

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 6053/DEL/2018**  
**[Assessment Year: 2007-08]**

Subhash Gujar S/O Budh Ram, Bhatti Gate, Jhajjar (Haryana)	<u>Vs</u>	Income Tax Officer, Ward-4, Rohtak
PAN- AFHPG1230L		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	<b>None</b>	
<b>Department represented by</b>	<b>Sh. Om Prakash, Sr. DR</b>	
<b>Date of hearing</b>	<b>19.01.2023</b>	
<b>Date of pronouncement</b>	<b>24.02.2023</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), Rohtak, dated 24.07.2018, pertaining to the assessment year 2007-08. The assessee has raised following grounds of appeal:

- “1. That the order of Ld. CIT (Appeals) is against law and facts.
2. That the Ld. CIT (Appeals) erred in confirming the assessment although there was no basis available for the Ld. AO to issue notice u/s 148 of the Act and the notice was issued only to make fishing enquires. There

*was no reason available for the Ld. AO to believe rather there is reason to suspect only.*

3. *That the Ld. AO erred in not issuing notice u/s 143(2) of the Act to the appellant.*

4. *That the Ld. CIT (Appeals) erred in confirming the addition of Rs. 3170000/- made by the Ld. AO for cash deposited by the appellant in his bank account, by ignoring all the evidences and documents filed by the appellant.*

5. *That the appellant craves leave to add or alter any of the Grounds of Appeal.”*

2. At the time of hearing no one attended the proceedings. However, it is stated vide letter dated 10.01.2023 that the written submissions dated 12.09.2022 may be considered and the appeal may be decided on the basis of the submissions of the assessee. Under these facts the appeal of the assessee was taken up for hearing in the absence of the assessee and is being decided after hearing the learned DR and on the basis of material available on record.

3. Facts giving rise to the present appeal are that case of the assessee was reopened on the basis that the assessee had deposited a sum of Rs. 31.70,000/- in his savings bank account. The Assessing officer has recorded that in response to the notice u/s 148 of the Income-tax Act, 1961 (hereinafter referred to as “the Act”), no one attended the proceedings and no return was filed. Therefore, a fresh notice u/s 142(1) of the Act was issued. Thereafter, the case was fixed from time to

time and on 25.02.2015 the assessee filed written reply stating that the return filed on 16.8.2007 may be treated as return filed in response to the notice u/s 148 of the Act. Hence, the Assessing Officer proceeded to frame the assessment after supplying the reasons for reopening of the assessment and assessed the income of the assessee at Rs. 32,62,020/- after making addition of Rs. 31,70,000/-, the amount deposited in savings bank account of the assessee. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions dismissed the appeal. Now the assessee is in appeal before this Tribunal.

4. Ground nos. 2 & 3 are against validity and legality of reopening of the assessment on the basis that there was no reason to believe that income of the assessee escaped assessment and the Assessing officer failed to issue notice u/s 143(2) of the Act. Apropos to these grounds, the submissions dated 12.09.2022 of the assessee are as under:

*“1. In the present matter, order was passed by Ld. AO u/s 143(3)/148 but no notice u/s 143(2) was issued to the appellant. Any assessment/ re-assessment order passed by Ld. AO u/s 143(3) without issuing notice, u/s 143(2) is a nullity and the order passed is liable to be quashed. It is worth to mention here that the present issue is a legal one and it is settled law that legal issues can be raised first time before Hon’ble Tribunal.*

*1.1 When this issue was specifically raised before Hon’ble Tribunal, Hon’ble Bench directed Ld. DR. to produce assessment records. After several adjournments, Ld. DR. produced assessment records before Hon’ble Bench. Hon’ble Bench perused the assessment records and find that no*

notice u/s 143(2) was issued by the Ld. AO. Order sheet entry dt. 6.12-2021 reads as under :

*“It is seen from Assessment Record that there is no 'order sheet regarding issuance of notice u/s 143(2) of the Act. The Revenue is directed to file a copy of notice issued u/s 143(2).*

*Ld. DR had also filed a Paper Book but no notice u/s 143(2) is filed in the Paper Book hence it is proven on record that department had not issued any notice u/s 143(2) before assessing the income of the appellant u/s 143(3).*

1.2 Appellant's case is covered by following judgements:-

*321 ITR 362 (SC) Hotel Blue Moon*

*383 ITR 448 (Del) Shri Jai Shiv Shankar Traders Pvt. Ltd.*

*383 ITR 455 (Del) Silver Line*

*398 ITR 701 (Del) Paramount Biotech Industries Ltd.*

*323 ITR 249 (Del) Society for Worldwide Inter Bank Financial Telecom*

1.3 In his written submission dt. 8.3.202, Ld. DR is trying to take shelter u/s 292BB of the Act. In this regard, it is to submit that non issuance of notice u/s 143(2) is a basic jurisdictional error and cannot be cured/condoned by referring to section 292BB of the Act.

*Ld. DR in his written submission has cited some case laws. These case laws are not applicable on the facts and circumstances of the case, on the grounds mentioned here under:-*

(i) *Broadway Shoe Company 99 taxmann.com 83 (J&K): in this case no return was filed by the appellant. Hence ratio in this judgment is not applicable on the present appeal of the appellant.*

(ii) *Madhya Bharat Energy Corporation Ltd. 337 ITR 389 (Del):- this case was distinguished by Hon'ble Delhi High Court in the matter of Silver Line 383 ITR 455.*

(iii) *Josh Builders and Developers Pvt. Ltd. 79 taxmann.com 435(P&H):- in this case, notice u/s 143(2) was issued. Issue was regarding the service of notice. In the present appeal, notice is not even issued, hence ratio laid down in this judgment is not applicable on the present appeal of the*

*appellant.*

*Appellant's case on the issue of 292BB is covered by following judgments:-*

*383 ITR 455 (Del) Silver Line:- The failure of the Assessing Officer, in reassessment proceedings, to issue notice under section 143(2) of the Act, prior to finalizing the reassessment order, cannot be condoned by referring to section 292BB of the Act.*

*Where no evidence or disputed facts are sought to be brought on record, and the issue being purely one of law, the Appellant Tribunal can permit the assessee to raise such a point before it '.*

*50 taxmann.com 105 (All) Salarpur Cold Storage P. Ltd.:- It was held that failure to issue a notice u/s 143(2) within prescribed period cannot be cured by taking recourse to section 292BB."*

5. On the contrary, learned DR opposed the submissions and also reiterated the submissions as made in the written submissions, reproduced below:

***"Factual Matrix:*** *In this case, the assessee deposited a sum of Rs. 31,70,000/- in cash during the financial year 2006-07 relevant to the A.Y. 2007-08 in his S/B bank account No. 8622 maintained with Haryana Gramin Bank, Jhajjar.*

*As per record, to enquire into the source of above deposit, various Notices were issued by the AO i.e. ITO Ward-4, Rohtak to the assessee but nothing was heard.*

*Accordingly reasons for proceedings u/s 148 were recorded by the AO on 13.03.2014 and necessary approval u/s 151 (1) of the competent authority i.e. JCIT, Rohtak Range, was obtained and thereafter, notice u/s 148 was issued to the assessee on 18.03.2014 which was duly served upon the assessee through Speed Post, sent vide dispatch no. 12388 dated 18.03.2014. In response to notice issued, the assessee did not file his return*

*of income. Again notice u/s 142(1) was issued on 02.09.2014 and 20.10.2014 and served on the assessee. After that again another notice u/s 142(1) of the Act was issued on 17.12.2014 and the same was served upon the assessee through speed post no. 5682 dated 17.12.2014 for 29.12.2014. In this notice, the assessee was asked to explain source of deposit 31,70,000/- in cash in above mentioned SB bank A/c during period from 01.04.2006 to 31.03.2007. Another notice u/s 142(1) of the Act was issued on 09.01.2015 for 30.01.2015. On 30.01.2015 none attended. Again the case was refixed on 10.02.2015. On 10.02.2015 the notice remained unattended too. The case was again fixed for 25.02.2015 and the assessee filed written reply with a copy of the acknowledgement of the return already filed on 16.08.2007 may be treated as return filed in response to the notice u/s 148 of the Act. It was examined and placed on the record by the AO. On this date the assessee was also supplied a copy of the reasons recorded for issue of notice u/s 148 of the I.T. Act in his case. As per note sheet entry of the AO record on 25.02.2015 the assessee was also asked to explain the source of cash deposits in the bank at Rs. 31,70,000/- as mentioned a copy of reasons supplied to him. On 16.03.2015 Sh. Subhash Gurjar, the assessee attended the assessment proceedings with Sh. P. Narang, Adv. They submitted written reply alongwith various documents regarding sale of his agricultural land measuring 5 kanal- 09 Marla against which he filed copy of agreements from different purchasers for sale of said land to explain the cash deposits in his bank account. It was further stated that the sale of said small pieces of lands could not be matured later on due to certain circumstances and the money received by the seller was to be returned to the purchasers through panchayati settlements. The assessee also stated that he sold buffalo and form-J etc. and the cash deposits in the bank were out of such sale proceeds. They submitted that in view of the above submission filed, the proceedings may be dropped. The case was discussed with them. Assessee derives income from rent and income from furniture business during the year.*

*However, the assessee could not substantiate the claims with corroborative evidences and producing witnesses for examination as sought by the assessing office. Accordingly, case was finalized by the AO after addition of the total cash deposited i.e. 31,70,000/- and initiated the penalty proceedings u/s 271(1)© of the Act for furnishing inaccurate particulars of the income.*

*After completion of the assessment proceedings the assessee filed appeal before the Ld. CIT(A), Rohtak. But the said appeal was dismissed by*

*the Ld. CIT(A) after examining all facts related to the case. During the appellate proceedings also the assessee failed to produce the requisite supporting evidences and witnesses at the Remand Report stage.*

***Not issuing Notice u/s 143[21]:*** Now before the Hon'ble Tribunal, the appellant assessee has raised this issue for the first time which was never raised either before the AO or the CIT [A], As such this issue does not emanate from the order of the Ld CIT[A] which has been challenged in the subject appeal.

*Secondly, the notice u/s 148 was issued on 18.03.2014 and return in response thereto was to be filed by 18.04.2014 which was not complied with. Instead it was on 25.02.2015 when the AR of the assessee, during the course of proceedings filed a copy of ITR dated 16.08.2007 requesting to treat the same as in response to notice u/s 148, as is noted in the note sheet. Considering the shortage of time before the AO to complete the assessment proceedings, which were to get barred by limitation within one month from that date, the AR was asked to explain the source of cash deposited in bank on the next date of hearing and it was duly noted by the assessee's AR. It is thus clear that sufficient time and opportunity was allowed to the assessee by the Assessing Officer before concluding the assessment.*

*Furthermore, the assessee's contention with regard to issue of notice u/s 143[2] is not maintainable in view of section 292BB of the I T Act, 1961 which is reproduced below:*

*“Notice deemed to be valid in certain circumstances.*

**292BB.** *Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—*

- (a) not served upon him; or*
- (b) not served upon him in time; or*
- (c) served upon him in an improper manner:*

**Provided** that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment. ”

*Since the assessee has participated in assessment proceedings the notice u/s 143[2] was deemed to have been issued in view of Section 292BB [supra]. Hence, the appellant assessee does not deserve any relief on this count.*

**Case Laws supporting the stand of the revenue:** In furtherance of the argument it is humbly requested that the following case laws may kindly be considered with regard to the issue of notice u/s 143[2] in this case:

**1. PCIT Vs Broadway Shoe Co. [2018] 99 taxmann.com 83 (Jammu & Kashmir)**

*Where Hon'ble J&K High Court held that where no return was filed in compliance of notice issued under section 148, issuing of notice under section 143(2) was not required for making assessment*

**2. CIT Vs Madhya Bharat Energy Corporation Ltd (337 ITR 389) (Delhi) (Copy Enclosed)**

*Where Hon'ble Delhi High Court held that Issuance of notice u/s 143(2) subsequent to 148 notice not mandatory. Para 12 of the order is reproduced below:*

*“12. It is noted that the impugned assessment is in response to notice under section 148 of the Act and the Act does not specifically provide that the assessment made under section 147 of the Act will be after issue of the notice under section 143(2) of the Act. In fact, the Assessing Officer has the basic jurisdiction to assess the income in terms of section 147 and section 148 of the Act where he has reason to believe that the income has escaped assessment. On the submissions of non-issuance of notice under section 143(2) of the Act, we are of the view that the findings of the Tribunal in this regard are not as per the scheme of the provisions of sections 147 and 148 of the Act.”*

**3. Josh Builders & Developers (P.) Ltd Vs PCIT [2017] 79 taxmann.com**

***435 (Punjab & Haryana)/r20161 389 ITR 314 (Punjab & Haryana)  
(Copy Enclosed)***

*Where Hon'ble P&H High Court held that assessee, having not raised any objection with regard to issuance and service of a valid notice during assessment proceedings and rather, without any objection, having voluntarily taken part in such proceedings, could not seek annulment of assessment proceedings on ground of non-service of notice.*

6. I have heard the learned Departmental Representative and perused the material available on record. Assessee has taken a specific objection before me regarding validity of proceedings u/s 147 of the Act. It is contended that proceedings are vitiated on account of non-issuance of notice u/s 143(2) of the Act. In support of this the assessee has relied upon various case laws as stated in para 1.2 of his submissions. On the other hand, contention of learned D.R. is that this issue is taken first time. The assessee failed to file ITR within time in pursuance of notice u/s 148 of the Act. Hence, now assessee cannot take advantage of his own negligence and lapse. He further placed reliance on provisions of Section 292BB of the Act to buttress the contention that non-issuance of notice u/s 143(2) would not vitiate the proceedings u/s 147 of the Act. I find that the Assessing Officer has observed as under:

*“As per record, to enquire into the source of above deposits, various notices were issued from this office to the assessee but nothing was heard from the assessee from 31.07.2009 to 10.02.2014. Accordingly notices U/s 148 of the Act was issued in this case on 18.03.2014 which was duly served upon the assessee through speed post sent vide dispatch No. 12388 dated*

18.03.2014. In response to notice issued, the assessee did not file his return of income. Again notice u/s 142(1) was issued on 02.09.2014, sent through speed post vide dispatch No. 2010 for 10.09.2014 requiring the assessee to file his return of income for the A.Y.2007-08. As per record no return was filed. Then fresh notice u/s 142(1) was issued on 20.10.2014 served on the assessee through speed post no. 2927 dated 21.10.2014 for 31.10.2014. It is noticed from the record that Shri P. Narang advocate attended the office and filed his power of attorney and a copy of the return of income dated 5.7.2006 was filed on 26.11.2014 declaring income of Rs. 90900/-. Again another notice u/s 142(1) of the Act was issued on 17.02.2014 and same was served on the assessee through speed post No.5682 dated 17.12.2014 for 29.12.2014. In this notice the assessee was asked to explain source of deposit 31,70,000/- in cash in above mentioned SB bank A/c during the period from 1.4.2006 to 31.3.2007. Subsequently this case was transferred to this office by the Ld.CIT. Rohtak vide his order passed u/s 127 of the Act dated 9.1.2015. Another notice U/s 142(1) of the Act was issued on 09.01.2015 for 30.01.2015. On 30. 1.2015 none attended. Again the case was re-fixed on 10.2. 2015. On 10.2.2015 the notice remained unattended to. The case was again fixed for 25.2.2015. On 25.2.2015 the assessee filed written reply with a copy of the acknowledgement of the return already filed on 16.08.2007 may be treated as return filed in response to notice issued u/s 148 of the Act. The said reply was examined and placed on record. On this date' the assessee was also supplied a copy of the reasons recorded for issue of notice u/s 148 of the Act in his case. As per Note Sheet entry dated 23.02.2015 the assessee was also asked to explain the source of cash deposits in bank at Rs. 31,70,000/- as mentioned a copy of reasons supplied to him. The case was adjourned to 9.3.2015. On 09.03.2015 Shri P.Narang Advocate, AR of the assessee attended and requested for further time. The case was adjourned to 12.3.2015. On 12..3.2015 the assessee sought adjournment for 16.3.2015. On 16.3.2015 Shri Subhash Gujar, the assessee attended the assessment proceedings with Shri P.Narang, advocate. They submitted written reply alongwith various documents regarding sale of his agricultural land measuring 5 Kanal- 09 Marla against which he filed copy of agreements from different purchasers for sale of said land to explain the cash deposits in his bank account. It was further stated that the sale of said small pieces of lands could not be matured later on due to certain circumstances and the money received by the seller was to be returned to the purchasers through panchayati settlements. The assessee also stated that he sold buffalo and from- J etc. and the cash deposits in the bank were out

*of such sale proceeds .They submitted that in view of written submission filed, the proceedings may be dropped. The case was discussed with them. Assessee derives income from rent and income from furniture business during the year.*

*Perusal of the documents submitted by the assessee reveals that the assessee is having in his name only 5 K-09 Marla of agril land at Jhajjar for which Fard/Jamabandi have been filed by the assessee. It is also noticed that there are co-owners of the said land which was stated to be sold to different persons as per details given below:-*

	<i>Land</i>	<i>Total consideration</i>	<i>Date</i>	<i>Baiana received</i>
i)	<i>1K -12 Marla</i>	<i>Rs. 8,00,000/-</i>	<i>5.4.2006</i>	<i>3,50,000/-</i>
ii)	<i>2K-00M</i>	<i>Rs. 12,00,000/-</i>	<i>8.4.2006</i>	<i>1,20,000/-</i>
iii)	<i>2K- 2.5m</i>	<i>Rs. 18,00,000/-</i>	<i>20.11.2006</i>	<i>3,50,000/-</i>

*The assessee submitted photo copies of the agreements for the above transactions to prove the cash deposits in his bank account. These have been examined and it is mentioned that none of the deal was matured as per date/time mentioned in the agreements and the total amount received by the assessee was to be returned back. Is not tenable because this appears to be exclusively concocted story to only to explain the bank deposits and is rejected. Similarly, perusal of the return of income originally filed also reveals that no agricultural income for the year was declared in that return whereas now the assessee furnished form No.J from the commission agents that he sold crops and the bank deposits were out of sale proceeds of wheat. This submission of the assessee is also not reliable because in the return filed originally no such income was declared and now the assessee furnished form J for earning agril income at Rs. 3.30,000/- for sale of 434.2 Quintals of wheat is also not considered genuine due to the fact that the assessee was having only 5K 9 Marla of land in his name/share and further no such agrii. Income was declared by him in the original return filed by him. Similarly, the submission of the assessee that he sold a buffalo on 30.10.2006 for Rs. 1,20,000/- is also not relied upon because the assessee submitted such deal on a plain papers, duly stamped, as in routine, no such receipts are taken except sale of animal in "cattle fair." Thus considering all the submissions offered by the assessee that the cash deposits to the extent of Rs. 31,70,000/- are not proved by documentary evidence and the above explanation offered by the assessee is rejected and it is held that these deposits are the income of the assessee earned from undisclosed sources not*

*shown in the return and due to result of enquiries it was highlighted. This is treated as concealed income of the assessee earned from undisclosed sources. Considering all the facts in mind it held that the deposit of Rs.31,70,000/- has not been explained satisfactorily with any documentary evidence which is treated as concealed income of the assessee earned by undisclosed sources and not disclosed to the department. This is results of investigation when such huge cash deposits were ascertained in the name of the assessee.. Thus the income of Rs.31,70,000/- shown as cash deposit in the Bank account of the assessee, mentioned above, is assessed as concealed income of the assessee .Penalty proceedings u/s 271(l)(c) of the act for furnishing of inaccurate particulars of income are being initiated separately. Subject to above remarks, income of the assessee is computed as under:-*

<i>Income as per return filed</i>	<i>Rs. 92,020/-</i>
<i>Addition as discussed above</i>	<i>Rs. 31,70,000/-</i>
<i>Taxable income</i>	<i>Rs. 32,62,020/-.”</i>

7. The grievance of the assessee in respect of reopening of the proceedings u/s 147 of the Act are two-fold – (i) that the notice u/s 148 of the Act was issued just to make fishing inquiry without being based upon any material evidence; and (ii) that the statutory notice u/s 143(2) was not issued and served upon the assessee. The assessee has filed reasons as recorded for reopening of the assessment along with paper book. As per this, it was stated that the assessee had deposited a sum of Rs. 31,70,000/- in his bank account. The explanation was sought whether such amount was disclosed in the return of income and source thereof. Therefore, the Assessing officer formed his belief that amount of Rs. 31,70,000/- was chargeable to tax and escaped assessment. I do not see any infirmity into the order of the

Assessing Officer so far the first objection of the assessee is concerned, as admittedly there was no disclosure in the return of income relating to this amount as recorded by the Assessing Officer. Moreover, the assessee has not placed on record any evidence suggesting that he had explained the source of cash deposits. It is also transpired from the record that various opportunities were given to the assessee by the Assessing Officer.

8. Now another question comes, whether notice u/s 143(2) of the Act was issued to the assessee. As per the Assessing Officer, notice u/s 148 was issued on 18.3.2014 and the representation on behalf of the assessee was made by one Shri P. Narang, Advocate as also filed a copy of return of income dated 5.7.2006 on 26.11.2014 declaring income of R.s 90,900/-. It is the contention of the assessee that as per Section 148 of the Act the assessee is required to furnish a return of income in response to notice u/s 148.

9. As per Assessing Authority a notice u/s 148 of the Act dated 18.3.2014 was issued and served upon the assessee. In response thereto no return was filed. Thereafter, a notice u/s 142(1) of the Act was issued, it was only on 26.11.2014 the return of income was filed declaring income of Rs. 90,900/- and on 25.2.2015 it was stated that return already filed may be treated as return filed in response to notice u/s 148 of the Act. Undisputedly the AO did not issue notice u/s 143(2) of the Act. Now the issue to be determined is whether non-issuance of notice u/s

143(2) is fatal to assessment framed by AO under the facts and circumstances of the case.

10. The Revenue has relied upon the judgment of Hon'ble Punjab & Haryana High Court rendered in the case of Josh Builders & Developers (P.) Ltd (supra) to buttress the contention that assessee participated in assessment proceedings and no such objection was raised. Therefore, non issuance of notice u/s 143(2) would not be fatal to the assessment framed by AO. This submission of the Revenue is contrary to the judgment of Hon'ble Supreme Court rendered in the case of ACIT Vs. Hotel Blue Moon (supra), wherein the Hon'ble Apex court has held that omission on the part of the Assessing Authority to issue notice u/s 143(2) cannot be a procedural irregularity and the same is not curable and, therefore, the requirement of notice u/s 143(2) of the Act cannot be dispensed with. In view of the judgment of Hon'ble Supreme Court in the case of ACIT Vs. Hotel Blue Moon (supra), non-issuance of notice u/s 143(2) of the Act is a jurisdictional error on the part of Assessing Authority. Hence, Section 292BB of the Act would not help AO. The impugned assessment so framed without issuance of notice u/s 143(2) is illegal, hence deserves to be annulled. It is pertinent to note that the judgment of Hon'ble Punjab & Haryana High Court rendered in the case of Josh Builders & Developers (P.) Ltd (supra), has been rendered on different set of facts, hence do not help Revenue. From the records placed before me it is evident that AO failed

to issue notice u/s 143(2) of the Act. Hence, the assessment framed by the AO is without authority of law. I hold accordingly. Ground no. 3 of the assessee's appeal is allowed.

11. Apropos to ground no. 4, it is stated that the assessee had filed supporting evidences regarding availability of cash. The assessee has filed a cash flow statement in paper book, which is reproduced as under:

<i>Date</i>	<i>Particulars</i>	<i>Amount</i>	<i>Date</i>	<i>Particulars</i>	<i>Amount</i>
05.04.2006	Om Parkash S/O Amar Singh	350,000.00	31.08.2006	SELF	500,000.00
08.04.2006	Om Parkash S/O Amar Singh 150000 Vijay Kumar, Krishan Kumar & Mahender Kumar 120000/-	270,000.00			
08.05.2006	Vijay Kumar, Krishan Kumar & Mahender Kumar	410,000.00	26.10.2006	Self	900,000.00
19.09.2006	Vijay Kumar, Krishan Kumar & Mahender Kumar 370000 Cattlesale 80000/-	450,000.00			
			10.11.2006	Cattle Purchase	200,000.00
30.10.2006	Cattle sale 120000/- Agriculture Income from-J 330000	450,000.00			
20.11.2006	Cash deposit Dilwar & Dharmender 350000/- & Cash 40000/-	390,000.00	28.12.2006 03.01.2007	Self Self	150,000.00 220,000.00
			18.11.2007	Self	1,350,000.00
27.11.2006	Dilwar & Dharmender	250,000.00	18.01.2007	Cash paid	98,746.00
02.12.2016	Tarun	424,373.00			
02.12.2006	Lalita	424,373.00			
02.03.2007	Parkash, Rajender & Ajit Singh	600,000.00	14.03.2007	Self	350,000.00
			21.03.2007	Self	150,000.00
			21.03.2007	Cash paid	100,000.00

**DHARYANA GRAMIN BANK**

<i>Date</i>	<i>Particulars</i>	<i>Cheque No.</i>	<i>Withdrawal</i>	<i>Deposit</i>	<i>Balance</i>
	<i>Interest upto date</i>		<i>0.00</i>		<i>0.00 cr</i>
	<i>Opening balance</i>				<i>0.00 cr.</i>
<i>05/04/2006</i>	<i>By cash</i>			<i>350000.00</i>	<i>350000.00 cr.</i>
<i>08.04.2006</i>	<i>By cash</i>			<i>270000.00</i>	<i>6200000 cr.</i>
<i>08.05.2006</i>	<i>By cash</i>			<i>410000.00</i>	<i>1030000.00 cr.</i>
<i>31.08.2006</i>	<i>To self</i>	<i>534331</i>	<i>500000.00</i>		<i>530000.00 cr.</i>
<i>09.09.2006</i>	<i>By cash</i>			<i>12367.00</i>	<i>542367.00 cr.</i>
<i>19.09.2006</i>	<i>By cash</i>			<i>450000.00</i>	<i>992367.00 cr.</i>
<i>26.10.2006</i>	<i>To cash</i>		<i>900000.00</i>		<i>92367.00 cr.</i>
<i>30.10.2006</i>	<i>By cash</i>			<i>450000.00</i>	<i>542367.00 cr.</i>
<i>10.11.2006</i>	<i>To cash</i>		<i>200000.00</i>		<i>342367.00 cr.</i>
<i>20.11.2006</i>	<i>By cash</i>			<i>390000.00</i>	<i>732367.00 cr.</i>
<i>27.11.2006</i>	<i>By cash</i>			<i>250000.00</i>	<i>982367.00 cr.</i>
<i>02.12.2006</i>	<i>By transfer</i>			<i>424373.00</i>	<i>1406740.00 cr.</i>
<i>02.12.2006</i>	<i>By transfer</i>			<i>424373.00</i>	<i>1831113.00 cr.</i>
<i>28.12.2006</i>	<i>To cash</i>		<i>150000.00</i>		<i>1681113.00 cr.</i>
<i>03.10.2007</i>	<i>To cash</i>		<i>220000.00</i>		<i>1461113.00 cr.</i>
<i>18.01.2007</i>	<i>To cash</i>		<i>1350000.00</i>		<i>111113.00 cr.</i>
<i>02.03.2007</i>	<i>By cash</i>			<i>600000.00</i>	<i>711113.00 cr.</i>
<i>10.03.2007</i>	<i>By interest</i>			<i>8401.00</i>	<i>719514.00 cr.</i>
<i>14.03.2007</i>	<i>To cash</i>		<i>350000.00</i>		<i>369514.00 cr.</i>
<i>21.03.2007</i>	<i>To cash</i>		<i>150000.00</i>		<i>219514.00 cr.</i>
	<b><i>Total balance</i></b>		<b><i>3820000.00</i></b>	<b><i>4039514.00</i></b>	<b><i>219514.00 cr.</i></b>

12. From the bank statement it is seen that there are withdrawals and deposits by the assessee in his bank account. Further, it is stated that he had sold certain lands and the sale consideration was available with him to deposit such amount in the bank. Learned counsel for the assessee submitted that the authorities below did not consider the evidences.

13. On the other hand, learned DR opposed the submissions and supported the findings of the authorities below.

14. Heard the rival submissions and perused the material available on record. I

find that the learned CIT(Appeals) has given her finding by observing as under:

*“6.2.1 The AO has made addition and rejected the submissions of the assessee after giving finding that the assessee had not shown any agriculture income in his return; the land holding was of the assessee and co-owners and there is no proper documentary<sup>7</sup> evidence to prove that the cash deposits are from the proposed sale of land which never materialized; the sale of cattle is also not substantiated by the assessee.*

*6.2.2 During the course of appellate proceedings the AO was asked vide order sheet entry dated 28.02.2018 to send the report after giving an opportunity to the assessee to prove the cash deposits claimed to have been received by way of ‘bayana’, record statements of the proposed buyers, examine their source of income, bank statements, verify if the land belong to the assessee only or other family members and also verify if money received by way of ‘bayana’ was also deposited in the bank accounts of relatives/co-owners of the land. This is essential to ascertain the genuineness of assessee’s claim. In his report dated 13.03.2018 the AO has submitted that the assessee was given an opportunity to appear before the AO on 08.03.2018 vide letter dated 01.03.2018 to produce documentary evidence to justify his claim with regard to issues raised by him in appeal but there was no compliance by the assessee so the issues raised were not verified by him.*

*6.2.3 The assessee’s claim of agricultural income of Rs 3.30 lacs is not acceptable as no such income was shown in the return filed by the assessee. The documents regarding possession of agricultural land show that Mr. Subhash is not the only owner of the land and there is no documentary evidence that wheat was produced on the said land. There was also no evidence to show that income from agriculture produced on the land of family members was only deposited in his bank account. Thus mere submission of Form J and non compliance of the assessee before the AO to substantiate his claim during remand proceedings, renders his claim unacceptable.*

*6.2.4 The assessee’s claim of sale of cattle is also not acceptable in view of the fact that a receipt has been submitted and name of purchaser has been given. There is no proof that the assessee was in possession of the cattle. The assessee did not avail the opportunity given by the AO during remand proceedings substantiate the claim made by him in this regard. Thus the sale*

*of cattle and deposit of Rs 1,20,000/- is not found acceptable.*

*6.2.5 The assessee's claim of cash deposits on account of receipt of 'bayana' for purposed sale of agricultural land which later did not materialize and was cancelled and the money was refunded is considered and the documents submitted by him including copy of notarized 'ikrarnama' and bank statement showing the cash deposits on the dates of 'ikrarnama' have been examined. The assessee's explanation that the land sale did not materialize due to certain circumstances and the money was returned to the purchasers through panchayati/mutual settlement, as seen from the documents given where such cancellation of the proposed sale is recorded and signed by the parties, is not found acceptable in view of the fact that assessee did not respond to the AO's letter to substantiate this claim, nor did he produced the various proposed buyers who had given him the money. No bank statements of family members were submitted to prove the money received after the 'ikrarnama' was only deposited in his bank account. Although the 'ikrarnama' is notarized and signed by the parties and witnesses and there are corresponding entries in the bank account, it is not sufficient proof of assessee's claim made in this regard. The onus to prove the source of cash deposits in the account of the assessee, was on him and he did not avail the opportunities given to him by the AO in remand proceedings nor submitted required evidence during appellate proceedings.*

*6.6 In view of the above discussion, the assessee's submissions are rejected the addition made by the AO on account of unexplained deposits of Rs 31,70,000/- is upheld. This ground of appeal is dismissed.*

15. However, looking to the evidences submitted by the assessee it can be inferred that the assessee was having sufficient funds for making deposit coupled with the fact that there were withdrawals from the bank account. Hence, these facts ought to have been considered by the authorities below, which has not been considered. The addition made by the AO is not justified and the same is hereby deleted.

16. Appeal of the assessee is allowed.

Order pronounced in open court on 24<sup>th</sup> February, 2023.

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

**\*MP\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**