

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI BENCH 'B',
NEW DELHI

BEFORE SH. G. S. PANNU, PRESIDENT
AND SH. RAVISH SOOD, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)

ITA No.4665/Del/2018

Assessment Year: 2013-14

Fakruddin Ali Ahmed H. No.1495-C, 2 nd Floor, Secotr-15, Part-2, Gurgaon PAN No. AHCPA1857C (APPELLANT)	Vs	ITO Ward- 1 (4) Gurgaon (RESPONDENT)
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Appellant by	Shri. K. Sampath
Respondent by	Shri. Sumit Kumar Varma, CIT D.R

Date of hearing:	08/12/2021
Date of Pronouncement:	28/12/2021

ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee is directed against the order passed by the CIT(A), Gurgaon dated

22.03.2018, which in turn arises from the order passed by the A.O u/s. 144 of the Income-tax Act, 1961 (for short “Act”) for A.Y 2013-14. The assessee has assailed the impugned order on the following solitary ground before us :

“1. On the facts and in the circumstances of the case and in law the Ld. CIT (A) erred in confirming the addition of Rs. 55,01,000/- made by the Assessing officer on account of cash deposited in Bank treating the same as income from undisclosed sources. The action being arbitrary, erroneous and unlawful must be quashed with directions for appropriate relief.”

2. Controversy involved in the present appeal lies in a narrow compass, i.e as to whether or not the lower authorities are justified in concluding that the assessee had failed to explain the source of cash deposits of Rs.55,01,000/-? Succinctly stated, the assessee had filed his return of income for A.Y 2013-14 on 10.07.2014, declaring an income of Rs.2,69,980/-. The case of the assessee was thereafter selected for scrutiny assessment u/s. 143(2) of the Act.

3. On a perusal of the ITS details of the assessee, it was observed by the A.O that he had made cash deposits aggregating to Rs.55.01 lac in his bank accounts, viz. (i). SB A/c with Bank of Maharashtra, Branch Gurgaon :Rs.35,01,000; and (ii). SB A/c with Gurgaon Gramin Bank, Branch Gurgaon : Rs. 20,00,000/-. As the assessee in the course of the assessment proceedings failed to furnish any explanation as regards the nature and source of the aforesaid cash deposits, therefore, the A.O treated

the amount of Rs.55.01 lacs as the assessee's unexplained income and added the same to his returned income.

4. Aggrieved, the assessee carried the matter before the CIT(A). During the course of the appellate proceedings the assessee furnished certain additional documentary evidence U/rule 46A of the Income-tax Rules 1962, viz (i). copy of the sale deeds of immovable properties that were sold by him during the year under consideration, which, as per him had sourced the cash deposits in his bank account; (ii) cash flow statement; and (iii). copy of the bank statements. As the aforesaid documents were in the nature of additional evidence, therefore, the CIT(A) called for a 'remand report' from the A.O.

5. During the course of the remand proceedings, it was the claim of the assessee that the cash deposits of Rs. 55.01 lac in his aforesaid bank accounts were primarily sourced out of sale proceeds of two properties that were owned by him, viz (i) sale of plot at Shanti Nagar, Gurgaon (sale consideration of Rs. 24 lac received in cash); and (ii) sale of one house at Chandan Nagar, Gurgaon (sale consideration of Rs.28 lac received in cash). Apart from that, it was the claim of the assessee that he had with him cash in hand of Rs.2,35,500/- as on 01.04.2012. Backed by his aforesaid claim, it was submitted by the assessee that the cash deposits aggregating to Rs.55.01 lac (supra) in his aforementioned bank accounts were made from his aforesaid duly explained source. However, the A.O was not persuaded to subscribe to the

aforesaid claim of the assessee. Rejecting the claim of the assessee as regards availability of opening cash in hand of Rs. 2,35,500/- on 01.04.2012 (as per the cash-flow statement), it was observed by the A.O that the assessee had not placed on record any material to substantiate his said claim. Qua the claim of the assessee that he had deposited an amount of Rs. 10,02,000/- out of the cash of Rs. 14,00,000/- that was received by him on 31.05.2012 on sale of his residential house at Chandan Nagar, Gurgaon for Rs. 28,00,000/- vide sale deed dated 06.07.2012, it was observed by the A.O that as the assessee had received the sale consideration in the presence of witnesses at the time of execution of the sale deed on 06.07.2012, therefore, his claim of having deposited cash to the tune of Rs. 10,02,000/- on 31.05.2012 out of the sale proceeds of Rs. 14,00,000/- that was received by him on 31.05.2012 did not merit acceptance. It was further observed by the A.O that the assessee had claimed that an amount of Rs.20,15,000/- that was deposited by him in cash in his bank account with Bank of Maharashtra, Branch : Gurgaon on 09.03.2013, was sourced out of the sale proceeds of Rs. 24 lac that was received by him on sale of a plot at Shanti Nagar, Gurgaon. However, the A.O did not find favour with the aforesaid claim of the assessee. It was observed by the A.O, that, as the assessee had received the sale proceeds of Rs. 24 lac at the time of registration of his aforesaid sale deed on 29.03.2013, therefore, his claim of having deposited an amount of Rs. 20,15,000/- on 09.03.2013 in his bank account out of the

aforesaid sale proceeds could not be accepted. It was further observed by the A.O that surprisingly the assessee had on 09.03.2013 also made a cash deposit of Rs. 20,00,000/- in his bank account with Gurgaon Gramin Bank, Branch: Gurgaon. Backed by his aforesaid observations, the A.O, in the course of the remand proceedings, was of the view, that the claim of the assessee that the cash deposits in his aforementioned bank accounts were sourced from the amounts that were available with him on sale of the aforesaid properties could not be accepted.

5. After considering the 'remand report' filed by the A.O a/w the rejoinder of the assessee, the CIT(A), was of the view, that though the sale deeds did make a mention about the money given in advance, however, as neither was it discernible therefrom as to when and in what manner such advance was given to the assessee, nor the assessee had furnished any evidence to substantiate his claim of having received the aforesaid amount of advance, therefore, the A.O had rightly rejected the same. It was further observed by the CIT(A) that though some advances are generally taken at the time of executing the 'agreement to sell', but the claim of the assessee that the entire amount of sale consideration was received by him prior to the execution of the respective sale deeds was not found to be convincing. Backed by his aforesaid observations the CIT(A) finding no infirmity in the view taken by the A.O upheld his order and dismissed the appeal.

6. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. Ld. Authorized representative (“A.R”, for short) took us through the facts of the case. Our attention was drawn by the ld. A.R to the ‘cash flow’ statement that was filed in the course of the proceedings before the CIT(A) who a/w the other supporting documents had forwarded the same to the A.O and had called for his ‘remand report’. It was submitted by the ld. A.R that the A.O had in the course of the remand proceedings most arbitrarily on the basis of self-suiting inferences rejected the assessee’s claim of having made cash deposits from the advances that were received by him on sale of properties. Elaborating on his aforesaid contention, it was submitted by the ld. A.R that the A.O in the course of the remand proceedings had whimsically related the receipt of sale consideration to the date of execution of the respective sale deeds. It was further submitted by the ld. A.R that though the CIT(A) had duly taken cognizance of the fact that the ‘sale deeds’ did make a mention about the money given in advance, but thereafter, he had without giving any cogent reason concurred with the view taken by the A.O, and held, that the explanation of the assessee that the entire sale proceeds of the aforesaid properties in question were received by him prior to execution of the sale deeds did not merit acceptance. Our attention was drawn by the ld. A.R to the observations of the CIT(A). Backed by his aforesaid contentions, it was submitted by the ld. A.R, that as both the lower authorities had on the basis of misconceived facts dislodged

the explanation of the assessee as regards the source of the cash deposits in his respective bank accounts, therefore, the same could not be sustained and was liable to be set-aside.

7. Per contra, the ld. Departmental representative (“D.R”, for short) relied on the orders of the lower authorities.

8. We have heard the ld. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record. Issue involved in the present appeal hinges around the explanation of the assessee as regards the source of the cash deposits in his respective bank accounts. As observed by us hereinabove, it has been the claim of the assessee, that the cash deposited in his bank accounts during the year under consideration was primarily sourced from the sale proceeds of the properties that were sold by him, viz. (i) sale of plot at Shanti Nagar, Gurgaon; and (ii) sale of house at Chandan Nagar, Gurgaon; which are stated to have been received by him in advance i.e prior to the execution of the respective sale deeds, as under :

Sr. No.	Particulars
1.	Deposit of an amount of Rs. 10,02,000/- in bank account with Bank of Maharashtra, Branch : Gurgaon, which is stated to have been made out of the cash of Rs. 14,00,000/- that was claimed to have been received as advance on 31.05.2012 on sale of his residential

	house at Chandan Nagar, Gurgaon for Rs. 28,00,000/-, vide sale deed dated 06.07.2012.
2.	Deposit of an amount of Rs.20,15,000/- in bank account on 09.03.2013 in bank account with Bank of Maharashtra, Branch :Gurgaon, out of the cash of Rs. 24 lac that was claimed to have been received by the assessee as advance on sale of plot at Shanti Nagar, Gurgaon for Rs. 24,00,000/-, vide sale deed dated 29.03.2013 .

As is discernible from the orders of the lower authorities, we find that they had related the receipt of sale consideration of both the properties in question by the assessee, to the date on which the respective sale deeds were executed. However, we find that a perusal of both the sale deeds reveal that there is no mention of the date on which the respective sale consideration qua both the properties in question was received by the assessee from the respective purchasers of the property. All that is therein found mentioned is that the assessee had received the sale consideration from the respective buyers in presence of a witness. We find substance in the claim of the ld. A.R that there is no material available on record from where it could be gathered that the assessee had received the sale consideration at the time of execution of the respective sale deeds and not prior thereto. On the contrary, the CIT(A), had in his order categorically admitted that though the sale deeds makes a mention about the money

being given in advance, but, had declined the claim of the assessee, for the reason, that neither was it discernible from the sale deeds as to when and in what manner the cash was handed over to the assessee, nor the assessee could substantiate his claim of having received the amount in question as an advance. For the sake of clarity the relevant observations of the CIT(A) are culled out as under :

“It is correct that the sale deed mentions about the money being given in advance. But when and in what manner, cash was handed over to the appellant, is not clear. No further proof was provided by the appellant to substantiate his claim. While, it may be correct that some advance is generally taken at the time of agreement to sell, but to accept that the entire sale consideration was given even before the registration of the sale took place, is not convincing enough.”

As is discernible from the aforesaid, it is a matter of a fact borne from record that the CIT(A) had admitted that though the sale deeds did mention about the money having been given in advance, but then, he was of the view, that as the same were silent as to when and in what manner such sale consideration was given to the assessee as an advance, therefore, the unsubstantiated claim of the assessee of having received part/full sale consideration qua sale of the properties in question did not merit acceptance.

9. After having deliberated at length on the issue in hand in the backdrop of the observations of the lower authorities and the contentions advanced by the ld. Authorized representatives for both the parties, we are unable to persuade ourselves to

subscribe to their view that the assessee had not received any part of the sale proceeds qua the sale of the properties in question prior to the date of execution of the respective sale deeds. As observed by us hereinabove, the CIT(A) had clearly admitted that the sale deeds did mention about the money having been given in advance. But after so observing, the CIT(A), was of the view, that as the sale deeds were silent as to when and in what manner the sale consideration was given to the assessee as an advance, therefore, his unsubstantiated claim of having received part/full sale consideration qua sale of the properties in question did not merit acceptance. We have given a thoughtful consideration and are unable to persuade ourselves to accept the reasoning given for rejection of the assessee's claim by the CIT(A). In our considered view, in case there was any doubt in the mind of the lower authorities as regards the genuineness of the assessee's claim of having received the sale consideration prior to the date of execution of the respective sale deeds, then, it was obligatory on their part to have made necessary verifications as regards the said issue from the respective purchasers of the property, which, however, we find they had failed to do. Insofar the reasoning given by the CIT(A) for declining the assessee's claim of having sourced part of the cash deposits in his bank accounts out of the part/full sale consideration qua the sale of the properties in question that were received prior to the date of execution of the respective sale deeds, we are afraid that the same is based on a half-hearted approach by him to the issue in hand. Having observed that the

sale deeds did make a mention about money given to the assessee in advance, the CIT(A), in our considered view could not have summarily rejected the assessee's claim of having received part/full sale consideration prior to the date of the execution of the respective sale deeds. Apart from that, we find that it is not even the case of the department that the sale consideration received by the assessee on sale of the respective properties had been channelized by him for making some other investment and/or incurring of any other expenditure. In our considered view, if the lower authorities had some doubts as regards the authenticity of the assessee's claim of having received the sale consideration prior to the execution of the respective sale deeds by the assessee, then, it was incumbent on their part to have examined the respective purchasers of the properties in question, which we are afraid had not been so done by them. Our aforesaid conviction that the lower authorities before rejecting the assessee's claim of having received the sale consideration prior to the execution of the respective sale deeds ought to have carried out necessary verifications from the purchasers is all the more strengthened by the fact that the CIT(A) had himself admitted that the sale deeds did make a mention about the money being given in advance. Be that as it may, we are of the considered view, that there is substance in the claim of the assessee of having received part/full sale consideration qua sale of the properties in question and the same had wrongly been rejected by the lower authorities. We, thus, in the backdrop of our aforesaid

observations set-aside the order of the CIT(A) and vacate the addition of Rs. 55.01 lac made by the A.O.

10. Resultantly, the appeal of the assessee is allowed in terms of our observations recorded hereinabove.

Order pronounced in the open court on 28.12.2021.

Sd/-

(G.S. PANNU)

PRESIDENT

NEHA

Date:-28.12.2021

Sd/-

(RAVISH SOOD)

JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	28.12.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	