

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D' NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER  
ITA No. 6076/Del/2013  
(Assessment Year: 2009-10)

Uday Bahadur,  
C-424, Ground Floor,  
Defence Colony,  
New Delhi

Vs. DCIT, Circle 1(1),  
New Delhi

PAN No. AAHPB4426A

Appellant

Respondent

Assessee by Sh. Rahul Khare, Advocate

Revenue by Ms. Radha Katyal Narang, Jr. DR

Date of hearing 03/11/2020

Pronouncement on 04 /11/2020

**ORDER**

**PER K. NARASIMHA CHARRY, JM**

Challenging the order dated 28.08.2013 passed by learned Commissioner of Income-tax (Appeals)-IV, New Delhi ("CIT(A)) for assessment year 2009-10, Shri Uday Bahadur ("assessee") filed this appeal.

2. Assessee is an individual and an employee of Amirey Gan Indoreal Pvt. Ltd. (a Joint Venture Company) (earlier known as Indoreal Infrastructure Pvt. Ltd.) and also a coparcener in Suraj S.J. Bahadur HUF

Orchards. For the AY 2009-10 he has filed the return of income on 29.03.2011 declaring income of Rs. 1,08,00,000/-. AO received information through AIR, that there is cash deposit of Rs. 23,34,400/- in the bank account of the assessee. Assessee was asked to provide details of cash deposit of Rs.23,34,400/- in his saving bank A/c for which Annual Information Return was received. Assessee, vide letter dated 15.12.11, submitted copies of his bank statements and also submitted the details of cash receipts of Rs.25 lakhs which he claimed to have received on behalf of Suraj S.J. Bahadur (HUF). On being asked to explain the nature of transaction between him and HUF, assessee replied that he has received this amount on behalf of Suraj S.J. Bahadur (HUF) on account of sale proceeds of Timber and Foliage to Shri Kashmira Singh, the contractor, with whom HUF has undertaken an agreement, during the previous year relevant to this assessment year. He further stated that he has been managing the affairs of the HUF as a sole male coparcener.

3. AO noted that during the scrutiny proceedings, the assessee also submitted Form No. 16 and a Brief Note on his income and gave a declaration that he has only salary income from his employer i.e. M/s Amirey Gan Indoreal Pvt. Ltd. Assessee further submitted that he has no business income, therefore, he does not maintain any books of accounts and consequently, neither P&L A/c, Balance Sheet and Tax Audit Report nor the details of registered office, corporate office, factory godowns, guest house etc. could be submitted. Assessee was asked to provide details like total Sales of the Orchard during the year 2008-09, party-wise details of the sales, when this stamp paper was purchased and executed, Bank statement of Shri Suraj S.J. Bahadur (HUF) for the year 2008-09, 2007-08 and 2006-07 etc.

4. It appears that the assessee submitted the detail of cash receipts from Shri Kashmira Singh of Rs.25 lakhs into the account of Shri Uday Bahadur, and also submitted therewith a confirmation dated 09.12.11 from Shri Suraj S.J. Bahadur, Karta of HUF. In the confirmation, the Karta has stated that the receipts from the sale proceeds of timber by HUF i.e. Suraj S.J. Bahadur (HUF) has been deposited in his son's account who is the coparcener in HUF. AO, however, observed that in this confirmation letter Karta of HUF has nowhere stated that Shri Uday Bahadur will be the sole owner of this amount i.e. Rs.25 lakhs and can use it as he like and that he has only declared about the deposit of the sale proceed in Shri Uday Bahadur's account and has not given any power of attorney to Shri Uday Bahadur to manage the affairs of HUF as has been claimed by Shri Uday Bahadur in his submissions. AO further observed that the assessee *also submitted a copy of Agreement vide letter dated 15.12.11 for sale of Timber and Foliage between Shri Kashmira Singh, the contractor, and HUF, the period of agreement was from 29.06.08 to 31.10.08, on scrutiny of the agreement, it was found that the agreement is between the contractor and HUF, therefore, the total amount of consideration on sale of Timber should have been deposited into the account of HUF not in the personal saving account of Shri Uday Bahadur, the said contract is neither registered with any Notary nor is witnessed by two witnesses at the time of its execution, and, therefore, it is only an afterthought of the assessee to avoid tax. AO, however, noted that the assessee stated vide letter dated 19.12.11 that this stamp paper was purchased before the execution of the agreement and executed and signed on the date of execution. According to AO, in that case also, it must have been witnessed by two persons and should have been got stamped with Notary to make it a legal document. Therefore, this agreement is not a legal document and is not acceptable.*

5. AO recorded several reasons to hold that the receipt of Rs. 25,00,000/- cannot be agricultural income and why it could be the income of HUF because it was deposited in the account of the assessee, instead of the account of HUF with Centurion Bank of Punjab. AO further doubted the claim of the assessee that he has been managing the affairs of HUF in the absence of any supporting document. On this score, total sale proceeds of Timber and Foliage of Rs.25,00,000/- was added back to the income of the assessee. It is pertinent to note that in the light of the submissions made and material produced by the assessee, in support of his contention that the receipt belongs to the HUF, but to him individually, AO, in his order stated that in order to protect the interest of the Revenue, notice u/s 142(1) of the Income Tax Act, 1961, was issued to the Suraj S.J. Bahadur (HUF) to file its return of income because the HUF has not been filing its return of income by treating receipt of Rs.25 lakhs as agricultural income and protective assessment is made in this case in the hands of Shri Uday Bahadur to tax non-agricultural income as per the provisions of the Act till a substantive assessment is made in the hands of HUF after submission of return of income by HUF. AO further made an addition of Rs.10,93,283/- treating the income as deemed interest income of Suraj S.J. Bahadur HUF.

6. When the assessee preferred an appeal before the Id. CIT(A) and offered to produce certain documents, AO objected the same and the CIT(A) also declined to receive the same. Then the Ld. CIT(A) proceeded to appreciate the findings of the AO and confirmed the addition of Rs. 25 lakhs on the similar grounds which formed the basis for the AO to make

addition. In respect of the addition of Rs.10,93,283/- treating the income as deemed interest income of Suraj S.J. Bahadur HUF, Id. CIT(A) observed that the AO has made the addition on account of interest income by presuming that had HUF deposited the amount in the bank account, it would have earned the interest income, but AO has failed to bring any evidence on record to establish that the appellant has earned any interest income and, therefore, the addition was made without any basis and such type of additions which are based on assumption are not permissible under the law. On this premise, the addition of Rs.10,93,283/- made on account of deemed interest was directed to be deleted.

7. Argument of the Id. AR is twofold. Firstly that having observing that notice u/s 142(1) of the Income Tax Act, 1961, was issued to the Suraj S.J. Bahadur (HUF) to file its return of income because the HUF has not been filing its return of income by treating receipt of Rs.25 lakhs as agricultural income and having made the protective assessment in the hands of assessee to tax non-agricultural income as per the provisions of the Act till a substantive assessment is made in the hands of HUF after submission of return of income by HUF, AO failed to take the issue to the logical conclusion by taking steps against the HUF and because of the absence of the substantive assessment anywhere, the protective assessment cannot be sustained. Secondly that when the AO realized that there was need of only protective assessment in the hands of assessee whereas the substantive assessment has to be made in the hands of HUF, the authorities below are not justified in preventing the assessee from producing the evidence to show that the receipt in fact pertains to the HUF.

8. Ld. DR, per contra, submitted that the assessee failed to explain the reasons for not producing the material sought to be produced by way of additional evidence before the AO and also the circumstances doubted by the authorities below and, therefore, the CIT(A) is justified in refusing to admit the additional evidence and confirming the assessment order.

9. We have gone through the record in the light of the submissions made on either side. It is an admitted fact that in the assessment order, AO observed that notice u/s 142(1) of the Income Tax Act, 1961, was issued to the Suraj S.J. Bahadur (HUF) to file its return of income because the HUF has not been filing its return of income by treating receipt of Rs.25 lakhs as agricultural income and protective assessment is made in this case in the hands of Shri Uday Bahadur to tax non-agricultural income as per the provisions of the Act till a substantive assessment is made in the hands of HUF after submission of return of income by HUF. It also goes undisputed that the Ld. CIT(A), during the appellate proceedings ascertained from the AO as to whether any notice u/s 142(1) was issued in respect of S.J. Bahadur HUF and the AO vide his remand report dated 23.08.2013 has submitted that no notice has been issued to M/s Suraj J. Bahadur HUF, which means that no assessment has been made in the hands of the said HUF. It is not known why notice u/s 142(1) in respect of S.J. Bahadur HUF was not issued and the reason why protective assessment is made in the hands of the assessee.

10. It is clear from the record that having considered the plea of the assessee in the light of the material produced by him, learned Assessing Officer thought it fit to issue notice under section 142 (1) of the Act in respect of SJ Bahadur HUF and till such time the

substantive addition is made in the hands of the HUF, learned Assessing Officer made protective addition in the hands of the assessee. In such an event, there is no reason as to why the learned Assessing Officer had not taken the things to their logical conclusion by making necessary enquiries as to the nature of the receipt vis a vis the HUF and also why the request of the assessee to permit him to produce the additional evidence on this aspect was resisted.

11. When it has come to the notice of the Ld. CIT(A) that it is only the protective assessment that is made in the hands of the assessee in view of the proposed proceedings against the HUF by issuance of notice under section 142 (1) of the Act to make substantive addition in the hands of the HUF, and no such notice under section 142 (1) of the Act was issued by the learned Assessing Officer, as admitted by the assessing officer in his remand report, the endeavour of the Ld. CIT(A) should be to allow the assessee to prove his contention with reference to the document, instead of proceeding with the matter and to hold that the receipt is taxable in the hands of the assessee basing on certain circumstances. When the assessee offered the direct evidence, findings of the authorities below basing on the circumstances does not appear to be proper, inasmuch as the endeavour of the authorities under the Income Tax Act shall be to assess the correct tax liability by affording an opportunity to the assessee.

12. With this view of the matter, we are of the considered opinion that the additional evidence to be produced by the assessee shall be admitted and a view has to be taken by the learned Assessing Officer by proper appraisal of such material with reference to the submissions made by the assessee. We, therefore, admit the additional evidence, set

aside the findings of the Ld. CIT(A) in respect of the addition of Rs. 25 Lacs which the assessee contends to pertain to the HUF, and remand the issue to the file of learned Assessing Officer to take a view after appreciating the material on record and affording an opportunity to the assessee to put forth his case on this aspect. Grounds of appeal of the assessee are accordingly allowed for statistical purpose.

13. In the result, appeal of the assessee is allowed for statistical purpose.

**Order pronounced in the open court on 04/11/2020.**

Sd/-  
**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(K. NARSIMHA CHARRY)**  
**JUDICIAL MEMBER**

Dated: 04/11/2020  
aks/-