

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : E : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.1721/Del/2016  
Assessment Year: 2011-12

Ajit Singh,  
S/o Shri Chander Bhan,  
H.No.16, vill. Chandu,  
P.O. Budhela,  
Gurgaon.

Vs.

ITO,  
Ward-2(2),  
Gurgaon.

PAN : BIAPS8064D

(Appellant)

(Respondent)

Appellant by : Shri K.P. Ganguli, Advocate &  
Shri Ashok Chhabra, CA  
Respondent by: Ms Rinku Singh, Sr. DR

Date of Hearing : 31.12.2018  
Date of Pronouncement: 31.12.2018

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 4<sup>th</sup> February, 2016 of the CIT(A)-1, Gurgaon, relating to Assessment Year 2011-12.

2. The assessee in the grounds of appeal has challenged the order of the CIT(A) in confirming the addition of Rs.54,18,000/- made by the Assessing Officer on account of cash deposit in two bank accounts maintained by the assessee.

3. the facts of the case, in brief, are that the assessee is an individual, and filed his return of income on 4<sup>th</sup> August, 2011 declaring total income of Rs.4,50,061/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee has deposited cash of Rs.24,18,000/- in the savings bank account maintained with Yes Bank, Garhi Harsaru, Gurgaon and Rs.30,20,000/- with Gurgaon Gramin Bank. On being confronted by the Assessing Officer the assessee submitted that he has received the advance of Rs.28 lakhs from Shri Prem Chand, S/o Shri Tek Chand, r/o Village Budeda for sale of agricultural land measuring 11 canal 12 marla. The assessee has also filed an affidavit dated 15<sup>th</sup> June, 2010 of Shri Prem Chand. The Assessing Officer examined Shri Prem Chand during the course of assessment proceedings who, during his examination stated that he has withdrawn the amount from his bank account maintained with Gurgaon Gramin Bank. In his support, he furnished the copy of the bank account. The Assessing Officer, on perusal of the bank account of Shri Prem Chand, noticed that there was a credit balance of Rs.15,746/- as on 01.04.2010 and the credit balance upto 13<sup>th</sup> August, 2011 was only Rs.51,000/-. As per the statement of Shri Prem Chand, he has withdrawn the following amounts:-

1. Rs.30,00,000/- on 1.10.2007
2. Rs.5,00,000/- on 23.10.2007
3. Rs 1,00,000/- on 19.02.2008
4. Rs. 1,00,000/- on 18.03.2008
5. RS. 10,00,000/- on 14.07.2008
6. Rs.1,20,000/- on 7.1.2009
7. Rs. 2,00,000/- on 23.07.2009

4. The Assessing Officer, after verifying the details, rejected the plea of the assessee and his witness for the following reasons:-

1. The cash so withdrawn by the witness of the assessee relates to F.Y.2007-08.
2. The Witness of the assessee is of the age of 55 years and these cash with draws might be utilized for discharging his social obligations.
3. As per affidavit of Sh. Prem Chand agreement to sell was made on 15.06.2010 and further cancellation on 7.4.2011 was not produced by the assessee.
4. The assessee have not sufficient credit balance in his account as on 1-04-2011 to refund a sum of Rs 2800000/-
5. The affidavit filed by the witness of assessee, has not stated the date of Execution of the affidavit. The affidavit is also salient about the amount of advance received and the date and mode of amount returned back .

5. The Assessing Officer accordingly made addition of Rs.54,18,000/- to the total income of the assessee on the ground that the explanation of the assessee is not maintainable and the cash deposited in the bank account is the undisclosed income of the assessee within the meaning of section 69A of the IT Act.

6. Before the CIT(A), the assessee filed an application for admission of additional evidence under rule 46A of the It Act. The Id.CIT(A) forwarded the same to the Assessing Officer for his comments, who objected to such additional evidence on the ground that the assessee was never prevented for admission of evidence which he was called upon as no such communication has been received by him. Since the assessee did not produce these evidence, therefore, the assessee is not coming under any of the exceptions provided under Rule 46A of the IT Rules. The plea of the assessee that he

is coming under the provisions of section 44AD and, therefore, no addition is called for in absence of maintenance of books of account was also rejected by the Assessing Officer. After considering the remand report of the Assessing Officer and considering the comments of the assessee to such remand report, the Id.CIT(A) rejected the additional evidences filed before him. So far as the merit of the case is concerned, he also upheld the action of the Assessing Officer on the ground that the assessee could not explain the source of such cash deposits to his satisfaction. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. We have considered the rival arguments made by both the sides and perused the orders of the Assessing Officer and CIT(A). We have also considered the various decisions cited before us. We find the Assessing Officer made addition of Rs.54,18,000/- to the total income of the assessee on the ground that the assessee could not explain the source of cash deposit of Rs.24,18,000/- and Rs.30,20,000/- respectively in the two bank accounts maintained by him. We find the Id.CIT(A) upheld the action of the Assessing Officer. It is the submission of the Id. counsel for the assessee that the assessee has filed certain additional evidences before the CIT(A) which were rejected by him and, thereafter, he sustained the addition. According to the Id. counsel for the assessee, these evidences should have been admitted in the interest of justice. Further, when the assessee is not maintaining any books of account and is covered under the provisions of section 44AD, the Id.CIT(A) was not justified in sustaining the addition of Rs.26,18,000/- which was deposited by the assessee in the

bank accounts from his sale proceeds. It is the submission of the Id. DR that the assessee is changing his stand from time to time and is not consistent in his approach towards the source of the deposits in the bank accounts. The assessee is trying to submit certain new evidences which were never submitted before the Assessing Officer although the assessee was given due opportunity of being heard during the course of assessment proceedings. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate the source of the cash deposit in the bank account to the satisfaction of the Assessing Officer. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly, allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 31.12.2018.

Sd/-

(SUCHITRA KAMABLE)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMFBER

Dated: 31<sup>st</sup> December, 2018

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi