

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. 1503/JP/2018
निर्धारण वर्ष / Assessment Year :2011-12

Shri Vishnu Prasad, Namdev Export, Opp.-Dhanopia Textiles, Sanganer, Jaipur.	बनाम Vs.	D.C.I.T. Circle-7, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAPPP 9225 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Manish Agarwal (CA)
राजस्व की ओर से / Revenue by :Smt. Rooni Paul(Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 09/02/2021
उदघोषणा की तारीख / Date of Pronouncement : 15/02/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-3, Jaipur dated 30/10/2018 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 and in law, Id. CIT(A) erred in confirming addition of Rs. 30,50,000/- made by A.O. U/s 68 alleging cash deposits in bank account as undisclosed income.*

1.1 *That, Id. CIT(A) erred in confirming addition of Rs. 30,50,000/- ignoring the submission of assessee that the said amount represented sale consideration received by assessee for sale of land.*

- 1.2 *That, Id. CIR(A) erred in confirming addition of Rs. 30,50,000/- ignoring the facts in written submissions and also evidences produced in the shape of sale agreement, merely for the reason that agreement was not registered. Appellant prays addition so made may please be deleted.*
2. *On the facts and in the circumstances of the case and in law, Id. CIT(A) erred in confirming addition of Rs. 15,00,000/- made by AO u/s 68 alleging cash deposits in bank account of assessee as undisclosed income.*
- 2.1 *That, Id. CIT(A) erred in confirming addition made by AO completely ignoring the submission of the assessee that the cash deposits were made out of sum received back of advance from one Shri Hanuman to whom advance was made for purchase of land in earlier years.*
3. *That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.”*

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 the assessee derived income from capital gain and interest income. For the year under consideration, the assessee filed his return of income on 29/03/2012 declaring total income of Rs. 5,72,221/-. The case of the assessee was selected for scrutiny under CASS and notices were issued. The A.O. passed assessment order vide order dated 25/03/2014 assessing total income of Rs. 54,88,057/- by making the following additions:

<u>Particulars</u>	<u>Amount</u>
Income from undisclosed source	45,50,000
Capital Gain (by applying provisions of sec 50C)	<u>3,65,836</u>
Total	<u>49,15,836</u>

Aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A) and the same was decided ex-parte by the Id. CIT(A). Thereafter, the assessee preferred appeal before the ITAT and the ITAT vide its order dated 14/09/2017 restored the matter to the file of Ld. CIT(A) for adjudicating the appeal afresh. In the set-aside proceedings, the Ld. CIT(A) once again confirmed the addition of Rs. 45,50,000/- by alleging the cash deposits in the bank accounts of the assessee to be from undisclosed sources.

4. Now the assessee has preferred the present appeal before the ITAT challenging the order of the Id. CIT(A) in confirming the additions made by the A.O..

5. Ground No. 1 to 1.2 of the appeal raised by the assessee are interrelated and interconnected and relates to challenging the order of the Id. CIT(A) in confirming addition of Rs. 30.40 lacs made U/s 68 of the Act. In this regard, the Id AR appearing on behalf of the assessee has reiterated the same arguments, as were raised before the Id. CIT(A) and also relied on the written submissions filed before the Bench. The contents of the written submissions are reproduced as under:

"In these grounds the appellant has challenged the addition of Rs. 30,50,000/- made u/s 68 of the Act, being confirmed by the Ld. CIT(A), in a summary manner without considering the facts of the matter.

Briefly stating the fact of the matter is that, during the assessment proceedings, on perusal of the bank a/c of the appellant, the Id. AO noticed cash deposits made to the tune of Rs. 45,50,000/- It was explained that the cash deposit of Rs. 30,50,000/- was made from sale of land, in the year under appeal, to Smt. Premlata, for which the entire consideration was received in cash. In support of the above fact, the appellant had filed sale deed dated 07.03.2011 (APB 1-5). It was further explained that the appellant had offered the capital gain arising on the above sale, in his computation of Income filed along with the Return of Income (APB 6). This capital Gain offered by the assessee was duly taxed as LTCG in his Computation of Total Income. As stated in the assessment order, Id. AO had then issued summons u/s 131 of the Act, to the purchaser, in response to which, though Smt. Premlata could not appear in person, had filed her bank statement (as asked for by Id.AO, directly to the office of Id. AO). The Id. AO rejected the source of deposit of cash Rs. 30.50 lacs, for the reason that, the bank statement of Smt. Premlata (which was directly submitted to Id.AO and was never confronted to appellant) did not show withdrawals of Rs. 30.50 lacs and as she did not attend the assessment proceedings of the appellant in person, the explanation of the appellant cannot be considered bonafide, and thus made addition of Rs. 30,50,000/- as undisclosed income.

In this regard it is further submitted before Your Honors that, the provisions of sec 68 reads as under:

Sec 68. "Where any sum is found credited in the book of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so

credited may be charged to income-tax as the income of the assessee of that previous year"

The appellant has explained the source of cash deposit of Rs. 30.50 lacs in his a/c as being the sale proceeds of the property sold by him to Smt. Premlata vide a sale deed dated 07.03.2011 (APB 1-5) which duly mentions the sale consideration of Rs. 30.51 lacs. Identity of the purchaser was also established beyond doubt, as the summons issued by the AO were duly responded and she had submitted her bank statement directly to the office of the AO, as she could not attend the proceedings personally. The consideration against the sale so made has been received in part and the same has been so deposited in the bank from Apr 2010 to Mar 2011, and the sale deed was then made in March 2011 after receipt of moneys due. Further the summons issued by Ld.AO were responded by the purchaser of property. This clearly proves the identity and genuineness of the transaction. The sale deed clearly establishes that the sale consideration was duly received by the assessee in cash, and that proves the source of deposit of Rs. 30.50 lacs in the bank account of the assessee on various dates. The AO had not doubted the sale of property, as the capital gains arising therefrom is duly accepted as such. There is no other entry in the bank statement which indicates, that the contention of the assessee, that amount received from sale of said property was other than that contended by him. Hence when the nature, source, identity and genuineness of the alleged deposit of Rs. 30.50 lacs have been amply proven, there was no reason to hold the deposit as unexplained, merely because the purchaser did not appear before the AO. In this regard the appellant humbly submits that, when the sale transaction is substantiated beyond doubt, the identity of the purchaser is not doubted, the fact that the land stood transferred to the purchaser is not in dispute, the receipt of entire sale consideration is evident from the sale deed, there is no reason to reject the explanation offered by the

appellant that the cash deposited was the sale proceeds so received, only for the reason that the bank statement of Smt. Premlata did not show withdrawals of Rs. 30,50,000/- Here it is pertinent to mention that, the appellant was never confronted with the bank statements of Smt. Premlata, which were allegedly used against the appellant despite of specific request made by assessee to make available any documents/information collected by Id.AO and which were being used against the assessee. Thus the explanation offered by the appellant, regarding the source and nature of deposit of cash of Rs. 30,50,000/- needs to be accepted as duly substantiated, and thereby the addition of this Rs. 30,50,000/- deserves to be deleted. The adverse inference so drawn by Id.AO without confronting the evidence so collected behind the back of assessee is against the principle of natural justice and consequent addition so made is bad in law and therefore deserves to be deleted.

During the appellate proceedings, Ld. CIT(A) did not consider the submissions filed by the appellant and upheld the addition made by the Id.AO summarily by holding that since the cash deposited in the bank accounts were quite earlier than the date of registration of the sale deed (i.e. 07.03.2011) the contention of the appellant that, the sale proceeds were utilized for making cash deposits, is not acceptable. It is humbly submitted that, the fact of sale of land is not disputed, the sale deed is duly registered, as also the fact that entire sale consideration was received in cash is accepted, and thus the receipt of sale consideration in instalments cannot be doubted and needs to be accepted. It is a practice in case of cash settlements to first receive the entire consideration/ almost the entire consideration and then register the sale deed in favor of the purchaser. Accordingly in the present case, as the sale consideration was agreed to be paid in cash, the payment was made in part until the date of registration (i.e. 07.03.2011). These payments as

and when received were deposited in the bank account of the assessee with Bank of Baroda.

In view of above, it is submitted that description of property sold to Smt. Prem Lata, which was a three storied house and ownership as well as possession of which is being enjoyed by her ever since assessee sold it, has been accepted by Id.AO. Further, both the parties confirmed that no part of sale consideration remained outstanding on the date of execution of sale deed. All these facts were confirmed from Sale Deed itself, which was never disputed by Id.AO and in fact affirmed by him by accepting the Capital Gain offered by assessee. In the scenario, there was no reason to not accept the fact that cash deposits of Rs.30.50 lacs in the bank account of assessee were made out of plot sold and thus the source of deposits was duly explained. It has been held by various Courts and it is settled law that assessee is not bound to explain source of source and addition cannot be made in hands of assessee merely because he could not fully prove the source of source, though he has fully proved the source of money to the satisfaction of Id. AO. The observation of Id. CIT(A) that confirmation from purchaser was not filed, lacks merit as the sale deed mentioning payment of Rs. 30.51 lakhs has been duly signed by purchaser and also seller. Hence sale deed itself is a confirmation of amount being paid by purchaser to assessee.

Thus there was nothing on records to suggest that explanation offered by the assessee was incorrect, and the addition so upheld by rejecting the bonafide explanation offered with documentary evidences, deserve to be deleted and the assessee prays accordingly. He relied upon the following case laws:

- 1. CIT v. U.M. Shah, Proprietor, Shrenik Trading Co. [1973] 90 ITR 396 (Bom.)*
- 2. Nemichand Kothari v. CIT (264 ITR 254)(Gau)*
- 3. Divine Leasing etc Vs. CIT 299 ITR 268 (DEL)*

4. *34 ITR 328 (MAD) & Ker HC in 117 ITR 371*

6. On the other hand, the Id DR has relied on the orders of the revenue authorities.

7. We have considered the rival contentions and carefully gone through the orders of the authorities below. We also deliberated upon the judicial pronouncements referred by the parties. From perusal of the record, as per facts of the present case, we noticed that, on perusal of the bank a/c of the assessee, the AO noticed cash deposits made to the tune of Rs. 45,50,000/- It was explained that the cash deposit of Rs. 30,50,000/- was made from sale of land, in the year under appeal, to Smt. Premlata, for which the entire consideration was received in cash. In support thereof, the assessee filed sale deed dated 07.03.2011. We observe that the assessee had offered the capital gain arising on the above sale, in his computation of Income filed along with the Return of Income. This capital Gain offered by the assessee was duly taxed as LTCG in his Computation of Total Income. The AO had then issued summons u/s 131 of the Income Tax Act, 1961 (in short, the Act) to the purchaser of the land, in response to which, the purchaser Smt. Premlata could not appear in person. But had filed her bank statement (as asked by the AO, directly to the office of AO). The AO rejected the source of deposit of cash Rs. 30.50 lacs, for the reason that, the bank statement of

Smt. Premlata (which was directly submitted to the AO and was never confronted to assessee) did not show withdrawals of Rs. 30.50 lacs and as she did not attend the assessment proceedings of the assessee in person, the explanation of the assessee cannot be considered bonafide, and thus made addition of Rs. 30,50,000/- as undisclosed income.

8. For ready reference, we reproduce Section 68 of the Act as under:

Sec 68. "Where any sum is found credited in the book of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year"

9. We observe that the assessee has explained the source of cash deposit of Rs. 30.50 lacs in his account as being the sale proceeds of the property sold by him to Smt. Premlata vide a sale deed dated 07.03.2011 which duly mentions the sale consideration of Rs. 30.51 lacs. Identity of the purchaser was also established beyond doubt, as the summons issued by the AO were duly responded and she had submitted her bank statement directly to the office of the AO, as she could not attend the proceedings personally. The consideration against the sale so made has been received in part and the same has been so deposited in the bank from Apr 2010 to Mar 2011 and the sale deed was then made in March 2011 after receipt of moneys due. Further the summons issued by the

AO were responded by the purchaser of property. This clearly proves the identity and genuineness of the transaction. The sale deed clearly establishes that the sale consideration was duly received by the assessee in cash and that proves the source of deposit of Rs. 30.50 lacs in the bank account of the assessee on various dates. The AO had not doubted the sale of property, as the capital gains arising therefrom is duly accepted as such. There is no other entry in the bank statement which indicates, that the contention of the assessee, that amount received from sale of said property was other than that contended by him. Hence when the nature, source, identity and genuineness of the alleged deposit of Rs. 30.50 lacs have been amply proven, there was no reason to hold the deposit as unexplained, merely because the purchaser did not appear before the AO. In this regard we observe that when the sale transaction is substantiated beyond doubt, the identity of the purchaser is not doubted, the fact that the land stood transferred to the purchaser is not in dispute, the receipt of entire sale consideration is evident from the sale deed, there is no reason to reject the explanation offered by the assessee that the cash deposited was the sale proceeds so received, only for the reason that the bank statement of Smt. Premlata did not show withdrawals of Rs. 30,50,000/-. Here it is pertinent to mention that, the assessee was never confronted with the bank statements of Smt.

Premalata, which were allegedly used against the assessee despite of specific request made by assessee to make available any documents/information collected by the AO and which were being used against the assessee.

10. We observe that during the appellate proceedings, Ld. CIT(A) did not consider the submissions filed by the assessee and upheld the addition made by the AO summarily by holding that since the cash deposited in the bank accounts were quite earlier than the date of registration of the sale deed (i.e. 07.03.2011) the contention of the assessee that, the sale proceeds were utilized for making cash deposits, is not acceptable. The fact of sale of land is not disputed, the sale deed is duly registered, as also the fact that entire sale consideration was received in cash is accepted, and thus the receipt of sale consideration in instalments cannot be doubted and needs to be accepted. It is a practice in case of cash settlements to first receive the entire consideration/ almost the entire consideration and then register the sale deed in favor of the purchaser. Accordingly, in the present case, as the sale consideration was agreed to be paid in cash, the payment was made in part until the date of registration (i.e. 07.03.2011). These payments as and when received were deposited in the bank account of the assessee with Bank of Baroda.

11. We also observe that description of property sold to Smt. Prem Lata, which was a three storied house and ownership as well as possession of which is being enjoyed by her ever since assessee sold it, has been accepted by the AO. Further, both the parties confirmed that no part of sale consideration remained outstanding on the date of execution of sale deed. All these facts were confirmed from Sale Deed itself, which was never disputed by the AO and in fact affirmed by him by accepting the Capital Gain offered by assessee. In the scenario, there was no reason to not accept the fact that cash deposits of Rs.30.50 lacs in the bank account of assessee were made out of plot sold and thus the source of deposits was duly explained. It has been held by various Courts and it is settled law that assessee is not bound to explain source of source and addition cannot be made in hands of assessee merely because he could not fully prove the source of source, though he has fully proved the source of money to the satisfaction of the AO. The observation of Id. CIT(A) that confirmation from purchaser was not filed, lacks merit as the sale deed mentioning payment of Rs. 30.51 lakhs have been duly signed by purchaser and also seller. Hence sale deed itself is a confirmation of amount being paid by purchaser to assessee. In the case of **Nemichand Kothari v. CIT (264 ITR 254)(Gau)**, wherein it has been held that *it is not the duty of the assessee to prove the source of the source of*

depositors. The important observations are as under: "A person may have funds from any source and an assessee, on such information received, may take a loan from such a person. It is not the business of the assessee to find out whether the source of sources from which the creditor had agreed to advance the amounts were genuine or not. If a creditor has, by any undisclosed source, a particular amount of money in the bank, there is no limitation under the law on the part of the assessee to obtain such amount of money or part thereof from the creditor, by way of cheque in the form of loan and in such a case, if the creditor fails to satisfy as to how he had actually received the said amount and happened to keep it in the bank, the said amount cannot be treated as income of the assessee from undisclosed sources."

In the case of **Mehta Parika and Co. Vs CIT Bombay 30 ITR 181**

(SC) wherein the Hon'ble Supreme Court has held:

Held, (i) that applying the true principles as to interference with findings of fact of the Tribunal, the Court was under the circumstances entitled to consider whether the finding that Rs. 30,000 represented undisclosed profits was correct;

(ii) as the cash book of the appellants was accepted, and the entries therein were not challenged, and neither further accounts nor vouchers were called for, and the persons who gave the affidavits were not cross-examined, it was not open to the Revenue to challenge the correctness of the cash book entries or the statements made in the affidavits;

(iii) the view of the Tribunal that it was impossible for the appellants to have had 61 notes on 18th January and rejection of 30 such notes was based on pure surmise, and as the appellants had furnished a reasonable explanation for possession of 61 notes, there was no justification for having accepted their explanation in part and discarded it in relation to the sum of Rs. 30,000 and no part of the sum of Rs. 61,000 could in the circumstances of the case have been assessed as undisclosed profits.

Facts proved or admitted may provide evidence to support further conclusions to be deduced from them which conclusions may themselves be conclusions of fact and such inference from facts proved or admitted could be matters of law. The Court would be entitled to intervene if it appears that the fact-finding authority has acted without any evidence or upon a view of the facts, which could not reasonably be entertained or the facts found are such that no person acting judicially and properly instructed as to the relevant law would have come to the determination in question."

In view of the above facts and circumstances, we are of the view that the cash deposited in the bank a/c of the assessee stands fully explained and duly substantiated, in the form of the registered sale deed mentioning the sale consideration of Rs. 30,50,000/-, as also the fact that the assessee's land stood transferred in the name of the buyer, which proves the genuineness of the transaction and thus the addition so made as undisclosed income of Rs. 30,50,000/- is directed to be deleted. Hence, we direct the A.O. to delete the same.

12. Ground No. 2 and 2.1 of the appeal raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs. 15.00 lacs made U/s 68 of the Act. In this regard, the Id AR has reiterated

the same arguments as were raised by the Id. CIT(A) and also relied on the written submissions filed before the Bench and the same is reproduced below:

"In these ground the appellant has challenged the addition of Rs. 15,00,000/- made by the Id.AO by alleging the same as undisclosed income, being cash deposits appearing in the bank statement of the assessee, upheld by Ld.CIT(A).

Out of the total cash deposits of Rs. 45,50,000/- appearing in the bank statement, as stated above, Rs. 15,00,000/- was explained as received from Shri Hanuman. The appellant had paid this amount to him as an advance against purchase of his land in FY2004-05. Later due to some disputes with the title of the said land the deal could not materialize, and the advance paid, remained receivable from Shri Hanuman. This amount duly appeared in the appellant's balance sheet as on 31.03.2005 [APB 16] This transaction was further substantiated by filing the duly notarized 'sale agreement', entered into between the appellant and Shri Hanuman [APB 7-12]. The said amount was recovered in the year under appeal, and the same was explained as being deposited in cash by the assessee. During the assessment proceedings the appellant had furnished complete address of Shri Hanuman the Id.AO issued summons, he did not attend the proceedings, and therefore the Id.AO, treated the same as unexplained credit, alleging that confirmation was also not filed by the appellant. The same findings were repeated by the Ld. CIT(A) and the said addition was confirmed.

In this regard it is humbly submitted that, since Shri Hanuman was not co-operating, the appellant had filed an affidavit of one of the witnesses to the sale agreement [APB 13], who had confirmed on oath that, the said sum of Rs15,00,000/- was received from Shri Hanuman, by the appellant.

The Id.AO as well as the Ld. CIT(A) did not consider the explanation provided by the appellant, and treated the sum so received and deposited in the bank account as unexplained deposits.

In this regard it is humbly submitted that, the provisions of sec 68, that deals with 'Unexplained credits' reads as under:

Sec 68. "Where any sum is found credited in the book of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year"

Thus, the assessee must prove the following three important conditions namely;-

- (i) Identity of persons – creditors*
- (ii) Genuineness of transaction; and*
- (iii) Capability of the persons giving cash credit.*

In the case of the appellant, (i) the identity of Shri Hanuman remains undisputed, as the summons issued by the Id.AO was duly served upon him, (ii) genuineness of the transaction is also proved (from books of accounts) beyond doubt, as amount paid as advance to him, duly appeared in the balance sheet of the appellant since FY 2004-05, as also the agreement to sale, that duly substantiates the transaction was available on records. As far as the third condition is concerned, it is submitted, that the appellant had not received any loan/ advance from him, but had only recovered his own money, thus, capacity is not the issue involved. Thus all the conditions envisaged above are completely satisfied by the appellant. Section 68 makes it clear that in respect of a cash credit entry the explanation offered by the assessee can be rejected by the Income tax Officer only on cogent grounds, that is, only if such grounds are not based upon any evidence. And the appellant has filed complete

evidences for the explanation offered by it, and the sole reason to reject the appellant's explanation, was that the persons did not appear in person for the assessment proceedings. Your honors would appreciate the fact in such kind of land deals, normally advance paid is never returned and Sh. Hanuman was also not willing to repay advance taken by him and assessee had to put continuous efforts and follow up to persuade him to pay back money (which was eventually received in installments) and he was not in good terms with assessee for this reason. In such circumstances, it was not accepted from him to cooperate with Income Tax department in the case of assessee.

In this regard it is further submitted that, it is a settled position of law that if the parties had received the summons but did not appear, the assessee could not be blamed-CIT v. U.M. Shah, Proprietor, Shrenik Trading Co. [1973] 90 ITR 396 (Bom.)

Based on above, it is submitted that, the cash deposit of Rs. 15,00,000/- appearing in the bank statement, also stands fully explained and substantiated, and thus prays that the addition so made may kindly be deleted."

13. On the other hand, the Id DR has relied on the orders of the revenue authorities.

14. We have considered the rival contentions and carefully gone through the orders of the authorities below. From the record, we found that out of the total cash deposits of Rs. 45,50,000/- appearing in the bank statement, as stated above, Rs. 15,00,000/- was explained as received from Shri Hanuman. The assessee had paid this amount to him

as an advance against purchase of his land in FY 2004-05. Later due to some disputes with the title of the said land the deal could not materialize, and the advance paid, remained receivable from Shri Hanuman. This amount duly appeared in the assessee's balance sheet as on 31.03.2005, which has been placed at page No. 16 of the paper book. This transaction was further substantiated by filing the duly notarized 'sale agreement', entered into between the assessee and Shri Hanuman. The said amount was recovered in the year under appeal and the same was explained as being deposited in cash by the assessee. During the assessment proceedings the assessee had furnished complete address of Shri Hanuman and the AO issued summons but he did not attend the proceedings, therefore the AO, treated the same as unexplained credit, alleging that confirmation was also not filed by the assessee. The same findings were repeated by the Ld. CIT(A) and the said addition was confirmed.

15. We observe that since Shri Hanuman was not co-operating, the assessee had filed an affidavit of one of the witnesses to the sale agreement, who had confirmed on oath that, the said sum of Rs15,00,000/- was received from Shri Hanuman, by the assessee. The AO as well as the Ld. CIT(A) did not consider the explanation provided by the assessee, and treated the sum so received and deposited in the bank

account as unexplained deposits. Thus, the assessee must prove the following three important conditions namely;-

- (i) Identity of persons – creditors
- (ii) Genuineness of transaction; and
- (iii) Capability of the persons giving cash credit.

In the case of the assessee, (i) the identity of Shri Hanuman remains undisputed, as the summons issued by the AO was duly served upon him, (ii) genuineness of the transaction is also proved (from books of accounts) beyond doubt, as amount paid as advance to him, duly appeared in the balance sheet of the assessee since FY 2004-05, as also the agreement to sale, that duly substantiates the transaction was available on records. As far as the third condition is concerned, it is submitted, that the assessee had not received any loan/ advance from him, but had only recovered his own money, thus, capacity is not the issue involved. Thus, all the conditions envisaged above are completely satisfied by the assessee. Section 68 makes it clear that in respect of a cash credit entry the explanation offered by the assessee can be rejected by the Income tax Officer only on cogent grounds, that is, only if such grounds are not based upon any evidence and the assessee has filed complete evidences for the explanation offered by it, and the sole reason to reject the assessee's explanation, was that the persons did not appear

in person for the assessment proceedings. Your honors would appreciate the fact in such kind of land deals, normally advance paid is never returned and Sh. Hanuman was also not willing to repay advance taken by him and assessee had to put continuous efforts and follow up to persuade him to pay back money (which was eventually received in installments) and he was not in good terms with assessee for this reason. In such circumstances, it was not accepted from him to cooperate with Income Tax department in the case of assessee. In the case of **CIT v. U.M. Shah, Proprietor, Shrenik Trading Co. [1973] 90 ITR 396 (Bom.)** wherein the Hon'ble High Court has held that, *if the parties had received the summons but did not appear, the assessee could not be blamed.* In view of the above facts and circumstances, cash deposit of Rs. 15,00,000/- appearing in the bank statement also stands fully explained and substantiated, therefore, we direct the A.O. to delete the addition made.

16. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 15th February, 2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 15/02/2021

***Ranjan**

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

1. अपीलार्थी / The Appellant- Shri Vishnu Prasad, Jaipur.
2. प्रत्यर्थी / The Respondent- The D.C.I.T. Circle-7, Jaipur.
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. 1503/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar