

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.2152/Del/2019
Assessment Year: 2008-09**

Babu Ram Mittal, vs. Income-tax Officer,
C/o Mittaso India Pvt. Ltd., Ward-1, Jind.
Uklana Road, Narwana(Haryana).

PAN : ABOPM2161K
(Appellant)

(Respondent)

Appellant by : Sh. R.S. Singhvi, C.A.
Sh. Satyajeet Goel, C.A.
Respondent by: Mrs. Kirti Sankratyayan, Sr. DR

Date of hearing: 04.04.2022
Date of order : 04.04.2022

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 26/12/2018 in appeal No. 74/BWN/TRF/2013-14 passed by the learned Commissioner of Income Tax (Appeals)- Hisar ("Ld. CIT(A)") in the case of Babu Ram Mittal ("the assessee"), for the assessment year 2008-09, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is an individual and its assessment u/s. 143(3) of the Income-tax Act, 1961 ("the Act") was completed on 23.07.2010 at an income of Rs.2,07,910/-. Subsequently,

learned Commissioner of Income-tax, Hisar, exercising his revisionary powers u/s. 263 of the Act, revised the assessment dated 23.07.2010 holding it to be erroneous and prejudicial to the interest of revenue. In the revisionary proceedings, it was observed by the Id. CIT, Hisar that the assessee had deposited Rs.44.00 lacs in cash on 07.03.2008 and 08.03.2008 in his bank account maintained with State Bank of Patiala, Narwana. The assessee in order to explain the source of deposits furnished six agreements with six persons, claiming that the amount of Rs.44.00 lacs was received from them as advance against sale of land, details of which are given in the assessment order. In the revisionary proceedings, assessee produced five persons in witness out of six before learned CIT, who recorded their statements. It was found by the Id. CIT that none of the persons were aware of the transactions with the assessee as well as the details of their share of land purported to be sold by the assessee. Some of the persons denied to enter into deal of land and agreement. One of such alleged purchasers was not produced. Ld. CIT further found that contents and pattern of all the six agreements were same and there was no reason to execute six separate agreements for sale of single piece of land and held the same as ingenuine. Therefore, finding the source of cash deposit of Rs.44.00 lacs as unexplained, Id. CIT, Hissar, revised the assessment order u/s. 143(3) of the Act holding it to be erroneous and prejudicial to the interest of Revenue.

3. In pursuance to the directions given in the order u/s. 263 of the Act, the Assessing Officer issued notices u/s. 143(2) and 142(1) alongwith questionnaire. In response, the contention of the assessee has been that most of the co-purchasers of the land were produced in the revisionary

proceedings to explain the cash deposit. The assessee was asked to produce remaining one person namely Sh. Dharambir, but he failed to do so. Accordingly, the Assessing Officer observed that the onus that lay upon the assessee to explain the source of deposit could not be discharged and therefore relying upon the decisions in the case of CIT vs. Mussadi Lal Ram Bharose, 165 ITR 14(SC) and CIT vs. Gurbachan Lal, 252 IT 157 (Del) , made addition of Rs.44,00,000/- u/s. 69 of the Act.

4. Assessee preferred appeal before the Id. CIT(A), who dismissed the same by the impugned order for want of representation on behalf of the assessee.

5. Assessee, therefore, preferred this appeal. Learned AR submits that the Id. CIT(A) was not justified in dismissing the appeal in limine without deciding the same on merits. He further submits that if the assessee is given an opportunity, he will be able to produce all the documentary evidence and witnesses to prove the source of impugned deposits in the bank account. He therefore, prays that the matter may be remanded back to the Assessing Officer for giving an opportunity to the assessee and to examine the witnesses. Ld. DR though relies on the orders of the authorities below but does not object to the prayer of assessee to produce the requisite witnesses before the Assessing Officer in support of its claim.

6. We have gone through the record in the light of submissions made on either side. It is not in dispute that the assessee could not produce requisite witnesses before the authorities below to explain the source of cash deposit in the bank account. The impugned order also reveals that the Id. CIT(A) has not decided the appeal on merits but dismissed the

same only for want of representation on behalf of the assessee. In the circumstances and in the interest of justice, we deem it proper to remand the case back to the file of Assessing Officer for making assessment afresh after giving an opportunity to the assessee to put up its case and to produce requisite witnesses before the Assessing Officer in support of its claim. The assessee is also directed to cooperate with the Assessing Officer and not to seek unnecessary adjournments. Accordingly, the appeal of the assessee is allowed for statistical purposes.

7. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 04/04/2022.

Sd/-

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER
Dated: 04/04/2022
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(K. NARSIMHA CHARY)
JUDICIAL MEMBER