

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC-2” BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 8450/DEL/2019
[Assessment Year: 2010-11]

Bhim Singh S/o Sh. Sukhbir Singh, Village: Amarpur, Distt. Palwal. C/o D.C. Garg, CA 205, Sector 15A, Faridabad-121007. PAN- EOPPS6432P	<u>Vs</u>	Income-tax Officer, Ward-1(2), Faridabad
APPELLANT		RESPONDENT
Appellant by		Shri D.C. Garg, CA
Respondent by		Sh. Om Prakash, Sr. DR
Date of hearing		19.01.2022
Date of pronouncement		11.02.2022

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), Faridabad, dated 22.08.2019, pertaining to the assessment year 2010-11. The assessee has raised following grounds of appeal:

“1. That the Learned Commissioner of Income Tax(Appeals), Faridabad has erred at law while confirming validity of assessment even without service of the notice under section 148 which is basic requirement for completion of assessment under section 147. The Ld. CIT(A) has ignored duly sworn affidavit by the Appellant.

2. That the Learned Commissioner of Income Tax (Appeals), Faridabad,

has erred at law while confirming reopening of the assessment merely on the basis of information received from bank regarding deposit of cash without recording his satisfaction by the AO as to whether any income has in-fact been escaped assessment.

3. *That the Learned Commissioner of Income Tax (Appeals), Faridabad has erred in law as well as on facts and in circumstances of the case by disregarding the verdicts of various courts including this Hon'ble Tribunal.*

4. *That the Learned Commissioner of Income Tax(Appeals),Faridabad has erred in law as well as on facts and in circumstances of the case by upholding addition on account of cash deposit without appreciating duly sworn affidavits by the Appellant and the Buyer duly supported with the Income Tax Return, bank statement, agreements and personal presence during remand proceedings.*

5. *That the Learned Commissioner of Income Tax (Appeals), Faridabad has erred in law as well as on facts and in circumstances of the case by upholding addition without appreciating the fact the agreement for sale of land is located in the main market of Vill- Amarpur and in market areas, actual rate are very much higher than the circle rates.*

6. *That Learned Commissioner of Income Tax (Appeals), Faridabad has erred in law as well as on facts and in circumstances of the case by dismissing valid sale agreements of land without confronting the circle rates gathered behind the back of the Appellant.*

7. *The appellant craves leave to add, amend or vary from the aforesaid grounds of appeal at or before the time of hearing.”*

2. The facts giving rise to the present appeal are that an information was received by the Assessing Officer that the assessee had made cash deposits amounting to Rs. 49,50,000/- in his saving bank account. The case of the assessee was re-opened u/s 147 of the Income-tax Act, 1961, hereinafter referred to as the “Act” and the assessment u/s 143(3) read with section 147 of the Act was framed vide order dated 29.12.2017. There was no effective representation on behalf of the

assessee before the Assessing Officer. Therefore, the Assessing officer treated a sum of Rs. 21,50,000/- as unexplained and assessed the income at Rs. 23,55,600/- against the income returned at Rs. 2,05,670/-.

3. Aggrieved against this, the assessee preferred appeal before the learned CIT(Appeals), who, after considering the submissions and material available on record, dismissed the appeal of the assessee. Now the assessee is in appeal before this Tribunal.

4. The only effective ground is against the addition made by the Assessing Officer.

5. Learned counsel for the assessee submitted that the assessee was not provided sufficient opportunity by the Assessing Authority to explain his case. He submitted that the assessing authority without appreciating the fact that the assessee had plausible explanation in respect of the deposit made in the bank account, made the addition. He further submitted that the learned CIT(Appeals) also did not appreciate the facts in right perspective.

6. Learned DR opposed the submissions and supported the orders of authorities below.

7. I have heard rival submissions and perused the material available on record. I find that learned CIT(Appeals) dismissed the grounds raised by the assessee by observing as under:

“17. The facts of the case and material available on record have been gone through. The appellant during the year has made cash deposits of Rs.49,50,000/- in his savings bank account maintained with Allahabad Bank. The AO has required the appellant to explain the source and nature of the same. The appellant could explain source of cash deposits to the extent of Rs.28,00,000/- from the sale proceeds of his agricultural land. The AO has required the appellant on 17.11.2017 to explain source of remaining cash deposit of Rs.21,50,000/-. It was explained further before the AO vide order sheet entry dated 11.12.2017 that the appellant intended to purchase land and for this purpose has received amount of Rs.21,50,000/- in cash from his close relatives. The AO has required the appellant to furnish complete particulars of such relatives with their complete addresses to substantiate the explanation so furnished. The appellant did not furnish any particular in this regard inspite of giving opportunity for the same. From these facts, it is evident that the appellant nowhere before the AO has claimed that the cash amount of Rs.21,50,000/- has been received by him from Sh. Sanjay Garg on account of advance against agreement to sell his land measuring 84 square yards situated in Village Amarpur. It is relevant to mention here that the appellant has furnished agreement to sell dated 22.04.2009 during the appellate proceedings. If such agreement had been entered by the appellant on 22.04.2009 then it is not explained why the same could not be furnished before the AO during the assessment proceedings conducted during the month of November and December 2017. During the assessment proceedings, the appellant has stated that he had received the cash from his relatives as he intended to purchase land whereas during the appellate proceedings it has been stated that the cash has been received against agreement to sell his land. Both these explanations are contradictory to each other. Further it is noted that the circle rate as notified by the relevant Authorities in respect of of land situated in Village Amarpur for F.Y. 2018-19 is Rs.20,00,000/- per acre (Rs.400/- per square yard) for agricultural land and Rs.2200/- per sq. yard in respect of other lands. As per the current rates for F.Y. 2018-19, the said land has the market value in the range of Rs.1,84,800/- whereas the appellant has claimed that he had entered into an agreement to sell for the said property for Rs.50,00,000/- on 22.04.2009, almost 10 years back. Keeping in view these facts, it is found that the claim of appellant that he had entered into an agreement to sell for some land for Rs.50,00,000/- during the F.Y. 2009-10 has not been found bonafide and genuine. Thus it is found that the explanation furnished by the appellant in respect of source of cash deposit of Rs.21,50,000/- in his bank

account has been found to be unsatisfactory. The onus was on the appellant to explain the source and nature of cash deposits of Rs.21,50,000/- in his bank account. The appellant could not discharge the said onus satisfactorily. Keeping in view the above facts and discussion along with provisions of section 69A of the Act, it is held that the AO was justified in making addition of Rs.21,50,000/- the same is hereby confirmed u/s 69A of the Act.”

8. Further, it is seen that the assessing authority made the addition ex parte to the assessee. Therefore, considering the material available on record and the submissions made by the assessee, I deem it proper, in the interest of principles of natural justice, that the assessee be given an opportunity to explain his case before the Assessing Officer. To sub serve the interest of substantial justice, the impugned order is set aside and the matter is restored to the file of the Assessing officer to make assessment afresh after giving adequate opportunity to the assessee.

9. Assessee's appeal is allowed for statistical purposes.

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