

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.1160/Del/2021
Assessment Year: 2017-18

Sh. Anmol Kumar, Vill. Kasmbad, Post- Budhanpur, Tehsil - Dhampur, Bijnor, Uttar Pradesh	Vs.	Income Tax Officer, Ward-3(5), Dhampur
PAN :CGJPK0570N		
(Appellant)		(Respondent)

Appellant by	Sh. Mayank Patwari, CA
Respondent by	Sh. Om Prakash, Sr. DR

Date of hearing	21.07.2022
Date of pronouncement	29.07.2022

ORDER

This is an appeal by the assessee against order dated 15.07.2021 of National Faceless Appeal Centre, Delhi, for the assessment year 2017-18.

2. Grounds raised by the assessee as under:

1. *On the facts and circumstances of the case, the order passed by Ld. CIT(A) is bad in law and on facts.*
2. *That the Ld. CIT(A) passed an ex-parte order without giving the Appellant a reasonable opportunity of being heard, thereby violating the principles of law and natural justice.*
3. *That the Ld. CIT(A) has grossly erred in law and on facts by considering the land owned by the Appellant at 22.2867 Bigha instead of 70 Bigha per Hectare.*

4. *That the Ld. CIT(A) has erred in law and on facts by applying the conversion rate of 4 Bighas per hectare instead of 12 Bighas per hectare.*
5. *That the Ld. CIT(A) is highly unjustified in confirming the re-classification of agricultural income of Rs. 2,78,000/- as Income from Other Sources. The addition by Ld. AO is on ad-hoc basis without bringing any corroborative material on record to substantiate such surmise.*
6. *That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 11,54,000/- u/s 69A of the Act on account of unexplained cash deposits.*
- 6.1. *That the Ld. CIT(A)/AO has grossly erred in stating that no source of such deposit was proved, ignoring the detailed submission made by the assessee.*
7. *That the appellant craves leave to add, alter, delete, rectify and modify any of the grounds of appeal before or at the time of hearing the appeal.*

3. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, assessee filed his return of income on 22.08.2017 declaring total income of Rs.2,72,840/-. The assessee also offered agricultural income of Rs.5,42,000/-. In course of assessment proceedings, the Assessing Officer noticed that compared to agricultural income shown in assessment year 2016-17, such income shown in the impugned assessment year is more than double. Therefore, he called upon the assessee to justify the quantum of agricultural income. In response to the query raised, the assessee furnished his reply giving the details of agricultural land holding. The Assessing Officer, however, after perusing the submission of the assessee observed that the agricultural land holding of the assessee is to the extent of 22 Bigha

and not 70 Bighas as claimed. Thus, he estimated the agricultural income at Rs. 12,000/- per Bigha and accordingly for 22 Bighas he computed the agricultural income of Rs.2,64,000/-. The differential amount of Rs.2,78,000/- was treated as income from other sources.

4. Further, the Assessing Officer found that during the period of demonetization, the assessee had deposited cash in his bank account amounting to Rs.13,54,000/-. Therefore, he called upon the assessee to explain the source of such cash deposit. After considering the submission of the assessee, the Assessing Officer accepted the source of cash deposit for an amount of Rs. 2,00,000/-, thereby, adding back an amount of Rs.11,54,000/- under section 69A of the Income-tax Act, 1961 (for short 'the Act'). Against the additions so made, assessee preferred an appeal before learned Commissioner (Appeals). However, by the impugned order, learned Commissioner (Appeals) sustained both the additions.

5. Before me, learned Authorized Representative of the assessee submitted that the Assessing Officer has completely misconceived the facts, while considering the land holding of the assessee and estimating agricultural income. He submitted, even the explanation furnished by the assessee regarding the cash deposits

in the bank account was not properly considered by the Assessing Officer. He submitted, since, assessee's appeal was decided ex-parte, he did not get an opportunity to contest the additions before learned Commissioner (Appeals) with supporting evidence. Therefore, he submitted for restoration of the issues to the Assessing Officer for de-novo adjudication.

6. Learned Departmental Representative, though, relied upon the observations of the departmental authorities, however, he did not express any serious objection with regard to restoration of the issues to the Assessing Officer.

7. I have considered rival submission and perused materials on record. It is observed, before the Assessing Officer, the assessee had submitted that his agricultural land holding was to the extent of 70 Bighas. However, the Assessing Officer has taken the land holding of the assessee at 22 Bighas. Before me, assessee has seriously disputed the aforesaid decision of the Assessing Officer to be contrary to the facts on record. Further, I am unable to understand the basis for estimating the agricultural income at Rs. 12,000/- per Bigha.

8. As regards the addition made under section 69A of the Act, it is the contention of the assessee that explanation furnished with

supporting evidence was not properly considered by the Assessing Officer. It is a fact on record that assessee's appeal before the first appellate authority was decided ex-parte. Therefore, the assessee did not get any opportunity to contest the additions made by the Assessing Officer with proper evidence. Considering these facts, I am of the view that the assessee deserves an opportunity to establish his case, both, with regard to agricultural income as well as cash deposit in the bank account with proper supporting evidence. Accordingly, I set aside the impugned order of the first appellate authority and restore the issues to the file of the Assessing Officer for *de-novo* adjudication after providing reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

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

Order pronounced in the open court on 29th July, 2022

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 29th July, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR