

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "D.B." JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1303/JP/2018
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Pappu Ram Saran 283, Mitra Niwash Colony, Vill- Ralawata, Kishangarh (Ajmer)	बनाम Vs.	The ITO, Ward-2, Kishangarh.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CXJPS 9188 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri O.P. Batheja
राजस्व की ओर से / Revenue by : Miss Chanchal Meena (ACIT)

सुनवाई की तारीख / Date of Hearing : 02/09/2020
उदघोषणा की तारीख / Date of Pronouncement: 03/09/2020

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 03.10.2018 of Id. CIT (A), Ajmer for the assessment year 2010-11. Due to prevailing COVID-19 pandemic condition the hearing of the appeal is concluded through video conference. The assessee has raised the following grounds:-

"Ground No.1:- The Id. CIT(A) has erred on facts and in law in dismissing the appeal of the appellant on his

ground that the Id. ITO, Ward-2, Kishangarh has erred on facts and in law in completing the assessment u/s 144/147/148 of the I.T. Act, 1961 on 19.12.2017 without recording his reasons & without issuance of notice u/s 148 by him, which is a mandatory requirement. Therefore, the assessment completed by him is bad in law and deserves to be quashed. The notice issued u/s 148 by ITO, Ward-1, Kishangarh on 30.03.2017 was without any jurisdiction, invalid and ab-initio void.

Without prejudice to the above

Ground No.2:- *The Id. CIT(A) has erred on facts and in law in dismissing the appeal of the appellant on his ground that in the case of the appellant notice u/s 148 was issued by the successor Assessing Officer (Sh. Dinesh Kajot, ITO, Ward-1, Kishangarh) on the basis of reasons recorded by his predecessor Assessing Officer (Sh. Radhey Shyam Verma, ITO, Ward-1, Kishangarh). Since the Ld. AO who had issued notice under section 148 was different than the officer who had recorded the reasons, therefore, the notice issued u/s 148 was bad in law and deserves to be quashed.*

Ground No.3:- *The Id. CIT(A) has erred on facts and in law in dismissing the appeal of the appellant on his ground that ITO , Ward-1, Kishangarh erred in invoking clause (a) of Explanation-2 of section 147 without fulfilling the mandate of proviso to section 147 and issuing notice u/s 148 on the basis of his fallacious assumptions, surmises, conjectures and wrong facts . Therefore, the notice issued by him is bad in law and deserves to be quashed.*

Ground No.4:- *The Id. CIT(A) has erred on facts and in law in dismissing the appeal of the appellant on his ground that the Id. PCIT, Ajmer has accorded approval for issuing notice*

u/s 148 in a mechanical manner without application of mind and has thus not fulfilled the mandate of provisions of section 151 of the I.T. Act. Notice issued u/s 148 on the basis such approval is bad in law and deserves to be quashed.

Ground No.5:- The Id. CIT(A) has erred in confirming addition of Rs. 21,05,000/- out of addition of Rs.27,50,000/- made by the AO under section 69 of the Act.

Ground No.6- The Id. CIT(A) has erred on facts and in law in dismissing the appeal of the appellant on the ground of incorrect charging of interest u/s 234B of the Act.

Ground No. 7. That the appellant reserves its right to add, alter, modify, amend or delete any of the grounds of the appeal during the course of appellate proceedings."

2. The assessee is an individual and has not filed any return of income U/s 139 of the IT Act. The AO received information from ITS data regarding cash deposit of Rs. 32,56,000/- in the bank account of the assessee during the year under consideration. The AO also conducted enquiry and asked the assessee to file any explanation regarding the source of cash deposits but there was no response from the assessee to the notice issued by the AO. Consequently, the AO issued notice U/s 148 of the Act on 30.03.2017 after recording the reasons and approval from the competent authority. In response to notice U/s 148 of the Act the assessee filed return of income on 28.04.2017 declaring total income of Rs. 1,27,430/-. The AO issued

noticed U/s 143(2) of the Act on 21.08.2017 and thereafter notice U/s 142(1) of the Act on 07.11.2017 but there is no response from the assessee to these notices and even nobody attended the assessment proceedings. Despite notice U/s 271(1)(b) of the Act was issued by the AO the assessee has not appeared before the AO nor made any compliance to the earlier notice issued. Accordingly, the assessment was framed U/s 144 r.w.s. 147 of the Act on 19.12.2017 whereby the AO has made addition of Rs. 27,50,000/- on account of unexplained cash deposit in the bank account of the assessee. The assessee challenged the action of the AO before the Id. CIT(A) and explained that the source of cash as sale proceeds of the lands sold by the assessee along with other co-owners for a consideration of Rs. 27,50,000/-. The assessee has also filed an application for admission of additional evidence under Rule 46A of the Income Tax Rules. The Id. CIT(A) called for a remand report from the AO on the additional evidence filed by the assessee as well as source of deposit in the bank account claimed by the assessee. The AO submitted remand report wherein the objection raised by the assessee were dealt with by the AO as well as the claim of the assessee was also examined by the AO. The AO in the remand report pointed out that though there is sale of land measuring 4 bigha

and 6 vishwa vide sale deed dated 09.04.2009 however, as per sale deed the sale consideration is shown as Rs. 6,45,000/- only and not Rs. 27,50,000/- as claimed by the assessee. Except the sale deed the assessee has not produced any other documentary evidence or material to show that the sale consideration of the land sold by the assessee along with other joint owners was more than Rs. 6,45,000/-. The Id. CIT(A) after considering the remand report as well as submissions of the assessee has restricted addition of Rs. 21,05,000/- after giving the credit of Rs. 6,45,000/- being the sale consideration of the land mentioned in the sale deed. Aggrieved by the impugned order of the Id. CIT(A) the assessee has filed the present appeal.

3. First we take up ground no. 5 regarding the merits of the addition sustained by the Id. CIT(A).

4. The Id. AR of the assessee has submitted that the AO has made addition of Rs. 27,50,000/- which was deposited on 09.04.2009 in the bank account of the assessee. The assessee has explained the source of the cash deposit on 09.04.2009 as the sale proceeds of the land which was sold jointly by the assessee along with other co-owners who were all family members vide sale deed dated 08.04.2009 and the entire sale consideration was deposited in the bank account of the assessee. Thus,

the Id. AR has submitted that there is direct nexus between the sale consideration of the land and deposit made on the very next day in the bank account of the assessee. Since the land sold by the family was an agricultural land therefore, it does not fall in the definition of capital asset U/s 2(14) of the Act. In support of his contention, he has relied upon the decision of this Tribunal dated 09.10.2018 in case of M/s OM Plantation vs. ITO in ITA No. 1047/JP/2017. Thus, the Id. AR has pleaded that once the assessee has produced the necessary evidence being sale deed and this surrounding circumstances which established the direct nexus with the transaction of the sale of land and deposit made in the bank account of the assessee, therefore, the addition sustained by the Id. CIT(A) not justified.

5. On the other hand, the Id. DR has submitted that the sale deed produced by the assessee states the sale consideration of Rs. 6,45,000/- only and therefore, the evidence produce by the assessee establishes the fact that the land was sold for a consideration of Rs. 6,45,000/-. The assessee has not produced any other evidence in support of the claim that the actual sale consideration of the land was Rs. 27,50,000/-. She has relied upon the orders of the Id. CIT(A).

6. We have considered the rival submissions as well as relevant material on record. The AO has made addition on account of cash deposit of Rs. 27,50,000/- in the bank account of the assessee on 09.04.2009. Since the assessee has not appeared before the AO nor made compliance to the various notices issued by the Assessing Officer, therefore, the assessment was completed ex-parte U/s 144 r.w.s. 147 of the Act. Before the Id. CIT(A) the assessee produced sale deed as well as bank account and also detailed submissions in respect of the source of cash deposit made in the bank account. The Id. C(IT(A) called for remand report wherein the AO has pointed out that the sale deed dated 08.04.2009 shows the sale consideration of Rs. 6,45,000/-. The Id. CIT(A) has consequently allowed the claim of the assessee only to the extent of Rs. 6,45,000/- as stated in the sale deed. The Bench has raised a query about the discrepancy in the name mentioned in the sale deed and the name of the assessee appearing in other records. The Id. AR has pointed out that the assessee Shri Pappu Ram is also known as @ Prabhu Ram. Thus, in the sale deed of the name of the assessee appearing as Shri Prabhu Ram. After verification of the record we are satisfied that the name appearing in the sale deed alias name of the assessee. The AO has also not disputed the fact that the assessee is

one of the joint owners of the land which was sold vide sale deed 08.04.2009. We further note that the cash of Rs. 27,50,000/- was deposited in the bank account of the assessee with Oriental Bank of Commerce, Kishangarh on 09.04.2009. The date of cash deposit is subsequent to the date of sale deed dated 08.04.2009 which prima facie shows that the source of cash deposit has a direct nexus with the sale transaction of the land sold by the assessee jointly with other co-owners vide sale deed dated 08.04.2009. Though the sale deed shows the sale consideration of Rs. 6,45,000/- which is also the Stamp Duty Valuation however, once the assessee has brought on record the relevant facts as well as nexus between transaction of sale and deposit in bank account then only inference can be drawn from these facts and circumstances of the case is that the source of deposit of Rs. 27,50,000/- is the sale consideration of the land. The Assessing Officer has not brought anything contrary on the record during the remand proceedings such as examination of the purchaser. Therefore, in the absence of any contrary material the explanation of the assessee regarding source of cash deposit in the bank account cannot be disputed. This Tribunal in case of M/s OM Plantation vs. ITO (supra) has considered an identical issue in para 6 as under:-

"6. We have considered the rival submissions as well as the relevant material on record. The assessee purchased the land situated at Bhankrota, Jaipur vide two sale deeds both dated 11/8/2005 for a total consideration mentioned in the sale deeds at Rs. 1,76,34,000/-. However, the Assessing Officer received the report of the DDIT(Inv) alongwith the details of the cash deposits in the bank accounts of the sellers and their relatives and further an agreement to sell dated 11/5/2005 wherein the consideration @ Rs. 28,25,000/- per bigha was agreed upon between the parties and part consideration was stated to have been paid at the time of agreement in cash as well as in cheque. The Assessing Officer has computed the total purchase consideration by adopting the rate of Rs. 28,25,000/- per bigha as stated in the agreement to sell dated 11/5/2005. Though the said agreement is not signed by both the parties and it was signed only by the seller, however, we find that the details given in the agreement regarding the agricultural lands, its khasaras numbers as well as the part consideration of Rs. 15,50,000/- through a cheque No. 582863/- dated 10/6/2005 is not in dispute. The details of the said cheque also find place in the registered sale deed dated 11/8/2005. Thus, the contents of the agreement to the extent of part payment of consideration has been established by the sale deed dated 11/8/2005. Therefore, even if the said agreement is not enforceable in law due to the non-bearing of the signature of the assessee and further due to non-registration, the contents of the said agreement which has been proved and corroborated by the sale deed go to establish the existence of the agreement between the parties. Further the details of the cash deposited in the bank account of the sellers and their relatives has been reproduced by the Assessing Officer in the assessment proceedings at page No. 4 and 5 of the assessment order as under:

S. No.	Name of person	Bank account No.	Deposited cash amount	Date	Relation with the seller
1.	Smt. Dhapu Devi	210501000	32,74,000/-	12/08/2005	Seller of land

	Meena	00001			
2.	Sh. Dulharam Meena	1007813	1,50,000/- 10,00,000/- 1,60,000/-	14/05/2005 12/08/2005 16/08/2005	Do
3.	Sh. Ballu Ram Meena	1007108	4,00,000/- 11,70,666/-	14/05/2005 12/08/2005	Do
4.	Sh. Harphool Meena	1004534	11,70,667/-	12/08/2005	Do
5.	Sh. Satendra Basanwal	1007978	14,00,000/-	12/08/2005	Son of Sh. Bagwataram Seller
6.	Sh. Rajendra Kumar Meena	1003946	1,50,000/- 14,00,000/-	12/05/2005 12/08/2005	Do
7.	Sh. Om Prakash Meena	1004337	1,50,000/- 14,00,000/-	12/05/2005 12/08/2005	Do
8.	Sh. Ashok Kumar Meena	1001168	14,00,000/-	12/08/2005	Do
9.	Sh. Roshal Lal Meena	1006877	1,50,000/- 14,00,000/-	12/05/2005 12/08/2005	Grandson of Sh Bagwataram, Seller
10.	Sh. Jagdish Pd. Meena	100131	7,50,000/-	12/08/2005	Son of Smt. Dhapu Devi Meena, Seller
11.	Sh. Manna Lal Meena	1008064	7,15,800/-	12/08/2005	Son of Smt. Dhapu Devi Meena, Seller
12.	Sh. Nemi Chand Meena	1005293	7,50,000/-	12/08/2005	Son of Smt. Dhapu Devi Meena, Seller
13.	Smt. Sushila Meena W/o Prabhu Dayal Meena	210501000 07726	7,50,000/-	12/08/2005	W/o- Sh. Prabhu Dayal Meena, S/o- Smt. Dhapu Devi Meena, Seller

The dates of deposit of cash as well as cheques in the bank accounts of the sellers, their sons, grandsons and wife are clearly matching to the dates of agreement to sell and sale deed i.e. 11/5/2005 and 11/8/2005. All the deposits of cash in the bank accounts of these persons were made on the very next day of execution of agreement and sale deed respectively. In absence of any other source of income of the sellers, the only inference which can be drawn from the details of the bank accounts and particularly the deposits made on the particular dates which is just one day after the execution of the agreement to sell and sale deeds that the cash deposits in the bank accounts of the sellers and their relatives is only from the sale consideration received against the sale of agricultural lands in question. There is no other transaction either on those dates or in around those dates of deposits in the bank accounts other than the present transaction of sale of lands by the sellers. Further the Assessing

Officer has reproduced the statements of the branch manager wherein the amounts were deposited as well as the relatives of the sellers who have confirmed the receipt of cash and deposit of the same in the bank account. Thus, we find that the assessment framed by the Assessing Officer is not solely based on the statements recorded by the Investigation Wing but there was tangible material in the shape of the bank accounts statements, agreement to sell and sale deeds which are of course not in dispute. The only dispute raised by the assessee is regarding the photo copy of the agreement and its evidentiary value, however, it is not the issue of legal enforceability of the said agreement and the claim under the agreement but the contents of the agreement which are to the extent corroborated by the independent evidence being sale deeds and further the bank statements of the sellers cannot be denied on the technical ground of admissibility. Therefore, once the payment of cash is reflected from all these documents as well as statements of the parties then the technical objection raised by the assessee will not help the case of the assessee.”

In view of the facts and circumstances of the case when the deposit of cash in the bank account is contemporaneous to the transaction of sale of land then in the absence of any contrary material the source explained by the assessee cannot be rejected. Hence, the addition sustained by the Ld. CIT(A) is deleted.

7. Ground no. 1 to 4 regarding validity of reopening of the assessment. Since we have decided the issue on merits in favour of the assessee, therefore, the legal issue raised by the assessee in these

grounds become academic in nature hence, we do not propose to decide the same.

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

Order pronounced in the open court on 03/09/2020.

Sd/-

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

(विजय पाल राव)
(Vijay Pal Rao)

लेखा सदस्य / Accountant Member
जयपुर / Jaipur

न्यायिक सदस्य / Judicial Member

दिनांक / Dated:- 03/09/2020.

*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Pappu Ram Saran, Kishangarh.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2, Kishangarh.
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. 1303/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar