

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH "B", CHANDIGARH**

BEFORE: SHRI. N.K.SAINI, VP & SHRI RAVISH SOOD, JM

आयकर अपील सं./ ITA NO. 297/CHD /2017

निर्धारण वर्ष / Assessment Year : 2007-08

Shri Naresh Kumar, Prop. M/s Durga Kela Bhandar, SCF 9, Grain Market, Sector 26, Chandigarh.	बनाम	The ITO, Ward 5(1), Chandigarh.
स्थायी लेखा सं./PAN NO: ABCPK24433Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 02.12.2020

उद्घोषणा की तारीख/Date of Pronouncement : 03.12.2020

(VIRTUAL COURT)

आदेश/Order

PER N.K.SAINI, VP

This is an appeal by the assessee against the order dated 07.12.2016 of CIT(A)-II, Chandigarh. The following grounds have been raised in this appeal :

- 1. The order of Ld. Commissioner of Income Tax (Appeals) is bad, against facts and law.*
- 2. The Ld. Commissioner of Income Tax (Appeals) has without appreciating the facts and circumstances of the case has erred in sustaining the addition of Rs. 14,00,000/-. The addition be deleted*
- 3. The Ld. CIT (Appeals) has without appreciating the facts and circumstances of the case has erred in sustaining the addition of Rs.716000/- on account of the typographical error inadvertently committed in the office of the authorised representative by mentioning the date of 19.04.2007 for the consolidated withdrawal of Rs. 1666000/- as against the factual withdrawals of Rs.950000/- each, as on 19.04.2007 and 20.04.2007 respectively. The addition be deleted*

4. *The appellant craves leave to add, amend or delete any of the grounds of appeal before the same in taken up for final disposal."*

2. From the aforesaid grounds, it would be clear that the grievance of the assessee relates to the sustenance of addition of Rs. 14 lacs and Rs. 7,16,000/- out of the additions made by the AO.

3. The facts of the case, in brief, are that the assessee filed his return of income on 25.10.2007 declaring total income of Rs. 3,41,890/- out of which deduction of Rs. 1 lac was claimed u/s 80C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The said return was processed u/s 143(1) of the Act. Thereafter, the AO initiated re-assessment proceedings u/s 148 of the Act. In response, the assessee asked the reasons/grounds on which the case was reopened. The AO conveyed vide letter dated 21.05.2014 as under :

"Please refer to your' letter received in this office on 23.04.2014 through your counsel, on the subject cited above. In this regard, you are requested to file income tax return for the Asstt. Year 2007-03 to comply with the notice u/s 148 issued by this office, first/ Thereafter, the reasons can be supplied to you, as requested."

4. The AO again asked the assessee to file the return of income by issuing a notice u/s 142(1) of the Act on 18.09.2014. In response, the assessee submitted that the original return filed by the assessee may be considered to have been filed u/s 148 of the Act. It was also submitted that the assessee purchased agricultural land for Rs. 30,66,000/- on 22.01.2007 by using OD

limit availed from Centurial Bank of Punjab which later got merged with the HDFC Bank, Sector 9, Chandigarh and that the bank had not supplied the copy of statement by citing the reasons of old record, a request was made for directing the said bank to provide the required bank statement.

4.1 The AO observed that details of the bank accounts of the assessee revealed that the opening balance as on 19.04.2007 was 'nil' and an amount of Rs. 20 lacs was credited on 19.04.2007, therefore, the claim of the assessee that he had invested in the impugned property by raising a loan from Centurial Bank of Punjab was contrary to the facts on record as the said property had been transferred to the assessee through Registered Deed on 22.01.2007 i.e. three months before the amount credited to his account. The AO also observed that no explanation had been submitted by the assessee to explain the source of Rs. 32,59,960/- [Rs. 30,66,000/- + Rs. 1,83,960/- (Stamp Duty) + Rs. 10,000/- (Registration Fee)] invested in the property. He made an addition of the said amount Rs. 32,59,960/- and assessed the income at Rs. 35,01,850/-.

5. Being aggrieved, the assessee carried the matter to the Id. CIT(A) and submitted that land was purchased for Rs. 30,60,000/- and cash amounting to Rs. 14 lacs was paid on

31.12.2006 to the seller by withdrawing Rs. 13,45,000/- from the books of account of M/s Naresh Kela Bhandar and Rs. 55,000/- from personal savings. It was further submitted that the assessee purchased stamp papers worth Rs. 1,83,960/- and requested seller to take the balance amount of Rs. 16,66,000/- in the third week of April, 2007 and the assessee had paid this amount on 19.04.2007 after withdrawing from his bank account maintained with HDFC Bank. The assessee also furnished following additional evidences under Rule 46A of the Income Tax Rules, 1962 :

- a) *An of Affidavit of Sh. Om Parkash S/o Sh. Payara Lai R/o SCF 16-17, Haryana Timber New Motor Market Manimajra U.T., Chandigarh as General Power of Attorney of Sh. Om Parkash S/o Sh. Banarsi Das With respect to sale of Agriculture land measuring 217 Kanal 16 Maria situated at VIII. Tobha Tehsil Garhshankar, Distt. Hoshiarpur.*
- b) *Copy of regular account of M/s Durga Kela Bhandar for the F.Y. 2006-07 reflecting the withdrawal of Rs. 13,45,000/- dated 12.12.2006.*
- c) *Affidavit of the appellant.*

6. The Id. CIT(A) forwarded the additional evidences furnished by the assessee to the AO for his comments. In response, the AO stated that the addition was rightly made on account of failure on the part of the assessee to explain satisfactorily the source of investment and objected for admission of additional evidences. On merit, the AO submitted the report as under :

"Firstly, it is submitted that the source explained by the assessee now during the course of appellate proceedings is contrary to the source explained by him before the Assessing Officer during the course of assessment proceedings".

Secondly, the assessee has now claimed that the payment of Rs. 14,00,000/- in cash was made to the seller Sh. Om Parkash as part payment of the total sale consideration

of Rs. 30,66,000/- after withdrawing a sum of Rs. 13,45,000/- from his accounts books business of M/s Naresh Kela Bhandar and Rs. 55,000/- out of personal saving also does not appear to be correct because of the following reasons:-

1. The perusal of ledger statement for the period 01.04.2006 to 31.03.2007 reveals that assessee has withdrawn a sum of Rs. 13,45,000/- on 12.12.2006 in cash from M/s Durga Kela Bhandar and the same amount has again been deposited by the assessee in the firm in cash on 27.02.2007. Therefore, the claim of the assessee that he has made payment to the seller after withdrawing from the firm is not correct.

Further, the assessee has claimed that the sale deed was executed on 22.01.2007 and on his request the seller agreed to receive the balance payment of Rs. 16,66,000/- in the third week of April, 2007. He has further claimed that the above said amount was paid by him to the seller after withdrawing the same from his account No. 109901000243162 maintained with HDFC, SCO 46-47, Sector 9-D, Chandigarh is also not correct. The perusal of bank statement reveals that the assessee has withdrawn a sum of Rs. 9,50,000/- on 19.04.2007 and Rs. 9,50,000/- on 20.04.2007 from his account. Thus, the claim of the assessee that balance amount of Rs. 16,66,666/- was paid by him to the said seller Sh. Om Parkash is also not correct and appears to be cooked up story from the part of the assessee. On 19.04.2007 a sum of Rs. 9,50,000/- has only been withdrawn by the assessee.

The assessee has failed to establish the source of purchase of land at the time of completion of assessment under selection 143(3)/147 and also by filing of additional evidence before your goodself."

7. The ld. CIT(A) forwarded the aforesaid remand report of the AO to the assessee for comments/submissions. The ld. CIT(A) after considering submissions of the assessee and the remand report of the AO, sustained the addition of Rs. 23,09,930/- by observing in para 6.3.1 of the impugned order as under :

"6.3.1.....Assessing Officer has given reasonable opportunity during course of assessment proceeding. During appeal proceedings assessee has requested for admission of additional evidence as the same could not be filed before A.O due to lack of time being the old record pertaining to F.Y. 2006-07 and the assessee has already close down the said business therefore it took time to trace the old accountant of the firm and old record. In the interest of natural justice, the additional evidence tiled by the assessee are admitted and adjudicated. During assessment proceedings appellant made statement that investment in the purchase of agriculture land has been made by raising a loan from the Centurion Bank of Punjab. However, during assessment proceeding assessee changed his stand and submitted that cash payment of Rs. 14,00,000/- was made by withdrawing from the books of M/s Naresh Kela Bhandar of Rs. 13,45,000/- which was not found corroborated from the books of the said firm. Assessing Officer has noted in his remand report that the amount of Rs. 13,45,000/- withdrawn from M/s Durga

Kela Bhandar has been deposited in the said firm on 27.02.2007 and therefore, the source of payment of cash of Rs. 14,00,000/- remained unexplained. As regard the balance payment of Rs. 16,66,000/-, seller has mentioned the date of payment to him in the affidavit as 19.04.2007. From the remand report, it is clear that assessee has withdrawn only Rs. 9,50,000/- on 19.04.2007 and therefore, there is no source for the balance payment of Rs. 7,16,000/-. In view of the above, appellant has explained the source of payments of Rs. 9,50,000/- only and hence, A.O is directed to restrict the addition to the extent of Rs. 23,09,930/- (Rs. 32,59,960/- - Rs. 9,50,000/-). Grounds of appeal No.2 and 3 are partly allowed.”

8. Now the assessee is in appeal.

9. The ld. counsel for the assessee submitted that neither the AO nor the ld. CIT(A) considered the facts in right perspective. It was further submitted that the date mentioned as 19.04.2007 for making the payment to the seller was a typographical mistake. It was stated that the payment was actually made on 20.04.2007 by making the withdrawal of Rs. 9,50,000/- each on 19.04.2007 and 20.04.2007 from the HDFC Bank. It was submitted that the then Advocate of the assessee informed vide letter dated 28.11.2006 to the ld. CIT(A) that the mistake was inadvertent and the payment was made on 20.04.2007 which was inadvertently mentioned as 19.04.2007. It was also submitted that the ld. CIT(A) without rejecting the explanation given by the then counsel for the assessee namely Shri R.K. Chaudhary sustained the impugned addition. The ld. counsel for the assessee also furnished additional evidences in the form of affidavits each dated 09.10.2020 furnished by the assessee as well as the seller of the agricultural land. He requested to admit these affidavits

as additional evidences as the contents of these affidavits go to the root of the matter and that in the said affidavits it has been clarified that the payment was made on 20.04.2007 to the seller and by mistake in the office of the Advocate, the date was typed as 19.04.2007.

10. In his rival submissions, the ld. Sr.DR strongly supported the orders passed by the authorities below and reiterated the observations made therein. It was further submitted that if the additional evidences furnished by the assessee are to be admitted, then the opportunity is to be given to the Department for consideration of the contents of these affidavits.

11. We have considered the submissions of both the parties and perused the material available on record. In the present case, it is an admitted fact that the additional evidences now furnished by the ld. counsel for the assessee in the form of affidavit of the assessee as well as of the seller of land namely Shri Om Parkash from whom the assessee purchased the agricultural land in question, were not available either to the ld. CIT(A) or to the AO for their consideration, however, these new evidences now furnished, go to the root of the matter, therefore the same are admitted. However, by keeping in view this fact that the evidences now furnished by the ld. counsel for the

assessee first time before this Bench of the ITAT were not available to the authorities below and even the letter dated 28.11.2006 written by the then counsel to the ld. CIT(A) appears to be not considered by the ld. CIT(A) since there is no discussion in the impugned order and even that letter was also not available to the AO who passed the assessment order on 28.01.2015 i.e. much before 28.11.2006 and by considering peculiar facts of this case, we deem it appropriate to set aside this case back to the file of the AO to be considered afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee and by considering all the evidences furnished by the assessee.

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

Order pronounced on 3rd December,2020

Sd/-

(RAVISH SOOD)

न्यायिक सदस्य/ Judicial Member

Sd/-

(N.K. SAINI)

उपाध्यक्ष / VICE PRESIDENT

Poonam

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File