

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA.No.3392/Del./2018
Assessment Year 2009-10

Anil Kumar, Village & Post Bhikanpur, Ghaziabad.	vs.	Income Tax Officer Ward-1 Ghaziabad PAN BQPPA9000A
(Appellant)		(Respondent)

For Assessee :	Shri Sumit Bansal, Advocate
For Revenue :	Shri Surendra Pal, Sr. D.R.

Date of Hearing :	24.09.2019
Date of Pronouncement :	21 . 12.2019

ORDER

The aforesaid appeal has been filed by the assessee against the order dated 8.3.2018 passed by Ld. CIT(Appeals) Aligarh for the quantum of assessment passed u/s 144/147 for the assessment year 2009-10. In the grounds of appeal, the assessee has challenged, i) validity of reopening u/s 147/148; ii) addition of Rs. 6,21,000/- on account of cash deposit; and iii) addition of Rs. 11 lacs on account of cheque deposited in the assessee's bank account.

2. The facts in brief are that, on the basis of AIR information that assessee has deposited cash amount of Rs. 11,65,999/- in his Saving Bank Account, assessee's case was reopened u/s 147, vide issuance of notice on 10.3.2016. As noted in the assessment order, the notice u/s 148 was served through affixture and thereafter various notices were also issued. However, neither any compliance was made nor any return of income was filed. Accordingly, the AO treated the entire cash

amount deposited in the bank account of Rs. 11,65,999/- as unexplained cash credit u/s 68.

2. Before the Ld. CIT(A), the assessee filed additional evidences in his application u/s 46A of IT Rules on which Ld. CIT(A) called for the remand report. The assessee's case has been that he along with his brothers, Shri Narendra and Shri Omendra have sold agricultural land to Shri Sunil Kumar and Shri Subodh Kumar for Rs. 11,60,000/- on 22.12.2008. As per the sale deed the purchaser has made following payments to the assessee and his brothers

1. Rs. 4,00,000/- in cash on 21/08/2008 at the time of Ikrarnama
 2. Rs. 2,00,000/- vide cheque No. 067730 drawn on BOI, Dubai, Ghaziabad
 3. Rs. 2,00,000/- vide cheque No. 120211 drawn on PNB, Raj Nagar, Ghaziabad
 4. Rs. 3,60,000/- in cash
- Total : Rs. 11,60,000/-*

3. Apart from that, the assessee and his brothers have sold another agricultural land of Rs. 5,35,000/- the details of which were as under :

1. Rs. 1,00,000/- in cash on 21/08/2008 at the time of Ikrarnama
 2. Rs. 2,00,000/- vide cheque No. 359024 drawn on UP Gramin Bank, Raj Nagar, GZB
 3. Rs. 2,35,000/- in cash
- Total : Rs. 5,35,000/-*

4. Assessee submitted that cheque amount of sale consideration as mentioned in the sale deed could not be encashed as the purchaser did not have sufficient balance in their bank account, therefore, they had deposited the cash of Rs. 11,65,333/-. AO in the remand report

observed that assessee was asked to produce the purchaser for cross examination but same were not produced. Ld. CIT (A) worked out the quantum of cash received by the assessee against the sale of property which was as under :-

Detail of the property	Cash Received	Date of receipt	Assessee's share	Cash deposited to bank account	Unexplained investment
Khasra No. 631 and 635 admeasuring .4680 and .2150 hectare	4,00,000+100,000	21/08/2008	*2,33,333	5,83,333	3,50,000/-
	3,60,,000+2,35,000	22/12/2008	**2,58,333	5,66,666	3,08,333/-
Total			4,91,666	11,49,999	6,58,333/-

5. Ld. CIT (A) accordingly observed that the assessee has received sale consideration of agricultural land of Rs. 4,91,666/- in cash and has deposited cash in his bank account of Rs. 11,49,999/- against the sale of land. Thus, the investment made by the assessee of Rs. 6,58,333/- (i.e. 11,49,999-4,91,666) and Rs. 16,000/- deposited prior to sale of land totalling to Rs. 6,74,333/- was unexplained investment which should have been added to the income of the assessee in place of Rs. 11,65,999/-.

6. Ld. CIT(A) further observed that on examination of bank account of the assessee it was found that assessee has received Rs. 11 lacs through transfer from Shri Subodh Kumar on 22.12.2008, i.e., on the date of sale of property and in response the show cause notice, the assessee submitted that said amount was received as advance money for sale of agricultural land and same was refunded back to Shri Subodh Kumar in cash during the financial year 2008-09 and 2009-10 as the deal could not materialised. However, assessee could not produce any documentary evidence in support of payment of Rs. 11 lacs. Ld. CIT (A) based on such observation by the AO in remand

report enhanced to Rs. 11,00,000/-. After considering the entire facts and material on record, he has sustained addition of Rs. 6,21,000/- on account of cash deposit and Rs. 11 lacs on account of credit appearing in the bank account on the ground that assessee has failed to discharge his onus to explain the source of the credit. The relevant observation and the finding of the Ld. CIT(A) reads as under :-

“The AO had made an addition of Rs. 11,66,000/- as the appellant could not give evidence with regard to the source of the cash deposits made in the bank account. In the appellate proceedings, it has been explained that Shri Anil Kumar, Shri Omendra Singh and Shri Narendra Singh had entered into an agreement for sale of rural agricultural land situated at Bikhampur, Ghaziabad on 21.08.2008 and total sale consideration was received in cash. It has been submitted that as per sale deed, an amount of Rs. 10,95,000/- has been shown in cash and the balance amount was in cheque but later on cheques were returned back and cash was received in lieu of the cheques. It has been clarified that from perusal of the bank statement of the three sellers, it can be verified that cheques were never encashed. It has further been clarified that the total sale consideration received in cash was divided equally between Shri Anil Kumar and Shri Narendra Kumar as per some family settlement. Though in the remand report, the AO has not agreed to submission made by the appellant, it is observed that in the bank accounts of Shri Anil Kumar (the appellant) Shri Narendra Kumar the following cash deposits have been made :-

Thus, the total cash received by the appellant and his brother appears to be Rs. 22,99,998/- whereas as per the sale

deed cash of only Rs. 10,95,000/- was shown as paid. An amount of Rs. 6,00,000/- was also paid by cheque. The appellant is contending that these cheques were never encashed and in lieu of the same equivalent amount was received in cash. There is no entry with regard to encashment of these cheques in the bank accounts of the appellant and his brother. This contention of the appellant may be considered as acceptable. Thus, the total cash received from sale of agricultural land would be Rs. 16,95,000/-. Out of this amount, a sum of Rs. 11,50,000/- (Rs. 5,66,666/- + Rs. 5,83,334/-) has been claimed to have been received by the appellant's brother Shri Narendra Singh. The cash available to the deposited in the account of the appellant works out to Rs. 5,45,000/- (Rs. 16,95,000 - 11,50,000). Hence, out of the total cash of Rs.11,66,000/-, cash of Rs. 5,45,000/- can be considered as explained. Therefore, out of the total addition of Rs. 11,66,000/-, amount of Rs. 5,45,00/- is being deleted and the remaining addition of Rs. 5,21,000/- is being confirmed.”

7. After considering the rival submissions and on perusal of the relevant finding given in the impugned orders as well as material referred above, we would like to first deal with the addition of Rs. 6,21,000/- as sustained by the Ld. CIT(A) on account of unexplained cash deposit in the bank account. It is an undisputed fact that assessee has sold two rural agricultural lands jointly with his brother and received the following consideration in cash:-

Name	Date of registry	Date of deposit in Bank account	Amount
Shri Anil Kumar		21.08.2008	583,333/-

Shri Narender Kumar (brother)	21.08.2008		583,333/-
Shri Anil Kumar	22.12.2008	22.12.2008	566,666/-
Shri Narender Kumar (brother)	22.12.2008	22.12.2008	566,666/-

8. Thus, both brothers had deposited sum of Rs. 11,50,000/- each on the date of registry of the agricultural land. However, the consideration mentioned in the deed agreement of Rs. 16,45,000/-. Ld. CIT(A) has added undisclosed income in the hands of the assessee in the following manner :

Total consideration as per agreement	16,95,000/-
Less: Amount deposited by appellant brother	11,50,000/-
	5,45,000/-
Explained cash in hands of appellant	5,45,000/-
Balance amount added to income of appellant	6,21,000/-

9. However, if it is an undisputed fact that assessee was half share holder, then unexplained cash in the hands of the assessee, if at all, out of the total consideration mentioned in the agreement of Rs. 16,85,000/- would come to Rs. 8,47,500/- (Rs. 1695000/2), out of which cash explained in hands of the assessee by the Ld. CIT(A) has been taken at Rs. 5,45,000/-. Therefore, the balance amount if at all which could be added for Rs. 3,85,000/-. Thus, instead of addition of Rs. 6,21,000/- added by the Ld. CIT(A), we confirm the addition of Rs. 3,85,500/- as unexplained cash deposit by the assessee which could not be explained satisfactorily before the authorities below.

10. In so far as the addition of Rs. 11 lacs being cheque deposited in the accounts of the assessee, Ld. Counsel's case before us was that this amount was received from Shri Subodh Kumar by way of transfer entry in the bank account of the assessee and said amount was later refunded back to him in cash, which fact has not been accepted by the Ld. CIT (A) on the ground that assessee has not withdrawn sufficient amount to pay back the cash. In support of genuineness of said credit assessee has furnished affidavit of Shri Subodh Kumar and assessee that Rs. 11 lacs was received by cheque and also copy of land records of the assessee to show that above land which was sought to be sold belonged to the assessee. Assessee has also filed affidavit of Gram Panchayat of the village to confirm that there was an agreement to sell an agricultural land to Shri Subodh Kumar for which advance of Rs. 11 lac was paid. Ld. CIT (A) has rejected the affidavit of Shri Subodh Kumar on the ground that it does not have any evidentially value as it was not furnished before the AO. Before us, Ld. Counsel has also pointed out that assessee had duly filed the bank statement before the Ld. CIT (A) which indicates that there was a huge cash withdrawal of Rs. 12,40,000/- which is evident from the fact that there was a cash withdrawal for the financial year 2008-09 of Rs. 5,40,000/- and net cash withdrawal in financial year 2009-10 of Rs. 7 lacs out of which assessee has returned back the sum of Rs. 11 lacs. From the perusal of the affidavit of Shri Subodh Kumar who has given the advance, it is seen that he has deposed that he has advanced money of Rs. 11 lacs from his saving bank account and if the said person has confirmed that he has given the payment to the assessee through his bank account and through banking channel as advance for purchase of land and is also the same person with whom assessee had actually transaction of sale for another piece of land which fact is borne out from the impugned orders as it was the subject matter of addition of

cash deposit, then it cannot be held that identity of the said person is not established or the explanation of the assessee that such an amount was received for proposed sale transaction of the agricultural land is not correct. It is further seen that assessee has shown huge withdrawal in the financial year 2008-09 and 2009-10 and therefore, without any adverse material, it can be very well presumed that these cash withdrawals explained the source of the repayment to the said purchaser which he has affirmed in his affidavit that he has received back the entire money. Accordingly, the addition of Rs. 11 lacs is deleted. In the result appeal of the assessee is partly allowed.

11. In so far as the validity of reassessment u/s 147 is concerned, first of all, it is seen that assessee has neither filed any return of income and there was categorical information that assessee has deposited cash in bank account for which no proper explanation could be given before the AO in response to notice given prior to the issuance of the notice u/s 148. The factum of cash deposit itself constitutes a material that cash deposit which has not been explained by the assessee itself constitutes the material for arriving at a prima facie belief that the cash deposit represent undisclosed income of the assessee. At the time of recording the reasons it has to be seen whether reasons to belief are based on any tangible information or not, which here in this case is quite ostensible in view of the AIR information which assessee could not explain the same. Accordingly, the validity of reassessment is affirmed. Thus, this issue is decided against the assessee.

12. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 21st December, 2019.

Sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Delhi, Dated 21st December, 2019

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1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT Bench, Delhi
6.	Guard File.