

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1084/Del/2020  
[Assessment Year : 2011-12]**

Ishwar Singh, C/o-Kapil Goel, Advocate, F-26/124, Sec-7, Rohini, New Delhi-110085. PAN-DBMPS4978D	vs	ITO, Ward-1, Rewari.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	None	
<b>Respondent by</b>	Shri Om Prakash, Sr.DR	
<b>Date of Hearing</b>	11.05.2022	
<b>Date of Pronouncement</b>	11.05.2022	

**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 06.01.2020.

2. The assessee has raised following grounds of appeal:-

**Jurisdictional Ground: Assessment is void ab initio**

1. "That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without appreciating that assumption of jurisdiction u/s 148 was by Ld AO was in violation of mandatory jurisdictional conditions stipulated under the Act;

1.1 That on the facts and in the circumstances of the case and in law, ld CIT-A erred in sustaining the order passed by Ld AO u/s 147/144 without appreciating that once it is admitted fact that (para 7.5 of CIT-A order) stated cash deposit gets fully explained being generated from sale of agricultural land (not capital asset) so there remains no strength in reasons recorded

*for reopening of case u/s 148 of the Act and assessment made thereafter u/d 144 of the Act, so as to treat cash deposited as unexplained in nature u/s 68 of the Act, accordingly reopening made may please be quashed:*

- 1.2 *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/144 without appreciating that reopening is made on basis of undated reasons which are inturn based on cash deposit only and that too with mechanical “yes” approval (again undated) , where all actions of undated reasons recording and approval giving are against the law where mere cash deposit is no ground to allege income escapement, thus orders of Ld AO and Ld CIT-A on basis of invalid reopening may please be quashed.*
- 1.3 *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) without valid approval from superior authority under the Act;*
- 1.4 *That on the facts and in the circumstances of the case and in law, Id CIT-A erred in sustaining the order passed by Ld AO u/s 147/143(3) as none of the assessee submission is appreciated while adjudicating the appeal;*

**Other grounds on merits qua addition of Rs 48,88,778**

2. *That order passed by Ld AO dated 23/08/2016 and further order passed by Id C1T A dated 06/01/2020 are bad in law in as much as addition of Rs 48,88,778/- (break up : addition for cash deposit of Rs 48,20,000 and interest of Rs 68,778) is made without appreciating that cash deposit of Rs 48,20,000 is fully explained by the fact that assessee being agriculturist having no other source of income has reed cash on a/c of sale of rural agricultural land which is not taxable capital asset u/s 2(14) of the Act as supported by affidavits,*

*agreements etc placed on records which have no where been objectively overruled as per law.*

*2.1 That order passed by Ld AO dated 23/08/2016 and further order passed by Id CIT A dated 06.01.2020 are bad in law in as much as addition of Rs 48,20,000/- is sustained on reasons (refer para 7.5 of CIT-A order) which have nothing to do with plausible and fact supported explanation of assessee that cash deposited is from sale proceeds of rural agricultural land and merely on basis of reasoning which remains to conjecture and surmises addition is sustained by Ld CIT-A without any independent enquiry from any person.*

*2.2 That order passed by Ld AO dated 23/08/2016 and further order passed by Id CIT A dated 06.01.2020 are bad in law in as much as addition of Rs 68,778 is beyond the scope of reopening and reasons recorded u/s 148 of the Act.*

*3. That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal.”*

3. At the time of hearing, no one appeared on behalf of the assessee. It is seen from the records that various opportunities were given to the assessee but there is no representation on behalf of the assessee. Therefore, the appeal is taken up for hearing in the absence of the assessee and is being decided after considering the material available on record.

### **FACTS OF THE CASE**

4. Facts giving rise to the present appeal are that the case of the assessee was re-opened u/s 147 of the Income Tax Act, 1961 (“the Act”). On the basis of the information received regarding deposit of cash amounting to Rs.48,20,000/- in the Saving Bank Account belonging to the assessee. Thereafter, a notice u/s 148 of the Act was issued to the assessee. In response to the notice, there was

no representation on behalf of the assessee. The Assessing Officer ("AO") recorded that various opportunities were given to the assessee. However, there was no representation on behalf of the assessee. Therefore, the AO made additions of Rs.48,20,000/- and Rs.68,778/- and assessed the income of the assessee at Rs.48,88,778/-.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal.

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

7. Apropos to Ground Nos. 1 to 3, Ld. Sr. DR heavily relied upon the orders of the authorities below. Ld. Sr. DR submitted that the assessee has been thoroughly negligent and the Ld.CIT(A) after giving sufficient opportunity to the assessee, has examined the issue in detail. He further contended that finding of Ld.CIT(A) is justified and the assessee failed to prove that he had received cash as a sale consideration. No evidence is placed on record before the authorities below.

8. I have heard the contention of Ld. Sr. DR and perused the material available on record. I find that the assessee has not filed any evidences regarding the receipt of cash paid to him as a consideration to sale of property. Before this Tribunal also, there is no evidence in support of the contention of the assessee that cash was received by him. Moreover, Ld. CIT(A) has given a finding on fact in para 7 to 7.5 of the impugned order which is reproduced as under:-

**7. “I have carefully considered the facts of the case, assessee’s submissions, assessment order, remand report and find that:-**

7.1 In this case notice under section 148 of the Act was issued after recording reasons and following due process of law as the Assessing Officer was satisfied that the cash deposit of Rs. 48,20,000/- had escaped assessment, Six notices u/s 148 and 142(1) of the Act were issued and also show cause was Issued as to why assessment may not be completed u/s 144 (I) of the Act. But not even once the assessee complied with these notices. As it was a time barring matter, best judgment assessment u/s 144 of the Act was made treating the cash deposit of Rs, 48,20,000/- as assessee’s income from undisclosed sources. Addition was also made of Rs.68,778/- as this interest income was also not disclosed by the assessee. A perusal of the record shows that the address the assessee on which six notices / letter were issued in the same address which is there on the form 35 given by the assessee and his address is not a vague address but has a specific house no. which shows that the assessee did receive the notices but- there was no compliance.

7.2 During the appellate proceedings the assessee has submitted that he could not attend the proceeding because of lack of knowledge as he is an agriculturist and all the cash deposits were from sale of joint agriculture land to M/s Dhamoon Contractions Pvt. Ltd through Sh. Sudeep Yadav. The total deal was Rs.1,48,08,510/- but the sale deed was done, at circle rate due to which payment of Rs. 99,88,500/- was received by demand draft and Rs.48,20,000/- were received in cash. He has submitted the copy of bank statement of all the family members who received the demand draft amount for sale of joint property to show that receipts by demand drafts only were deposited in their bank accounts and cash was not deposited. The copy of sale deeds have been enclosed. The assessee also submitted the copies of bank statement of all the family member in the Syndicate bank which shows the receipts by way of the demand draft from the builder but no cash deposits are there in that period. Further he has submitted copy of his bank account of Rewari Central Co-op Rank whereby cash of Rs. 48,20,000/- was deposited on 3<sup>rd</sup> and 4<sup>th</sup> November 2010 i.e. after the date

*of registration of sale deed. An affidavit also has submitted whereby he has affirmed that the cash deposit was the payment received by selling by the joint property of the family which was not a capital asset and the total sale proceeds are as per the price agreed in the Ikrarnama.*

*7.3 The application under rule 46 A was accepted in view of the principle of natural justice and sent to the Assessing Officer for his comments. During the remand proceeding the Assessing Officer gave proper opportunity to the assessee to prove his contention that the agreement was made with Sh. Sudeep Yadav on behalf of the buyer Company wherein it was proposed to make a deal at the rate of Rs 51 lacs per acre but in the sale deed circle rate was taken as a basis and only Rs.99,88,500/- were paid by draft and balance consideration of Rs.48,20,000/- was paid in cash. But the assessee failed to provide copy on any agreement and could not produce Sh. Sudeep Yadav for verification.*

*7.4 During appellate proceeding the report was confronted to the assessee and he submitted that Sh. Sudeep Yadav refused to appear and give the copy of agreement so it could not be produced before the Assessing Officer. The assessee also submitted affidavits of all the family members who stated that their share received in cash was deposited in bank account of the assessee. The assessee has also given a certified copy of agreement/ ikararnama which, support his contention and which was obtained from the court.*

*7.5 In view of the above discussed facts and material on record it is seen that in this case all the joint property owners had bank accounts and deposited the money received by way of demand draft in their accounts but as per their affidavits and bank statements the cash component of their share was deposited in the account of Ishwar Singh. The assessee has not been able to produce Sh. Sudip who was signatory on behalf of the buyer company in the agreement which has now been submitted so it could not be verified. The agreement does show that assessee's contention has some merit and it is also strengthened by the fact that the land was agriculture land and not a capital asset and by showing higher sale proceeds there would be no tax liability on him rather it is the buyer who is benefitted by*

*paying lower stamp duty and cash out of undisclosed money. It is also known that the construction companies mislead the innocent and ignorant agriculturists while buying their land who are not aware of the implication of reducing the value of land in the sale deed and thus utilized their undisclosed income and the farmers are happy to receive the full consideration which is agreed upon in the Ikrarnama. However in this case as all the joint owners had bank accounts and received the DDs as well as cash around the same time it is not acceptable that the cash deposited in assessee's account was the share of all the joint owners received in this transaction. As original agreement could not be produced to establish the higher rate of transactions and on the copy of agreement submitted the signature of buyer company is not there and Sh. Sudip who was mediator did not appear for verification, assessee's plea is rejected and addition is confirmed."*

The above finding of the Ld.CIT(A) is not rebutted 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. Thus, grounds raised by the assessee in this appeal are dismissed.

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

Order pronounced in the open Court on 11<sup>th</sup> May, 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