

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

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.1961/Del/2019
निर्धारणवर्ष/Assessment Year: 2009-10

Manoj Kumar, 654, Near Tempo Stand, Vill. Ugrakheri, Panipat, Haryana.	बनाम Vs.	ITO Ward 2, Panipat.
PAN No. DHTPK5348N		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Ms. Apoorva Bhardwaj, CA
राजस्वकीओरसे /Revenue by	Ms. Garima Sharma, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	06.06.2022
उद्घोषणाकीतारीख/Pronouncement on	28.06.2022

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), Karnal dated 30.11.2018 for AY 2009-10 in sustaining the addition of Rs.68,30,000/- made by the Assessing Officer on account of unexplained cash deposits into assessee's bank account.

2. Brief facts are that the Assessing Officer/ITO, Ward-2, Panipat came into possession of NMS Data according to which the assessee has

entered into financial transactions by making cash deposits of Rs.68,30,000/- into his bank account maintained in Union Bank of India, Mimbri, Panipat during the FY 2008-09. The assessee was required to explain the source of cash deposits. However, the assessee did not furnish any explanation on the source of cash deposits. The ITO, Ward-2, Panipat initiated proceedings u/s 148 of the Act by issue of notice dated 16.03.2016. The assessee did not file his return of income in response to notice u/s 148 of the Act. It is observed from the assessment order that several notices were sent and served on the assessee but the assessee failed to comply with the notices. Left with no option the Assessing Officer completed the assessment u/s 144 of the Act treating the following cash deposits as unexplained and accordingly made addition u/s 69A of the Act:

<u>Date of Deposit</u>	<u>Amount (Rs.)</u>
17.10.2008	23,40,000/-
04.11.2008	22,80,000/-
02.12.2008	<u>22,10,000/-</u>
Total:	<u>68,30,000/-</u>

3. Before the Ld. Commissioner of Income Tax (Appeals) the assessee furnished copy of savings bank account of the assessee, copies of various registered sale deeds, copy of sale agreements, copy of land record along with affidavit by assessee's cousin etc., as additional evidences under Rule 46A of the I.T. Rules. The Ld. CIT(A) called for remand report from the Assessing Officer and the Assessing Officer furnished remand report

on the evidences furnished by the assessee. The remand report was given to the assessee for his comments and the assessee by letter dated 31.10.2018 submitted his comments on the remand report furnished by the Assessing Officer. The Ld.CIT(A) considering both the remand report as well as the comments on remand report sustained the addition made by the Assessing Officer observing that the assessee has not been able to counter the AO's finding beyond making vague reference and tried to justify the cash deposits into his bank account.

4. The Ld. Counsel for the assessee in so far as cash deposit of Rs.23,40,000/- which was deposited on 17.10.2008 is concerned. It is submitted that out of Rs.23,40,000/- an amount of Rs.6,31,000/- was deposited on behalf of Shri Ravindra who was the cousin brother of the assessee as he has no bank account at that time. It is submitted that this amount of Rs.6,31,000/- was received by Smt. Saroj and Shri Ravindra out of sale proceeds on sale of property vide sale deed dated 16.10.2008. Ld. Counsel submits that copy of the sale deed is placed at paper book page no. 22 to 26. The Ld. Counsel further submits that Shri Ravindra who is the cousin brother of the assessee has also given an affidavit to the effect that he is resident of Panipat and sold his property through sale deed dated 16.10.2008 bearing no. 5702 for Rs.6,31,000/-. The Ld. Counsel submits that the amount of Rs.6,31,000/- which was deposited on behalf of Shri Ravindra was later repaid by withdrawing cash from the

bank on various dates starting from 23.12.2008 to 29.01.2009 as and when required by Shri Ravindra.

5. Coming to deposit of Rs.17,09,000/- out of Rs.23,40,000/- the Ld. Counsel submits that this amount was deposited on behalf of his relative Shri Changdi Ram. The Ld. Counsel submits that this amount was also repaid subsequently by withdrawing the cash from bank account on various dates starting from 04.02.2009 to 27.05.2009 as and when required by him. The Ld. Counsel for the assessee submits that Shri Changdi Ram is the maternal grandfather of the wife of the assessee and he has received this amount of Rs.17,09,000/- out of family settlement on 17.10.2008. The Ld. Counsel for the assessee submits that the Assessing Officer in the remand proceedings even called one of the buyer Shri Sukhbir Singh and recorded his statement who has also confirmed sale of property by Shri Changdi Ram to 8 persons including Shri Sukhbir Singh. The Ld. Counsel for the assessee submits that even though Shri Sukhbir Singh has confirmed before the Assessing Officer that the transaction of sale of property by Shri Changdi Ram to Shri Sukhbir Singh and others and received money by Shri Changdi Ram from out of sale of property on family settlement he completely disbelieved the transaction.

6. The Ld. Counsel therefore submits that the source for deposit of Rs.23,40,000/- into the bank account of the assessee on 17.10.2008 has been properly explained and the addition be deleted.

7. Coming to cash deposit of Rs.22,80,000/- made on 04.11.2008 the Ld. Counsel for the assessee submitted that this deposit was made out of cash withdrawals on the previous day i.e. on 03.11.2008. The Ld. Counsel submits that on 03.11.2008 the assessee has withdrawn an amount of Rs.23 lakhs out of which Rs.22,80,000/- was deposited on the next day i.e. on 04.11.2008. The Ld. Counsel for the assessee submits that in the remand report even the Assessing Officer has stated that in view of the date of withdrawal and the redeposit the version of the assessee may be accepted. The Ld. Counsel submits that the Ld. CIT(A), however, sustained the addition which is not at all justified.

8.1 Coming to deposit of Rs.22,10,000/- made on 02.12.2008 the Ld. Counsel submits that this amount consists of three transactions one is Rs.4,20,000/-, second one is Rs.8,24,000/- and the third one is Rs.10,00,000/-.

8.2 With respect to Rs.4,20,000/- the Ld. Counsel submits that this amount was deposited on behalf of Shri Ved Pal father of the assessee out of sale proceeds received as per sale of property vide sale deed no. 6916 dated 10.12.2008. It is submitted that the copy of sale deed is placed at pages 7 to 12 of the paper book.

8.3 With respect to deposit of Rs.8,24,000/- the Ld. Counsel submits that this amount was deposited on behalf of Shri Ved Pal father of the

assessee out of proceeds received on sale of property vide sale deed no. 9202 dated 17.03.2009.

8.4 Coming to cash deposit of Rs.10,00,000/- it is submitted that this deposit was made out of cash withdrawal made on 27.11.2008. The Ld. Counsel submits that copy of relevant bank statement is at page 5 of the paper book. Therefore, it is submitted that the assessee has explained all the cash deposits of Rs.22,10,000/- made into his bank account and, therefore, none of these deposits can be considered as unexplained income of the assessee. Therefore, it is requested that the addition be deleted.

9. The Ld. DR strongly placed reliance on the orders of the authorities below.

10. We have heard the rival submissions, perused the orders of the authorities below and the evidences produced before us. With regard to the cash deposit of Rs.6,31,000/- out of Rs.23,40,000/- deposited on 17.10.2008 into assessee's bank account on behalf of Shri Ravindra who is his cousin brother we observed that Shri Ravindra in his affidavit has deposed that he is resident of Ugra Khedi, Panipat and he is the cousin brother of the assessee sold his property for Rs.6,31,000/- vide sale deed no. 5702 dated 16.10.2008. In the affidavit Shri Ravindra also stated that he has no bank account in Panipat and he has given this money to the assessee for depositing into his account. The Assessing Officer in his

remand report stated that sale deed was executed on 16.10.2008 by Shri Ravindra and Smt. Saroj and they have no blood relation with the assessee and the assessee has not explained the repayment of the deposit. It is observed that before the Ld. CIT(A) the assessee furnished the affidavit of Shri Ravindra who had stated that he is the cousin brother of the assessee and he has sold the property and since he has no bank account the amount was given to the assessee to deposit in his account. The veracity of the contents of the affidavit were not doubted by the Ld. CIT(A). He has simply confirmed the addition observing that the Assessing Officer fairly given the reasons as to why the assessee could not give explanation for cash deposits. We also observed that the sale deed was entered into on 16.10.2008 by Shri Ravindra and the cash deposit was made on the very next date i.e. on 17.10.2008. Since the contents of the affidavit were not in doubt the explanation of the assessee that the deposit of Rs.6,31,000/- made into his bank account was on behalf of his cousin brother cannot be disbelieved. In the circumstances the explanation given by the assessee justifying the cash deposit is plausible explanation given the evidences on record. Thus, we direct the Assessing Officer to delete the addition of Rs.6,31,000/- made as an unexplained deposit.

10.1 Coming to cash deposit of Rs.17,09,000/- out of Rs.23,40,000/- made on 17.10.2008 we observed that in the remand report the Assessing Officer has stated that statement of Shri Sukhbir Singh one of the

purchasers of the land from Shri Changdi Ram was recorded on 07.08.2018 and Shri Sukhbir Singh has admitted that he has entered into an agreement for purchase of land from Shri Changdi Ram. However, the AO disbelieved the transaction and he was of the view that it is only an afterthought as the agreement was entered into was recorded on paper after affixing Revenue stamps. We observed that Shri Changdi Ram who is the maternal grandfather of assessee's wife sold his land as part of family settlement to Shri Sukhbir Singh and eight others on 17.10.2008 and received Byana of Rs.30 lakhs. We also observed that in the remand proceedings the assessee has given the details of withdrawals from his bank account and returned the same to Sh. Changdi Ram on various dates starting from 04.02.2009 to 27.05.2009 whenever he required. The AO never examined the bank statement of the assessee on the contentions of the assessee that he had re-paid the amount to Sh. Changdi Ram. We also observed that in the remand proceedings the assessee furnished letter from Village Surpunch confirming the relation of the assessee with Sh. Changdi Ram. Nothing was commented by the Assessing Officer on this letter of the assessee and also the repayment made to Shri Changdi Ram. We also observed that cash of Rs.17,09,000/- was deposited into bank account on the day when the transaction was entered into by Sh. Changdi Ram which was also confirmed by one of the buyers. In view of the above, we hold that the assessee has explained the source of cash

deposit for Rs.17,09,000/- and, accordingly, the AO is directed to delete this addition.

11.1 In respect of cash deposit of Rs.22,80,000/- made on 04.11.2008 we observed that the assessee has withdrawn Rs.23 lakhs on 03.11.2008 out of which Rs.22,80,000/- was deposited on 04.11.2008 which was duly verified by the AO in the remand proceedings. Therefore, we hold that the assessee has explained the source for this deposit of Rs.22,80,000/- made on 04.11.2008 and, accordingly, we direct the AO to delete this addition.

11.2 With regard to cash deposit of Rs.10 lakhs made on 02.12.2008 out of Rs.22,10,000/- we observed that the AO in his remand report stated that in view of volume of debit and credit entries recorded in the bank account the submission of the assessee that this amount was deposited out of withdrawals cannot be accepted. On perusal of the bank statement of the assessee which is placed at page 5 of the paper book, we observed that the assessee has credit balance of Rs.23,23,750/- as on 04.11.2008 out of which the assessee has withdrawn Rs.10 lakhs on 27.11.2008 and made deposit of Rs.22,10,000/- on 02.12.2008 which includes the deposit of Rs.10,00,000/-. Therefore, the contention of the assessee that the said cash deposit of Rs.10,00,000/- out of Rs.22,10,000/- made on 02.12.2008 was out of the withdrawal of Rs.10,00,000/- made on 27.11.2008 cannot be disbelieved. The bank

entries reflected in the assessee's bank account suggest that the explanation given by the assessee cannot be disbelieved. Thus, the AO is directed to delete the addition of Rs.10,00,000/- out of deposit of Rs.22,10,000/- made on 02.12.2008.

11.3 Coming to deposits of Rs.4,20,000/- and Rs.8,24,000/- out of Rs.22,10,000/- made on 02.12.2008 it is the contention of the assessee that these deposits were made on behalf of Shri Ved Pal father of the assessee out of sale proceeds received by Sh. Ved Pal on sale of property belonging to him vide sale deed No. 6916 dated 10.12.2008 and sale deed No.9202 dated 17.03.2009 respectively. In the remand report the Assessing Officer observed that Sh. Ved Pal has received cash of Rs.4,20,000/- at his residence on the same day when the sale deed was executed. Similarly it is the observation of the Assessing Officer in the remand report that Sh. Ved Pal received Rs.8,20,000/- in cash at his residence when the sale deed was executed on 17.03.2009. Therefore, the Assessing Officer observed that when Shri Ram Pal father of the assessee had sold his properties and received cash at his residence on the very same day when the sale deeds were executed on 10.12.2008 and 17.03.2009 the assessee could not have deposited cash of Rs.4,20,000/- and Rs.8,24,000/- into his bank account on behalf of his father Sh. Ved Pal on 02.12.2008. We have examined the copies of sale deeds produced before us and find that the above observations of the Assessing Officer are correct. In the sale deeds it is mentioned that the above said

amounts i.e. Rs.4,20,000/- and Rs.8,24,000/- were delivered in cash at the residence of Sh. Ved Pal on the day the sale deeds were executed. We are of the view that when the father of the assessee Sh. Ved Pal had received cash on the day on which the sale deeds were executed he could not have given these monies to the assessee for deposit into assessee's account as the assessee has deposited on 02.12.2008 but whereas the sale deeds were executed on 10.12.2008 and 17.03.2009. Therefore, the contentions of the assessee are not corroborated with evidences and they are contrary to the record placed before the Assessing Officer as well as before us. Thus, the addition made by the Assessing Officer in respect of the deposits of Rs.4,20,000/- and Rs.8,24,000/- made on 02.12.2008 out of Rs.22,10,000/- is sustained.

12. In the result, the appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 28/06/2022

Sd/-
(G.S. PANNU)
PRESIDENT

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

Dated: 28.06.2022

**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