

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

SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.3459/Del/2019
Assessment Year: 2010-11

Shri Gajraj Singh, H. No. 55, Mohalla Mohan Patti, Maneswar, Gurgaon – 122 050	Vs.	Income-Tax Officer, Ward-1(5), New Delhi
PAN :BZHPS3052F		
(Appellant)		(Respondent)

Appellant by	S/Shri Gaurav Jain & Sudharshan Roy, Adv.
Respondent by	Shri Om Parkash, Sr. DR

Date of hearing	30.08.2022
Date of pronouncement	25.11.2022

ORDER

This is an appeal by the assessee against order dated 19.2.2019 of learned Commissioner of Income-Tax (Appeals)-1, Gurgaon pertaining to assessment year 2010-11.

2. Ground nos. 1, 6 & 7 are general grounds, hence, do not require specific adjudication.
3. Ground no.2, the assessee has challenged the validity of reopening of assessment under Section 147 of the Income-Tax Act,

1961. Whereas, in ground nos. 3, 4, and 5, the assessee has challenged the merits of the addition made of Rs.49,85,000.

4. Briefly, the facts are, assessee is a resident individual and derives income from agriculture. For the assessment year under dispute, the assessee did not file any return of income under Section 139(1) of the Act. Subsequently, the Assessing Officer received information indicating that as per individual transaction statement for financial year 20091-10, the assessee had deposited cash amounting to Rs.96,60,000 in two savings banks account with the Bank of Rajasthan and Union Bank. Based on such information, the Assessing Officer formed an opinion that income chargeable to tax in the year under consideration has escaped assessment. Accordingly, he reopened the assessment under section 147 of the Act.

5. In course of assessment proceeding, the Assessing Officer called upon the assessee to explain the source of the cash deposits in the bank accounts. In response to the query raised, the assessee furnished its reply explaining the source of cash deposits and furnished a cash flow statement. However, the Assessing Officer was not convinced with the submission of the assessee. Ultimately, he added back an

amount of Rs.49,85,000 to the income of the assessee. Though, the assessee contested the aforesaid addition as well as the validity of reopening of assessment under Section 147 of the Act, however, learned Commissioner (Appeals) declined to interfere on both the issues.

6. Before me, learned counsel appearing for the assessee challenged the validity of reopening of assessment and submitted that merely relying upon the information contained in the individual transaction statement, the Assessing Officer has reopened the assessment under Section 147 of the Act without any independent inquiry or application of mind. He submitted, the amount of cash deposit mentioned in the reasons recorded do not match with the information contained in the individual transaction statement. He submitted, though, Bank of Rajasthan was subsequently taken over by ICICI Bank and the same deposit was appearing in both the bank account, without making proper inquiry, the Assessing Officer reopened the assessment. He submitted, even CIT has also granted approval mechanically without proper application of mind. Thus, he submitted, reopening of assessment is invalid. As regards the merits of

the addition made, learned counsel submitted, the assessee had received an amount of Rs.25,20,000 towards sale of land. Another amount of Rs.12,00,000 was withdrawn from Union Bank of India and Rs.10,70,000 was the opening cash balance available with the assessee. He submitted, without properly appreciating assessee's claim, the Assessing Officer partly accepted the source of cash deposits while adding back the balance amount.

7. Drawing my attention to copy of the cash flow statement, a copy of which is placed at page 12 of the paper book, learned counsel submitted that the Assessing Officer did not accept assessee's opening cash balance, withdrawal from bank and total rent receipts. He submitted, the assessee, being an agriculturalist, holding of cash balance is acceptable. Thus, he submitted, assessee having explained the source of cash deposits, no addition should have been made.

8. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

9. I have considered rival submissions and perused the material on record. I have also examined the decisions relied upon. It is evident,

in the year under consideration, the assessee has deposited cash amounting to Rs.58,86,000 in two bank accounts standing in his name. It is a fact on record that the assessee did not file any return of income under Section 139(1) of the Act. The fact relating to cash deposit made by the assessee came to the notice of the Assessing Officer from the individual transaction statement available with the department. Thus, in absence of any return of income filed by the assessee, the Assessing Officer had no other information to suggest that the cash deposits reflected in the individual transaction statement has been offered to tax by the assessee. Therefore, in my view, while reopening the assessment under Section 147 of the Act, the Assessing Officer had tangible material in his possession to form belief that income has escaped assessment. Therefore, he has validly initiated proceedings under Section 147 of the Act. In so far as the validity of approval granted under Section 151 of the Act, I do not find any deficiency in such approval. Therefore, I do not find any merit in ground no.2. Accordingly, the ground is dismissed.

10. In so far as the merits of the issue is concerned, in course of assessment proceeding, the assessee had explained the source of cash deposits as under:

- Rs.25,20,000 advance received from a party towards sale of land
- Rs.12,00,000 withdrawn from Union Bank of India on 19.02.2018 and 17.05.2018;
- Rs.10,70,000 opening cash balance as on 01.04.2007;
- Rs.7,30,000 withdrawn from ICICI Bank;
- Rs.3,66,000 out of rent receipts;

11. While framing the assessment order, the Assessing Officer has accepted the withdrawal of Rs.7,30,000 from ICICI Bank and rent receipts of Rs.1,45,000. Whereas, the balance amounts for explaining the source of deposit was not accepted by the Assessing Officer.

12. From perusal of cash flow statement, it is observed that the assessee had opening cash balance of Rs.10,70,000 as on 01.04.2007. Apparently, the Assessing Officer has disbelieved assessee's claim regarding opening cash balance.

13. Considering the fact that assessee is a agriculturist, his age and past earnings over a period of 35 years, the claim of opening cash balance of Rs.10,70,000 is believable. In fact, before learned Commissioner (Appeals) the assessee has filed an affidavit in this regard. As regards withdrawals of Rs.12,00,000 from Union Bank of India, the bank statement clearly demonstrates such fact. When the Assessing Officer has not been able to establish on record that withdrawals made from the bank account were utilized for any purpose other than the purpose claimed by the assessee, assessee's claim that deposits of Rs.12,00,000 were out of earlier withdrawals is acceptable. The assessee had also claimed that an amount of Rs.25,20,000 was available with assessee for deposit in the bank account, being the amount received from Shri Bisamber Dayal for sale of land.

14. Before the departmental authorities, the assessee had furnished the agreement to sell and bank statement of the buyer to prove the receipt of Rs.25,20,000. In fact, in the statement recorded by the Assessing Officer, Shri Bisamber Dayal had categorically stated of

having given advance of Rs.25,20,000 to the assessee towards sale of land.

15. On perusal of bank statement of Shri Bisamber Dayal placed in the paper book, it is evident, just prior to advancing the amount of Rs.25,20,000 to the assessee, substantial amount has been credited to the account of Shri Bisamber Dayal towards arrears of salary. Thus, there cannot be any manner of doubt regarding assessee's claim of having received the amount of Rs.25,20,000 from Shri Bisamber Dayal.

16. Thus, if assessee's explanation regarding source of deposit in the bank account is considered in proper perspective and in consonance with facts and evidences placed on record, then, it has to be concluded that the assessee has been able to explain the source of cash deposits in the bank accounts.

17. In view of the aforesaid, I delete the addition of Rs.49,85,000.

18. In the result, the appeal is partly allowed, as indicated above.

Order pronounced in the open court on 25th November, 2022.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 25th November, 2022.
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi