

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. N. S. Saini, Accountant Member

ITA No. 6431/Del/2018 : Asstt. Year : 2009-10

Shri Rajesh Kumar, VPO Barauli, Panipat-132103	Vs	Income Tax Officer, Ward-5, Panipat
(APPELLANT)		(RESPONDENT)
PAN No. AVTPK3761G		

Assessee by : Sh. S. Krishna, Adv.

Revenue by : Sh. S. L. Anuragi, Sr. DR

Date of Hearing: 04.04.2019

Date of Pronouncement: 11.04.2019
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ORDER

This is an appeal filed by the assessee against the order of CIT(A), Karnal dated 24.07.2018.

2. The assessee has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the AO's order dated 15.12.2016, returning perverse findings of fact, which are contrary to the evidence as before her.

2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in sustaining addition u/s.69 in a sum of Rs.8,75,000.

The Assessee seeks leave to add to, forego, alter, or otherwise modify all or any of the grounds of appeal as raised herein."

3. The sole issue involved in this appeal is that the Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.8,75,000/- u/s 69 of the Act.

4. The brief facts of the case are that the Assessing Officer observed that the assessee has invested Rs.8,75,000/- in purchasing a property

valued Rs.33,25,000/- with other co-parcenors during the during the year under consideration. The share of the assessee was 1/5th of the total investment. However, the assessee did not file any return of income u/s 139 of the Act. Therefore, he asked the assessee to explain source of the funds for making investment in the property. The assessee explained that the source of the investment was the amount received from his mother who had received maturity proceeds of fixed deposit amounting to Rs.7,10,000/- on 26.06.2016 and the balance amount of Rs.1,65,000/- was the agricultural income earned by the assessee.

5. The Assessing Officer observed that the property was purchased on 05.06.2008 and amount of Rs.7,10,000/- was withdrawn on 26.07.2007 i.e. a year in advance and hence, correlating withdrawal with purchase consideration was not proved by the assessee. The Assessing Officer also observed that no agricultural income was shown in the return of income and nor was there any ownership of agricultural land. Hence, he added Rs.8,75,000/- to the income of the assessee u/s 69 of the Act.

6. On appeal, the Commissioner of Income Tax (Appeals) confirmed the action of the Assessing Officer on the ground that there was no evidence linking the funds with the explanation in terms of FD of the mother of the appellant and the stated agricultural income.

7. The Authorized Representative of the assessee during the course of hearing filed before me copy of the saving bank account with Canara Bank being A/c No. 6261 of the mother of the assessee. From this he pointed out that on 03.06.2007, there was a credit by the bank of Rs.7,07,278/- towards maturity proceeds of FDR. He pointed out that from this account, there was withdrawal on 26.06.2007 of Rs.7,10,000/-. He further filed bank account of the assessee with State Bank of India being A/c No.10086200392 from where it was pointed out that on 26.06.2007 there was deposit of Rs.7,10,000/-. Thereafter, the assessee issued cheque of Rs.8,75,000/- on 27.06.2007 on

this bank account and made payment of Rs.8,75,000/- towards property. Thus, it was a submission that the source of investment in the property was explained by filing all the necessary evidences and therefore, addition made was not justified.

8. On the other hand, the Id. Departmental Representative relied on the orders of the lower authorities.

9. We have heard the rival submissions and perused the orders of lower authorities and the material available on record. In the instant case, the Assessing Officer observed that the assessee has purchased a property in which he is the owner of 1/5th of share and paid purchase consideration of Rs.8,75,000/- towards his share in the property. The Assessing Officer was not satisfied with the explanation of the assessee and made addition of Rs.8,75,000/- u/s 69 of the Act on the ground that the assessee had withdrawn the amount of Rs.7,10,000/- from the mother's account for purchase of property one year before it cannot be said that the cash withdrawal was same which was deposited in the account of the assessee.

10. On appeal, the Commissioner of Income Tax (Appeals) confirmed the action of the Assessing Officer.

11. Before me, the Authorized Representative of the assessee submitted that the observation of the Assessing Officer that withdrawal of cash of Rs.7,10,000/- from the mother's account was one year prior to the purchase of the property is factually incorrect as it will be observed from the bank account of the mother with Canara Bank that the amount was withdrawn on 26.06.2007 and was deposited in the bank account of the assessee on the very same day as will be seen from the bank account of the assessee with State Bank of India.

12. The Departmental Representative supported the orders of the lower authorities.

13. We find that the Assessing Officer made addition of Rs.8,75,000/- in the hands of the assessee on the ground that registered sale deed by which the assessee purchased property co-jointly with others was registered on 05.06.2008 which falls in the previous year relevant to the assessment years 2009-10.

14. A perusal of the said registered sale deed at page 3 thereof shows that Rs.8,75,000/- was paid vide cheque no. 634101 drawn on State Bank of India, Kishanpura, Panipat. Further perusal of the assessee's bank statement maintained with State Bank of India, Kishanpura, Panipat being savings bank A/c No. 00000010086200392 shows that the said cheque was paid by the assessee on 27.06.2007.

15. Thus, it is observed that the assessee paid consideration of Rs.8,75,000/- on 27.06.2007 i.e. during the previous year relevant to the assessment year 2008-09. No material has been brought before me to show that the assessee made payment of Rs.8,75,000/- during the assessment year under consideration. In the above circumstances, I find no justification for making addition of Rs.8,75,000/- during the year under consideration. Therefore, the addition of Rs.8,75,000/- is hereby deleted.

16. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Open Court on 11/04/2019).

Sd/-
(N. S. Saini)
Accountant Member

Dated: 11/04/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR