

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-2" BENCH: NEW DELHI****BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER****ITA No. 4067/DEL/2018**
[Assessment Year: 2014-15]

Bharath Kumar Nakka, Flat No. SF-4, Sai Kutir, (Beside BSNL Exchange on GT Road) Plot No. 14,15,16 Shahid Nagar, Sahibabad, Ghaziabad PAN- ACOPN7964N	<u>Vs</u>	ACIT, Circle-69(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Salil Kapoor, Advocate, Ms. Ananya Kapoor, Adv., Ms. Soumya Singh, Adv., and Shri Amarbir Singh Walia, CA	
Respondent by	Sh. Om Prakash, Sr. DR	
Date of hearing	10.01.2022	
Date of pronouncement	18.02.2022	

ORDER**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-21, New Delhi, dated 28.03.2018, pertaining to the assessment year 2010-11. The assessee has raised following grounds of appeal:

1. *That under the facts and circumstances of the case, the Ld CIT(A) erred both in law and facts in accepting the order by Ld AO , without applying her mind into the fact that "admission should be taken in totality and not in part" which is a well known law as per principals of admissions as evidence in law.*
 2. *That under the facts and circumstances of the case ,the Ld CITA(A)-21 not properly applied her mind in my application and documents submitted during appeal proceedings*
 3. *That under the facts and circumstances of the case ,the Ld CIT(A)- 21 was not justified in approving the order by Ld AO that 16.40 Lakh as unexplained income .*
 4. *That under the facts and circumstances of the case, the Ld CIT(A)- 21 was not justified in approving the order by Ld AO that cash deposit of 4.00 Lakh as unexplained income*
 5. *That under the facts and circumstances of the case ,the Ld CIT(A)- 21 was not applied her mind in calculating the capital/capital loss and taken a unilateral decision*
 6. *That under the facts and circumstances of the case ,the Ld CIT(A)- 21 should have applied her mind and logic before accepting the contention of AO and rejecting my claim.*
 7. *That the appellant craves leave to add to ,alter, amend, modify, substitute, delete and/ or rescind all or any of the Grounds of appeal on or before the final hearing ,if necessary so arises*
2. The facts giving rise to the present appeal are that a search and seizure operation u/s 132 of the Income-tax Act, 1961, hereinafter referred to as the "Act" was carried out on the assessee at Terminal 1D, IGI Airport, New Delhi by the ADIT(inv.), AIU, New Delhi on 4.8.2013. The case of the assessee was taken up

for scrutiny and a notice u/s 143(2) was issued on 4.12.2014 and was duly served upon the assessee. The Assessing Officer, during the course of the assessment, observed that during the search operation the assessee was found in possession of Rs. 24.70 lakh. Out of this Rs. 16.40 lakh was seized u/s 132(1) of the Act and balance Rs. 8.30 lakh was handed over to the assessee on 4.8.2013. The Assessing Officer called upon the assessee to explain the source of the amount. In response thereto the assessee stated that the amount was the sale consideration of the property Flat No. 20 Aryan Residency, More Super market, Guddadahalli, Bangalore. However, the explanation of the assessee was not accepted by the Assessing Officer and he made addition of Rs. 16.40 lakh u/s 69A of the Act. The Assessing Officer further made addition in respect of transfer expenses of Rs. 3,00,000/- and cash deposits of Rs. 4,00,000/-.

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

4. Ground nos. 1 & 2 are general in nature and need no separate adjudication.

5. Ground no. 3 is against sustaining the addition of Rs. 16.40 lakhs, as unexplained income.

6. Learned counsel for the assessee vehemently argued that the authorities below were not justified in making and sustaining the addition. He submitted that

the assessee had duly explained the source of cash, which is stated to be out of sale proceeds of property. He submitted that the authorities below have not appreciated the facts in right perspective.

7. On the contrary, learned Sr. DR supported the orders of the authorities below and submitted that there is no infirmity in the orders of authorities below.

8. I have heard rival submissions and perused the material available on record. I find that the Assessing officer has noted the fact that the assessee stated that the amount found in his possession during the course of search was out of sale proceeds of the property which was sold at Bangalore. The Assessing Officer had disbelieved the contention of the assessee purely on the basis that in response to notice u/s 131 of the Act, no one appeared before the assessing authority. The learned CIT(Appeals) has confirmed this finding. The learned CIT(Appeals) has decided this issue by observing as under:

“30.1 In this case the AO has made an addition of Rs.16,40,000/- u/s 69A of the I.T. Act on the ground that the appellant could not explain the cash of this amount which was claimed out of the sale proceed of a flat at Banguluru. The facts of this case is that a search & seizure operation u/s 132 of the Act was carried out at Terminal ID, IGI Airport, New Delhi on 04/08/2013 and in this search cash of Rs.24.70 lakhs was found from the possession of the appellant and the source of this cash was explained by the appellant as the sale proceeds of his flat at Aryan Residency, More Super market, Gudaddahalli, Banguluru. During the course of assessment proceedings the AO has observed that the registered sale deed was only of the value of Rs. 15,60,000/- as against the claim of the appellant of Rs.32,00,000/-. During the course of assessment proceedings, the assessee has also expressed his inability to contact the buyer who has given this cash

to him. A summon was also issued by the AO to the buyer, who did not respond. In this light, the AO has treated the difference of Rs. 16,40,000/- as unexplained income of the appellant u/s 69A of the Act as per the discussion made by the AO in the assessment order mentioned supra in para 28.

30.2 During the course of appellate proceedings, the appellant has filed written submission, mentioned supra in para 29 and claimed that as the Department has seized the amount of Rs.24.70 lakhs during the course of search the AO has contradicted himself by treating this as unexplained as this is in relation to the Agreement to Sale.

30.3 The contention of the AO and the submission of the appellant has been considered and it is gathered that the appellant himself has claimed that the money was received against the sale of property of Rs.32 lakhs out of which the Department has seized Rs.24.70 lakhs but as the registered sale deed of this property is of Rs.15.60 lakhs, the AO is right in holding that the amount of Rs. 16.40 lakhs is unaccounted as it could not be substantiated by any document of the buyer. Further, the AO has also summoned the buyer in this respect and asked for confirmation during the course of assessment proceedings but the buyer did not respond to this, hence, the explanation of the appellant that the money is received from the buyer remained unexplained. In this light, I have no reason to interfere in the decision of the AO and the addition of Rs. 16.40 lakhs is confirmed.

9. The contention of the assessee was that the assessee had entered into an agreement to sell dated 29.6.2013, wherein the sale consideration was stated to be Rs. 32 lakh. However, while executing sale-deed, sale consideration was stated Rs. 15.50 lakh. It is the case of the assessee that the sale consideration reflected in the sale deed was as per the stamp valuation. However, the correct value was stated in the agreement to sell. This fact has not been verified by the authorities below. The

Assessing Officer ought to have made inquiry regarding this from the buyer of the property. It is seen from the record that the notice u/s 131 remained un-responded by the buyer. The Assessing Officer has also not made any assessment in the hands of the buyer of the property, who, as per the assessee, had paid a sum of Rs. 32 lakh as the sale consideration of the property. I, therefore, looking into the facts of the present case and in the absence of proper inquiry by the Assessing Officer, set aside the impugned assessment order. I am of the considered view that the Assessing Officer ought not to have brushed aside the material evidence so furnished in the form of agreement to sell of the property. He should have carried out further inquiry regarding correctness of the claim of the assessee. However, looking to the facts and circumstances narrated by the assessee, the contention of the assessee appears to be correct. Moreover, the Assessing Officer has not brought any material suggesting that the assessee was engaged in any other trade or vocation thereby he had been earning income. The assessee is a salaried employee in an engineering institute at Delhi. I, therefore, set aside the impugned order and direct the Assessing Officer to delete the addition. However, it is clarified that Assessing Officer would be at liberty to make addition in the hands of buyer as per law. Further, Assessing Officer would compute capital gain arising out of the transaction after giving set off of loss, if available under law, in the hands of the assessee.

10. The appeal of the assessee is allowed in terms indicated hereinabove.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated: 18/02/2022.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI