

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC-2” BENCH: NEW DELHI****BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER****ITA No. 394/DEL/2021****[Assessment Year: 2010-11**

Mahender Singh S/o Sh. Des Ram Singh, 371, Village kanhai, Gurgaon, Haryana-122003 C/o M Sahu & Associates, CAs, House No. 651, 1 st Floor, Sector-10A, Nr. Union Bank of India, Gurgaon-122001, Haryana PAN- AEZPS9382J	<u>Vs</u>	Income-tax Officer, Ward-2(4), Gurgaon
APPELLANT		RESPONDENT
Appellant by	Sh. M.R. Sahu, Adv.	
Respondent by	Sh. Om Prakash, Sr. DR	
Date of hearing	04.01.2022	
Date of pronouncement	04.02.2022	

ORDER**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-1, Gurgaon, dated 29.06.2018, pertaining to the assessment year 2010-11. The assessee has raised following grounds of appeal:

“1. *Additional legal grounds of appeal not raised before CIT(A):*

- 1.1. *That on the facts, and in the circumstances of the case and in law, Ld.CIT(A) erred in sustaining the reopening action of AO under section 147 to 151 because stand alone Annual Information Return (AIR) data is not valid to believe that income has escaped assessment accordingly confirming addition of Rs.3,17,600/- on account of cash deposited in saving bank account is not sustainable in the eye's of law.*
- 1.2. *That on the facts and in the circumstances of the case and in law, the appellant submits that 'reason to believe' was recorded by AO under suspicion and fallacious assumption that cash deposited in savings bank account constitute income of assessee and accordingly reassessment proceedings under section 147 is without jurisdiction and deserves to be quashed.*
- 1.3. *That on the facts and in the circumstances of the case and in law, the appellant submits that sanction of Pr.CIT, Gurgaon was obtained under section 151(1) in a mechanical manner by mentioning ' Yes , I am satisfied ' accordingly the reassessment u/s 147 is without jurisdiction and deserves to be set-aside.*
- 1.4. *That on the facts and in the circumstances of the case and in law, the appellant submits that notice under section 143(2) dated 18.08.2017 was issued without verification of return of income filed on 17.08.2017 and intimated to AO on 18.08.2017 thus notice issued u/s 143(2) is invalid accordingly reassessment order passed u/s 143(3) r.w.s 147 is not sustainable in the eye's of law.*
2. *Validity of addition of Rs3,17,600/- being the cash deposited in bank account out of past savings and agricultural income:*
 - 2.1. *That on the facts and in the circumstances of the case and in law, CIT(A) erred in confirming the addition of Rs3,17,600/- ignoring the documentary evidences produced before him towards ownership of agricultural land and earning from cultivation and without appreciating the fact that in the case of exempted agricultural income assessee is not statutorily not liable to disclose the same in the return of income.*
 - 2.2. *That on the facts and in the circumstances of the case and in law, CIT(A) erred in confirming the addition of Rs3,17,600/- ignoring the fact that cash was deposited from the past savings and receipt of cash from wife.*

3. *The assessee himself denies his liability towards interest charged u/s 234A, u/s 234B and u/s 234C and prays for appropriate relief.*
4. *That the above grounds are independent and without prejudice to each other. The assessee craves the right to amend, add, delete, replace, all or any of the grounds of appeal either during the course of hearing or at any time before hearing of this appeal”*

2. The only effective ground in this appeal is against sustaining the addition of Rs. 3,17,600/- on account of cash deposit in the bank account. Facts, in brief, are that in this case assessee had not filed his return of income. The case of the assessee was reopened u/s 147 of the Income-tax Act, 1961, herein after referred to as the “Act”, on the basis that the assessee had deposited cash of Rs. 10,34,400/-. Thereafter, the Assessing officer framed the assessment u/s 143(3) read with section 147 of the Act on 8.11.2017, thereby the Assessing Officer made addition of Rs. 3,17,600/-.

3. Aggrieved, against this the assessee preferred appeal before the learned CIT(Appeals), who sustained the addition and dismissed the appeal of the assessee. Now the assessee is in appeal before the Tribunal.

4. Learned Counsel for the assessee submitted that the source of cash deposited was stated to be out of past savings and income from agriculture. He submitted that the learned CIT(Appeals) recorded incorrect facts that the assessee did not furnish any evidence to prove the genuineness of agricultural income. In support

of this the learned counsel for the assessee drew my attention to paper book pages 9 to 21 and also page 22 wherein the pension payment order is enclosed to state that the assessee was getting pension from Dakshin Haryana Bijli Vitran Nigam.

5. On the contrary, learned Sr. DR opposed the submissions and supported the orders of the authorities below.

6. I have heard rival submissions and perused the material on record. I find that before the learned CIT(Appeals), the claim of the assessee was that the deposits in bank were made out of past savings and agricultural income. However, the learned CIT(Appeals) dismissed this ground of the assessee by observing as under:

“3.3. I have carefully considered the appellant’s submissions. I have also perused the facts recorded in the assessment order. The Assessing Officer in a detailed order has clearly established that the appellant had not furnished any evidence in order to prove the genuineness of claim of agricultural income. It is also a fact on record that the appellant had not shown any agricultural income in the return filed for AY 2010-11 in response to notice u/s 148. The claim of the appellant with regard to agricultural income is mere self serving statement in order to explain the source of cash deposits in the bank account. The addition made by the Assessing Officer is accordingly confirmed. This ground of appeal is dismissed.”

7. During the course of hearing the learned counsel for the assessee has drawn my attention to Revenue record in the form of copy of Jamabandi and Khasra Girdawari. As per copy of Jamabandi, which is enclosed at paper book page 15, it is recorded that the agricultural land was under self cultivation of the assessee. The Revenue has not rebutted this evidence by placing any contrary material on record.

Therefore, the finding of the authorities below is contrary to the record. The Assessing Officer is hereby directed to delete the addition.

8. Assessee's appeal is allowed.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Madan Pal

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI