

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC-1" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.7479/DEL/2018  
Assessment Year 2008-09

Dharam Pal, Dabathwa, Meerut	v.	ITO, Ward-1(2), Meerut
TAN/PAN: AYKPD7356C		
(Appellant)		(Respondent)

Appellant by:	Shri Vinod Kumar Goel, Adv.		
Respondent by:	Shri R.K. Gupta, Sr.D.R.		
Date of hearing:	27	10	2020
Date of pronouncement:	29	10	2020

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the assessee against the impugned order dated 03.10.2018 passed by Ld. Commissioner of Income Tax (Appeals), Meerut for the quantum of assessment passed u/s.144 for the Assessment Year 2009-10.

2. The facts in brief are that on the basis of AIR information that assessee had made certain cash deposits in his saving bank account during the financial year 2008-09 without quoting his PAN, notice u/s.148 was issued on 29.03.2016 which has stated by the Assessing Officer to have been served upon the assessee through speed post; and thereafter various notices u/s. 142(1) were issued and served

upon assessee. However, no compliance has been made and thereafter assessment has been made u/s.144 making aggregate addition of Rs.25,80,880 which also included deposit of Rs.7,30,878/-.

3. Before the Ld. CIT(A) it was explained that out of total deposit added by the Assessing Officer, two were cheque payments of Rs.3,50,000/- each deposited in the bank account of the assessee on 19.06.2008. With regard to source of cash deposits, it was submitted that the same was on account of agreement to sale made by the purchaser with the assessee for the sale of land and there was *Ikrarnama*, i.e., the copy of agreement between two parties wherein it has been shown that the said amount has received in cash which was deposited in the bank account. Ld. CIT (A) has called for the remand report to the Assessing Officer. In remand report, the Assessing Officer observed that there were two cash deposits of Rs. 9,50,00,000/- on 17.06.2008 and further Rs. 9 lacs on 18.06.2008 which assessee has tried to explain by relying upon *Ikrarnama*, is not notarized nor there is any detail that when the paper was purchased and there is signature of one witness and that to be without address. So the authenticity of *Ikrarnama* cannot be accepted and this alleged *Ikrarnama* is also dated 31.06.2008, therefore, the source of cash deposits of sums remained unexplained.

3. Ld. CIT (A) has deleted the addition of Rs.7 lacs which was on account of cheque entries and was also cross verified

by the Assessing Officer from the sale deed wherein the cheque entries were mentioned. However with regard to the cash deposits, Ld. CIT (A) has confirmed the addition after observing and holding as under:

*“It is with regard to cash deposit of Rs.9,50,000/- that the Assessing Officer has minutely examined the documents filed which is purportedly a copy of the Ikrarnama and the Assessing Officer observes that the same is not notarized there is no details as to when the treasury paper was purchased of value of Rs. 100/-. Then the AO is also point out that there is only one witness who is signing the document and no details of witness have been given.*

*The AR on his part is questioning the right of the AO to make inquiry and investigation since the AO has proved that the agreement is doubtful and fictitious. The Id. AR is totally of the mark and in contravention of legal procedure in questioning the right of the AO an inquiry and observations which the AO has made. The value of evidence filed has to be first determined and it is to be decided by the authorities concerned whether the evidence filed is credible enough to be proceeded with for further investigation. In this case the AO has been able to established the duplicitous nature of evidence filed in the form of Ikrarnama by pointing out specific short coming.*

*The AR in his counter remarks that the purchaser and sellers are bound by this agreement and the assessee is received payment does not prove anything because the seller and the purchaser are interested parties and the evidence given has to*

*be examined for its correctness in the first place by the taxing authority.*

*The fact is that the prima facie examination of the evidence filed in the form of alleged Ikrarnama is a useless piece of evidence which comes across as an afterthought and it does not merit further inquiry given highly doubtful in nature.*

*The Id. AR has tried to compare this duplicitous Ikrarnama with a duly sworn affidavit in the case of Mukesh Singh and prima facie comparison is wrong when in this case one is not even shows when the paper was purchased for Ikrarnama and who is the only witness in the agreement as the only the name has been stated and no address has been given. Moreover, under the law of registration of documents at least two witness are required whereas in this case apparently there is only one witness and even his whereabouts are not known.*

*Thus, the facts remains cash deposit of Rs. 9,50,000/- on 17.06.2008 and Rs. 9,00,000/- on 18.06.2008 deposited in the appellant's bank account remains totally unsubstantiated and are thus confirmed as unexplained deposit u/s 69 of the Act. The alleged Ikrarnama filed during appeal is being made annexure to this appeal order.”*

4. Before us, Id. counsel for the assessee submitted that the assessee had received advance of sums aggregating to Rs.18,50,000/- against agricultural land situated at village-Dabathwa, Pohli, Babakpur, District Meerut. This is clearly borne out from the agreement to sell, i.e., *Ikrarnama* wherein amount of cash and cheque has been mentioned. The Id.

Assessing Officer has passed an ex-parte order without service of notice on the assessee even the copies of reasons recorded were not supplied to the assessee. The assessee has specifically requested before the Id. CIT (A) to supply the copy of reasons recorded which has not been made available till date. He further submitted that there has been gross violation of natural justice at the stage of the Assessing Officer and also during the course of appellate proceedings because during the remand proceedings Assessing Officer did not give any opportunity or asked the assessee to substantiate the authenticity of *Ikrarnama* or has called upon the seller or asked the assessee to produce the seller, and therefore, merely on surmises the agreement to sell/*Ikrarnama* could not have been rejected which proves the source of cash in the bank account. The addition made cannot be sustained; and alternatively the matter can be restored back to the file of the Assessing Officer so that assessee can substantiate the source because no proper opportunity was given.

5. On the other hand, Id. DR strongly relied upon the order of the Ld. CIT (A) and submitted that the onus was upon the assessee to prove the genuineness of the cash deposits in the bank account which has not been discharged and the authenticity of the agreement to sell has been rejected by the Assessing Officer and the remand proceedings also by the Ld. CIT (A).

6. After considering the rival submissions and on perusal

of the material referred to before us at the time of hearing, we find that the entire issue of cash deposits in the bank account hinges upon the primary evidence which is *Ikrarnama* /agreement to sell, wherein the purchaser has made payment of cash of sums aggregating to Rs.18,50,000/- and Rs.7 lacs in cash. This *Ikrarnama* was not filed before the Assessing Officer, because the order has been passed ex-parte for which the ld. counsel for the assessee submitted that notices issued by the Assessing Officer were not received by the assessee at all. Before the ld. CIT (A) when *Ikrarnama* was filed, the ld. CIT(A) has called for the remand report and Assessing Officer also did not give any opportunity so as to substantiate the authenticity of the *Ikrarnama* and the same has been rejected by the Assessing Officer on surmises. The Assessing Officer and Ld. CIT (A) has confirmed the addition merely on the ground that the primary evidence, i.e., *Ikrarnama* is an afterthought and its authenticity is in doubt.

7. Under these facts and circumstances, we are of the opinion that the matter should be restored back to the file of the Assessing Officer and the assessee is directed to prove the authenticity of the *Ikrarnama* and / or produced the purchaser before the Assessing Officer as and when called upon; and Assessing Officer can examined the purchaser about the authenticity of the *Ikrarnama* and also the source of cash deposits. The onus would be entirely on the assessee to substantiate his case. With this remark, the issue of cash deposit is remanded back to the file of the Assessing Officer to

be decided afresh and in accordance with law after giving due and effective opportunity of hearing to the assessee.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 29<sup>th</sup> October, 2020.**

Sd/-  
**[PRASHANT MAHARISHI]**  
**ACCOUNTANT MEMBER**

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

DATED: 29<sup>th</sup> October, 2020

PKK: