

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 03/JP/2020
निर्धारण वर्ष / Assessment Year :2011-12

Ghasi Ram Kotkasim, C/o- O.P. Batheja, D-18, Anand Vihar, Railway Colony, Jagatpura, Jaipur-302017.	बनाम Vs.	ITO, Ward-1(5), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BNUPR 2296 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri O.P. Batheja (ITP)
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 19/10/2020
उदघोषणा की तारीख / Date of Pronouncement : 03/11/2020

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the Id. CIT(A), Alwar dated 31/10/2019 for the A.Y. 2011-12, wherein the assessee has raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in confirming the addition of Rs. 13,79,400/- through a non speaking order, ignoring the submissions and documentary evidences furnished by the appellant.*
- 2. The Id. CIT(A) has erred in dismissing the appeal of the appellant on chargeability of interest U/s 234A and 234B of the Act.*
- 3. The appellant craves leave to add, amend or withdraw any of the grounds of appeal during the appellate proceedings."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. Brief facts of the case are that on the basis of AIR information, the assessee deposited Rs. 19.50 lacs in his bank account No. 77430100026369 on 06/05/2010 maintained with Rajasthan Regional Gramin bank, on the basis of which, the A.O. issued notice U/s 148 of the Income Tax Act, 1961 (in short, the Act) on 06/12/2013. The assessee submitted copy of sale deed before the A.O. showing sale of 2 Bhigha 7 Biswa agricultural land to shri Prithivi Singh at Rs. 6,95,000/-. After making detailed enquiry, the A.O. passed assessment order assessing total income of assessee at Rs. 13,79,400/- after allowing credit of Rs. 6,95,600/-. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions and material placed on record, confirmed the action of the A.O. Against which, the assessee is in further appeal before the ITAT.

4. Ground No. 1 of the appeal raised by the assessee relates to confirming the addition of Rs. 13,79,400/- made by the A.O. The Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A). The Id AR has also relied on the

written submissions filed before the Tribunal and the contents of his written submission reads as under:

The appellant is an illiterate farmer residing in village Dingali, P.O.-Kotkasim, Teh.-Tijara, Distt.-Alwar. He has no other source of income except agricultural income. Therefore, he did not obtain PAN and also did not file any return of income. During the previous year relevant to the A.Y.2011-X:2 cash of Rs.19,50,000/- was deposited on 06.05.2010 in S.B.A/c No. 77430100026369 of the appellant in Rajasthan Gramin Bank, Bibirani. After making several cash withdrawals on different dates, further cash deposits of Rs.35,000/-, Rs.45,000/-, Rs.45,000/- were made in the said account on 12.10.2020, 15.11.2010 and 11.12.2010 respectively. Thus, there were aggregate cash deposits of Rs.20,75,000/- in this account during the relevant previous year.

On the basis of AIR information relating to the aforesaid cash deposit of Rs.19,50,000/- on 06.05.2010, the Id. AO issued notice u/s 148 to the appellant on 06.12.2013. The appellant being an illiterate agriculturist, residing in a remote village and not conversant with Income-Tax did not make any compliance of the said notice issued u/s 148. The Id. AO issued notice u/s 142(1) to the appellant on 06.02.2015 fixing the case for hearing on 12.02.2015. In compliance, Sh. Mohan Sharma and K.L.Gupta ARs appeared before the Id. AO on behalf of the assessee from time to time. The appellant filed copy of the sale-deed dated 05.05.2010 showing sale of 2 Bigha 7 Biswa agricultural land in vill. Dingali by Sh. Ghisa Ram son of the assessee, for Rs.6,95,600/- to Sh. Prithvi Singh s/o Sh. Jaipal Singh, Ullahwas, Teh.-Sohna, Distt.-Gurgaon. Sh. K.L.Gupta,

A.R. of the assessee stated before the AO that the said land was actually sold for Rs.25,36,500/- @ 9,90,000/- per bigha but on the insistence of the purchaser the sale-deed was executed at Rs.6,95,600/-, being the DLC rate. Shri Gupta also informed the Id. AO that an agreement was also made to the above effect before executing the sale-deed, dated 05.05.2010, which is presently not traceable and will be produced as and when the same is found. It was also stated that out of the total sale consideration of Rs.23,26,500/-, Rs.2,50,000/- were received at the time of agreement and the remaining amount of Rs.20,76,500/- was received on 05.05.2010 at the time of executing the sale-deed, out of which Rs.19,50,000/- was deposited in the bank account of the appellant on the very next day i.e. 06.05.2010. Also, the land sold by the assessee was rural agricultural land being used for agricultural purposes since beginning and not liable to any capital gain tax. The Tehsildar, Kotkasim through his letter dated 27.04.2015 confirmed to the Id. AO that the impugned land is rural agricultural land being used for agricultural purposes. Regarding the further cash deposits of Rs.,1,25,000/- it was stated that these deposits were made out of the withdrawals made from the same account on various dates and agricultural income of the assessee.

However, the Id. AO was not convinced with the reply of the assessee and after allowing credit for sale-deed consideration of Rs.6,95,600/- treated the remaining deposits of Rs.13,79,400 (20,75,000 - 6,95,600) as unexplained. The Id. CIT(A) has also confirmed the addition made by the AO without properly appreciating the facts of the case and the additional evidences filed by the appellant, in a casual and summary manner.

He has further submitted that the appellant is purely a farmer residing in a remote village, having no other source of income except agricultural income. The Id. AO has also not made any other addition except addition on account of bank deposits. For the preceding or succeeding assessment years no notice u/s 142(1) or 148 was ever issued by the Department. The land sold in the name of his son is rural agricultural land being used for agricultural purposes as also confirmed by the Tehsildar, Kotkasim (P.B.page-21) and is not a capital asset u/s 2(14)(iii) of the Act. The witnesses to the agreement dated 04.03.2010 (P.B.page-12-13) have also confirmed that the impugned agricultural land was sold @ Rs.9,90,000/- per bigha. (P.B.page-15-16) and the Id.AO has not even examined them during the remand proceedings. The appellant is a person of very low means and has no such source of income from which unexplained cash of Rs. 19,50,000/- could be generated. It is also worth mentioning that the sale-deed was registered on 05.5.2010 (P.B.page-3 to 6) and the bank deposit of Rs.19,50,000/- through a single entry in the bank account of the appellant was made on 06.5.2010 (P.B.Page-2). The assessee cannot earn undisclosed income of Rs. 19,50,000/- within 35 days of beginning of the new financial year by any means and deposit the same in his bank account in the garb of sale proceeds of the said land. On perusal of the bank account it can also be seen that before and after this deposit there are no major deposits in the account of the appellant. Therefore, considering the facts and circumstances of the case, the source of bank deposit of Rs.19,50,000/- on 06.05.2010 may also kindly be accepted as out of sale proceeds of agricultural land, for the cause of substantial justice. He has relied on the decision of Hon'ble Supreme Court in the case of CIT v.

P.K.Noorjahan, reported in (1999) 237 ITR 570(S.C.). The Id AR has also relied on the decision of the ITAT Jaipur Bench in the case of Pappu Ram Saran v. ITO in ITA No. 1303/JP/2018 order dated 03/09/2020.

5. On the other hand, the Id DR has relied on the orders of the authorities below.

6. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. As per the facts of the present case, we noticed that during the previous year relevant to assessment year 2011-12, cash of Rs. 19.50 lacs were deposited by the assessee on 06/05/2020 in S.B. account No. 77430100026369 in Rajasthan Gramin Bank. Apart from this, further cash deposits of Rs. Rs.35,000/-, Rs.45,000/-, Rs.45,000/- were also made in the said account on 12.10.2010, 15.11.2010 and 11.12.2010 respectively. In this way, an aggregate cash deposit of Rs. 20.75 lacs were deposited by the assessee. On the basis of AIR information relating to the aforesaid cash deposits, the AO issued notice u/s 148 of the Act to the assessee. However, the assessee did not make any compliance of the said notice, thereafter notice u/s 142(1) of the Act was

also issued to the assessee on 06/02/2015 and in consequence thereof certain documents in the shape of sale deed dated 05.05.2010 thereby showing sale of 2 Bigha 7 Biswa agricultural land in village- Dingali by the assessee for Rs.6,95,600/- to one Sh. Prithvi Singh s/o Sh. Jaipal Singh, Ullahwas, Teh.-Sohna, Distt.-Gurgaon was filed. It was submitted by the Id AR that since the source of cash deposits were asked from the assessee, therefore, in compliance thereof, the assessee had placed on record copy of sale deed dated 05/05/2010 thereby showing sale of 2 Bigha 7 Biswa agricultural land by the assessee to Sh. Prithvi Singh s/o Sh. Jaipal Singh. Copy of which is at page No. 3 to 6 of the paper book. It was submitted by the Id AR that in fact the said land was sold for Rs.25,36,500/- @ Rs. 9,90,000/- per bigha but on the insistence of the purchaser the sale-deed was executed at Rs.6,95,600/-, being the DLC rate. It was also submitted that prior to execution of sale deed, an agreement was also made to the above fact, which was initially not traceable before the A.O.. However, the said agreement was placed on record by way of additional evidence before the Id. CIT(A) during the course of appellate proceedings and as per the said agreement, a total consideration of land in question was fixed at

Rs. 23,26,500/- out of which Rs. 2.50 lacs were received at the time of execution of agreement and the remaining amount of Rs. 20,76,500/- was received on 05/05/2010 at the time of executing the sale deed and out of which Rs. 19.50 lacs were deposited in the bank account of the assessee on the very next day i.e. 06/05/2010. As far as the other cash deposits amount to Rs.1.25 lacs are concerned, in this respect, it was submitted by the Id AR that these deposits were made out of withdrawals made from the same account on various dates and agricultural income of the assessee.

7. From the record, we noticed that the A.O. completed the assessment U/s 144 of the Act on 17/03/2015 at an income of Rs. 13,79,400/- after allowing credit of Rs. 6,95,600/- being sale consideration of said land as per the sale deed out of total bank deposits of Rs. 20.75 lacs. The Id CIT(A) during the appellate proceedings had admitted additional evidence filed by the assessee through an application under Rule 46A of the Income Tax Rules, 1962 and by virtue of that application, the evidences in the shape of agreement dated 04/03/2010 executed by assessee in favour of Jaipal for the sale of the said land i.e. 2 Bigha and 7 Biswa @ 9.90 lacs per Bigha was also admitted to be

placed on record. Apart from this, the assessee had also drawn our attention to the affidavits of the witnesses i.e. Virendra Yadav S/o- Shri Kaluram and Jagram S/o Late Sadhuram Gurjar who were present at the time of execution of agreement dated 04/03/2010. It was submitted by the Id AR that since the land in question was sold @ 9.90 lacs per bigha as per agreement dated 04/03/2010 but on the instance of purchaser, the sale deed was executed at Rs. 6,95,600/- only being the DLC rate, therefore, it is proved that the assessee had received entire amount of Rs. 23,26,500/- from the sale of land in question and therefore, out of this amount, Rs. 19.50 lacs were deposited in the bank account on the very next day i.e. 06/05/2010. In support of the contention made under the similar facts, the assessee has relied upon the decision of the Coordinate Bench of this ITAT in the case of Shri Pappu Ram Saran Vs ITO in ITA No. 1303 order dated 03/09/2020. On the contrary, the Id DR while relying upon the orders passed by the revenue authorities, had submitted that the assessee has miserably failed to prove the source of cash deposits in the bank as according to the registered sale deed, the land in question was sold at Rs. 6,95,600/- vide sale deed dated 05/05/2010. It was also submitted that no reliance can be placed

of agreement dated 04/03/2010 as the same is not an authentic document. It was further submitted that the said agreement is not between the assessee and Shri Prithivi Singh, however, the said agreement has been shown to be executed between the assessee and one Jaipal who is father of purchaser Shri Prithivi Singh. Even otherwise that agreement do not contain the signatures of the seller i.e. Shri Jaipal, therefore, the same cannot be relied upon.

8. After having heard both the parties at length, we found that during the first appellate proceedings, the remand report was sought by the Id. CIT(A) from the A.O. concerned and in the said report, the A.O. had categorically mentioned that necessary summons U/s 131(1) of the Act were issued upon the said Jaipal on 13/04/2018, 15/01/2019 and 06/02/2019 for carrying out necessary verifications in order to verify the veracity and genuineness of the said agreement dated 04/03/2010 but the said Jaipal, the alleged purchaser of the agricultural land had not made any compliance and even did not appear before the A.O. Apart from this, the A.O. had also asked the assessee to produce the said Jaipur for examination but the assessee also could not produce the said Jaipar as the assessee remained non-

cooperative. We have also gone through all the documents placed on record by the assessee in his paper book which are page No. 1 to 21. From the copy of sale deed executed on 05/05/2010 which is at page No. 3 to 6 of the paper book, we noticed that this registered sale deed dated 05/05/2010 was executed by the assessee in favour of one Prithivi Singh S/o Jaipal for the sale consideration of Rs. 6,95,000/- and this sale deed do not contain the details of execution of alleged agreement to sell dated 04/03/2010. We have also gone through the copy of agreement dated 04/03/2010 which was executed between the assessee and one Jaipal. On careful analyzing the said agreement dated 04/03/2010, we noticed that this agreement was not executed between the assessee and the said purchaser of land i.e. Prithivi Singh rather the said agreement has been executed between the assessee and one Jaipal S/o- Shri Banshi Ram who according to assessee, father of the purchaser Shri Prithivi Singh. Even otherwise, the said agreement dated 04/03/2010 do not contain signature of Jaipal on the said agreement which goes to prove that Jaipal was never signatory or party to the said agreement. Therefore, this document dated 04/03/2010 carries no evidentiary value. Even otherwise, the registered sale deed dated 05/05/2010

is between the different parties i.e. the assessee and one Shri Prithivi Singh and is a registered document, therefore, the presumption of correctness is attached with the said registered sale deed. On the other hand, the said agreement dated 04/03/2010 is an unregistered document which is not found mentioned in the registered sale deed dated 05/05/2010 and has also been executed between different parties i.e. the assessee and one Jaipal and even the said Jaipal has not found to be signatory to the said agreement dated 04/03/2010 which amply proves that this document dated 04/03/2010 carries no evidentiary value, therefore, no benefit can be derived upon by the assessee on the basis of said agreement to sell. It is a settled law that when a registered document has been placed on record, therefore, the presumption is to be drawn that registered document in the shape of registered sale deed dated 05/05/2010 carried evidentiary value which shows that the consideration paid to the assessee for the sale of the land in question was only at Rs. 6,95,600/- and the A.O. had rightly completed the assessment at Rs. 13,79,400/- after allowing credit of Rs. 6,95,600/- being sale consideration of the said land as per sale deed out of the total bank deposits of Rs. 20.75 lacs. The decision of the

Coordinate Bench of this Tribunal in the case of Shri Pappu Ram Saran Vs ITO (supra) is of no help to the assessee as the facts contained in that case is altogether different from the facts of the present case, the said agreement on the basis of which the assessee is raising his claim of having received Rs. 23,26,500/- is not sustainable as the said agreement did not find mention in the registered sale deed dated 05/05/2010 and the said agreement is also executed between the different parties and do not contain the signature of said purchaser i.e. Jaipal, therefore, the *pari materia* contained in the judgment cited by the assessee i.e. Shri Pappu Ram Saran Vs ITO (supra) is different from the facts of the present case and therefore, that decision is distinguishable from the facts and therefore, not applicable in the facts of the present case. No new facts or circumstances have been brought before us in order to controvert or rebut the findings so recorded by the Id. CIT(A), therefore, we find no reason to interfere into or deviate from the findings so recorded by the Id. CIT(A), therefore, we uphold the order of the Id. CIT(A) qua this issue.

9. Ground No. 2 of the appeal raised by the assessee is with regard to chargeability of interest U/s 234A and 234B of the Act.

Since we have already dismissed the main ground raised by the assessee, hence, this ground of appeal is also dismissed.

10. In the result, this appeal of the assessee is dismissed.

Order pronounced in the open court on 09th November, 2020.

Sd/-

(विक्रम सिंह यादव)

(VIKRAM SINGH YADAV)

लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)

(SANDEEP GOSAIN)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 09/11/2020

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Ghasi Ram Kotkasim, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward-1(5), Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 03/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar