

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

श्री कुल भारत, न्यायिक सदस्य

तथा

श्री मनीष बोरड, लेखा सदस्य के समक्ष

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No. 1018/Ind/2016		
निर्धारणवर्ष/ Assessment Year : 2009-10		
Smt.Rajrani Johri, 143, Happy Home Apartments, Opposite Patrakar Bhawan, Malviya Nagar, Bhopal	vs.	Income-tax Officer, 1(1), Bhopal.
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN: AAPPJ6281K		

अपीलार्थी की ओर से/Appellant by	:	Shri Ashish Goyal, Adv. and Shri N. D. Patwa, ITP
प्रत्यर्थी की ओर से/Respondent by	:	Shri K. G. Goyal, Sr. DR

सुनवाई की तारीख/Date of hearing	:	26.04.2018.
उद्घोषणा की तारीख/Date of pronouncement	:	27.04.2018

आदेश / O R D E R

PER KUL BHARAT, J.M. :

This appeal is filed by the assessee against the order of Id. Commissioner of Income tax (A)-31, New Delhi, Camp at Bhopal, dated 30.06.2016.

2. The assessee has raised the following grounds of appeal :-

1. The assessment order is invalid, barred by limitation, illegal, bad in law, void-ab-initio and therefore liable to be quashed.
2. The Ld. CIT(A) erred in sustaining the assessment order which is invalid, barred by limitation, illegal, bad in law, void-ab-initio and therefore, liable to be quashed.
3. The Ld. CIT(A) was not justified in sustaining the addition of Rs. 10,00,000/- as unexplained investment and deposits in the saving bank account.
4. The Ld. CIT(A) was not justified in sustaining the addition of Rs. 4,34,326/- as income from other sources, disregarding the claim of the appellant of agricultural income.

3. At the out-set, the Ld. Counsel for the assessee submitted that he does not wish to press ground nos. 1 & 2. Ground no. 1 & 2 are dismissed as not pressed.

4. Ground no. 3 is against sustaining the addition of Rs. 10 lakhs as unexplained investment.

5. Briefly stated, the facts of the case are that the case of the assessee was picked up for scrutiny assessment. While framing the assessment, the AO noticed that there was cash deposit of Rs. 10 lakhs. The AO treated the same as unexplained cash deposit and added the same. Further, the AO disallowed the claim of Rs. 4,34,326/- as income from other sources disregarding the claim of the assessee of agricultural income. Aggrieved by this, the assessee preferred this appeal before the Ld. CIT(A), who after considering the submissions, dismissed the appeal.

6. Apropos ground no.3, the Ld. Counsel for the assessee submitted that the AIR information in respect of cash deposit in saving bank account of assessee in excess of Rs. 10 lakh revealed that there were cash deposits totalling to Rs.19,32,275/-in the assessment year 2009-10. After considering the submissions and

explanation furnished by the assessee,the cash deposit of Rs.10 lakh

was considered as unexplained by the AO. The assessee submitted that the sum of Rs. 10 lakh was received in cash from Mohd. Ziya Ullah Hasan being power of attorney holder of the Seller – Mohd. Asim Quereshi & Smt. Mazida Bano. The Ld. Counsel for the assessee submitted that the assessee entered into an agreement to purchase an agricultural land admeasuring 57.33 acres at Gram Chandanpur, Dist. Bhopal. The deal could not be materialized and the cancellation deed dated 19.06.2008 signed by the assessee and Mohd. Ziya Ullah Hasan was entered. The witness to the cancellation deed were Shri Gulab Singh S/o Shri Hari Prasad and Shri Sanjay Soni S/o Shri Ramesh Soni The Ld. Counsel for the assessee submitted that the cash money of Rs. 10 lakh were received from Mohd. Ziya Ullah Hassan which he has deposited in bank account on 20.06.2008. The AO formed an opinion that the cancellation deed was an afterthought and added the sum of Rs. 10 lakh being unexplained cash deposits. The Ld. Counsel for the assessee contended that the assessee was not given an opportunity to submit the documentary evidences for justifying the claim, such

as affidavit from witness of cancellation agreement, namely, Shri Gulab Singh and Shri Sanjay Soni.

7. The Ld. Departmental Representative supported the orders of the lower authorities.

8. We have considered the facts, rival submissions and perused the material available on record. We find that the matter requires examination of the documentary evidences. In the interest of justice, we deem it proper to remand back the matter for verification of the documents to the file of AO. The AO shall verify the same and decide the matter afresh and also afford an opportunity of being heard to the assessee.

9. Apropos ground no. 4, the Ld. Counsel for the assessee submitted that the AO has not considered the expenses incurred by the assessee to earn the substantial agricultural income which perhaps the land lord with the meagre income could not have borne or they might not have the required skills/equipments. The Ld. Counsel for the assessee submitted that the meager income of the landlord does not constitute a valid reason for treating the agreement as well as the agricultural operations carried out as bogus or non-genuine. The Ld. Counsel for the assessee submitted

that for the non-inclusion of the assessee's name in the P-II form of the Local Authorities, it was for the landlord to consider it necessary or otherwise. As far as the assessee was considered, it was not sine-quo-non for carrying out agricultural operations on batai or contract. The reasons/objection of the AO being irrelevant has no force. Regarding discrepancies/objection with regard to the non appearance of soya bean crop in the P-II form, if the AO had any doubt, the AO ought to have got the matter verified either by making spot enquiries or through the Local Authorities concerned before taking and adverse or perverse view on this account. The AO did not consider the agricultural income which according to his version ought to have been earned through the crops of Vipul, Masoor, Alsi, Tiara etc. which appeared in the P-II form. The assessee had produced evidences regarding agricultural operations carried out alongwith expenses incurred therefor as also the mandi receipts in support of the agricultural produces sold through them. Copies of batai agreement, agricultural expenses, mandi receipts for sale of agricultural produce and copy of P-II form were submitted. The Ld. Counsel for the assessee submitted that inspite of submitting all these evidences, the AO treated the agricultural

income of Rs. 4,34,326/- as income from undisclosed sources. The same may be deleted. The Ld. Counsel for the assessee submitted that the assessee was not given proper opportunity of being heard.

10. We have considered the facts, rival submissions and perused the material available on record. We find that the matter requires examination of the documentary evidences. In the interest of justice, we deem it proper to remand back the matter for verification of the documents to the file of AO. The AO shall verify the same and decide the matter afresh and also afford an opportunity of being heard to the assessee.

11. In the result, the appeal of the assessee is partly allowed for statistical purposes.

The order was pronounced in the open court on 27.4.2018.

Sd/-
(मनीष बोरड)
लेखा सदस्य
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(कुल भारत)
न्यायिक सदस्य
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 27/04/2018

CPU/SPS

Smt. Rajrani Johri,Bhopal

-: 8 :-

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

By order

Private Secretary/DDO, Indore