

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.549/Del/2019

निर्धारणवर्ष/Assessment Year: 2009-10

Gurvinder Singh C/o M/s RRA TaxIndia, D-28, South Extension, Part-1, New Delhi.	बनाम Vs.	ITO Ward 2, Karnal.
PAN No. BZTPS8710G		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Shri Somil Agarwal, CA Dr. Rakesh Gupta, Adv.
राजस्वकीओरसे /Revenue by	Shri Om Prakash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	08.03.2022
उद्घोषणाकीतारीख/Pronouncement on	27.04.2022

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), Karnal dated 28.08.2018 for the AY 2009-10 in sustaining the addition of Rs.37 lakhs made by the Assessing Officer u/s 69A of the Act.

2. Briefly stated the facts are that the assessment of the assessee was reopened by issue of notice u/s 148 of the Act on the reason that assessee had made cash deposits into savings bank account with HDFC Bank, Kunj Pura Road, Karnal. In response to the said notice the assessee filed return of income on 28.12.2016 declaring income of

Rs.1,18,511/-. The reassessment was completed u/s 143(3) read with section 147 of the Act on 30.12.2016 determining income of the assessee at Rs.37,43,511/-. In the course of assessment proceedings, assessee was asked to reconcile/explain the cash deposits made on various dates into his bank account. As the assessee was not furnishing the reconciliation statement and since the assessment was time barring the Assessing Officer completed the assessment on 30.12.2016 based on the information furnished by the assessee till 29.12.2016. On examining the sale deed and affidavit of assessee the Assessing Officer came to know that the assessee sold agricultural lands and received Rs.98,10,000/- in cash and deposited the same into bank account. The Assessing Officer accepted the cash deposits of Rs.95,20,000/-, Rs.1,35,000/- and Rs.1,00,000/- deposited on 06.08.2008, 14.08.2008, and 20.11.2008 respectively as explained since deposits were made from out of cash received of Rs.98,10,000/-. The Assessing Officer also accepted 1.30 crores received through RTGS as part of sale consideration of land. However, in so far as cash deposits of Rs.12 lakhs and Rs.25 lakhs deposited by the assessee on 08.01.2009 and 17.02.2009 totaling to Rs.37 lakhs was treated as remained unexplained and the same was added as income of the assessee. On appeal, the Ld. CIT(Appeals) sustained the addition.

3. The Ld. Counsel for the assessee submits that the source for the deposit of cash into bank account of the assessee of Rs.12 lakhs on

08.01.2009 was withdrawal of Rs.16,62,000/- made by the assessee on 24.12.2008. Similarly, the Ld. Counsel submits that the source for deposit of Rs.25 lakhs into bank account of the assessee on 17.02.2009 is from withdrawal of Rs.30,75,000/- made on 13.02.2009. The Ld. Counsel for the assessee submits that the assessee withdrew an this amount of Rs.16,62,000/- and Rs.30,75,000/- contemplating to purchase land and since the deal could not materialize an amount of Rs.12 lakhs was deposited into bank account on 08.01.2009 and Rs.25 lakhs was deposited on 17.02.2009 within a period of few days. The Ld. Counsel submits that the reason for confirmation of the addition by the Ld. CIT(A) was that the explanation of the assessee was not backed by any evidence. At this stage, the Ld. Counsel submits that additional evidence was furnished in the form of certificate issued by HDFC Bank confirming the withdrawals made by the assessee from his account i.e. Rs.16,62,000/- on 24.12.2008 and Rs.30,75,000/- on 13.02.2009. The Ld. Counsel submits that since this evidence is going to the root of the matter the same may be admitted. The Ld. Counsel further referring to the bank statement furnished at page 13 of the paper book submits that the entries of cash withdrawal and deposits were reflected in the bank statement and, therefore, there is no reason for disbelieving the explanation given by the assessee. The Ld. Counsel placed reliance on the following decisions in support of his submission that when once the assessee explained that

the cash deposit was made from out of cash withdrawals addition cannot be made as unexplained cash credit:

1. *ACIT Vs. Baldev Raj Charla & Ors. reported in 18 DTR 413;*
2. *Moongipa Investment Limited Vs. ITO reported in 70 DTR 132;*
3. *Jaya Aggarwal Vs. ITO reported in 165 DTR 97 (Del).*

4. On the other hand, the Ld. DR strongly supported the orders of the authorities below.

5. Heard rival submissions perused the orders of the authorities below. On perusal of the assessment order it can be seen that the addition to the extent of Rs.37 lakhs was made by the Assessing Officer as unexplained cash deposits, in respect of Rs.12 lakhs made on 08.01.2009 and Rs.25 lakhs made on 17.02.2009 as the assessee could not furnish the reconciliation. Before the Ld. CIT(Appeals) the assessee contended that assessee has sold agricultural land and received sale consideration by way of cash as well as through RTGS and later on in the month of December on 24.12.2008 assessee withdrew an amount of Rs.16,62,000/- intended to purchase land. However, as the assessee could not find suitable land an amount of Rs.12 lakhs was deposited on 08.01.2009. Similarly it was contended that an amount of Rs.30,75,000/- was withdrawn on 13.02.2009 and an amount of Rs.25 lakhs was deposited on 17.02.2009. However, the explanation of the assessee was rejected by the Ld. CIT(Appeals) observing that it is only a general explanation and not backed by any evidence.

6. On perusal of the bank statement it is noticed that the assessee has withdrawn Rs.16,62,000/- on 24.12.2008 and also deposited an amount of Rs.12 lakhs on 08.01.2009. Similarly, it is noticed that assessee has withdrawn Rs.30,75,000/- on 13.02.2009 and Rs.25 lakhs was deposited on 17.02.2009. The explanation of the assessee that the monies were withdrawn intending to purchase land but since no suitable land could be found the assessee re-deposited into bank account cannot be brushed aside especially when the assessee and his family who are all agriculturists and they have sold their lands vide sale deed dated 05.08.2008 which is evident from the assessment order itself. Further on perusal of the certificate issued by HDFC Bank withdrawn cash on those dates. Even without going into the additional evidence in the form of the letter for HDFC Bank furnished by the assessee it is abundantly clear from the bank statement furnished by the assessee that there were cash withdrawals and cash deposits into bank accounts.

7. In the case of *Jaya Aggarwal Vs. ITO (supra)* the Hon'ble Delhi High Court in para 7 & 8 held as under:

"7. Impugned order holds that no prudent person would keep a huge amount of Rs.2,00,000/- at their residence to negotiate a property deal. There was no bar in withdrawing the money from the bank at any time before deal was finalized to pay earnest money.

8. We find it difficult to accept the approach and findings recorded for several reasons. The brief order does not examine and consider the entire explanation and material on record as withdrawal of Rs.2,00,000/- in cash was undisputed. Naturally, the huge withdrawal was for a purpose and objective. From the beginning the explanation given was that withdrawal was to pay earnest money for purchase of immovable property, which deal

did not fructify. Explanation given was not fanciful and sham story. It was perfectly plausible and should be accepted, unless there was justification and ground to hold to the contrary. Delay of some months in redeposit of part amount is the sole and only reason to disbelieve the appellant. Persons can behave differently even when placed in similar situations. Due regard and latitude to human conduct and behavior has to be given and accepted when we consider validity and truthfulness of an explanation. One should not consider and reject an explanation as concocted and contrived by applying prudent man's behavior test. Principle of preponderance of probability as a test is to be applied and is sufficient to discharge onus. Probability means likelihood of anything to be true. Probability refers to appearance of truth or likelihood of being realized which any statement or event bears in light of the present evidence. Evidence can be oral and cannot be discarded on this ground. Assessment order and the appellate orders fall foul and have disregarded the preponderance of probability test."

8. In the case of ACIT Vs. Baldev Raj Charla & Ors. (supra) the Delhi Bench of the Tribunal held that addition cannot be made u/s 69 of the Act only because there was some time gap between withdrawals and cash deposits.

9. In the case on hand the time gap between cash withdrawals and the cash deposits is not more than 15 days, where the cash deposit of Rs.12 lakhs was made. In case of cash deposit of Rs.25 lakhs made by the assessee the time gap was only 3 days. Similar view has been taken by the Delhi Bench in the case of Moongipa Investment Limited Vs. ITO (supra).

10. In view of the above discussion, I hold that the explanation given by the assessee is a plausible explanation and the bank statement reflects both cash withdrawals and cash deposits within a gap of few days

and, therefore, I direct the Assessing Officer to delete the addition made u/s 69A of the Act and re-compute the income accordingly.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27/04/2022

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 27.04.2022
**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi