

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'SMC-1' NEW DELHI]**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
A N D
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 7849/Del/2018 (A.Y. 2009-10)

A N D

I.T.A. No. 7850/Del/2018 (A.Y. 2009-10)

(THROUGH VIDEO CONFERENCING)

Shri Sukhdev Singh, Village Kayampur, Tehsil Nakur, Distt. Saharanpur PAN: HGVPS3714M (APPELLANT)	Vs.	Income Tax Officer, Ward : 1, Saharanpur. (RESPONDENT)
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Assessee by :	Shri Ankit Gupta, Advocate
Department by:	Sh.Sanjeev Mahajan, Sr.DR

Date of Hearing	13.05.2021
Date of Pronouncement	28.05.2021

O R D E R

PER SUCHITRA KAMBLE, JM :

These two appeals are filed by the assessee against order dated 24.09.2018 passed by CIT (Appeals), Muzaffarnagar, for assessment year 2009-10.

2. The grounds of appeal are as under:-

I.T.A. No. 7849/Del/2018 :

“ 1. That, the notice issued U/s 148r.w,s 148 of the Act and initiated the re-assessment proceedings is illegal, bad in law and without jurisdiction;

2. That, CIT(A) has failed to appreciate that no notice U/s 148 of the Act and other statutory notice during the re- assessment proceedings was never properly served on the assessee and the same were sent on the wrong

addresses, even after knowing the correct address of the appellant, hence the proceedings initiated is illegal, bad in law and without jurisdiction.

3. That, CTT(A) has failed to appreciate that no proper and valid satisfaction/reasons were recorded by the assessing officer before assumption the jurisdiction U/s 147 and issuing the notice U/s 148 of the Act.

4. That, The CIT(A) erred in validate the action of the assessing officer of initiating the proceeding on the basis of AIR information, which is vague, incorrect and baseless, without application of independent mind on the said information, whether the same constitute the tangible material and having live nexus, which leads to income escaping assessment, therefore, the alleged reason recorded are highly arbitrary, bad in law and purely based on surmises and conjecture;

5. That, no proper approval was obtained on the alleged reason recorded by the assessing officer as per section 151 of the Act, before issuing the notice U/s 148 of the Act, hence the proceeding initiated is illegal, bad in law and without jurisdiction;

6. That, no proper approval was obtained before issuing the notice U/s 131 of the Act, which is the basis of the initiating the proceeding U/s 147 of the Act, therefore, the notice and proceedings is illegal, bad in law and without jurisdiction;

7. That assessment order passed 144/147 and the addition made are illegal, bad in law and without jurisdiction. The CIT(A) erred in upholding the same.

8. That, the assessing officer has erred in making the addition to the income of Rs.36,90,000.00 on account of unexplained CASH transaction U/s 69 A of the Act, against the Nil Income of the assessee. The CIT(A) erred in restricting the same at Rs.26,20,000.00, which is illegal, unjust, highly excessive and are not based on any material on record.

9. That, CIT (A) has failed to appreciate in confirming the addition, that the assessee is an agriculturist and having no other source of income and The CASH was deposited out of the sale proceeds of the agriculture land as well as the sale proceeds of the agriculture proceeds, hence the addition made is highly arbitrary and unjust;

10. That, CIT(A) has failed to appreciate that the provision of section 69A per se not applicable on the CASH deposit in the bank account of the assessee, hence the addition made U/s 69A is highly arbitrary and unjust.

11. The addition confirmed and the observations made by CIT (A) are unjust, unlawful and based on mere surmises and conjunctures. The addition made cannot be justified by any material available on record.

12. That the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/ allowances made.

13. That the impugned Assessment Order passed by the Assessing Officer and order passed by CIT(A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.

14. That the interest U/s 234A & 234B has been wrongly and illegally charged as the appellant could not have foreseen the disallowances/additions made and could not have included the same in current income for payment of Advance tax. The interest charged under various sections is also wrongly worked out.

15. The appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.

All of the above grounds of appeal are without prejudice and are mutually exclusive to each other. “

I.T.A. No. 7850/Del/2018 :

“ 1. That, the notice issued 271(1)(c) of the Act and order passed is illegal, bad in law and without jurisdiction.

2. That, CIT(A) has failed to appreciate that no proper satisfaction was recorded in assessment order as well as notice issued U/s 271(1)(c) of the Act, hence the proceedings initiated is illegal, bad in law and without jurisdiction.

3. That, CIT(A) has failed to appreciate that no proper and specific charge was mentioned in assessment order as well as in notice issued U/s 271(1)(c) of the Act, hence the penalty imposed is bad in law and without jurisdiction

4. That, the assessing officer has erred in imposing the penalty of Rs.1 1,46,596.00. The CIT(A) erred in confirming the same, which is illegal, bad in law and unjust.

5. That, CIT (A) has failed to appreciate before confirming the penalty, that the assessee is an agriculturist and having no other source of income and The

CASH was Deposited out of the sale proceed of the agriculture land as well as the sale proceeds of the agriculture proceeds, hence the penalty imposed is highly arbitrary' and unjust.

6. That, CIT(A) failed to appreciate that no material was available on record to the fact which proves that the explanation given by the assessee appellant was found false or incorrect, hence the penalty imposed is highly arbitrary and unjustified.

7. The observations made by CIT (A) are unjust, unlawful and based on mere surmises and conjunctures. The addition made cannot be justified by any material available on record.

8. That the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/ allowances made and penalty imposed.

9. That the impugned penalty Order passed by the Assessing Officer and order passed by CIT(A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.

10. The appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.

All of the above grounds of appeal are without prejudice and are mutually exclusive to each other. “

3. The case was selected on the basis of AIR information of cash deposited in the bank account of the assessee. Assessee deposited Rs.36,90,000/- in the savings bank account which was received by the assessee from sale of agricultural land and other agricultural income as well as sale proceeds. The Assessing Officer issued notice to the assessee vide notice under Section 147 and 148 of the Income Tax Act, 1961 (the Act) dated 16.05.2011. As per the assessment order the notice was returned back with the postal remark that the same was not accepted. Therefore, the Assessing Officer passed assessment order under Section 144 of the Act treating the cash transaction amounting to Rs.36,90,000/- as unexplained deposit and treated the same as income under Section 69A and made addition accordingly.

4. Being aggrieved by the assessment order the assessee filed appeal before

the CIT (Appeals). The CIT (Appeals) partially allowed the appeal of the assessee.

5. The ld. AR submitted that assessee is an Individual-agriculturist and the only source of income is agricultural income. The ld. AR further submitted that for the year under consideration the assessee has not filed any return of income for the reason that the assessee has only agricultural income and the same is exempt under the Income Tax Act. For the year under consideration the assessee sold the agricultural land of Rs.36,90,000/- in cash which has been deposited by the assessee in his bank account. The assessee received Rs.5,90,000/- on 22.07.2008 and Rs.31,00,000/- on 24.01.2009 whereas the assessee after registering the sale deed at Rs.26,20,000/- on 24.01.2009. The ld. AR further submitted that on the basis of AIR information the Assessing Officer issued the verification notice dated 31.01.2011 and 8.04.2011 on the wrong address. The assessee could not make compliance as the same letter was never served on him. Therefore, the Assessing Officer has initiated the re-assessment proceedings under Section 147 and 148 of the Act on 16.05.2011. The ld. AR further submitted that notice issued under Section 148 of the Act on the wrong address i.e. Shri Sukhdev Singh, S/o. Shri Sarshan Singh, Village Mazir Kalan, Post Office Sarsawa, Distt. Saharanpur. The assessing Officer accepted that before completion of the re-assessment proceedings the Assessing Officer was of the knowledge of correct address of the assessee. Thus, the ld. AR submitted that notice issued under Section 148 of the Act was not properly served and hence the whole proceeding is illegal, without jurisdiction and against the principles of natural justice. The ld. AR further submitted that the re-opening on the basis of the illegal, bad in law and defective verification notice makes the re-assessment proceedings illegal and void ab initio. The ld. AR further submitted that the re-assessment cannot be made to verify the cash deposited with the bank account by itself does not lead to income in the hands of the assessee, in the absence of any material, cannot be held as sufficient reason for re-opening assessment. The

ld. AR relied upon the decision of Delhi Bench of the Tribunal in the case of Bir Bahadur Sijwali Vs. ITO (ITA 68 SOT 197) and Pramod Kumar Shai Vs. ITO (ITA 5758/Del/2013 dated 23.12.2019. On merits, the ld. AR submitted that the CIT (Appeals) erred in upholding the addition of cash deposit of Rs.26,20,000/- as un-explained cash deposit in the bank account as the cash deposited on the date mentioned in the sale deed itself proves that the cash is deposited out of sale of agricultural land which was partially agreed by the CIT (Appeals). The CIT (Appeals) and the Assessing Officer has not brought on record any contrary evidence in respect of the explanation given by the assessee relating to cash deposit of the sale proceeds of agricultural land.

6. As regards the penalty appeal, the ld. AR submitted that notice issued under Section 274 of the Act is illegal, bad in law and without jurisdiction as there is no proper limb mentioned in the penalty order whether there is concealment of income or furnishing of inaccurate particulars of income. The Assessing Officer has also not given any proper satisfaction.

7. The ld. DR submitted that the Assessing Officer has made addition ex-parte as the assessee has received the notice but refuse the same. The CIT (Appeals) has given substantial relief to the assessee as the assessee could not establish the reasoning about cash deposit to the extent of Rs.26,20,000/-. As regards penalty order, the Ld. DR submitted that the Assessing Officer has rightly imposed penalty and notice under Section 274 read with Section 271(1)(c) of the Income Tax Act is valid.

8. We have heard both the parties and perused all the relevant material available on record. As regards the contention of notice not properly served by the Assessing Officer, the explanation of the postal authorities is that the assessee has refused to take notice is a good service and hence ground Nos. 1 to 7 are dismissed. As regards ground Nos. 8 to 13, the CIT (Appeals) do have taken cognizance of the provision produced before him, if given a partial relief

despite the details given by the assessee for the entire amount of Rs.36,90,000/-. From the perusal of the record presented before the CIT (A), it can be found that the explanation given by the assessee relating to sale of land for Rs.36,90,000/- was duly reflected in his bank account. The CIT (A)'s stand that no explanation was offered relating to the remaining cash deposit to the extent of Rs.26,20,000/- is not correct. The cash deposits were made according to the sale deed dated 22.07.2008 and the amount was received on 22.07.2008 and 24.01.2009 which was properly reflected in assessee's bank account. Therefore, the CIT (Appeals) was not right in sustaining the remaining amount of cash deposit to the extent of Rs.26,20,000/-. Therefore, on merits the assessee succeeds and ground Nos. 8 to 13 are allowed. As regards to Ground No. 14, the same is consequential and hence not adjudicated upon. Therefore, ITA No. 7849/Del/2018 is partly allowed.

11. As regards penalty appeal, the same is consequential, hence it will not sustain in the light of the addition which is deleted as per the findings given hereinabove. Thus, penalty does not survive. Hence ITA No. 7850/Del/2018 is allowed.

12. In result, appeal being ITA No. 7849/Del/2018 filed by the assessee is partly allowed and appeal being ITA No. 7850/Del/2018 filed by the assessee is allowed.

Order pronounced in the Open Court on this 28th Day of May, 2021

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 28/05/2021.

MEHTA

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	24.05.2021
Date on which the typed draft is placed before the dictating Member	25.05.2021
Date on which the typed draft is placed before the Other Member	28.05.2021
Date on which the approved draft comes to the Sr. PS/PS	28.05.2021
Date on which the fair order is placed before the Dictating Member for pronouncement	28.05.2021
Date on which the fair order comes back to the Sr. PS/PS	28.05.2021
Date on which the final order is uploaded on the website of ITAT	28.05.2021
Date on which the file goes to the Bench Clerk	28.05.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	