

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.7919/Del/2018
[Assessment Year : 2010-11]**

Mohkam Singh, S/o-Shri Chota Ram, H.No.255, Sector-6, HUDA, Panipat, Haryana-132103. PAN-AWXPS8147H	vs	ITO, Ward-2, Panipat.
APPELLANT		RESPONDENT
Appellant by	Shri K.C.Aneja, Adv.	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	16.08.2022	
Date of Pronouncement	24.08.2022	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2010-11 is directed against the order of Ld. CIT(A), Karnal dated 12.10.2018.

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

1. *“That the allegation by the Hon’ble Commissioner Appeal Karnal on the assessee that he failed to discharge his onus in establishing the genuineness of the land transaction and deposit in his bank account are wrong and unjustified. The case of Dinesh Kumar Jain (Late) Through (Legal Heir Ankit Jain) vs PCIT, [2018], 407 1TR-65(DEL) has not applied on me.*
2. *That the Ld. AO and Hon’ble Commissioner Appeal Karnal has not considered the Assessee’s reply that he had sold the agriculture land during the Financial Year 2008-09 relevant to the Assessment Year 2009-10. Which is wrong and unjustified and against the natural justice.*
3. *That the Ld. AO and Hon’ble Commissioner Appeal Karnal has wrongly assumed the total sales consideration of agriculture land as Income which is illegal and unjustified.”*

3. The only effective ground in this appeal is against the sustaining of addition of Rs.17,10,000/- in respect of cash deposited in the bank account of the assessee.

FACTS OF THE CASE

4. Facts giving rise to the present appeal are that the Assessing Officer ["AO"] was in possession of the information regarding cash deposited by the assessee in his bank account No.00000010099239358 maintained with State Bank of India, Model Town, Panipat amounting to Rs.17,10,000/- The case of the assessee was re-opened and a notice u/s 148 of the Income Tax Act, 1961 ["the Act"] was issued to the assessee after getting the requisite approval from the Competent Authority. In response thereto, Ld. Counsel for the assessee, Shri. J.B.Sharma, Advocate attended the proceedings. The assessee was engaged in the business of the Commission Agent of food grains. The assessee was asked to explain the source of cash deposited in his bank account during the course of assessment proceedings. In response thereto, the assessee filed his reply and stated that he had sold an agricultural land for a sum of Rs.25,00,000/- and out of which, an amount of Rs.20,00,000/- was given to Shri Naveen Kumar, S/o-Shri Radha Kishan, Panipat for purchase of agricultural land. However, the transaction did not materialize and same was returned back to the assessee. The AO did not accept the explanation of the assessee and proceeded to make addition of Rs.17,10,000/-.

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

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

7. Ld. Counsel for the assessee vehemently argued that the impugned order is highly arbitrary and justified and made addition without appreciating the facts. Ld. Counsel for the assessee drew my attention to the Sale Deed Nos.551 & 553 dated 05.06.2008 which has been executed as co-owner of the assessee for a sum of Rs.12,15,000/- and Rs.10,14,000/-. Out of that, the assessee had share of Rs.13,91,370/-. He stated that before the AO, it was categorically stated that out of that sale consideration, a sum was given to Shri Naveen Kumar, Son of Shri Radha Kishan on 24.07.2008 which was received back on 15.05.2009 and 05.07.2009. The sale amount was deposited in the bank account of the assessee. Ld. Counsel for the assessee submitted that both the authorities below have not adverted to the submissions of the assessee.

8. On the contrary, Ld.Sr.DR opposed these submissions and supported the orders of the authorities below.

9. I have heard the contentions of Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Ld.CIT(A) has decided the issue by observing as under:-

3.4. Findings:-

I have examined the facts of the case and the submissions made by the assessee. An addition of Rs. 17,10,000/- was made u/s 69A of the IT Act, 1961 being unexplained cash credit.

The A.O. has dwelt with, in length, in his order on the reasons for making the said additions.

The relevant extract of the assessment order is reproduced as under:-

During the period under consideration the assessee engaged in the business of commission agent of food grains. The information furnished by the assessee is placed on record and has been examined. The case was discussed with the AR of the assessee. The details of cash deposit in the bank account of the assessee is as under:-

Sr.No.	Date	Amount (In Rs.)	Sr.No.	Date	Amount (In Rs.)
1.	29.05.2009	60,000/-	5.	14.07.2009	3,00,000/-
2.	05.06.2009	3,00,000/-	6.	15.07.2009	2,00,000/-
3.	03.07.2009	1,50,000/-	7.	21.07.2009	50,000/-
4.	11.07.2009	4,50,000/-	8.	28.07.2009	2,00,000/-
Total					17,10,000/-

2. During the course of assessment proceedings the assessee was required to explain the cash deposit of Rs. 17,10,000/- made in his saving bank account during the financial year 2009-10 relevant to assessment year 2010-11. In this regard a written submission has been furnished by the assessee on 10.08.2017 which is reproduced as under:-

1. "Regarding cash deposited into bank:- The assessee deposited a sum of Rs. 1710000/- on different dates into State Bank of India, Panipat during the F.Y. 2009-10. The assessee deposited the said amount from his own funds/cash in hand.
2. That the assessee had sold a property/land on dt 05.06.2008 for a sum of Rs. 2500000/-. Further, the assessee gave advance Rs. 2000000/- to Sh. Naveen Kumar S/o Sh. Radha Kishan, Panipat on dt 24/07/2008 for purchase of property/land. Later on the advanced amount was received back between dt 15/05/2009 and 05/07/2009 as the agreement of property could not be completed due to some reasons of seller. The assessee deposited the amount into his

*bank as and when received back from Sh. Naveen Kumar.
An affidavit of Sh. Naveen Kumar is attached herewith.*

In this regard, you are requested to accept the same and oblige."

During the proceedings statement of Sh. Naveen Kumar has been recorded on oath on 21.08.2017. The copy of balance sheet, copy of profit and loss account and copy of capital account of the assessee has been obtained and placed on record. Perusal of information following facts are emerged in this case

i) During the proceedings vide reply received in this office on 10.08.2017 the assessee has stated that he has sold a property on 05.01.2008 for a consideration of Rs. 25,00,000/-. During the proceedings the assessee has enable to substantiate his claim by way of not providing the copy of sale deed computation of income i.e. calculations of capital gain etc. for the relevant period i.e. financial year 2008-09 (05.06.2008 to 31.03.2009) relevant to assessment year 2009-10.

ii) The assessee has further stated that he had given advance of Rs.20,00,000/- to Shri Naveen Kumar on 24.07.2008.. The assessee has not furnished any documentary evidence i.e. capital account, copy of balance sheet etc. for the year ending 31.03.2009 to establish the genuineness of the transaction.

Moreover, on perusal of affidavit it is noticed that no specific/practical reason of cancellation of deal between Uncle and Nephew is stated. Why both the blood related persons were involved in a deal and without any specific reason the same is being cancelled. It is pertinent to mention here that original agreement of sale of land (copy not furnished) was executed between both the parties on 24.07.2008 and the date of maturity of the deal was 24.03.2009 and in absence of maturity of the same the advance money is returned back by the seller latest by 05.07.2009 which is almost after the expiry of eleven months from the execution of agreement which is impractical in general practice such type of transactions. Generally, it is a mandatory clause in the such type

agreements that if the purchaser will back out or go out from the term and conditions of said agreement then entire advance money will be forfeited by the seller and if the seller will back out then seller have to repay double of the advance money received. But in the instant case no such type of conditions have been adopted by any of the seller/purchaser.

iii). Naveen Kumar is the real nephew of the assessee and thus, the content of the affidavit is not so much reliable and it appears after thought idea of the assessee and is a concocted story.

iv). The assessee is commission agent of food grains and has shown net interest income of Rs. 13,266/- for the period under consideration. Thus, how can it may be possible that assessee has not charged any interest on the amount of Rs. 20,00,000/-.

v) As regard the re-payment was made by Sh. Naveen Kumar there is no credit worthiness of Sh. Naveen Kumar for the period under consideration as the source of re-payment was explained by way of raising loans in cash as per detail below:-

Loan raised from Sh. Mahender brother-in-law of Sh, Naveen Rs. 5,00,000/- (in cash), Rs. 5,00,000/- (in cash) from Sh. Sohan Uncle (Phupha ji) of Sh. Naveen Kumar and Rs. 6,00,000/- (in cash) from Sh. Parkash uncle of Sh. Naveen. Sh. Naveen Kumar has bank account number 017401516193 in ICICI Bank, Panipat since 2006. However, not even a single transaction has been made through the banking channels to establish the genuineness of the transaction.

vi) Perusal of balance sheet for the year ending 31.03.2010, it is noticed that the assessee has maintaining two bank accounts i.e. S.B.I. Panipat and S.B.I., Bapoli and closing balance has been reported in the balance sheet at Rs. 95,063/- and Rs. 92,623/- respectively.

Whereas the bank account number 00000010099239358 maintained with State Bank of India, Model Town, Panipat has closing balance as on 31.03.2010 at Rs. 8,263/- but the same is not part of the balance sheet. It is clearly transpires that the assessee has made the transactions of the

account from the bank account which is not the part of the accounts books of the assessee.

Keeping in view this fact that the account of the assessee is not part of the account books of the assessee and no transaction has been made through banking channels, the assessee could not established the genuineness of the transactions even after availing sufficient and numerous opportunities.

It is settled dictum of law that prima facie onus is always on the assessee to prove the cash credit entries found in the books of account in the assessee. In landmark cases like *Kale Khan Mohammad Anif Vs. CIT (1963) 50 ITR 1 (SC)*, *Roshan Di Hatti Vs. CIT (1977) 107 ITR (SC)* vide which it is held that onus of providing the source of a sum of money found to have been received by the assessee is on him. Where the nature and source thereof cannot be explained satisfactorily, it is opened to the revenue to hold that it is the income of assessee and no further burden is on the revenue to show that the income is from any particular source. It may also be pointed out that the burden of proof is fluid for the purposes of section 68. Further, in the case of *CIT Vs. Jagtar Singh* reported at 315 ITR 106 (P&H) (Appeal No. 373 of 2006 (2.12.2011)) it has been held by the Hon'ble Jurisdictional High Court that it is well settled that wherever a receipt is sought to be taxed as income, the department is required to prove that the same falls within the taxing provision and where the receipt is in the nature of an income, the burden lies on the assessee to show that it is not taxable as it falls within the purview of exemption provided by the Act. However, under section 68 of the Act, where any amount is found credited in the accounts of the assessee relating to any previous year, the same can be charged to income tax as the income of the assessee of that year where the explanation offered by the assessee about the nature and its source is not satisfactory in the opinion of the Assessing Officer. In such a case there is prima facie evidence against the assessee, viz. the receipt of money and if, he fails to rebut the said evidence, it can be used against him by holding that it was the receipt of income nature.

Again, support is drawn from CIT vs Jalan Timbers 223 ITR 11, 17 (Gauhati) wherein it is clearly held that in order to establish the fact of receipt of cash-credit, the assessee must prove three important conditions.”

- 1. Identity of the cash creditors.*
- 2. Genuineness of the transaction.*
- 3. Capability of the person giving the cash credit.*

During the proceedings assessee was not able to prove the identity of the cash creditors and also not able to prove the genuineness of the transactions with the supporting evidence. Thus, the addition of Rs. 17,10,000/- is made as unexplained cash credit under the provision of section 69A.

It is seen from the above, that the assessee has failed to establish the genuineness of the transaction, especially in reference to the advance made to Naveen Kumar, his nephew. An affidavit submitted by his nephew is a self-serving one. Moreover, the appellant's submissions show that the credit worthiness of the assessee's nephew is not established. This fact has also been pointed out by the A.O.

In view of the facts as pointed out above, the assessee has even at the appellate stage failed to discharge his onus in establishing the genuineness of the land transactions and the deposit in his bank account. Therefore, the provisions of Section 69A of the IT Act, 1961 are squarely attracted in this case. The burden of proof was on the assessee which was not discharged satisfactorily by him by a satisfactory explanation or substantiated by evidence. The Hon'ble Delhi HC had in the case of Dinesh Kumar Jain (late) (through legal heir Ankit Jain) vs PCIT, [2018] 407 ITR 65 (DEL) in its order dated 08.08.2018 has held that given the totality of the facts and circumstances of the case, it was clearly proved that the assessee failed to explain deposits of cash to the satisfaction of the authorities below. Hence, the appellant's plea was dismissed. On the identical factual matrix, this case is covered by the judgment cited above. Hence, the addition is confirmed. The grounds of appeal are dismissed.

- 4. In the result, the appeal is dismissed.”*

10. From the above finding, it is clear that Ld.CIT(A) has not adverted to the submissions of the assessee that the amount was deposited out of the sale consideration of the agricultural land. The factum of execution of Sale Deed is well established from the Sale Deeds filed by the assessee. I find that neither the AO nor the Ld.CIT(A) conducted any inquiry regarding the verification of the claim of the assessee that the sale consideration was the source of cash deposited in the assessee's bank account and also advance from one of the relatives. No material is placed on record to rebut the findings of assessee. I therefore, direct the AO to delete the impugned addition. Thus, grounds raised by the assessee are allowed.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 24th August, 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