

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH ‘B’ CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ITA No. 246/CHD/2018

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Mangat Singh, S/o Shri Karam Singh, Village-Ferozpur, Mullapur Garibdass,, Tehsil-Kharar, Distt. Mohali.	बनाम VS	The ITO, Ward 6(4), Mohali.
स्थायी लेखा सं./PAN No: DHIPS2788K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Tej Mohan Singh

राजस्व की ओर से/ Revenue by : Shri Paresh Johri, CIT-DR

सुनवाई की तारीख/Date of Hearing : 03.12.2018

उद्घोषणा की तारीख/Date of Pronouncement : 15.01.2019

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee assailing the correctness of the order dated 20.10.2016 of CIT(A)-2 Chandigarh pertaining to 2011-12 assessment year on various grounds wherein the addition made by the AO on account of deposits in the bank account stated to be sourced from sale of agricultural land stood confirmed in appeal.

2. The ld. AR referring to the record submitted that the assessee needs to file a Paper Book consisting of necessary evidences on record which needs to be taken into consideration for determining the issues. The evidences, it was submitted, have not been correctly appreciated. However, considering the orders available on record, it was noticed that the evidences are not a subject matter of discussion as only conclusions on some evidences are drawn. Accordingly, it was deemed appropriate to direct the parties to address the facts on record and a pass over was given pointing out that if necessary, time would be granted.

3. In the pass over proceedings, the ld. AR inviting attention to the assessment order para 2 submitted that the assessee has been considered by the AO to be purely agriculturist and in the year under consideration has

declared agriculture income of Rs. 78,720/-. It was submitted that in his bank accounts maintained with Oriental Bank of Commerce, Mullanpur, deposits of Rs. 3,23,50,500/- odd were found. On query, it was submitted, the assessee had explained that these were deposits made from the sale proceeds of agricultural land measuring 30 Kanal and 12 Marlas in village Ferozpur Bangar, Distt. Mohali and the total amount of which was Rs. 3,71,31,250/-. The said land, it was explained had been sold to the following persons :

1. Shri Dilraj Singh Karta (HUF) S/o Shri Hardeep Singh
No. 1638, Section 39-B, Chandigarh
2. Shri Sukhdeep Singh Karta (HUF) S/o Shri Hardev Singh
No. 576, Sector 11-B, Chandigarh
3. Shri Satpal Singh S/o Shri Jaspal Singh
No. 157, West Avenue, Aamritsar

3.1 Out of the said amount, it was stated that Rs. 47,81,000/- had been received through cheques and Rs. 3,23,00,000/- had been received in cash on 28.01.2011 i.e. on the date of the executed Sale Deed and the cheque amounts were deposited on the next date. The assessee, it was submitted, was required to substantiate the claim that the cash deposit was from the very same agricultural land sold.

3.2 It was submitted that the reply of the assessee was considered to be not sufficient in view of the fact that summons issued to the purchasers returned back with the comment "Left. Returned to sender" and "NSP".

4. The CIT-DR relying upon the orders, on the other hand, submitted that the assessee has failed to substantiate its claim. The affidavit filed by the assessee of Smt. Harjeet Kaur as eye-witness to the transaction has been held to be not relevant as she was sister of the assessee.

5. We have heard the rival submissions and perused the material on record. A perusal of the assessment order shows that the assessee gave the following reply on 12.01.2015 which was also filed in an affidavit dated 08.01.2015, the contents of which are extracted in para 3 of the assessment order and read as under :

- "1. That I am an agriculture land & deriving my livelihood through agriculture activities only.*
- 2. That I have no other source of Income.*
- 3. That during the financial year 2010-11, I have sold my agricultural land situated at village Ferozpur Bangar measuring 30 Kanals & 12 Marias to Sh. Dilraj Singh Karta(HUF) S/o Sh. Hardeep Singh, r/o H.No. 1638 sector 39B Chandigarh, Sukhdeep Singh Karta(HUF) s/o Sh. Hardev Singh r/o H.No. 576 sector 11B Chandigarh and Sh. Satpal Singh s/o Sh. Jaspal Singh r/o H.No. 157, West*

Avenue Amritsar(Pb) for Rs. 3,71,31,250/- Rs. three crore seventy one lac thirty one thousand two hundred and fifty only.

4. *That the sale deed of the said land was executed for Rs.47,81,250/- on/y by the purchaser to avoid the stamp duty and the balance amount was given in cash.*
5. *That out of the above said amount I received Rs. 3,23,50,000/-(Rs. Three crore twenty three lacs & fifty thousand in cash & Rs.47,81,250/- via bankers Cheques on dated 28-01-2011 I deposited these amount in oriental bank of Commerce account.*
6. *That I have no taxable income under the IT Act 1961 and filing my income tax return in response of notice U/S 148 declaring agricultural income which is exempt under the IT Act 1961.*
7. *That I am filing my affidavit explaining the truth of transactions.*

07/01/2015

*Deponent
Mangat Singh*

Verification. Verified that the facts stated above are true & correct to the best of my knowledge belief & nothing has been concealed therein.

07/01/2015

*Deponent
Mangat Singh*

6. It is seen that summons were issued to the purchasers which came back with the following comments :

*"But all the letters returned back with postal remark "**Left Returned to Sender & NSP**". After that their PANs have been traced out from system and noticed that all persons are assessed with Income Tax officer ward- 5(4) & 5(1), Amritsar.*

7. A perusal of the above shows that the Assessing Officer traced the PANs of the three persons and failed to carry out any other activity. A perusal of the impugned order shows that the affidavit of Smt. Harjit Kaur which was filed to support the assessee's claim, was discarded as that being of an interested person. The assessee, as per record is supposed to have also filed the Report of GAMADA which has been discarded on the plea that the Sale Deed registered reflects only an amount of Rs. 47,81,750/-. We find that in the facts of the present case, the tax authorities have proceeded to take action qua the transactions against the most vulnerable person. There is nothing on record to show that the assessee having sold his land continued to have any hold over the purchasers. The AO having full authority to call for their production in the peculiar facts instead of disbelieving the assessee ideally should have cross-checked the facts from the purchasers who consciously chose not to appear before the Department and may have reason to not address the correct facts. At this juncture, it would not be out of context to refer to the grounds raised by the assessee in the present appeal wherein ground No.1 and 10 are general :

2. *That addition made of Rs. 3,23,50,000/- under the provisions of section 68 of the Act is illegal, unjustified and unwarranted by the facts of the case, because the Assessee is an agriculturist and is not maintaining books of A/c.*
 3. *That the AO has not found credit in the books of the Assessee and saving A/c maintained by the Assessee cannot be treated as books of A/c as such addition made cannot be sustained.*
 4. *That the Learned CIT A-(2) ignored the cumulative circumstances of the case which proves that the Assessee deposited Rs. 3,23,50,000/- in cash plus Rs. 47,81,250/- by cheque (in total Rs. 3,71,33,250/-) in the bank after receiving this amount from Dilraj Singh Karta HUF, Sh. Sukhdeep Singh Karta HUF and Sh. Satpal Singh after selling 30 Kanal 12 Maria agriculture land sold on dated 28.01.2011 at Vill. Ferozepur, Distt. Mohali.*
 5. *That the Assessee filed Affidavit dated 08.01.2015 in which the Assessee has explained that he is doing agriculture farming and have no other source of income. The Assessee further stated that the deposit in the bank was made out of sale proceeds of 30 Kanal 12 Maria agriculture land against which the purchaser paid Rs. 47,81,250/- through cheque (executing for Sale Deed) and paid in cash Rs. 3,23,50,000/- in token of the receipt of sale.*
 6. *That the Assessee deposited the said money in his bank. The Learned CIT (A) rejected the appeal of the Assessee treating amount of Rs. 3,23,50,000/- as an unexplained income on account of unexplained cash U7S 68 of the LT.Act 1961.*
 7. *That the assessee has duly explained the source of deposit in the bank, now it is for the department to prove that the Assessee had earned this huge amount in the year under assessment in a day(overnight) and the circumstantial evidence proves that the deposit was made after selling agriculture land.*
 8. *That the Honorable High court of Allahabad in the case of CIT V7s Intezar Ali in ITA No. 162 (2013) dismissed the appeal of the department by accepting source of deposit in the bank was sale consideration of agriculture land. The facts and circumstances of the case is the same as in the case of the Assessee.*
 9. *That the Learned AO did not cross examine the assessee on the point of Affidavit filed by the Assessee and her sister, nor rebutted the content of the Affidavit, which remain uncontroverted, must inverbally be accepted as true and reliable as held in case of Mehta Parikh & Co. V7s CIT (1956) 30 ITR 186, 187(S.C) and Kanshma V7s CIT(All) 142 ITR 61 8.*
8. On a perusal of the record, it is seen that admittedly the tax authorities have taken the easy route by insisting upon the taxpayer to produce the parties on whom he admittedly had no control. The taxpayer after having sold his land has no hold to cause the reluctant purchaser to appear. In the facts of the present case, admittedly 30 Kanal 12 Marla have been sold in village Ferozepur Bangar, Distt. Mohali on 28.01.2011 as per the Sale Deed which has been taken note of by the Department. The fact that it reflected an amount of Rs. 47,81,250/- is a matter of fact. The short issue for consideration was the value of the land sold at the relevant point of time. The AO in the facts of the present case should have carried out necessary enquiries as he had the PAN details of the purchaser. Accordingly, we find that in the peculiar facts and

circumstances of the present case, the Tax Authorities have failed to exercise their powers which they are vested with and in the face of the inability of the assessee to produce the concerned purchasers, the Department who has the PAN numbers and has traced the parties in Amritsar should have no hesitation in calling forth and examining the issues as the purchasers may be front-men of some builders etc. having deep pockets. The relevant facts in the form of the value of the specific property at the relevant point of time may also be a relevant aspect to be taken into consideration. Accordingly, in the interest of justice, the issue is restored back to the file of the AO with a direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. The assessee in its own interests is advised to place all relevant facts and evidences on record.

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

Order pronounced in the Open Court on 15.01. 2019.

Sd/-

(अन्नपूर्णा गुप्ता)
(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

“पूनम”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant -
2. प्रत्यर्थी/ The Respondent -
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

Sd/-

(दिवा सिंह)
(DIVA SINGH)

न्यायिक सदस्य/ Judicial Member

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar