

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. Sudhanshu Srivastava, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 869/Del/2017 : Asstt. Year : 2011-12

Vikash, S/o Sh. Yad Ram, C/o Anand Kumar Contractor, VPO Jhojhu Khurd, Tehsil Charkhi Dadri, Bhiwani	Vs	Income Tax Officer, Ward-2, Bhiwani
(APPELLANT)		(RESPONDENT)
PAN No. AFXPV1282M		

**Assessee by : Ms. Raji Nothani, Adv.
Revenue by : Sh. N. K. Bansal, Sr. DR**

Date of Hearing: 22.10.2020	Date of Pronouncement: 10.11.2020
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A), Hisar dated 14.12.2016.

2. Following grounds have been raised by the assessee:

"1. That the Ld. CIT(A) was not justified in confirming the action of Ld. A.O., rejecting the duly executed Family settlement between the family members of the assessee without pointing out even a single defect in the execution of the Family settlement by only pointing out that parents of assessee being alive didn't kept anything for their only livelihood whereas as per the assessee the parents are living with the assessee and he looks after them and the property belongs to the Parents and is at their disposal, therefore the objection raised by the Ld. Assessing Officer is not tenable

and without any material on record hence needs to be set aside.

2(a) That the Ld. CIT(A) was not justified in confirming the action of Ld. A.O., rejecting the transaction arising out of duly executed Agreement to Sale between the assessee with Mohinder Singh, Rajesh & Sandeep on conjectures and surmises without pointing out even a single defect in the execution of the said Agreement which was duly executed in front of independent witnesses and the Ld. Assessing Officer himself recorded the statements on oath and documents in the form of land revenue records to show the creditworthiness of the purchaser have been produced, further the said transaction has been duly recorded in the books of accounts of the assessee therefore the rejection of the said transaction by the Ld. Assessing Officer is not tenable and without any material on record hence needs to be set aside.

(b) That the Ld. CIT(A) was not justified in confirming the action of Ld. A.O., in making an addition of Rs.58,00,000/- as undisclosed income of the assessee on the ground that the Agreement to sale entered with Mohinder Singh, Rajesh & Sandeep is unbelievable whereas as per the assessee the transactions undertaken in the Agreement to sale was duly recorded in the books of accounts and the said Agreement was duly executed in front of independent witnesses and the Ld. Assessing Officer himself recorded the statements on oath and documents in the form of land revenue records to show the creditworthiness of the purchaser have been produced, therefore the additions made by the Ld. Assessing Officer is not tenable and without any material on record hence needs to be deleted.

3(a) That the Ld. CIT(A) was not justified in confirming the action of Ld. A.O., in rejecting the transaction arising out of duly executed Agreement to Sale between the assessee with Brahma Nand on conjectures and surmises without pointing out even a single defect in the execution of the said

Agreement which was duly executed in front of independent witnesses and the Ld. Assessing Officer himself recorded the statements on oath and documents in the form of land revenue records to show the creditworthiness of the purchaser have been produced, further the said transaction has been duly recorded in the books of accounts of the assessee therefore the rejection of the said transaction by the Ld. Assessing Officer is not tenable and without any material on record hence needs to be set aside.

(b) That the Ld. CIT(A) was not justified in confirming the action of Ld. A.O., in making an addition of Rs.7,00,000/- as undisclosed income of the assessee on the ground that the Agreement to sale entered with Brahma Nand is unbelievable whereas as per the assessee the transactions undertaken in the Agreement to sale was duly recorded in the books of accounts and the said Agreement was duly executed in front of independent witnesses and the Ld. Assessing Officer himself recorded the statements on oath and documents in the form of land revenue records to show the creditworthiness of the purchaser have been produced, therefore the additions made by the Ld. Assessing Officer is not tenable and without any material on record hence needs to be deleted.

4(a) That the Ld. CIT(A) was not justified in confirming the action of Ld. A.O., in rejecting the transaction arising out of duly executed Agreement to Sale between the assessee with Surjeet Kumar on conjectures and surmises without pointing out even a single defect in the execution of the said Agreement which was duly executed in front of independent witnesses and the Ld. Assessing Officer himself recorded the statements on oath and documents in the form of land revenue records to show the creditworthiness of the purchaser have been produced, further the said transaction has been duly recorded in the books of accounts of the assessee therefore the rejection of the said transaction by the Ld. Assessing Officer is not

tenable and without any material on record hence needs to be set aside.

(b) That the Ld. CIT(A) was not justified in confirming the action of Ld. A.O., in making an addition of Rs.37,00,000/- as undisclosed income of the assessee on the ground that the Agreement to sale entered with Surjeet Singh is unbelievable whereas as per the assessee the transactions undertaken in the Agreement to sale was duly recorded in the books of accounts and the said Agreement was duly executed in front of independent witnesses and the Ld. Assessing Officer himself recorded the statements on oath and documents in the form of land revenue records to show the creditworthiness of the purchaser have been produced, therefore the additions made by the Ld. Assessing Officer is not tenable and without any material on record hence needs to be deleted.

5(a) That the Ld. CIT(A) was not justified in confirming the action of Ld. A.O., in making an adhoc disallowance of Rs.2,00,000/- on account of expenses claimed by the assessee on the ground that vouchers are not properly vouched and some of them are self generated whereas as per the Assessee there is no defect in the vouchers therefore, the disallowance made by the Assessing Officer on conjectures and surmises deserves to be allowed as it directly relates to the business of the Assessee.

(b) That alternatively and without prejudice to the above the assessee also disputes the quantum of disallowance made by the Assessing Officer."

3. The assessee is a civil contractor filed return of income on 28.09.2011 declaring total income of Rs.2,58,822/-. In the bank account of HDFC maintained by the assessee, cash deposits to the tune of Rs.58,00,000/- have been found. The amounts have been deposited in cash on 23.07.2010 of Rs.35,00,000/- and on 26.07.2010 of Rs.23,00,000/-.

4. On enquiry about the source of cash, it was explained that the father of the assessee Sh. Yad Ram prepared family settlement deed for his two sons, one being the assessee and the other being his brother Sh. Om Prakash. As per the settlement, the entire 7 acres plot was given to the assessee only.

5. It was explained that subsequent to the family settlement on 02.06.2010, the assessee has entered into an agreement on 23.07.2010 with three persons namely, Sh. Mohinder Singh, Sh. Rajesh and Sh. Sandeep for the sale of this property and received the above said amount of Rs.58,00,000/-. It was submitted that on 31.07.2010, the said agreement has been annulled and the entire amount of Rs.58,00,000/- was returned during the period from 01.09.2010 to 03.11.2010. Thus, it was shown that the receipt and payments have been settled.

6. On 01.11.2010, the assessee again entered into an agreement for the sale of the plot of 7 acres which was obtained through the family settlement for Rs.78,00,000/- and received an advance of Rs.40,00,000/- from one person namely, Sh. Brahma Nand. The assessee received in total an amount of Rs.65,00,000/- (40,00,000 + 25,00,000) out of the total consideration of Rs.78,00,000/-. The deal was subsequently cancelled on 01.01.2011 and the amount has been returned. Thus, it was shown that the receipt and payments have been settled.

7. The assessee has also entered into an agreement on 28.10.2010 with Sh. Surjeet Singh for sale of plot measuring 322 sq. yds. and received Rs.37,00,000/- out of the agreed sale

consideration of Rs.45,00,000/-. The deal was subsequently cancelled on 09.12.2010 and the amount has been returned. Thus, it was shown that the receipt and payments have been settled.

8. From the above, the following facts emerge,

1. The assessee received Rs.58,00,000/- from Sh. Mohinder Singh
2. The assessee received Rs.65,00,000/- from Sh. Brahma Nand
3. The assessee received Rs.37,00,000/- from Sh. Surjeet Singh
4. All the above three persons cancelled their deeds owing to non-payment of Rs.12,00,000/-, Rs.13,00,000/- and Rs.8,00,000/-.

9. The Assessing Officer made addition primarily suspecting the veracity of the settlement deed and held that the settlement deed is only a ploy to cover up the cash loans taken from various people which have been treated u/s 69A. The AO held that the assessee was in dire need of money and to show solvency of more than Rs.1 cr. to obtain the contracts. It was held by the AO that all the operation of entering into an agreements and subsequent cancellation, was a devise to introduce assessee's own income as per his needs. Having gone through the entire deposits, the AO made addition of Rs.92,00,000/- as unexplained money u/s 69A.

10. The Id. CIT (A) confirmed the addition of the AO holding that all the above facts regarding entering of agreement to sell, receipt of advance, extending of execution of sale deed, non

registration and non execution of any sale deed, cancellation of agreement to sell, cancellation of deal, return of advance and non production of evidences regarding source of investment prove that assessee has merely concocted evidences unsuccessfully to explain cash deposits in bank account.

11. During the hearing before us, the Id. AR argued that the assessee has produced copy of ledger account of Sh. Mohinder Singh, copy of agreement to self, copy of the land holding of Sh. Mohinder Singh and details of the withdrawal from the bank. It was also argued that the statement of Sh. Mohinder Singh was also recorded and no conclusive evidence could be brought out by the revenue in contrary to the facts submitted by the assessee. Regarding the sale of agricultural products by Sh. Bhrama Nand and the receipt of monies, it was argued by the Id. Counsel that no opportunity has been given to explain the transaction of sale of food grains with the adthias. With regard to Sh. Surjeet Singh, it was argued that the details have been produced before the AO who failed to consider the same as genuine. It was argued that the enquiries conducted by the revenue have not been made known to the assessee and the assessment has been completed in haste. It was argued that the assessee is willing to produce the parties before the revenue if need be.

12. On the other hand, the Id. DR argued that the entire family settlement deed itself is a make believe arrangement as the entire property has been bequeathed to the assessee when there are other children in the family. The receipt of the payment and cancellation of the agreements is a fictitious story

to prove the cash deposits in retrospect. The agreements entered within a short span of one month after the family settlement deed and cancellation within 5 days of the last payment made by the alleged purchaser is all sham and bogus

13. Heard the arguments of both the parties and perused the material available on record.

14. We have examined the moot issue of applicability of Section 69A with regard to the cash deposits found in the bank statement of the assessee and whether the assessee has discharged his onus of explaining this deposit satisfactorily.

15. We have gone through the statement of Sh. Mohinder Singh recorded by the revenue on 17.09.2013 wherein he has confirmed of payment of Rs.58,00,000/- on execution of sale agreement and receipt of the same amount after cancellation of the said sale agreement. It is an undisputed fact that Sh. Mohinder Singh unequivocally stated that the money earned by him and belongs to him. In that case, it can be said that the assessee has discharged the onus casted upon him. Even after recording the statement wherein Sh. Mohinder Singh owned up the amounts as being from his own sources, the revenue ought to have examined as to the taxability of the amounts in the hands of Sh. Mohinder Singh.

16. Regarding the amounts received from Sh. Bhrama Nand, Sh. Surjeet Singh and Sh. Leela Ram, the matter is being referred to the file of the AO to examine the matter afresh duly following principles of natural justice and giving the details of

the enquiries conducted by the revenue so that the assessee gets an opportunity to furnish their replies.

17. In the result, the appeal of the assessee is partly allowed.
Order Pronounced in the Open Court on 10/11/2020.

Sd/-

(Sudhanshu Srivastava)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 10/11/2020

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR