

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DIVISION BENCH, CHANDIGARH**

**श्री संजय गर्ग, न्यायिकसदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य**  
**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND**  
**Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**आयकरअपीलसं./ITA No. 507/CHD/2015**

निर्धारणवर्ष / Assessment Year : 2011-12

Shri Anoop Saggur, M/s Aristo Industrial Corporation Kalsian Street, Miller Ganj, Ludhiana	बनाम	The ITO, Ward V(1), Chandigarh
स्थायीलेखासं./PAN NO: ARSPS7328E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे/Assessee by : Shri Sudhir Sehgal, Advocate &  
Shri Pankaj Bhalla, CA

राजस्वकीओरसे/ Revenue by : Shri Chandrajit Singh, CIT DR

सुनवाईकीतारीख/Date of Hearing : 10.10.2019

उदघोषणाकीतारीख/Date of Pronouncement : 03.01.2020

**आदेश/Order**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 18.03.2015 of the Commissioner of Income Tax (Appeals)-2, Ludhiana [hereinafter referred to as 'CIT (A)'].

2. The assessee in this appeal has taken following grounds of appeal:-

1. *That the Ld. CIT(A)-II, Ludhiana has wrongly passed the order u/s 250(6) of the Income Tax Act, 1961 against law & facts of the case.*
2. *That the Ld. CIT(A)-II erred in law & fact in confirming arbitrary addition of Rs. 64,50,000/- on account of cash deposited in bank account of the assessee maintained with HDFC Bank without any base & reason thereof.*
3. *That the Ld. CIT(A) failed to discharge the onus and failed to appreciate the fact that the Ld. A.O. also failed to discharge the onus which the statute itself confers on them about as to why the explanation given by assessee is not satisfactory and wherefrom the said money has come in terms of section 69 of the Act, when the assessee has already discharged his onus.*
4. *That the addition sustained by Ld. CIT(A) u/s 69 of the Act, is without appreciating the facts that the said amount has been duly recorded in books of accounts and such a hypothetical addition is in contravention of provision of section 145 of the Act.*
5. *That the Ld. CIT(A) has erred in not admitting that the impugned assessment order is illegal, hypothetical, arbitrary and need to be set aside as such.*
6. *That the appellant craves, leave to vary, alter or add any grounds of appeal.*

3. A perusal of the above grounds of appeal reveal that the sole issue raised by the assessee in this appeal is relating to the addition of Rs. 64,50,000/- made by the Assessing Officer on account of unexplained cash credits in the bank account of the assessee.

4. The brief facts relating to the issue are that the return of the assessee for the year under consideration declaring income of Rs. 8,18,000/- was filed by the assessee on 24.08.2011. The return was selected for scrutiny under CASS on account of "Heavy cash deposits made by the assessee in his saving bank account maintained with HDFC Bank Ltd." The assessee submitted the details of cash deposits made in the bank account on different dates during the months of June and July 2010 amounting to Rs. 64,50,000/- and contended that he had received Rs. 70,00,000/- as advance against sale of plot in the year 2006-07. The assessee contended that the cash deposits amounting to Rs. 64,50,000/- were made out of the advance received of Rs. 70,00,000/- in the year 2006-07. The Assessing Officer thereafter asked the assessee to furnish inter alia the following details:-

- i. Documentary evidence in respect of the ownership of plot for the sale of which the appellant had claimed to have received Rs. 70,00,000/- as advance.*
- ii. Documentary evidence in respect of deal made in the year 2006-07 for which advance of Rs. 70,00,000/- was received.*
- iii. Details of persons from whom advance was received.*
- iv. Details of broker.*
- v. Details of witnesses.*
- vi. Date of cancellation of deal.*

*vii Details of personal balance sheet filed by the appellant reflecting the cash in hand of Rs. 70,00,000/-. In this regard the AO asked the appellant to file details of any return filed in this regard.*

The assessee furnished the required documents to the Assessing Officer and further explained that the assessee was having 1/5<sup>th</sup> share in the land in question. That all the five co-owners have entered into an agreement to sell the aforesaid 5 acres of land for Rs. 3.60 crore per acre with MGF Group on 7.11.2005. That Mr. Parveen and Sharnjit Singh of Mohali represented on behalf of the MGF Group. That amount of Rs. 3.50 cores was received as earnest money out of which the assessee / appellant received Rs. 70 lacs as per his share. However, the proposed purchasers did not turn up after the payment of earnest money for execution of the sale deed. Therefore, a dispute arose between the assessee and other co-owners on the one hand and the proposed purchasers i.e MGF Group on the other hand. Since the MGF Group did not turn up to execute the sale deed, therefore, as per agreement, the assessee alongwith other co-owners forfeited the aforesaid earnest money received of Rs. 3.50 crores. However, since the dispute was going on, the money was kept by each of the co-owner in safe custody and was not deposited in the bank account. The assessee-appellant thereafter received a notice u/s 148 on 4.5.2010 for reopening of the assessment for assessment year 2006-07. Thereafter, as per the advice given by his counsel, the money amounting to Rs. 64,50,000/- was

deposited in the bank account. That the amount of Rs. 70 lacs as cash in hand was duly reflected in the balance sheet which was filed before the Assessing Officer during the assessment proceedings u/s 148 of the Act. That apart from that the assessee-appellant had also filed Wealth Tax Returns, wherein, the possession of the aforesaid amount of Rs. 70 lacs was duly reflected. The requisite details, as called for by the Assessing Officer, were also submitted. It was also explained that there was no broker in the deed and further that there was no cancellation deed executed till date. The other documentary evidence, as required by the Assessing Officer, were also supplied. The Assessing Officer, however, did not agree with the contention of the assessee observing that there was a gap of more than 4½ years in receiving the cash from the aforesaid transaction and depositing of the same in the bank account and that it was not probable for a person to keep such a cash in hand. He observed that the assessee had failed to prove the amount deposited in the bank account in the financial year relevant to the assessment year under consideration was the same that was received as earnest money on 7.11.2005. He, therefore, made the impugned addition into the income of the assessee.

5. The Ld. CIT(A) also confirmed the additions so made by the Assessing Officer observing that though the appellant might have entered into an agreement for sale of land against which he had received

Rs. 70 lacs, however, that by itself did not imply that cash deposits made almost 4 ½ years after the date of agreement would automatically stand explained from that source. He, therefore, held that the Assessing Officer was justified in adding this amount to the total income of the assessee.

6. Being aggrieved by the order of the CIT(A), the assessee has come in appeal before us.

7. We have heard the rival contentions of the Ld. Authorized Representatives of both the parties and have also gone through the records. At the outset, Ld. Counsel for the assessee has submitted that the lower authorities have not doubted the receipt of amount of Rs. 70 lacs by the assessee as earnest money vide agreement to sell dated 7.11.2005 from MGF Group. The Ld. Counsel has further submitted that all the documents to show that there was ongoing dispute with the MGF Group were furnished before the lower authorities. He, in this respect has relied upon the following documentary evidence:-

“a. Copy of biana was seized during survey u/s 133 on MGF Group on 18.06.2009. The case of the assessee was referred to the concerned A.O. for A.Y. 2006-07 and case of the appellant was reopened u/s 148 and the assessment was completed with no adverse finding in this regard (Refer Page No. 65 to 67 of the Paper Book- I and copy of reasons recorded are at page 153 of PB-I.

b. Presence was recorded of all the co-sellers in the form of affidavit, dated 17.04.2006 before the Tehsildar. (Placed in the Paper Book at pages 175 to 176 of the Paper Book-II).

c. Statement / Halfia Bian of the assessee and other co-sellers before the DSP narrating the facts as noted above given at Page No. 179 to 189 of the Paper Book-II.

d. Copy of complaint filed by Co-buyer to the Superintendent of police by the co-buyer to agreement to sell dated 07.11.2005 (Refer Page No. 177-178 of Paper Book-II).

e. Report of DSP, Jagraon dated 15.04.2013 wherein he recorded his satisfaction in this regard at Page No. 190 to 192 of the Paper Book-II.

f. Report of SSP, Ludhiana to ADGP, Punjab wherein he recorded his satisfaction in this regard at Page No. 193 to 194 of the Paper Book-II.”

The Ld. counsel has further submitted that the case of the assessee was not the alone case, whereas, there were other four co-sellers of the property, who had received Rs. 70 lac each. That the other co-owners had also deposited in bank the same amount in financial year 2010-11 and their assessments have been completed under various section i.e. 147/143(3) & 153A/143(3) of the Act, wherein, on similar facts and circumstances after making detailed enquiries on the similar facts, the different Assessing Officers have accepted the deposit of amount in their respective bank accounts in financial year 2010-11 due to above

circumstances. The Ld. counsel has further submitted that assessment order was passed u/s 147/143(3) in the case of Ramesh Goyal, u/s 143(3) in the case of Sh. Sanjay Dhingra and u/s 153A/143(3) in the case of Sh. Pardeep Kumar who are co-owners of the land alongwith assessee. He, has submitted that on similar facts and circumstances, the issue has been accepted and settled in favour of the said assessees. The reasons of keeping the cash with each owner has been the same and the explanation stood accepted in their cases. The Ld. counsel has further explained that there was reasonable cause for not depositing the cash earlier due to dispute about the refund of cash, since earlier, a legal notice dated 17.04.2006 had been issued by the assessee to the proposed purchasers. This legal notice has been taken note of by the DSP in his report to the SSP, Ludhiana. The Ld. counsel has further placed reliance on the copy of the assessment order dated 26.12.2011 for assessment year 2006-07 passed in the case of the assessee u/s 148 / 143 of the Act.

8. The Ld. DR on the other hand, has relied upon the findings of the lower authorities.

9. A perusal of the said order dated 26.12.2011 in the case of the assessee for assessment year 2006-07 reveals that a survey action was carried out at the business premises of M/s Modage Housing Development Private Ltd., Mohali on 18.6.2009 from where certain

documents were found from which it was revealed that a cash amount of Rs. 70 lacs representing advances for sale of land out of the total consideration of Rs. 18 crores for the purchase of 40 Kanals of land at village Karimpur, Ludhiana had been received on 7.11.2005 by the assessee Shri Anoop Saggar. Since the assessee had not returned the said amount as income of the assessee, hence, the Assessing Officer recorded reasons that he had reason to believe that income of the assessee to that extent had escaped assessment. Thereafter, the assessment was reopened and framed u/s 147 of the I.T. Act, however, during the assessment proceedings, the assessee explained that the said amount was received as earnest money and could not be said to be the income of the assessee.

Considering the above submissions, the returned income of the assessee was accepted by the Assessing Officer vide order dated 26.12.2011 for assessment year 2006-07. A perusal of the aforesaid assessment order dated 26.12.2011 for the assessment year 2006-07 in the case of the assessee proves that the assessee's explanation of receipt of Rs. 70 lacs was not doubted by the Department. The only ground for which the addition has been made is that there is a time gap of 4 ½ years in deposit of the said amount in the bank and that under the circumstances the said receipt of Rs. 70 lacs cannot be correlated with the aforesaid deposit.

However, we find that the assessee has duly explained the reasons for non-depositing the same in the bank account. Moreover, there is no evidence that the assessee had utilized the said amount for any other purpose. It is pertinent to mention here that the five co-sharers had received Rs. 70 lacs each, however, addition has not been made in the case of other co-sharers. All the co-sharers had deposited the cash in the bank account on almost the same dates in the year 2010. The explanation for non-depositing the amount for almost 4½ years has been accepted by the concerned Assessing Officer in the assessment orders framed in their cases either u/s 143(3) of the Act or u/s 147 read with section 143(3) of the Act. The assessee in this respect had placed reliance on the copy of the assessment dated 21.3.2014 passed in the case of other co-owner of the land namely Shri Sanjay Dhingra, wherein, no addition has been made on account of cash amount deposited in the bank account.

The office note attached by with the assessment order reads as under:-

*“The case was selected for compulsory scrutiny under CASS, As per AIR information the assessee has made cash deposits of Rs. 56,50,000/- in ICICI bank Ltd. When the assessee was asked to explain the sources of cash deposits of Rs. 56,50,000/- in ICICI bank ltd, the assessee filed reply on 10.03.2014 stating there in that an amount of Rs. 3.50 crore received as advance by 5 persons including assessee namely Sh. Pardeep Kumar, Shri Anup Saggar, Shri Ramesh Goyal and Shri Pawan Kumar against sale of 5 acres of agricultural land on 01.11.2005 but the matter was in dispute. All the five persons decided to keep the whole amount in safe custody. The matter is also pending with ADGP,*

*Punjab (Police Authorities. Moreover, all the co-owners had deposited the same amount in bank on the same dates evidence of which has been obtained and placed on file. Hence, no adverse inference is drawn.*

10. The assessment was also framed in the case of another co-owner namely Shri Ramesh Goyal u/s 147 read with section 143(3) of the Act vide order dated 15.12.2018. A copy of the said assessment has been placed at page 197 of the paper book. A perusal of the said order also reveals that the explanation given by the said co-owner Shri Ramesh Goyal that the amount of Rs. 70 lacs being 1/5<sup>th</sup> share was received as earnest money and after considering the entire documents as well as the report of the police authorities and evidence of litigation etc., the plea of the said assessee Shri Ramesh Goyal was accepted and the Assessing Officer did not make any addition.

11. In view of the above, since the assessee has duly proved the source of the amount and has also explained reasons for non-depositing the same in the bank account after receipt of the same and further considering the fact that the explanation and evidences in relation to the identical transactions and in respect of late deposit of the amount in the bank account by the other co-owners have been accepted in their cases and further in the absence of any evidence that the assessee had utilized the said amount of Rs. 70 lacs for any other purposes, we do not find any justification on the part of the lower authorities in making the

impugned addition in the case of the assessee especially when there is otherwise no fact or circumstance which may distinguish the case of the assessee from other co-sharers. In view of this, the impugned order of the CIT(A) is set aside and the addition made by the lower authorities of Rs. 64,50,000/- is ordered to be deleted.

In the result, the appeal of the assessee stands allowed.

Order pronounced in the Open Court on 03.01.2020

Sd./-  
(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)  
लेखा सदस्य/ Accountant Member

Sd./-  
(संजय गर्ग / SANJAY GARG)  
न्यायिक सदस्य/ Judicial Member

**Dated : 03.01.2020**  
"आर.के."

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File