

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.112/RPR/2019
निर्धारण वर्ष / Assessment Year : 2013-14

Hemendra Banjare
53/B HSCL Colony,
Ruabandha Sector, Civic Centre,
Bhilai (C.G.)-490006.

PAN : AJGPB7555A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-1(4),
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by :Shri R.B Doshi, CA
Revenue by :Shri G. N Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing : 25.07.2022

घोषणा की तारीख / Date of Pronouncement : 17.10.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-II, Raipur, dated 18.02.2019, which in turn arises from the order passed by the A.O under Sec.143(3)/147 of the Income-tax Act, 1961 (in short 'the Act') dated 18.12.2017 for assessment year 2013-14. Before us the assessee has assailed the impugned order on the following grounds of appeal:

“1. In the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming addition of Rs.55,58,000/- made by the A.O invoking sec.69A on account of unexplained investment. The addition made by the AO and confirmed by the Ld. CIT(A) is not justified.

2. The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”

2. Succinctly stated, on the basis of information received that though the assessee during the year under consideration had made cash deposits of Rs.55.58 lacs in his bank account but had not filed his return of income for the year under consideration i.e. A.Y.2013-14, the AO had resorted to proceedings u/s.147 of the Act.

3. During the course of assessment proceedings, it was observed by the A.O that the assessee had made cash deposits of Rs.55.58 lacs in his bank

account. On being queried, it was the claim of the assessee that in the normal course of his land brokerage business he would receive in his bank account the sale consideration on behalf of his clients, which after deduction of his commission/brokerage would be transferred to them. However, the aforesaid explanation of the assessee did not find favour with the A.O. It was observed by the A.O that the bank statement of the assessee did neither reveal any such transferring of amounts to the impugned sellers nor withdrawing of any such amount for making payments to them. On being called upon to substantiate the veracity of his aforesaid claim the assessee filed with the A.O copies of some sale deeds and Ikrarnamas (agreements). The A.O after perusing the records in the backdrop of the facts involved in the case before him was not inclined to accept the explanation of the assessee. The AO was of the view that the assessee himself was engaged in the business of purchase and sale of land. It was observed by the A.O that the modus-operandi that was adopted by the assessee was to convince poor farmers to sell their lands and obtain/execute Mukhtiar (power of attorney)/Ikrarnama (agreement) in his favour and thereafter sell the same at a higher value. The A.O considering the aforesaid facts held a conviction that the cash deposits in the bank account was undeniably the amounts received by the assessee from purchase/sale of land. However, as the assessee had failed to place on record copies of the purchase deeds,

therefore, the A.O held the entire amount of Rs.55.58 lac (supra) as the unexplained income of the assessee u/s.69A of the Act.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

7. At the very outset of the hearing of the appeal, it was submitted by the Ld. Authorized Representative (for short 'AR') for the assessee that while for the A.O had made an addition of the impugned cash deposits as an unexplained investment u/s.69A of the Act, however, the CIT(Appeals) while upholding the said addition had re-characterized the same as an unexplained cash credit u/s.68 of the Act. It was the claim of the Ld. AR that as the assessee had not maintained any books of account, therefore, the re-characterization of the simplicitor cash deposits in the bank account of the assessee as an unexplained cash credit u/s.68 of the Act by the CIT(Appeals) could not be sustained and was liable to be struck down on the

said count itself. The Ld. A.R in support of his aforesaid contention had relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Bhaichand H. Gandhi (1983) 141 ITR 67 (Bom.) and the order of the ITAT, Mumbai in the case of Mehul M. Vyas Vs. ITO (2017) 164 ITD 296 (Mum.). Alternatively, it was the claim of the Ld. AR that both the lower authorities had failed to appreciate the facts in right perspective and had wrongly made/sustained the addition of Rs.55.58 lacs in the hands of the assessee.

8. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

9. After having given a thoughtful consideration to the facts involved in the present case before us in the backdrop of the contentions advanced by the Ld. AR, we find substance in the claim of the Ld. AR that the simplicitor cash deposits made by the assessee in his bank account could not have been held as an unexplained cash credit u/s.68 of the Act. Our aforesaid conviction is supported by the judgment of the Hon'ble High Court of Bombay in the case of Bhaichand H. Gandhi (supra) and the order of the ITAT, Mumbai in the case of Mehul M. Vyas (supra) as had been relied upon by the Ld. AR before us. Although we have principally concurred with the aforesaid claim of the ld. AR, but the same in our considered view would not have any material bearing on the sustainability of the addition made in the

hands of the assessee. We, say so, for the reason that setting-aside of the re-characterization of the addition by the CIT(Appeals) would result to resurfacing of the addition made by the AO u/s.69A of the Act.

10. We are now confronted with the issue that as to whether or not the provisions of section 69A of the Act could have been triggered by the A.O for making the addition of Rs.55.58 lac (supra). On a perusal of Section 69A of the Act, it transpires that the same contemplates that where in any financial year the assessee is, inter alia, found to be the owner of any money and such money is not recorded in the books of account, if any, maintained by him for any source of income, and he offers no explanation about the nature and source of acquisition of the same; or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, then, the money may be deemed to be the income of the assessee for such financial year. Admittedly, it is a matter of fact borne from record that the assessee had deposited money in question in his bank account during the year under consideration. Undeniably, as at the time of depositing the aforesaid money the assessee was the owner of the same, therefore, the provisions of Section 69A would clearly be applicable. We, thus, are of the considered view that no infirmity does emerge from the addition of the aforesaid amount of Rs.55.58 lac (supra) u/s.69A of the Act by the A.O.

10. Adverting to the merits of the case, it transpires that the assessee except for coming forth with an unsubstantiated explanation before the A.O that the amount in question represented the sale proceeds of lands which he in the normal course of his business was holding, as a broker, for and on behalf of his clients (i.e sellers of property), had however failed to substantiate the same on the basis of any supporting documentary evidence.

11. On appeal, the assessee had come forth with a novel claim that he a/w. two other persons, viz. Shri Santosh Yadav and Shri Ghanshyam Sahu were involved in land brokerage business. It was the claim of the assessee that the cash deposit of Rs.55.58 lac (supra) pertained to five sale transactions which were collectively executed by them during the year under consideration. It was, also, the claim of the assessee that in the course of their land brokerage business the sale proceeds of the clients were deposited in his bank account. For the sake of clarity the submissions of the assessee which were filed before the CIT(Appeals) are culled out as under:

“2.2. The submissions of the appellant are as under:

Myself and my other two informal partners were there. We use to do real estate dealing:

- We all three were equal partners namely myself Hemendra Banjare, Ghanshyam Sahu and Santosh Yadav:

- The sale/registry is done directly among the purchaser and seller. WE only use to rotate the transaction through us so that we should get our marginal 1-3% on sale.
- Since the rate of land to be sold is also very transparent to the seller and purchaser.
- There is no-/ very less chance of us to receive more profit as the market of land is very open and our purchaser himself does not register to the seller:
- All the partners were a bit dependent on me to do the bank transactions to maximum level;
- That as per annexure attached we had done transaction in the bank account and had utilized the cash amount through my account;”
- That during the FY 2012-13 my self and all my other partners were unaware of the IT provisions and the need of accounting. Income tax, profit calculation and applicability of taxation;
- We only knew that if the total profit which is received by me is within the taxable limit I may not be required to pay tax;
- Since my total income is within the limit I got relieved without knowing that transactions related to other persons and partners should not be reflected through my account;
- I have done all transactions and only the basic profit which is 1-3% per deal is only our income;
- We use to distribute the income after each deal:
- So my declaration is true and may be accepted.

The CIT(Appeals) in order to verify the authenticity of the aforesaid claim of the assessee had referred to one of the sale transaction of Rs.16.90 lacs (approx.) in which Shri. Santosh Yadav (supra) was stated to be a purchaser and had appeared a/w. the assessee in the course of the appellate proceedings. On being queried about the source of the aforesaid amount of

Rs.16.90 lacs (supra), it was claimed by him that the same was the amount that was received from the final purchaser. However, no details as regards the name and address of the alleged final purchaser were provided by him. Also, in the remaining four sale transactions the story was no better and neither any details about the final purchaser were divulged nor any documents in support thereof were filed by the assessee before the CIT(Appeals). It was observed by the CIT(Appeals) that the assessee and his associates had also failed to provide the details of their respective share of profits in their so called land broking business that was claimed to have been jointly carried out by them. It was further observed by the CIT(Appeals) that the brokerage receipt of Rs. 2,72,800/- that was shown by the assessee in his return of income could not be correlated with the cash deposits in his bank account. It was, thus, observed by the CIT(Appeals) that considering the facts involved in the case before him the nature and source of the cash deposits of Rs.55.58 lac (supra) could not be proved by the assessee. Although the CIT(Appeals) as observed by us hereinabove had principally concurred with the addition of the aforesaid amount of Rs.55.58 lac (supra) made by the A.O, but he had held the same as an unexplained cash credit u/s.68 of the Act.

12. We have deliberated at length on the issue in hand, and are of the considered view that as the assessee had undeniably failed to substantiate

on the basis of irrefutable documentary evidences the nature and source of the cash deposits of Rs.55.58 lac (supra) made in his bank account during the year under consideration, therefore, no infirmity does emerge from the orders of the lower authorities who had rightly made/sustained the addition of the same in the hands of the assessee. We, thus, in terms of our aforesaid observations uphold the addition of Rs.55.58 lac (supra) made by the A.O u/s.69A of the Act.

13. In the result, appeal of the assessee is dismissed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 17th October, 2022

***SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-II, Raipur (C.G)
4. The Pr. CIT-II, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy//

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.