

IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE SMC BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.256/Ind/2019**  
**Assessment Year: 2008-09**

Shri Pradeep Sharma, S/o. Shri Badri Prasad Sharma Village Ratibad, Bhopal (Appellant)	<u>बनाम/</u> Vs.	ITO-2(2) Bhopal (Revenue)
P.A. No.BNUPS9341E		
Appellant by	Shri Ashish Goyal & Shri N.D. Patwa, Advs	
Respondent by	Shri Ashish Porwal, DR	
<b>Date of Hearing:</b>	<b>08.07.2020</b>	
<b>Date of Pronouncement:</b>	<b>09.07.2020</b>	

**आदेश / O R D E R**

This appeal by the assessee is directed against order of the Commissioner of Income Tax Appeals [CIT(A)]-3, Bhopal dated 16.01.2019 pertaining to the assessment year 2008-09. The assessee has raised following grounds of appeal:

*On the facts and the circumstances of the case:-*

*1. the Ld. CIT(A) was not justified in sustaining the assessment order u/s 144 r.w.s 147 which is bad in law,*

*void-ab-initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*

*2. That the Ld. CIT(A) erred in sustaining the addition of Rs.11,07,600/- on account of unexplained cash deposit in the bank account without accepting the explanations offered by the assessee.*

*3. That the Ld. CIT(A) erred in sustaining the addition of Rs.11,07,600/- as unexplained income of the assessee, without considering that the assessee has taken loan from Mr. Mahesh Sharma and from Mr. Lalit Sharma and also discharged the onus by providing affidavits of the lenders.*

2. The facts giving rise to the present appeal are that the case of the assessee was reopened on the ground that the assessee had deposited cash amounting to Rs.1107,600/- in his Saving Bank Account. The Assessing Officer did not accept the explanation as given by the assessee and proceeded to make addition of Rs.11,07,600/- amount deposited in the bank account.

3. Aggrieved against the addition made in assessment order dated 21.03.2016, the assessee preferred an appeal before Ld.

CIT(A), who also dismissed the appeal. Now the assessee is in appeal before this Tribunal.

4. Ground No.1 is against the reopening of the assessment, Ld. counsel for the assessee submitted that the revenue authorities were not justified in reopening the assessment.

5. Ld. D.R. submitted that admittedly, the assessee had not filed return of income, therefore, to verify the veracity of deposit in the bank account. The Assessing Officer was justified in reopening the assessment.

6. I have heard the rival submissions, perused the materials available on record. I do not see any infirmity into the action of the Assessing Officer for reopening of the assessment, admittedly, the assessee had not filed any return of income. He had deposited in the saving account amounting to Rs.11,07,600/-. The source of such deposit

was required to be verified. Thus, ground no.1 of the assessee's appeal is rejected.

7. Ground No.2 & 3 are against the sustaining addition of Rs.11,07.600/- for unexplained cash deposit. Ld. counsel for the assessee reiterated the submission as made in the written submission. For the sake of clarity written submission are reproduced as under:

*“Source of cash deposit*

*Deposit received from maternal uncles for investment. The assessee, after receipt of the money had invested the same in shares. The details of the deposit received were as under:*

<i>Name</i>	<i>Amount</i>	<i>Source</i>	<i>Evidences</i>
<i>Mahesh Sharma(Mama)  Occupation-Farmer</i>	<i>7,06,200</i>	<i>(a) Maturity of Monthly income Certificate (MIC).  (b) Sale of Rural Agricultural land</i>	<i>(a) Confirmation and affidavit of Mahesh Sharma (PAPER BOOK 13014)  (b) Bank Statement of Mahesh (PB18) showing cash withdrawal Rs.6,42,000 on 14.01.2008 and bank statement of assessee showing</i>

			<p><i>cash deposit (PAPER BOOK 19) Rs.6,40,000 on same date.</i></p> <p><i>(c) Three different sale deeds of agricultural land. PAPER BOOK.20-44</i></p>
<p><i>Lalit Sharma(Mama) Occupation-Farmer</i></p>	<p><i>4,01,400</i></p>	<p><i>Sale of Agricultural Land</i></p>	<p><i>Three different Sale deed of agricultural lands. PAPER BOOK 20-44</i></p>

*Details of amount received on sale of rural agricultural land by Mamaji was as under:*

<i>Land</i>	<i>Date of Registry</i>	<i>Amount</i>	<i>PB Ref.</i>	<i>When payment received as per registry</i>
<i>Khasra No.297/ 1</i>	<p><i>07.07.2008</i></p> <p><i>POA transferred as per sale deed - 06.08.2007</i></p>	<i>4,32,000</i>	<i>PB20-24</i>	<i>Already received earlier. Para 3 of the sale deed</i>
<i>Khasra No.298-306/1-307/1/1/4 etc</i>	<p><i>07.07.2008</i></p> <p><i>POA transferred as per sale deed - 06.08.2007</i></p> <p><i>(PAPER BOOK 32034)</i></p>	<i>4,32,000</i>	<i>PB25-34</i>	<i>Already received earlier. Para 3 of the sale deed</i>

<i>Khasra No.298- 306/1- 307/1/1</i>	<i>07.07.2008  POA transferred as per sale deed - 06.08.2007  (PAPER BOOK 32034)</i>	<i>4,32,000</i>	<i>PB35-44</i>	<i>Already received earlier. Para 3 of the sale deed</i>
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*Comments of the Ld. AO in the Remand Report (PB7-9)*

*Basis of Ld. CIT(A) and submissions of the appellant:*

*1. Registry for sale of land was done on 07.07.2008, but the cash was deposited in the bank of assessee between 13 Nov. 2007 to 3<sup>rd</sup> April 2008.*

*Submission:*

*Assessee submitted in the rejoinder that the amount was received prior to registry. In fact there was mention of the Power of Attorney in the sale deed. The Power of Attorney was dated 6<sup>th</sup> August 2007.*

*2. No prudent agriculturist will sell the land and advance the receipt as loan without any reason.*

*Submission:*

*The fact that the depositors (Mamaji) sold the land is on record and evidenced by registry. The basis of the Ld. CIT(A) is a mere suspicion and surmise, and nothing else.*

*3. The source of the deposits is duly explained as above in the chart.*

*So far as the receipt of Rs.6,40,000/- is concerned, it is clear from the bank statement of the appellant that the amount was withdrawn from the bank of Mahesh Sharma and deposited in the bank of the appellant on the same date.*

*Source of the balance receipt was out of the sale of three rural agricultural lands by Mahesh Sharma and Lalit Sharma. This fact they had confirmed in the affidavits. Ld. AO and Ld. CIT(A) choose not to examine them.*

8. On the contrary, Ld. DR opposed this submission and supported the orders of the authorities below.

9. I have heard the rival submissions, perused the orders of the authorities below. The sole grievance of the assessee is that the authorities below rejected the explanation in a casual manner, despite the fact that the assessee had given documentary evidences in support of the source of cash deposits. I find that Ld. CIT(A) confirmed the addition by observing as under:

*4. "Ground No.1:- Through this ground of appeal the appellant has challenged the addition of Rs.11,07,600/- on account of unexplained cash deposit in bank*

account. The AO made addition of Rs.11,07,600/- on the basis of AIR information receipt. The appellant had deposited cash amounting to Rs.11,07,600/- in his saving bank account. The AO has issued notice u/s 148 dated 27.03.2015 after recording the reasons, but the appellant failed to comply. Notices u/s 142(1) were issued on 10.09.2015 & 12.10.2015. The appellant failed to comply the above notices. Thereafter, on 26.11.2015 the appellant attended and requested for more time to submit the information and next date of hearing was fixed on 29.12.2015. Vide letter dated 22.01.2016 the appellant submitted that he has not filed his income tax return of year under consideration, his income was below the limit. Thereafter, the AO made the addition of Rs.11,07,600/- and pass the order u/s 144 of the Income Tax Act. During the appellate proceedings the appellant submitted that he had taken loan from Mr. Mahesh Sharma & Mr. Lalit Sharma. In support of his claim the appellant produced affidavits of Mr. Mahesh Sharma & Mr. Lalit Sharma. In these affidavits they confirmed that they had given the money to the appellant out of amount received from sale of rural agricultural land and submitted registry documents for sale of rural agricultural land. The appellant made the deposit in the bank account from 13.11.2007 to 02.04.2008. Shri Mahesh Sharma & Shri Lalit sharma sold the land on 07.07.2008 i.e. after the case deposit therefore, the appellant failed to establish that the sum deposited in the bank account is sale proceed of agricultural land of Shri Mahesh Sharma & Shri Lalit Sharma. The appellant also failed to state the reason why Shri Mahesh Sharma & Shri Lalit Sharma sold the agricultural land. The appellant also failed to

*bring on record the need of money which he allegedly taken from Shri Mahesh Sharma & Shri Lalit Sharma. No prudent agricultural will sale the land and advance the receipt as loan without any reason. Therefore, the addition made by the AO amounting to Rs.11,07,600/- is confirmed. Therefore, the appeal on this ground is dismissed.*

10. During the course of hearing Ld. counsel for the assessee has taken me through the paper book where the assessee has enclosed confirmations of given loan to the assessee and also confirming this fact by way of affidavits. These confirmation and affidavit from Shri Mahesh Sharma is enclosed at paper book pages 13-14 and confirmation and affidavit from Shri Lalit Sharma is enclosed at paper book pages 15-16. Ld. counsel also drew out attention to paper book pages 17 to 18 for bank statements of Shri Mahesh Sharma which is also enclosed in paper book as to buttress the contention that the assessee had received a sum of Rs.7,06,200/- from Shri Mahesh Sharma out of

Maturity of Monthly Income Certificate (MIC) and sale of Rural Agricultural Land. Ld. counsel stated that there was cash withdrawal of Rs.6,42,000/- from the account of the assessee. Therefore, the source of Rs.6,40,000/- stood explained. Both authorities have not accepted this contention and in my view when the assessee has linked cash deposit, withdrawal, cash received from relatives of the assessee and the relative has given affidavit that such amount was received by the assessee from the said relative Shri Mahesh Sharma. Revenue ought to have brought some adverse material on record for rebutting such contention. However, no such material is placed on record, therefore, I direct the Assessing Officer to delete the addition of Rs.6,40,000/-. Regarding balance amount of Rs.4,01,400/-, it is the contention of the assessee that the amount was received from another relative who had sold his land and out of the advance receipt, he made payment

to the assessee. I find that the Ld. CIT(A) observed that assessee made deposit in bank account from 13.11.2007 to 02.04.2008. Shri Mahesh Sharma & Shri Lalit sharma sold the land on 07.07.2008 i.e. after the case deposit therefore, the assessee failed to establish that the sum deposited in the bank account is sale proceed of agricultural land of Shri Mahesh Sharma & Shri Lalit Sharma. The assessee also failed to state the reason why Shri Mahesh Sharma & Shri Lalit Sharma sold the agricultural land. It is further observed by the Ld. CIT(A) that the assessee failed to bring on record the need of money which he allegedly taken from Shri Mahesh Sharma & Shri Lalit Sharma. No prudent agriculturist will sell the land and advance the receipt as loan without any reason. This observation of the Ld. CIT(A) is contrary to the records as it is pointed out by the Ld. counsel for the assessee that part of money was out of maturity of fix deposits. The other intention of the assessee

that amount was received in advance as Power of Attorney was executed on 6<sup>th</sup> August 2007 and factum of Power of Attorney is duly reflected in the registered sale deed. Hence, in my view the Ld. CIT(A) ought not to have just brushed aside the explanation, admittedly, on the basis of suspicion, I, therefore, direct the Assessing Officer to delete the balance addition of Rs.4,01,400/-. Thus, grounds No.2 & 3 of this appeal are allowed.

11. The appeal filed by the assessee is partly allowed.

*Order was pronounced in the open court on 09.07.2020.*

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

Indore; दिनांक Dated : 09/07/2020

*Patel/PS*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order  
**Assistant Registrar, Indore**