

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F + SMC' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 04/DEL/2018 (A.Y 2009-10)

Yogendra S/o Late Raghubir Piyush Vishwa & Co. CA, A-109, First Floor, Meerut Mall, Near Rani Mill, Delhi Road, Meerut AFMPY5487L (APPELLANT)	Vs	ITO Ward-2(4) Aayakar Bhawan, Meerut (RESPONDENT)
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Appellant by	Sh. Vinod Kumar Goel, Adv
Respondent by	Sh. Pradeep Singh Gautam, Sr. DR

Date of Hearing	29.01.2020
Date of Pronouncement	18.02.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 09/11/2017 passed by CIT(A)-Meerut, for Assessment Year 2009-10.

2. The grounds of appeal are as under:-

“1. That each ground of appeal is without prejudice to each other.

2. That the proceedings u/s 148/144 of the Income Tax Act, 1961 is illegal, unjustifiable and bad in law.

3. That the Ld. A.O passed the assessment order u/s 148/144 of the Income

Tax Act, 1961 but the order had to be passed u/s 147/144 of the said Act in this case.

4. *That on the facts and in the circumstances of the case and in law, Ld.CIT(A) erred in law for not allowing the followings:-*

(i) *That the Ld CIT(A) has given relief only for Rs. 1,00,000/- each (Total Rs. 2,00,000/-for both the brothers) as cash in hand / accumulated savings instead of Rs. 2,00,000/- each (Total Rs. 4,00,000/-for both the brothers) as per day to day cash summary submitted by the appellant .*

(ii) *That the Ld CIT(A) has not given any relief for Sale of trees/agriculture income of Rs. 2,72,000/- each (Total Rs. 5,44,000/- for both the brothers) as per day to day cash summary submitted by the appellant . instead of the fact that both the brothers were engaged in only agricultural activities during the year under consideration and also in past years.*

5. *That subject to the prejudice to the above grounds and on the facts and in the circumstances of the case Ld CIT(A) erred in law for not accepting our argument that only 50% addition should be made in the hand of the appellant.*

3. The assessee is a farmer engaged in the agricultural activities and is not filing any return of income as he is not having the gross total income which exceeds the basic exemption limit available to the resident individual, during the year under consideration. The assessee is having three brothers and sold the rural agricultural land. But all of them were not having any bank account and one of them is having a joint saving account with the assessee. Due to which the whole amount of consideration is deposited in the aforesaid joint bank account in which the assessee is a primary account holder whereby the income tax notice is issued only on the assessee. The assessment is completed u/s 148/144 and additions of Rs. 32,12,000/- were made to the income of the

assessee.

3. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A) and the CIT(A) reduced the total income of Rs.10,06,000/- as per following calculations:-

Cash Deposited up to 17.06.2008 (date of peak credit in bank account)		23,54,500/-
Less:-		
Cash withdrawn up to 17.06.2008 from the same bank account As per A.O remand report	5,45,500/-	
Cash in hand of both brothers As discussed in para a above	2,00,000/-	
Cash withdrawn from bank in immediate preceding year As discussed in para b above and as per A.O remand report	4,53,000/-	
Agricultural land sold cash received as per sale deed-rampal As discussed in para e above	1,50,000/-	13,48,500/-
Remaining cash deposited unexplained		10,06,000/-

4. The Ld. AR submitted that the CIT(A) has not given the cognizance of transaction of agricultural land which was sold and the consideration is for all the three brothers as well as the assessee. Therefore, the joint bank account should be taken into account which is also in the name of the brother of the assessee while calculating the taxability. The Ld. AR submitted that the total income reduced to Rs. 10,06,000/- has to be again taken half only i.e. 50%

only as the assessee's brother also has received sale consideration.

5. The Ld. DR relied upon the assessment order and the order of the CIT(A).

6. We have heard both the parties and perused the material available on record. It is submitted by the assessee that the sale consideration was received by joint account holders including the brother of the assessee and the same was not properly taken into account either by the Assessing Officer as well as by the CIT(A). Therefore, it will be appropriate to remand back this issue to the file of the CIT(A) to take a proper cognizance of the share and taxability of both the brothers. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. The appeal of the assessee is partly allowed for statistical purpose.

7. In result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on 18th FEBRUARY, 2020.

**Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 18/02/2020
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	30.01.2020
Date on which the typed draft is placed before the dictating Member	30.01.2020
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	18.02.2020
Date on which the final order is uploaded on the website of ITAT	18.02.2020
Date on which the file goes to the Bench Clerk	18.02.2020
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	