

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.364/Del/2020

[Assessment Year : 2011-12]

Ram Kumar Sindhu, House No.1842/10, Tilak Nagar, Rohtak, Haryana. PAN-DUCPS3198Q	vs	ITO, Ward-5, Rohtak.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	23.03.2022	
Date of Pronouncement	28.04.2022	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2011-12 is directed against the order of Ld. CIT(A), Rohtak dated 23.09.2019. The assessee has raised following grounds of appeal:-

1. *"That the learned Commissioner of Income Tax(Appeals) has grossly erred both in law and on facts in sustaining an assessment under section 143(3)of the Act at Income of Rs. 19,99,535/- as against returned income being filed at Rs. 1,08,861/-*
2. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining an addition of Rs. 6,00,000/- on account of Cash Deposit.*
3. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining an addition of Rs. 12,90,674/- on account of Undisclosed Long Term Capital Gain.*
4. *That in doing so, the learned CIT (A) has grossly erred in failing to considering the fact that the assessee had received cash of Rs. 6,00,000/- from his Son (engaged in business of Dairy Farm and*

agricultural activities) further, the learned AO &CIT(A) based their decision purely on suspicion, surmises and conjectures, without carrying out any verification and as such, the addition so made should be deleted.

5. *That in doing so, the learned CIT (A) has grossly erred in failing to appreciate that the fact that the assessee had purchased house property of Rs. 8,86,000/- in the name of his dependent wife and son further, the learned AO &CIT(A) based their decision purely on suspicion, surmises and conjectures, and as such, the addition so made should be deleted.*
6. *That having regard to the facts and circumstances of the case, the learned CIT(A) has erred in law and facts in confirming the additions made in the assessment order dated 17/12/2018 as the same additions are contrary to law and facts.*
7. *That in any case and in any view of the matter, the assessment framed under section 143(3) of the Act, is bad in law and against the facts and circumstances of the case.*
8. *That having regard to the facts and circumstances of the case, Learned CIT(A) has erred in law and on facts in confirming the action of learned AO in passing the impugned order.*
9. *That the appellant craves the leave to add, alter or amend the grounds of appeal at any stage and all grounds are without prejudice to each other.”*

2. At the time of hearing, no one appeared on behalf of the assessee. Notice sent through speed post has been returned back unserved by the Postal authority with remark “no such person on this address”. The assessee has not provided any other address to the Registry. Therefore, the appeal is taken up for hearing in the absence of the assessee.

FACTS OF THE CASE

4. Facts giving rise to the present appeal are that the case of the assessee was re-opened for assessment on the basis of cash deposited in the bank account of Rs.25,15,000/-. In response to the notice, a reply through online portal was filed. However, no one attended the proceeding therefore, the Assessing Officer ("AO") made addition of Rs.8,01,000/- on account of unexplained cash deposit and Rs.12,90,674/- as the undisclosed capital gain. Hence, the AO assessed total income of the assessee at Rs.22,00,535/-.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, partly allowed the appeal of the assessee and sustained the addition of Rs.12,90,674/- made on account of undisclosed capital gain and out of addition of Rs.8,01,000/- was confirmed on account of cash deposits.

6. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before the Tribunal.

7. Ground No.1, 6, 7, 8 & 9 are general in nature, need no separate adjudication.

8. Ground Nos. 2 & 4 of the assessee's appeal are inter-related against the addition of Rs.6,00,000/- on account of unexplained cash deposited in the bank account by the assessee.

9. Ld. Sr. DR opposed these submissions and supported the orders of the authorities below and submitted that Ld.CIT(A) has already given relief to the extent that the assessee could explain the source of cash deposits. However, the assessee has grossly failed to explain the source of cash deposits.

10. I have heard contention of the Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. I find that Ld.CIT(A) has given finding on fact in para 5.2 on this issue by holding as under:-

5.2. *“During the appellate proceedings the assessee submitted that out of Rs. 8,01,000/- deposited in cash, Rs. 6,00,000/- was given by his son who runs a dairy farm and does agricultural activities on land. Further, he had cash in hand of Rs. 1,25,000/-, cash gift of Rs. 1,00,000/- from wife, Rs. 2,00,000/- from sale of buffaloes and agricultural income of Rs. 1,47,000/-. It is seen that the explanation regarding agricultural income was not accepted by the AO and the source of cash deposits being gift from wife and sale of buffaloes was never submitted before the AO. The assessee has not given any evidence regarding the source of income of his son in form of proof of land holding, agricultural activity and sale of crops and of running a dairy' farm. Thus assessee's contention that Rs 6 lacs was given to the assessee for purchase of residential house is not acceptable. As regards agricultural income of the assessee, no such income was shown while filing the return in which only gross total income of Rs 1,08,861/- has been shown and the computation shows agricultural income of Rs 1,47,000/-. In support of the same copy of fard has been given but it is not specified how much land holding was in his name and what were the total receipts and evidence thereof has not been submitted in support of his claim. Thus, benefit of only Rs. 1,00,000/- is being given to the assessee considering that he possesses land on which cultivation is being done and also considering that some sale proceeds of crops grown may have been deposited in the bank account. Similarly, proof of cash in hand of Rs 1,25,000/- is not there. However considering that there was some land holding and income earned by the assessee and also considering that there would be some savings made over the years, a benefit of Rs 1,00,000/- is being given to the assessee. The submission regarding the gift from wife and sale of buffaloes is rejected as no such submission was made before the AO. If this was a fact and documentary evidence in this regard was not there, at least a*

written submission should have been made before the AO. There is no justification for giving the submission at appellate stage. It is not a case where the assessee did not appear before the AO and could not submit the evidence or atleast make this submission at the time of assessment proceedings. Thus addition of Rs 6,00,000/- is confirmed.”

11. The above finding on fact is not controverted by the assessee by placing any contrary material on record. Therefore, I do not see any reason to interfere in the finding of Ld.CIT(A), the same is hereby affirmed. Ground Nos. 2 & 4 of the assessee's appeal are thus, rejected.

12. Ground Nos. 3 & 5 of the assessee's appeal are also inter-related against the undisclosed long term capital gain.

13. Ld. Sr. DR opposed the submissions of the assessee as made before Ld.CIT(A) and supported the orders of the authorities below and contended that Ld.CIT(A) has given a finding on fact.

14. I have heard contention of the Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. I find that before the Ld.CIT(A), the assessee had stated that he was entitled for deduction u/s 54F of the Income Tax Act, 1961 (“the Act”). It was stated that the sale consideration of the original asset was invested into new asset. However, new asset was purchased in the name of the wife and son of the assessee. This contention of the assessee was rejected by the Ld.CIT(A) by following the judgements of Hon'ble High Court of Punjab & Haryana rendered in the case of *Kamal Kant Kamboj vs ITO 84 taxman.com 541 [P&H]* and *CIT vs Dinesh Verma (2015) 233 Taxman 409 [P&H]*. The assessee has not brought any binding precedent decided by the Hon'ble Punjab & Haryana High Court in

favour of the assessee, allowing the deduction u/s 54F of the Act where the sale consideration was invested in the name of spouse or the dependent son of the assessee. Therefore, I do not see any reason to interfere in the findings of Ld.CIT(A), the same is hereby affirmed. Thus, grounds raised by the assessee are dismissed.

15. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 28th April, 2022.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI