

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC-1" : DELHI  
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.2397/Del./2019  
Assessment Year 2010-2011

Shri Babu Khan, 1490, Karim Nagar, Hapur Road, Meerut. PAN GPTPK3959C	vs.	The Income Tax Officer, Ward-1(2), Meerut.
(Appellant)		(Respondent)

For Assessee :	Shri Vinod Goel, Advocate
For Revenue :	Shri Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing :	27.07.2021
Date of Pronouncement :	16.09.2021

**ORDER**

This appeal filed by the Assessee is directed against the Order Dated 05.03.2019 of the Ld. CIT(A), Meerut, relating to the A.Y. 2010-2011.

2. The facts of the case, in brief, are that the assessee is an individual and has not filed his return of income. In this case information was received from the CIB, Kanpur that the assessee has deposited cash of Rs.69,95,600/- in his savings bank account with State

Bank of India during the F.Y. 2009-2010. Accordingly, the A.O. issued a query letter Dated 04.01.2017 to the assessee for verification of the financial transactions entered into by him. However, no reply was received. Since the source of cash deposits has not been explained and the PAN and ITR of the assessee was also not available, the A.O. was of the belief that cash deposited by the assessee was out of his undisclosed income. He, therefore, reopened the case of the assessee after recording reasons and after obtaining satisfaction of the PCIT, Meerut. Notice under section 148 of the I.T. Act was issued on 21.03.2017 which was duly served on the assessee, but, no compliance was made by the assessee to such notice. The A.O. thereafter issued notice under section 142(1) along with a questionnaire fixing the date for hearing on 05.05.2017. However, there was again no compliance. The subsequent notices issued under section 142(1) were also not complied with by the assessee. Therefore, A.O. proceeded to complete the assessment under section 144 of the I.T. Act, 1961.

2.1. Subsequently, the A.R. of the Assessee appeared before the A.O. and stated that assessee has sold agricultural land for a sum of Rs.34,66,650/- along with his Brother, Nephew, Uncle and Aunty and all the persons have deposited the sale proceeds amount in the assessee's savings bank account since these persons do not have any bank account. It was further submitted that the Uncle of the Assessee has received an amount of Rs.31,50,000/- as advance for sale of other agricultural land which was also deposited in the joint account which is in the name of the assessee and his Uncle Shri Jahir Ahmed in State Bank of India, Kithore, Meerut. The balance amount was explained to be deposited out of agricultural income and earlier withdrawals from the bank.

2.2. However, the A.O. was not satisfied with the explanation given by the assessee. According to him, out of the total deposit of Rs.69,95,600/-, source of deposit to the tune of Rs.34,66,650/- was explained and the balance amount of Rs.35,28,950/- remains unexplained in which share of the assessee was 50% which comes to

Rs.17,64,475/-. The A.O. accordingly made addition of Rs.17,64,475/- to the total income of the assessee.

2.3. Before the Ld. CIT(A), the assessee apart from challenging the addition on merit, challenged the validity of the re-assessment proceedings. Certain additional evidences were also filed before the Ld. CIT(A). However, the Ld. CIT(A) was not satisfied with the arguments advanced by the assessee. He upheld the re-assessment proceedings as well as the addition on merit. So far as the merit of the case is concerned, the Ld. CIT(A) upheld the action of the A.O. by observing as under :

*“During the course of appeal proceedings the AR has moved an application under Rule 46A of the IT Rules, 1962 along with purported copy of agreement to sell in which a sum of Rs. 31,50,000/- has been shown as advance received which is incidentally also dated 10.07.2009.*

*The AR has only given the photocopy of the agreement without giving the copy of the back side*

*of the purported agreement so as to prove its genuineness as to its date and the purported Agreement to Sell was not submitted before the AO and in the Application under Rule 46 of the IT Rules, 1962 also. The Id. AR does not give any reason as to why this Agreement to Sell could not be submitted before the AO. It has also not been clarified as to under which clause of Rule 46A of IT Rules, 1962 this piece of evidence should be now admitted.*

*Still in the interest of justice on 13.10.2018 the AO was called along with assessment record and the evidence submitted was carefully examined by the AO and CIT(A) and the recordings were made on the note sheet. From the examination it is clearly established, that this documents which is purportedly an Agreement to Sell is nothing but an afterthought which has been created to justify the deposit of Rs.31,50,000/-.*

*To establish this fact, the following documents are being made as part of this order.*

- 1. Copy of PAN card sent by State Bank of India, Kithore Branch, Meerut in compliance to summon u/s 131 of the IT Act, issued by the AO. (Annexure -1).*
- 2. Copy of Vakalatnama as filed before AO. (Annexure - 2).*
- 3. Copy of one sale deed filed before AO having registration no.8537. (Annexure - 3).There are other Sale Deeds on record as well.*
- 4. Copy of Aadhar Card duly verified by Babu Khan. (Annexure-4).*
- 5. Copy of purported Agreement to Sell as filed during the appeal proceedings. (Annexure-5).*

*In all these documents except the last one Babu Khan has signed in Hindi whereas in the alleged Agreement to Sell his purported signature are in English.*

*In the Agreement to Sell filed as additional evidence during the appeal proceedings vide letter received on 13.07.2018 the signature of Babu Khan is in English as in all the other documents he has been signing in Hindi which indicates that agreement to sell is an afterthought already a forged piece of evidence. In all the sale deeds where Babu Khan involved which were submitted during the assessment proceedings, the appellant Sh. Babu Khan has signed in Hindi the copy of PAN card received from State Bank of India also shows Babu Khan signing in Hindi and his signature in Hindi again have been verified by the bank official. Similarly on the copy of the Aadhar Card also Babu Khan has signed in Hindi. The vakalatnama filed during the assessment proceedings shows Babu Khan the assessee signing in Hindi.*

*It is only in the purported Agreement to Sell that Babu Khan signature have come in English and this piece of evidence, which is only a photocopy of the front side of the alleged Agreement has not been countersigned or*

*verified or copies of back side provided even the notary stamp is quite illegible and vague and cannot be read no date of paper purchase is indicated anywhere and the entire document is of doubtful veracity and no effort has been made to prove that this purported document is genuine and has any basis as the original has never been produced during the appeal proceedings.*

*Thus, the Appellant has failed in his attempt to substantiate the balance deposit through this alleged forged Agreement to Sell which is nothing but an afterthought and therefore the AO's finding that Rs.35,28,950/- remained unexplained in which the assessee's share was half which comes to Rs.17,64,475/- remains un-assailed and non controverted in the absence of any credible evidence whatsoever. The order of the AO does not require any interference and the addition made by the AO is hereby confirmed.*

8. *In the result, the appeal is hereby dismissed.”*

3. Aggrieved with such Order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :

*“1. That the assessment U/s 144/147 was made without any serving the reason and approval of Pr. CIT for reopening of the assessment as well as the assessment made by the A.O. is bad in law. The CIT(A) has not dispose this ground.*

*2. That the A.O. has not considered advance taken the amount by the assessee along with his uncle as sale amount against the agriculture land. The document filed by the assessee is well supported by copy of Ikrarnama and sale deed. Even A O as well as CIT(A) never tried to examine on sale deed and agreement photo of the assessee was also pasted. Then rejection by CIT(A) on the basis of technical reasons is bad in law.*

3. *That the assessee has right to add, delete or modify any grounds of appeal during the proceedings.*

4. Learned Counsel for the Assessee did not make any arguments so far as the validity of the re-assessment proceedings are concerned, therefore, the same is dismissed as not pressed. So far as the remaining grounds are concerned, the Learned Counsel for the Assessee submitted that assessee has furnished the following details :

1. *“Copy of PAN card sent by State Bank of India, Kithore Branch, Meerut in compliance to summon u/s 131 of the IT Act, issued by the AO. (Annexure -1).*
2. *Copy of Vakalatnama as filed before AO. (Annexure - 2).*
3. *Copy of one sale deed filed before AO having registration no.8537. (Annexure - 3).There are other Sale Deeds on record as well.*

4. *Copy of Aadhar Card duly verified by Babu Khan. (Annexure-4).*

5. *Copy of purported Agreement to Sell as filed during the appeal proceedings. (Annexure-5).”*

4.1. He submitted that merely because the Agreement to Sell was in English and the signature in PAN and other details are in Hindi, the same cannot be a ground for making the addition. He submitted that assessee is not well conversant with the income tax proceedings and is a Lecturer in a College and has knowledge in English for signature. He submitted that the bank account was in the name of the Assessee and his Uncle and the deposits were made out of sale proceeds of agricultural land, advance received for sale of land, deposit out of agricultural income and past withdrawals. The Ld. CIT(A) should have accepted the same. He submitted that there is no evidence on record that the documents filed by the assessee are forged and non-genuine without conducting any enquiry. He

accordingly submitted that the addition made by the A.O. and sustained by the Ld. CIT(A) should be deleted.

5. The Ld. D.R. on the other hand, heavily relied on the Order of the Ld. CIT(A). He submitted that before the A.O. the assessee has not given any proper explanation and the Ld. CIT(A) has given detailed reasoning for sustaining the addition made by the A.O. He accordingly submitted that the Order of the Ld. CIT(A) be upheld.

6. I have considered the rival arguments made by both the sides, perused the Orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the A.O. in the instant case reopened the assessment of the assessee on the ground that the assessee is a non-filer of income tax return and has made huge cash deposit of Rs.69,95,600/- in his S B Account. I find during the course of assessment proceedings the A.O. after considering the explanation of assessee regarding deposit of Rs.34,66,650/- on account of sale of agricultural land, accepted the source to this extent as explained. However, for the balance

amount of Rs.35,28,950/- the explanation of the assessee that the same is out of advance received by his Uncle for sale of other agricultural land, previous withdrawals from the Bank Account and out of agricultural income was not accepted by the A.O. who made addition of Rs.17,64,475/- being 50% of the income belonging to the assessee since the bank account was a joint bank account. I find the Ld. CIT(A) upheld the action of the A.O. the reasoning of which has already been given in the preceding paragraph. It is the submission of the Learned Counsel for the Assessee that without making any enquiry, the A.O. made the addition which has been sustained by the Ld. CIT(A). He submitted that although the assessee had filed the PAN copy, copy of Vakalat, copy of one Sale Deed, copy of Aadhar Card which are signed in Hindi, however, the copy of Agreement to Sell was signed in English. He submitted that merely because one of the document was signed in English and the assessee being a Lecturer in a College, cannot be a ground to disbelieve that assessee cannot sign in English since all his other documents are signed in Hindi. He submitted that it is

the prerogative of the assessee as to how he can sign i.e., whether in Hindi or English and the A.O. without making any enquiry could not have disbelieve the document and treat the same as forged.

6.1. I find some force in the above arguments of the Learned Counsel for the Assessee. When the assessee has submitted copy of Agreement to Sell of the agricultural land, at least the A.O. could have called the person who had given so much money to the Uncle of the assessee as advance. Further the submission of the assessee before the A.O. that some amount is deposited out of his agricultural income and previous withdrawals from the Bank which were available for deposit in the Bank Account also not considered properly. Considering the totality of the facts and circumstances of the case and in the interest of justice, I deem it proper to restore the issue to the file of A.O. with a direction to grant one more opportunity to the assessee to substantiate his case and decide the issue as per fact and Law. The A.O. may conduct necessary enquiry as he deems

proper by directing the assessee to produce the person from whom the advance has been received for sale of land by his Uncle. The assessee is also hereby directed to appear before A.O. and adduce the evidence to the satisfaction of the A.O. regarding source of deposit without seeking any adjournment under any pretext, failing which, the A.O. is at liberty to pass appropriate Order as per Law. I hold and direct accordingly. Grounds raised by the assessee are accordingly allowed for statistical purposes.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 16.09.2021.

Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER

Delhi, Dated 16<sup>th</sup> September, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-1' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.