

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.1619/Del./2020
Assessment Year 2011-2012

Shri Jagdish, Ghaziabad. PAN APBPJ9955K C/o. M/s. RRA TAXINDIA D-28, South Extension, Part-I, New Delhi-110049.	vs.	The Income Tax Officer, Ward – 1 (3), Ghaziabad. Uttar Pradesh.
(Appellant)		(Respondent)

For Assessee :	Shri Rakesh Gupta, And Shri Somil Agarwal, Advocates.
For Revenue :	Sh. R.K. Gupta, Sr. DR
Date of Hearing :	14.10.2021
Date of Pronouncement :	29.10.2021

ORDER

This appeal filed by the Assessee is directed against the Order dated 11.08.2020 of the Ld. CIT(A), Ghaziabad, relating to the A.Y. 2011-2012.

2. Facts of the case, in brief, are that the assessee is an individual. In this case information was received that the assessee has deposited cash of Rs.26,04,000/- in his Saving

bank Account bearing No.xxxx4910 maintained with Oriental Bank of Commerce. Accordingly, verification letters were sent to the assessee on the last known address through speed post after seeking necessary approval. Since there was no compliance from the side of the assessee and no PAN was available with the Department, the A.O. after recording reasons under section 147 of the I.T. Act, 1961 for reopening, issued notice under section 148 of the I.T. Act, 1961 dated 23.03.2018 which was duly served upon the assessee. The A.R. of the assessee filed reply on 29.03.2018. Thereafter, the A.O. issued notice under section 142(1) of the I.T. Act, 1961 along with questionnaire requiring the assessee to furnish the copy of income tax return, details/documents etc. The Authorized Representative of the assessee filed copies of sale/purchase deeds and ITR. During the course of assessment proceedings, the A.O. noted from bank account submitted by the assessee that assessee has made cash deposits of Rs.26,04,000/-. On being confronted to the assessee, it was submitted that he has agricultural land of 0.675 Hectare situated at village-

Painga, Modinagar on 11.5.2010 for Rs.20,25,000/- which was in the name of his wife Smt. Omwati and which was purchased in the year 2006 for Rs.4,30,200/-.

2.1. So far as the balance deposit of Rs.5,75,000/- is concerned, [i.e.,Rs.26,00,000(-)20,25,000 = Rs.5,75,000], it was submitted that this amount was given by his son Mr. Tinku Chaudhary after sale of his Buffallows, cow and popular trees. In the absence of any plausible explanation or evidence to show such sale of Buffallows, cow and popular trees, the A.O. made addition of Rs.5,75,000/- as unexplained cash.

2.2. During the course of assessment proceedings, the assessee furnished the capital gain calculation of the property sold at Rs.20,25,000/- admitting the land as capital asset within the meaning of Section 2 (24) of the I.T. Act, 1961 as under :

Sale consideration (F.Y 10-11)	-	Rs. 20,25,000/-
Less : Cost of acquisition (2006-07)		
430200/519*711	=	5,89,350/-
Indexation cost of improvement (Boundary-wall)	-	2,88,372/-
		<u>Rs. 8,77,722/-</u>
Long Term Capital Gain	-	Rs. 11,47,278/-
Less : Deduction u/s 54B		
Purchase of Plot and construction cost (F.Y. 10-11)		<u>Rs. 12,10,000/-</u>
Taxable Gain	-	NIL

2.3. The A.O. asked the assessee to furnish the cost of improvement of the land and furnish the evidence of construction of boundary wall such as investment made and detail of the contractor and proof of material purchased for such boundary wall. The assessee simply furnished a plain paper agreement with one Shri Rajneesh S/o Sh. Brahmpal, Village-Painga. The A.O. did not consider the same as concrete evidence of construction of boundary wall. Rejecting the various explanations given by the assessee, the A.O. determined the long term capital gains at Rs.14,35,651/- after allowing the indexed cost of acquisition at Rs.5,89,349/- from sale consideration of Rs.20,25,000/-. After allowing deduction of Rs.6,54,800/- under section 54F of the I.T. Act, 1961, the A.O. added long term capital gains of Rs.7,80,851/- to the total income of the assessee. Accordingly, the A.O. determined the total income of the assessee at Rs.13,60,244/- and agricultural income of Rs.2,32,600/-.

2.4. In appeal, the Ld. CIT(A) upheld the action of the A.O. So far as the addition of Rs.5,75,000/- in respect of unexplained cash is concerned, the Ld. CIT(A) upheld the action of the A.O. by observing as under :

“5.2 Original ground of appeal no. 1: *The appellant the has challenged the addition of Rs.5,75,000/- made by the A.O. on account of income from unexplained sources. The appellant claimed that he received this amount from his son, Shri Tinku Choudhary who is an agriculturist. The A.O. has duly examined this issue in his assessment order and has given clear finding that due to several deficiencies, this explanation of the appellant cannot be accepted. The stated claim of the appellant that this amount was received from his son, Shri Tinku Choudhary, who gave him the said amount after sale of buffalo, cow and popular trees, however, he failed to give any evidence such as khasra, khatauni with respect to land of which popular trees were grown and any credible evidence with respect to sale of cattle. He could only furnish a plain receipt (a self serving*

document) of the sale. Even during appellate proceedings the appellant fail to give any credible explanation supported by evidentiary proof of the stated receipt of Rs.5,75,000/- from his son, Shri Tinku Choudhary. Thus, in the above facts and circumstances, I do not find any reason to interfere with finding of the A.O. on this issue. Therefore, the action of the A.O. for treating Rs.5,75,000/- as unexplained income of the appellant is confirmed. Hence, this ground of appeal is rejected.”

2.4. So far as the addition of Rs.7,80,851/- is concerned, the Ld. CIT(A) upheld the action of the A.O. by observing as under :

“5.4. Additional ground no. 2: Though in this ground of appeal again appellant has claimed that he is not the owner of the land. The owner and the seller of the land is his wife i.e. Smt. Omwati. The sale proceed of the land was deposited by his wife in his account.

5.4.1. *It is seen that during assessment proceedings the appellant himself has taken the onus of providing the explanation of source of cash deposit in his bank account. There was not a single time mention of his wife. The reply and the claim of stated sources have been furnished by the appellant himself and never disclosed the sources are the income of his wife. In his ITR and computation of income furnished during assessment proceedings the appellant claimed his income as capital gain from the sale proceeds of the land. Thus, it is clear that he is contradicting himself and has raised frivolous additional ground before undersigned. Hence, this additional ground of appeal is rejected.”*

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 having regard to the facts and circumstances of the case, the assumption of jurisdiction in*

reopening the impugned assessment and passing the impugned reassessment order u/s 147/143(3), is bad in law and against the facts and circumstances of the case and more so when statutory conditions as stipulated u/s 147 to 151 have not been complied with.

2. *That in any case and in any view of the matter, the assumption of jurisdiction in reopening the assessment u/s 147/143(3), is illegal, bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal grounds.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the reassessment order passed by Ld. AO as the statutory notice u/s 143(2) has not been issued/ served upon the assessee and that too in accordance with law.*
4. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on*

facts in confirming the action of Ld. AO in making addition of Rs.5,75,000/- by treating it as alleged unexplained income of the assessee and that too by recording incorrect facts and findings and in violation of principles of natural justice.

5. *That in any case and in the view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making an addition of Rs.5,75,000/- by treating it as alleged unexplained income of the assessee, is bad in law and against the facts and circumstances of the case.*
6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have deleted the addition of Rs.7,80,851/- made by Ld. AO as LTCG, on the ground that assessee is not the owner of subjected agricultural land, hence the alleged capital gain cannot be taxable at all in the hands of assessee.*
7. *That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have deleted the*

addition of Rs.7,80,851/- made by Ld. AO as LTCG on the ground that subjected agricultural land was not a capital asset, hence not chargeable to tax at all.

8. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

4. During the course of hearing, the Learned Counsel for the Assessee did not press the grounds of appeal numbers.1, 2 and 3, for which, the Ld. D.R. has no objection. Therefore, the same are dismissed as not pressed.

5. Grounds of appeal numbers 4 and 5 relate to the order of the Ld. CIT(A) in sustaining the addition of Rs.5,75,000/-. Learned Counsel for the Assessee submitted that the assessee has deposited an amount of Rs.5,75,000/- out of the amount given by his son Mr. Tinku Chaudhary after sale of his buffalows, cow and popular trees. Further the A.O. without examining the son of the assessee simply rejected the claim by merely stating that no evidence

whatsoever was filed by the assessee. He submitted that given an opportunity the assessee is willing to produce his son before the A.O. for his examination and A.O. may accordingly determine the source of deposit.

5.1. So far as the computation of long term capital gains is concerned, the Learned Counsel for the Assessee submitted that when the asset sold belongs to the wife of the assessee, the addition cannot be made in the hands of the assessee. He submitted that the assessee by mistake has treated the property as his own for the purpose of computation of capital gain. He submitted that there is no estoppels in Law as held by the Hon'ble Delhi High Court in the case of CIT vs., Bharat General Reinsurance Co. Limited [1971] 81 ITR 303 [Del.]. He submitted that the lower authorities have not decided the issue in proper perspective and, therefore, he has no objection if the matter is restored to the file of A.O. for fresh adjudication.

6. The Ld. D.R. on the other hand heavily relied on the Order of the Ld. CIT(A).

7. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I find the A.O. in the instant case reopened the case of the assessee on the ground that assessee has made cash deposit of Rs.26,04,000/- in S.B. A/c maintained with Oriental Bank of Commerce. I find during the course of assessment proceedings while explaining the source of such cash deposit in the bank account, the assessee filed various details, according to which, an amount of Rs.20,25,000/- was deposited out of sale proceeds of land belonging to the wife of the assessee Smt. Omwati and the balance amount of Rs.5,75,000/- was deposited out of cash given by the son of the assessee Mr. Tinku Chaudhary after sale of his Buffallows, cow and popular trees. I find the A.O. made addition of Rs.5,75,000/- being the difference between the cash deposit of Rs.26 lakhs and Rs.20,25,000/-.

7.1. The A.O. further made addition of Rs.7,80,851/- as long term capital gains on account of sale of land at Rs.20,25,000/- after deducting the indexed cost of

acquisition and deduction under section 54F of the I.T. Act, 1961.

7.2. I find the Ld. CIT(A) upheld both the additions, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Learned Counsel for the Assessee that the A.O. without examining the son of the assessee simply rejected the claim of assessee that an amount of Rs.5,75,000/- given by his son is out of sale of Buffallows, cow and popular trees. It is the submission of the Learned Counsel for the Assessee that given an opportunity assessee is willing to produce his son before the A.O. to substantiate such cash given to his father. Similarly, it is also the submission of the Learned Counsel for the Assessee that when the property is in the name of the wife of the assessee who has purchased and sold the same, the addition cannot be made in the hands of the assessee. I find some force in the above arguments of the Learned Counsel for the Assessee. Admittedly, the assessee during the course of assessment proceedings had explained before the A.O. regarding the source of cash of

Rs.5,75,000/- which was given by his son Mr. Tinku Chaudhary after sale of his Buffallows, cow and popular trees. Neither the A.O. asked the assessee to produce his son for examination nor the assessee had volunteered to produce him before the A.O. Now that the Learned Counsel for the Assessee is willing to produce Mr. Tinku Chaudhary before the A.O. for his examination and substantiate the cash payment of Rs.5,75,000/-, therefore, 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 relating to addition of Rs.5,75,000/- to the file of A.O. with a direction to give an opportunity to the assessee to substantiate the cash deposit of Rs.5,75,000/- by producing cogent evidence to the satisfaction of the A.O. and produce Mr. Tinku Chaudhary before the A.O. for his examination. The A.O. shall decide the issue as per fact and Law, after giving due opportunity of being heard to the assessee. Ground of appeal numbers 4 and 5 are accordingly allowed for statistical purposes.

8. So far as the addition of long term capital gains of Rs.7,80,851/- is concerned, it is the submission of the Learned Counsel for the Assessee that when the property was purchased by the wife of the assessee and sold by the wife of the assessee, no addition on account of long term capital gains can be made in the hands of the assessee and the lower authorities have not properly appreciated the facts of the case. 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. for adjudicating the issue afresh as per fact and Law, after giving due opportunity of being heard to the assessee. I hold and direct accordingly. Ground of appeal numbers 6 and 7 are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on 29.10.2021.

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

Delhi, Dated 29th October, 2021
VBP/-

Copy to

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

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.