

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'G' : NEW DELHI)

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1857/Del/2016, A.Y. 2009-10

Sh. Ajay Kumar Mehtra V-279, Rajouri Garden, New Delhi-110027 PAN : AEAMP0535Q	Vs.	ITO Ward 43(3), New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Ms. Shilpi Dewan, Adv.
Revenue by	Shri Abhishek Kumar, Sr. DR

Date of hearing:	03.08.2022
Date of Pronouncement:	16 .08.2022

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Assessee against order dated 29.01.2016 in appeal no. 01/14-15(257/11-12) in assessment year 2009-10 passed by Commissioner of Income Tax (Appeals)-15, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 28.12.2011 u/s 143(3) of the Income Tax Act, 1961 passed by ITO,

Ward 26(1), New Delhi (hereinafter referred to as the Assessing Officer 'AO').

2. The facts in brief are the Assessee is an agriculturist and claims to BE having ancestral land at Kaithal District VPO at Baba Ladana in Haryana. He filed return of income declaring total income of Rs. 3,49,650/-. The case was processed u/s 143(2) on the basis of AIR information which indicated cash deposit of Rs. 45,60,000/- by the assessee in his bank account maintained with HDFC, Rajouri Garden. Accordingly, the assessee was required to submit the nature and source of cash deposit with documentary evidences. In response thereto, the assessee vide written submissions dt. nil submitted that he is an agriculturalist having declared an agricultural income also. The assessee had, received various advances against the proposed sale of agricultural land. These funds were deposited in bank account maintained with HDFC Bank, Rajouri Garden Branch. It was also submitted by the assessee that some money had been deposited with the firm A.K.Mehta & Co., out of advances received. During the course of assessment proceedings, the assessee has further submitted that these advances have not been received as single transaction but the advances have been received, on various dates in accordance with convenience and availability of funds and Mutual settlement between the parties However, as the assessee did not produce these parties nor submitted any documents regarding identity of the persons, creditworthiness and genuineness of the transactions. In the absence of any supporting details filed by the assessee, to verify the genuineness of these transactions, information u/s 133(6) have been requisitioned from the parties on the basis of addresses provided by the assessee. AO by letters dt. 2.12.2001, directed to provide the following information:

- (i) *Copy of PAN/AO*
- (ii) *The source of such payment made*
- (iii) *Whether any agreement to sale was made and if so, the copy thereof*
- (iv) *Copy of their identification.*

2.1 AO observed in the order, “*All the persons, who have alleged to have made payments totaling to Rs. 60,00,000/- to the assessee in lieu of land/plot as advances, were required to provide the information by 23.12.2011. It is noticed that in most cases, notices issued u/s 133(6) of the I.T.Act, 1961 have not been complied with as no requisite information have been received from the persons from whom the assessee claims to have received advances. Further, in some cases, the notices issued u/s 133(6) of the I.T.Act, 1961 have been received back undelivered.*”. Accordingly addition of Rs. 60,00,000/- was made.

2.2 In Appeal, the Ld. CIT(A) called for a remand report. Ld CIT(A) observed;

“that the stand taken by AO was further substantiated when some of the creditors were found not traceable despite making spot inquiry by ITI of the AO in pursuance to the directions of CIT(A). The remaining creditors, whose statements were recorded by AO, also could not establish their creditworthiness and genuineness of transaction. During the statements, two creditors namely Shri Ram Bhagat and Shri Rajaram, who have allegedly advanced Rs. 10,00,000/- to appellant, have categorically refused that they have given any advance against any part of the land to appellant. They have even refused to recognize the appellant by stating that they do not know Shri Ajay Kumar Mehta, the appellant. In respect of their

creditworthiness, Shri Ram Bhagat stated his annual income from agriculture during the F.Y. 2008-09 was around Rs. 50,000/-. Similarly, Shri Rajaram stated his annual income from agriculture during that year was around Rs. 50,000- Rs. 60,000/-. Both the persons refused to have issued any receipt, as claimed by appellant and filed during assessment proceedings as well as appellate proceedings. In the similar way, Shri Balraj and Shri Ramphal, sons of Shri Harr Kishan, R/o Baba Ladana have refused to recognize Shri Ajay Kumar Mehta, the appellant and also refused to accept that any advance has been given against any land possessed by appellant. They have also declined to have issued any receipt of giving advance when they were shown the copies of receipts furnished by appellant during assessment as well as appellate proceedings. Both have stated their annual income during F.Y. 2008-09 around Rs. 40,000/- from agriculture. The statements of Shri Jagjeet Singh, Patwari was also recorded by AO who categorically stated that the land in question was already sold by appellant on 16.04.2001 for a consideration of Rs. 17.83 lacs and during the F.Y. 2008- 09, Smt. Shashi (widow), Shri Varun, Shri Gaurav, Shri Vijay Kumar, S/o Tulsi, Shri Darshan Kumar, Shri Rameshwar, Shri Rampal, Shri Jaipal, Shri Zile Ram, Shri Suresh Kumar etc. were the owners of the said land in that year. Thus the land was already sold by appellant in the year 2001 to some other persons as above and for the same land; he is now claiming to have received advances from altogether different persons. Thus, the conclusion drawn by AO regarding unexplained cash credits in the hands of appellant is substantiated by the inquiries made by him

during the remand proceedings. For the remaining creditors, who were not found traceable during spot inquiry, appellant failed to submit any details or documents to establish their identity, creditworthiness and genuineness of transactions executed with them. He failed to produce them despite opportunity given by AO during remand proceedings. 'Thus, in view of above, it can' be clearly concluded that the appellant has failed to discharge his onus of fulfilling the conditions as laid down as per provisions of Section 68 to establish the creditors as genuine.

6.1 Now, I come to the submissions made by appellant in reply to the remand report of AO. The first ground taken by appellant is that the AO passed the order without affording proper opportunity to appellant. The ground taken by appellant is misplaced. As mentioned by AO in the assessment order, AO had given ample opportunity to appellant during assessment proceedings, to substantiate his claim and accordingly the submissions were also made by him. The details and documents given by appellant were gone through and analyzed by AO and thereafter only conclusion was drawn by him regarding the cash creditors. During the remand proceedings also, again appellant was given sufficient opportunities by AO to substantiate his claim with details and documents and by producing the cash creditors before him. Thus, in both the proceedings, appellant was given sufficient opportunities to be heard by following the principles of natural justice. It appears that the appellant has raised this ground just for the sake of raising objections without the support of sufficient facts. The other objection raised by appellant that no opportunity to

cross examine the creditors was provided to assessee of the creditors whose statements are recorded by AO, also has no substance. Onus was on the appellant to produce the creditors before AO and establish their identity, creditworthiness and genuineness of transaction but during the whole of the assessment proceedings or remand proceedings, appellant failed to discharge his onus. The AO, by his own efforts, traced out some of the creditors and patwari and recorded their statements which substantiated the stand taken by him during assessment proceedings. The appellant was given full opportunity by providing the copies of these statements for rebuttal but he failed to raise any objection about the facts stated by creditors. Just for the sake of taking a ground, he has raised a general objection that he was not given any opportunity to cross examine the creditors. Had he any objection or shortcomings in the contents of statements of creditors, he should have raised these objections in the submissions during remand proceedings or appellant proceedings. However, the same has not been done by him. The other objections raised by appellant regarding the invocation of section 68 of the Act are also misplaced. The AO has, during the assessment proceedings as well as remand proceedings, conducted every possible inquiry by issuing notices u/s 133(6) of the Act, issuing summons u/s 131, making spot enquiries, asking appellant to furnish complete details about the creditors and then only reached the conclusion. It has to mention here that as per settled principle of law, onus is on the assessee to establish the identity and creditworthiness of creditors and genuineness of transactions as per provisions of law. Once, the onus is discharged by assessee, it gets shifted to AO to prove otherwise.

However, in the case of appellant, appellant himself has failed to discharge his onus of fulfilling all three conditions as per provisions of Section 68 of the Act. Despite not discharging the onus by assessee, AO made full inquiry about the cash creditors in view of the provisions of Section 68 of the Act and in absence of any details and documentary evidence on the part of appellant, he treated the cash creditors as unexplained. The third ground raised by appellant is that the AO could at best have added Rs. 45,60,000/- only which are credited in the bank account of appellant. As per him, though he received advances of Rs. 60,00,000/- against the proposed sale of land/plot but only Rs. 45,60,000/- was deposited in the bank account, AO should have limited the addition to the extent of that amount only. Again, the ground taken by appellant is misplaced. The appellant himself has admitted during the assessment proceedings that out of the total advances of Rs. 60,00,000/- received by him, Rs. 45,60,000/- was deposited as cash in the bank: account in HDFC, Rajouri Garden, New Delhi and some money was deposited with the proprietary firm A.K. Mehta and Co. Thus, the appellant himself has given the details of total money received as advance and its application towards cash deposits in bank account and deposits in A. K. Mehta and Co. Moreover, when the total amount of advances received by him is Rs. 60,00,000/- then why only Rs. 45,60,000/- should be treated as income as unexplained cash credit, cannot be understood. As per provisions of Section 68 of the Act, the sum credited in the books of account of assessee, if remains unexplained, has to be treated as income. In the case of appellant, the sum of Rs. 60,00,000/- has been credited in his books of account, which

remained unexplained as per Section 68 of the Act, therefore, whole of amount has to be treated as unexplained and added to the income of assessee. In view of this discussion, grounds raised by appellant are dismissed.”

3. The assessee has now raised following grounds;

1. *“The Ld. CIT(A) has erred both in law and on the facts of the case confirming the order of the AO passed u/s 68 of the Act.*
2. *The Ld. CIT(A) has erred both in law and on facts of the case upholding the addition of Rs. 60,00,000/- made by the AO u/s 68 of the income tax act, 1961 on account of advance against sale of agricultural lands*
3. *The Ld. CIT (A) has erred both in law and on facts of the case upholding the additions made by the AO without affording proper opportunity to cross examine the witnesses despite repeated request made by the appellant.*
4. *The Ld. AO erred in levying interest u/s.234B & 234D of the Act:*
5. *The Ld. AO erred in initiating penalty proceedings u/s. 271(1)(c) of the Act.*
6. *That the appellant craves leave to add, alter, amend or modify any ground on or before the time of hearing”*

4. Heard and perused the record.

5. On behalf of the assessee it has been submitted that the evidence was collected against the back of assesee and was not confronted to him by the Id. CIT(A). It was submitted that statements of certain persons were recorded who has per the Revenue showed ignorance of the transactions and Id. AR submitted that in villages there is possibility of people with similar name and unless opportunity was given to cross examine, the statement of those witnesses could not have been relied. Thus, the sum and substances of the arguments were that there were violation of principle of

natural justice by relying evidence by Ld. CIT(A) which was not confronted to the assessee and reliance in this regard placed on the judgment :-

“1. P. Mittal Manufacturing (P) Ltd. vs. ITO, ITAT (Delhi)

2. Shri Jai Singh Yadav vs. ACIT (ITAT Jaipur)

3. Andaman Timber Industries Vs. CCE (2015)”

6. On the other hand, Ld. DR submitted that there is no error in the findings and assessee was given due opportunity to file submissions on the remand report.

7. Appreciating the matter on record it can be observed that the issue no. 1 to 3 arise out of same questions of facts and law therefore are taken up together for determination. The matter on record suggests that in the assessment proceedings there was no matter before the Ld. AO either in the form of any documents being tendered by the assessee about identifies of the persons, creditworthiness and genuineness of the transactions of sale of land qua which advance was received from different persons on different dates. In the statement of facts assessee, before CIT(A), assessee gave following details of the transactions/ agreement to sales ;

Date	Areas	Receipt	Remaining Amount	Remaining amount payable before	Who has given the Money
10/07/2008	20 Kanal	Rs. 10,00,000/-	Rs.5,00,000/-	23/06/2009	Jaipal & Zile Ram Resident of V & PO Baba Ladana who could not arrange the

					fund on the date.
05/06/2008	16 Kanal	Rs. 10,00,000/-	Rs.6,00,000/-	23/06/2009	Rameshwar Resident of Kaithal, Gali No. 2, Near Jindal Hospital
01/05/2008	20 Kanal	Rs. 15,00,000/-	Rs.5,00,000/-	19/05/2009	Suresh & Zile Ram Resident of V&PO Baba Ladana.
10/11/2008	31 Kanal 04 Marla	Rs. 15,00,000/-	Rs.5,00,000/-	06/07/2009	Balraj & RamPal Resident of V & PO Baba Ladana.
12/09/2008	20 Kanal	Rs. 10,00,000/-	Rs.5,00,000/-	25/05/2009	Ram Bhagat & Raja Ram Resident of V & PO Baba Ladana.

8. Further, in the appeal the assessee filed copies of receipts issued by aforesaid Five persons. Ld. CIT(A) considered it appropriate to get these receipts verified as the same were not submitted during assessment proceedings. Further, AO was also directed to make further inquiry, including spot inquiry and submit report about the advances and receipts by the assessee against the sale of alleged agricultural land. Having received the report the Ld. CIT(A) was of the considered opinion that assessee failed to discharge its onus and heavily relied the report of Shri Jagjit Singh Patwari who had made statement to the AO during remand proceedings that the assessee had already sold his land on 16.04.2001 for a consideration of Rs. 17.83 lakhs and that during the F.Y 2008-09. The land was recorded in the name of these vendee.

9. Now when the case of assessee is of a prejudice being caused due to not being provided opportunity of cross examination of witnesses then there should at least be some matter on record to suggest that accepting the evidences as un-rebutted, has caused prejudice to the assessee. The right of cross examination is certainly a sacrosanct right but on questions of facts, there has to be a plausible defence or a case to be put up to the witnesses to rebut their evidences or to question their veracity. Bald averments of prejudice are not sufficient that the denial of right of cross examination has resulted into prejudice. Rather when Revenue Authorities are recording evidences during assessment proceedings they are discharging duty imposed under law and the presumption is attached that the records are correct. The statement of concerned Patwari could have been very well rebutted by merely production of Revenue records before Ld. CIT(A) or even this Tribunal. As a matter of fact, it appears from record that the agreements themselves were not produced disclosing as to what were the survey numbers of the land which were proposed to be sold to five different persons. Thus, there is no substance in the grounds raised and the same are decided against the assessee. **The appeal is dismissed.**

Order pronounced in the open court on 16th August, 2022.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 16th .08.2022

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI