has purchased the agricultural land and, therefore, the order passed by the Income Tax Appellate Tribunal is just and proper.

10. Thus, in the light of above discussion, and respectfully following the decision of Jurisdictional High

Court and other judicial pronouncement as discussed above, we are of the considered opinion that the assessee is entitled to deduction under section 54B of the Act. Therefore, the AO is directed to allow the deduction under section 54B of the Act, out of sale proceeds of sale of agricultural land sold by the assessee as discussed above. However, the issue of computation of indexation cost of original assets is restored to the file of the AO for limited purpose and after computation of indexation cost, the AO will allow the deduction under section 54B in accordance with law. We may note that the case laws relied by the Ld. CIT (A) are distinguishable on facts and law, and moreover, we are following latest judgement and more particularly the judgement of Hon`ble Jurisdictional High Court in the case of Pr. CIT v. Balmukund Meena (supra) which would have precedence over the judgement of other High Court and no other contrary decision of Hon`ble Jurisdictional High Court has been brought to our notice. Moreover, where we further find support from the judgement in the case of CIT v. Vegetables Products Ltd. [1973] 88 ITR 192 (SC) held that if two reasonable constructions of taxing provision are

possible, that construction which favours the assessee must be adopted. This is well-accepted rule of construction recognized by this court in several of its decisions. In view of above, we find that it is settled law that where two interpretations are possible, the one, which is favourable to the assessee should be adopted. Applying the ratio of above decisions to the facts of the case, it can safely said that that when two views are possible on the same subject, the view favouring the assessee should be adopted. Therefore, the appeal on above ground is allowed, for deduction under section 54B of the Act subject to computation of long-term capital gain after indexation cost in accordance with law.

11. Ground no. 2 relates to making addition of Rs. 58,72,000 section 68 of the Act without verifying the facts of the case.

12. Facts apropos of this ground are that the assessee has sold another agricultural land for Rs. 2.34 crores by agreement to sale entered in to M/s. Satellite Infra Real Estate Pvt. Ltd. through director Shri Chirag Shah. According to which advance of Rs. 58.72 lakhs was received which consisted Rs. 11 lakhs by cash and Rs.

47.72 lakhs by cheque. It was submitted that the said agreement was cancelled and the amount was refunded. The AO has accepted this claim of the assessee and not made any addition on this score. However, Ld. CIT (A) considered the entire amount of Rs. 58.72 lakhs (including cash and cheque) as undisclosed investment under section 69 of the Act as the assessee has failed to produce copy of cancellation deed and proof of repayment of said amount.

13. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that the advance of Rs. 58.72 lakhs was received in cash and by cheque and same was deposited in bank account of the assessee. As the purchaser, party could not make the remaining payments, both parties agreed for cancellation of agreement and the amount received was returned back. This fact along with copies of cancellation agreements were filed before the CIT (A), but he chose to ignore them. It was submitted that major payments was received by cheques and major payments was made by cheques and agreement cancelled with

mutual consent. The deposit of Rs. 58.72 lacs in assessee's account stands duly proved.

14. The Ld. DR relied on the orders of lower authorities.

15. We have heard the rival submissions of both the parties and perused the material available on record. we find that as per cancellation agreement deed (PB122), the assessee had entered in to an sale agreement on December 5,2007 for sale of agricultural land at Survey No. 209/2 of rakba 1.187 hectares as against which advance amount of Rs. 41 lacs (PB125, 48 and 49) was received by cheque was returned to buyer of the property. The ld. Counsel for the assessee also relied in the case of ACIT v. Smt. Kusum Ramniklal Sanghani 4 ITR (Tribunal) 582 (Mum) to contend that under section 69, the burden on the Department to show that money belongs to the assessee is on Revenue. The ld. Counsel for the assessee further relied in the case of ITO v. Nagardas Jashraj [28 ITD 3786 (Ahd-Tribunal)] to submit that section 69A creates legal fiction by the deeming phrase "may be deemed to be income of the assessee" but such legal fiction is restricted to treating the money, bullion etc. of which the assessee is found to be

owner in any financial year. That legal fiction does not create any presumption to the effect that the assessee would also be deemed to be owner of any money, bullion etc. which he has found in possession in a financial year. The ld. Counsel for the assessee also cited a decision of this bench in the case of ITO v. Smt. Shanaz Bano I.T.A. No. 443/Ind/2054 dtd. 7.1.2005 in which it was held that if a person has only agricultural income no addition can be made to the total income. Similar view also expressed by coordinated bench in the case of ITO v. Ranjit Singh Sisodiya, I.T.A. No. 552/Ind/2006.

16. We have heard the rival submissions of both the parties and perused the material available on record. We find that, the agreement to sale deed for transfer of agricultural land by the to Satellite Infra & Real Estate Pvt. Ltd. stands cancelled as per the copy of cancellation agreement (placed at PB124-126). The amount of Rs. 41 lacs mentioned therein also stands returned back by cheque as details mentioned thereon. The amount was returned back by cheque as well as cash and no sale was effected. These facts were also verified by the AO as he has

duly discussed the advance receipt and cancellation of this agricultural land. Therefore, we are of the considered opinion that the Ld. CIT (A) was not justified in making this addition by enhancement without bringing any evidence on record that the assessee had effected the said sale of land. Therefore, we do not find any merit in such addition, which there is no real income, and such income cannot be taxed on presumption basis. Hence, the addition made by the AO/ the Ld. CIT (A) is deleted. This ground of appeal is allowed.

17. Ground no. 3 relates to addition of Rs. 8,80,000 us 69 of the Act without pinpointing any unexplained deposit.

18. Brief facts are that the CIT (A) noted that the assessee has shown total cash deposit of Rs. 68.30 lacs out of which an amount of cash of Rs. 48.50 was received by cash from ancestral agricultural land sale, Rs. 11 lacs for advance of sale of another agricultural land which leaves balance cash deposit of Rs. 8.80 lacs [$68.30 - 48.50 - 11 = 8.80$]. Hence, the CIT (A) directed the AO to treat this amount as unexplained under section 69A of the Act.

19. Being, aggrieved the assessee filed this appeal before the Tribunal. The ld. Counsel for the assessee submitted that during the year under consideration the assessee has withdrawn cash of Rs.1,14,09,700 from bank in cash during the year and Rs. 8.80 lacs is out of said figure has been deposited back. The learned Counsel took us through the copy of bank statement showing cash withdrawals, which are appearing at Paper Book Page No. 34 to 49, and cash withdrawals details of Rs. 1.14 crores and submitted that cash of 8.80 lacs was deposited back out of such cash withdrawals.

20. The Ld. DR relied on Ld. CIT (A).

21. We have heard the rival submissions of both the parties and perused the material available on record. We find that there are various cash withdrawal from bank account of the assessee as appearing in bank statement placed at PB34 to 49 and cash withdrawal statement of Rs. 1.14 crores. The assessee has made cash withdrawals of Rs. 114 lacs; therefore, we are of considered opinion that these cash deposits back to bank account is out of said amount of Rs. 1.14 crore withdrawn in cash by the

assessee. Further, the Ld. CIT (A) has not pinpointed that which cash withdrawal is not reconcilable from bank account. The filed details of such withdrawals. Therefore, we do not find any justification in making this addition. This addition is therefore, deleted. We order accordingly. This ground is allowed.

22. I.T.A. No. 410/Ind/2014: Shri Vishnu Mukati: AY08-09: Since we have allowed the appeal in the case of Shri Sukhram Mukati: I.T.A. No. 409/Ind/2014 AY08-09, the grounds of appeal in the case of Shri Vishnu Mukati are same except figures and land purchases and sales, therefore, on the basis of said findings given in the case of Shri Sukhram Mukati hence, all three grounds of appeals in the case of Shri Vishnu Mukati are allowed.

23. In the result, the appeal of Shri Sukhram Mukati and Shri Vishnu Mukati are allowed in respect of both appeals.

24. The order pronounced in the open Court on 22nd August 2017

Sd/-

(C.M. GARG)

Sd/-

(O.P. MEENA)

JUDICIAL MEMBER ACCOUNTANT MEMBER

दिनांक /**Dated :22nd August 2017**

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard
file.

By order

Assistant Registrar, Indore