

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री रमेश सी० शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RAMESH. C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 219/JP/2019  
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Bhawani Singh Shekhawat 137, Sagar Road, Amer, Jaipur.	बनाम Vs.	The ITO, Ward-7(4) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BGXPS 3521 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri P.C. Parwal (C.A.)  
राजस्व की ओर से / Revenue by : Shri A.K. Mahala (JCIT)

सुनवाई की तारीख / Date of Hearing : 08/04/2019  
उदघोषणा की तारीख / Date of Pronouncement: 10/04/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 28.12.2018 of the Id. CIT(A), Jaipur for the assessment year 2010-11.

The assessee has raised the following ground:-

*"1. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 11,38,230/- by treating the source of investment in agricultural land to this extent as unexplained.*

*2. The appellant craves to alter, amend and modify any ground of appeal.*

*3. Necessary cost be awarded to the assessee.”*

2. The only issue arises in this appeal of the assessee is relating to the addition of Rs. 11,38,230/- on account of unexplained investment in the plot of land. During the year under consideration the assessee has made investment of Rs. 34,83,230/- (including registration charges of Rs. 1,83,230/-) in purchase of immovable property situated at 1/38, Golimar Garden, Amer Road, Jaipur. In order to verify the source of said investment the AO asked the assessee to explain the source. In response, the assessee has submitted reply dated 16.06.2016 explaining the source of investment in purchase of the plot of land in question. Apart from showing the loan from Rajasthan Textiles Development Corporation as well as from other persons, the assessee has also explained the source of sale proceeds of agricultural land originally owned by the father of the assessee and after the death of the father of the assessee, his brother, sisters and mother became the legal heirs of the land. The AO did not accept the source of fund from sale of agricultural land and consequently made the addition of Rs. 11,83,230/- on account of unexplained investment in the hand of the

assessee. The assessee challenged the action of the AO before the Id. CIT(A) and reiterated its contention that the source of Rs. 11,83,230/- is the sale proceeds of agricultural land as well as assessee's income of the past years. The assessee also filed gift deed from the three sisters of the assessee as well as mother and claim that a sum of Rs. 12 lacs received by the assessee from three sisters and mother out of the sale consideration of the agricultural land. The Id. CIT(A) did not accept the contention of the assessee on the ground that the land was sold in the year 2006 and the present plot of land was purchased in the year 2009 therefore, it is highly unlike that the sale proceeds of the land was kept in house by the assessee and deposited in the bank only at the time of purchase of the plot of land in the year 2009. Thus, the Id. CIT(A) has confirmed the addition made by the AO.

3. Before us, the Id. AR of the assessee has submitted that the assessee has made total investment of Rs. 34,83,230/- including the expenditure on registry out of which Rs. 28,00,000/- were made by cheque and payment of Rs. 6,83,230/- was made in cash. Since, the assessee also deposited a sum of Rs. 5,00,000/- before issuing the cheque therefore, the AO as made an addition of Rs. 11,83,230/-. The source of cash payment and cash deposit in the bank of Rs. 11,83,230/-

is out of the sale proceeds of agricultural land sold on 17.03.2006 for a consideration of Rs. 18,66,000/-. Further the assessee has also shown the source being saving from the income declared for the assessment years 2009-10 & 2010-11 of Rs. 3,53,690/- and Rs. 4,14,720/- respectively. Thus, the Id. AR has submitted that the assessee has explained the source more than the said amount of Rs. 11, 83,230/-. He has referred to the gift deeds executed by the mother and three sisters who are co-owners of the land sold. Therefore, the assessee was having sufficient funds to the deposit of Rs. 5,00,000/- in the bank account and also for making payment of Rs. 6,83,230/- in cash. Thus, the Id. AR has submitted that the addition made by the AO and confirmed by the Id. CIT(A) may be deleted.

4. On the other hands, the Id. DR has submitted that the land in question was sold in the year 2006 whereas deposits were made in the bank in the year 2009 as well as the cash payment was made for purchase of land in the year 2009. Therefore, it cannot be accepted as source of the deposit made in the bank as well as cash payment for purchase of plot of land after the gap of three years when the assessee has not given satisfactory explanation for keeping the cash at house for such a long time. As regards saving from the income, the Id. DR has

submitted that the income declared by the assessee was not sufficient to meet even household expenditure therefore, the claim of saving is not acceptable. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. In response, to the show cause notice issued by the AO regarding the source of investment of Rs. 34,83,230/- for purchase of immovable property situated at 1/38 Golimar Garden, Amer Road, Jaipur the assessee in its reply dated 16.06.2016 has given the details as under :-

Details of cost of purchase			Source of Investment		
Date	Mode of payment	Amount	Date of receipt	Particulars	Amount
21.05.2009	Cheque	5,00,000/-	04.06.2009	Loan from Rajasthan Textiles Devop. Corp.	8,00,000/-
05.06.2009	Cheque	5,00,000/-	04.06.2009	Loan received from Raj Kumar  Balance available in the bank out of sale proceed	2,00,000/- 3,00,000/-
08.06.2009	Cheque	5,00,000/-	06.06.2009	Loan received form Mohit Jewellers	10,00,000/-
13.06.2009	Cheque	5,00,000/-			

06.07.2009	Cheque	5,00,000/-	06.07.2009	Cash deposit in bank out of sale of agriculture land in 2006	5,00,000/-
10.06.2009	Cash	5,00,000/-	10.06.2009	Cash payment out of sale of agriculture land in 2006	5,00,000/-
10.06.2009	Cash registry charges	1,83,230/-	10.06.2009	Cash expenses out of sale of Agriculture land in 2006	1,83,230/-
Total purchase cost		34,83,230/-	Total source		34,83,230/-

Thus, from the details filed by the assessee the AO noted that the assessee has made a cash payment of Rs. 6,83,230/- and the balance payment was made through cheque however, the assessee has also made a deposit of Rs. 5,00,000/- in cash in the bank account before issuing the cheque dated 06.07.2009. Accordingly, the AO proposed to make the addition of Rs. 11,83,230/- on account of unexplained investment. The assessee submitted that the source of the said amount of Rs. 11,83,230/- was out of sale proceeds of agricultural land sold in the year 2006 by the assessee, his brother, mother and three sisters. The AO noted that the assessee's share in the sale proceeds of land is only Rs. 3,11,000/- and therefore, the claim of the assessee was not

accepted. On appeal, the assessee filed the gift deed from three sisters and mother giving their share in the sale proceeds of agricultural land to the assessee of Rs. 3,00,000/- each and thereby the assessee claimed that the source of investment to the extent of Rs. 12,00,000/- was available with the assessee on account of these gift of the sale proceeds of agricultural land made by his mother and three sisters. Further, the assessee has also claimed that there was a saving from the declared income from the assessment years 2009-10 and 2010-11 as well as withdrawal from the bank of Rs. 3,00,000/- on 09.06.2009. The details of the total source of funds as claimed by the assessee are as under:-

"4. Considering the above facts, the assessee has availability of cash funds of Rs. 25,79,410/- as under:-

<i>Share of in the sale proceeds of agricultural land</i>	<i>Rs. 3,11,000/-</i>
<i>Gift from mother and sisters out of sale proceeds of agricultural land</i>	<i>Rs. 12,00,000/-</i>
<i>Cash withdrawals from bank on 09.06.2009</i>	<i>Rs. 3,00,000/-</i>
<i>Income declared in AY 2009-10</i>	<i>Rs. 3,53,690/-</i>
<i>Income declared in AY 2010-11</i>	<i>Rs. 4,14,720/-</i>
<i>Total</i>	<i>Rs. 25,79,410/-"</i>

After giving a deep thought on the facts and circumstances of the case as well as analyzing the relevant details, we find that once the mother

and three sisters of the assessee have confirmed the gift to the assessee out of the sale proceeds it is clear that they have not claimed their share in the sale proceeds of the agricultural land and consequently the entire sale proceeds remained with the assessee and his brother. Therefore, even if taking half share of the sale proceeds of Rs. 18,66,000/- the share of the assessee comes to Rs. 9,33,000/-. Further, it is also the matter on record that as per the details of the bank account the assessee has claimed withdrawals of Rs. 3,00,000/- on 09.06.2009 which is prior to the payment of Rs. 6,83,230/- on account of purchase of plot of land in question. Therefore, even without considering any saving for the assessment years 2009-10 and 2010-11 if the, half share in the sale proceeds of agricultural land and the bank withdrawals made by the assessee of Rs. 3,00,000/- on 09.06.2009 is taken into consideration the assessee has established the availability of funds of Rs. 11,83,230/-. When there is no other use of sale proceeds of agriculture land then the said amount is very much available with assessee. We find that as per the bank statement filed by the assessee at page 9 to 18 of the paper book there is a withdrawals of Rs. 3,00,000/- on 09.06.2009. Hence, in the facts and circumstances of the case, we hold that the assessee has explained the source of Rs.

11,83,230/- on account of investment made in the purchase of plot of land and accordingly the addition made by the AO is deleted.

In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 10/04/2019.

Sd/-  
( रमेश सी० शर्मा )  
(Ramesh. C. Sharma)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10/04/2019.

\*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Bhawani Singh Shekhawat, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-7(4), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 219/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar