

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'SMC': NEW DELHI)**

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER

**ITA Nos.:- 2107, 2111 & 2112/Del/2018
(Assessment Years: 2013-14, 2012-13 & 2014-15)**

Abdullah Siddique S/o Shri Abdul Allam, Mohalla-Sheikh Zadgan, Sahkari Krishi Yantra, Sarahanpur, Uttar Pradesh	Vs.	ITO Ward- 1 Saharanpur
PAN No: BGZPS9799C		
APPELLANT		RESPONDENT

Assessee by : None.
Revenue by : Sh. S.L. Anuragi, Sr. DR
Date of Hearing : 13.06.2019
Date of Pronouncement : 25.06.2019

ORDER

PER DIVA SINGH:

These three appeals filed by the assessee assail the correctness of the separate Orders dated 05.12.2017 of CIT(A)- Muzaffarnagar, pertaining to 2012-13, 2013-14, 2014-15 Assessment Years on identical grounds. Accordingly noting that the issues raised in the appeals rely upon similar set of facts and circumstances a consolidated Order for the years under consideration is being passed.

2. However it is worth mentioning that at the time of hearing, no one was present on behalf of the assessee. The appeals were passed over. In the second round also the assessee remained unrepresented. Considering the fact that on the last date of hearing i.e. 06.03.2019 the appeals were adjourned on the written request of the assessee in the background where on the earlier date fixed for hearing i.e 10.09.2018, the appeal was adjourned on the written request of the assessee and yet again on 11.12.2018, the assessee failed to appear. In these circumstances since despite information the assessee has

failed to put in any appearance it was deemed appropriate to proceed with the present appeal *ex parte qua* the assessee appellant on merits.

3. The Ld. Sr. DR Mr. Anuragi was heard who submitted that the facts, circumstances and position of law in each of the appeals on identical grounds remains the same. Accordingly, the facts, arguments and reasons considered in ITA 2107/Del/2018 may be applicable to the remaining two appeals. On considering the record, the submissions of the ld. Sr. DR were found correct on merits.

4. Accordingly, for ready reference the grounds from ITA 2107/Del/2018 are being reproduced hereunder:

“1. The Ld CIT(A) has wrongly confirmed the agriculture income of Rs.325000/- only assumed by the Ld ITO despite submission of arguments and material of higher agriculture income by the appellant and the Ld ITO having not brought out any material whatsoever of his assumption of agriculture income.

2. The Ld. CIT (A) have grossly erred on facts and law in confirming an addition of Rs 6,25,343/- to the income of the appellant as unexplained cash deposits in the Bank Account under section 69 A of the Income Tax Act 1961.

3. The appellant craves for leave to add, amend, modify or withdraw any of the grounds of appeal.”

5. The relevant facts of the case are that the assessee in response to notice u/s 148 of Income Tax Act, 1961, returned an income of Rs. 2,02000/-. The AO in the course of the scrutiny proceedings required the assessee to explain the deposits of Rs. 35,26,150/- in State Bank of India and Punjab National Bank accountant nos. 10926030202 and 3726000102001305 respectively. The assessee in response thereto submitted that his main source of income is from agriculture. The deposits in the bank were stated to be from sale of crops and poplar trees. It was claimed that he had also taken land on contract to grow crops. The assessee was also found to have paid MBBS fees for his daughter Miss Sabiya Abdullah amounting to approximately Rs. 7,00,000/- per annum. Accordingly, considering the explanation and the evidences addition of Rs. 32,16,150/- was made by the A.O. in the following manner:

“As per the documents produced the assessee is having ; approximately 65 bighas of agricultural land and as per the prescribed rate an average of Rs.4000/- to 5000/- agricultural income is earned from per bigha land, therefore, a total of Rs.3,25,000/- is considered as agricultural income of the assessee per annum. It is also worthwhile to mention here that in the return filed in response

to notice u/s 148 of the assessee has not shown any income under the head agricultural income, whereas he is stating that his total source of income is from agriculture. Therefore, even if the contention of the assessed is accepted that he is enjoying agriculture income, the same is taken of Rs.3,25,000/- and after deducting Rs.3,25,000/- from total deposited the balance amount of Rs.3201150/- remains unexplained case deposits as the onus lies on the assessed to prove the capacity and genuineness of the transaction. Reliance is placed on Manoj Aggarwal VS DCIT (ITAT, SB Del) 113 ITD 377 and VIT VS K. Chinnathamban (S.C.) 292 ITR 682."

- 6.** The assessee carried the issue in appeal before the CIT(A) who considering the facts, submissions and the evidences granted part relief holding as under:

"7. The facts of the case, submission of the appellant and remand report of the AO have been gone through. In this case the appellant has filed return of income of 09-05-2016 by declaring income of Rs.2,02,00,0/- u/s 44AD of the Act. There were cash deposits of Rs.35,26,150/- in savings bank account maintained by the appellant with State Bank of India and Punjab National Bank. It was explained that the cash deposits in the bank account reflect agricultural receipts from sale of crops, Poplar trees. The AO has estimated the agricultural income from the appellant from 65 bighas of land at Rs.325.000/- and has made the addition of balance amount of Rs.32,01,150/- as unexplained cash deposits u/s 69A of the Act. The AR during the appellate proceedings has stated that the appellant has earned income from business and agricultural activities and further stated that the appellant has shown business receipts of Rs. 25,20,000/- from sale of seeds, manures, seedlings etc on which profit of Rs.2,02,000/- has been shown u/s 44AD of the Act. The AR argued that there are frequent cash withdrawals from these bank accounts which are the source of subsequent deposits. The AR argued that the AO has not given any benefit out of such cash withdrawals. The detailed submission of the AR has been reproduced as above.

From the facts of the case and material on record it is noted that there are frequent cash deposits/cash withdrawals in both the bank accounts of the appellant. The appellant has shown business turnover of Rs.25,20,000/- in the return of income on which income of Rs.2,02,000/- has been shown u/s 44AD of the Act. The AO has not disputed these facts. From these facts it can be logically inferred that amount of Rs.35.26,150/- deposited in the bank accounts of the appellant was on account of business receipts of the appellant. There are frequent cash deposits and withdrawals in the bank accounts of the appellant. In these circumstances peak credit theory should have been applied by the AO to compute the income out of transactions recorded in the bank statements. On this basis after reducing opening balance in the bank accounts, the peak credit for both the bank account works out to Rs.9,50,343/-. The AO has himself estimated the agricultural income of the appellant at Rs.325000/-. After giving credit of agricultural income of Rs.3,25,000/- and business income of Rs.2,02,000/-, there remains unexplained credit of Rs.4,23,343/-. Under the facts it is therefore held that the AO was justified to make addition to the extent of Rs.4,23,343/- which is upheld. The balance addition is hereby deleted. Grounds of appeal Nos.2 to 8 are hereby partly allowed."

- 7.** Aggrieved by this the assessee is in appeal before the ITAT.

8. The Ld. Sr. DR relying upon the impugned order submitted that already more than adequate relief has been granted to the assessee and nothing is placed on record to justify any further relief. It was submitted that even if the issue had to be decided on the basis of the estimates, even then the general arguments that the cash withdrawals constituted the source of the deposits without any evidence cannot out rightly be accepted. Nothing has been placed before the ITAT to assail the said finding or grant any further relief.

9. I have heard the submissions and perused the material available on record, I find that the Ld. CIT(A) in the order passed has been more than fair. There is no argument, evidence or fact on record justifying any further relief. Accordingly the grounds raised for want of any justification for modifying the order passed are rejected. The finding under challenge is upheld. Said Order was pronounced on the open Court at the time of hearing itself.

10. In the result, the appeal of the assessee is dismissed.

11. A perusal of facts in ITA No. 2111/Del/2018 show that in the facts of the present case also the assessee had returned an income of Rs. 1,27,300/- pursuant to notice u/s 148 of IT Act. The deposits of Rs. 35,73,000/- in the same saving bank accounts maintained with State Bank of India and Punjab National Bank were required to be explained.

12. Similarly, in ITA No. 2112/Del/2018 it is seen that pursuant to notice u/s 148 of IT Act the assessee returned an income of Rs. 2,32,210/-. Similarly, in the very same two bank accounts the deposits amounting to Rs. 33,82,691/- were required to be explained. In the year under consideration also the assessee was found to have paid MBBS fees for his daughter Miss Sabiya Abdullah amounting to Rs. 7,00,000/- per annum.

13. Considering similar evidences and reasons additions made by the AO in the respective years have been a subject matter of part relief by the CIT(A). The CIT(A) it is seen relying upon the very same reasoning and facts granted part relief considering the peak credit for both the accounts in the respective years and relying upon the estimate of the AO of the agricultural income. Accordingly, for similar reasons as set out in ITA No. 2107/Del/2018 for want

of any argument, fact or evidence justifying any further relief the assessee's appeals are dismissed. Said Order was pronounced in the open Court at the time of hearing itself.

14. In the result, the appeals of the assessee are dismissed.

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

Dated: 25.06.2019

Bidhan/AG(Chd)/Poonam(CHD)

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	13.06.19
Date on which the typed draft is placed before the dictating Member	14.06.19 17.06.19 20.06.19
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	