

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**I.T.A No.887/Del/2018
Assessment Year: 2009-10**

Late Sh. Girdhari Lal Through L/H Sh. Premchand & Others, C/o 19, Navyug Market, Second Floor, Ghaziabad, Uttar Pradesh.	बनाम Vs.	ITO, Ward 1(2), Ghaziabad.
PAN No. AVJPG2255M		
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

Assessee by	Shri Raj Kumar, CA
Revenue by	Shri Rajesh Kumar Dhanesta, Sr. DR

Date of hearing	20.02.2023
Date of Pronouncement	.03.2023

ORDER

PER YOGESH KUMAR US, J.M.

This appeal is filed by the assessee against the order dated 26.10.2017 of the Id. Commissioner of Income Tax (Appeals), [(hereinafter referred to CIT (Appeals)] Ghaziabad, for assessment year 2009-10.

2. The assessee has raised the following grounds of appeal read as follows: -

1. "That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts since the reasons recorded for reopening of case U/s 148 indicate is that cash deposits aggregating to Rs 1,00,15,000/- have been made in the savings bank account of the assessee, but the mere fact that these deposits have been made in a bank account does not indicate that these deposits constitute an income which has escaped assessment. Therefore the reason of initiating

the case proceedings U/s 147 is void-ab-initio reliance can be placed in the case of "Bir Bahadur Singh Sijwali vs Assessee" I.T.A. No.: 3814/Del/11 where the Hon'ble ITAT Delhi held that "we are of the considered view that the reasons recorded by the Assessing Officer (cash deposit), as set out earlier, were not sufficient reasons for reopening the assessment proceedings. We, therefore, quash the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits of I.T.A. No.: 3814/Del/11 Assessment year: 2008-09 the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

- 2. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in making the addition of Rs 3,00,00,000/- as income from other sources without appreciating the facts that the amount of Rs.3,00,00,000/- was received as advance money against the agreement of sale of immovable, however Later on the agreement of sale revoked by mutual agreement of both parties and Rs.3,00,00,000/- (Rs.1,00,00,000/- in cash and Rs.2,00,00,000/- through banking channel) was returned to Sh. Iqbal Singh Sodhi which is clearly evident from bank statement.*
- 3. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts that during hearing proceeding, the details of Rs.3,00,00,000/- credit through sundries was asked. In this regard we have to say that, we have approached to Punjab National Bank, G.T. Road, Ghaziabad to provide the details of credit through 'Sundry' A/c' of Rs.30,00,000/- credited on 29-07-2008. The bank denied to provide the details.(Denied letter enclosed). Although we have also approached through our personal resources also, but could not succeed, neither the Ld. CIT (A) nor the AO had invoked section 131/133.*
- 4. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts that The A.O. has not tried to verify the truthness of the agreement dated 14-08-2008. In which major payments (Rs.2,00,00,000/-) were received through banking channel. The verification can be done by A.O. by invoking section 131/133 by asking the proof of payments from bank or purchaser of agreement. But the A.O. decided to conclude the transaction "after thought devise". The transaction was entered on 14-08-2008 through bank entries and partly in cash and notice from department was received on 17-02-2012. The bank transaction can route after receiving the notice from department. So the conclusion*

drawn by A.O. regarding "after thought devise" is based on reasons best known to A.O. and indicates ill intention of A.O.

5. *The said property was sold in next year (AY-2010-11 dated 09-04-2009) and tax has also imposed in AY 2010-11 vide order 05-12-2017 passed by AO.*

6. *That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts The A.O. has not considered the reply properly and not provided us opportunity of being heard to explain the doubts he was bearing in mind, If any. In spite of providing opportunity of being heard the A.O. decided to make addition without any concrete basis.*

7. *The AO was not satisfied with entries of Rs.30,00,000/- while it is appearing in bank account but he made the addition of Rs.3,00,00,000/-.*

8. *That in any case and any view of the matter, action of Ld. CIT(A) in not reversing the action of Ld. AO in making the impugned addition/disallowance and framing the impugned assessment order which is contrary to law and facts, void ab initio, beyond jurisdiction, and without giving adequate opportunity of hearing, by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.*

9. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B, 234C and of the Income Tax Act, 1961.*

10. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

3. Brief facts of the case are that the assessee filed return disclosing income of Rs.300/- (Agricultural income of Rs.1,50,000/- for rate purpose) in compliance to notice u/s 148 of the Income Tax Act, 1961. The case was selected for scrutiny to examine the capital gain tax liability and the assessment order came to be passed on 31.03.2009 by making an addition of Rs.3,00,00,000/- on account of undisclosed sources.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A) and the CIT(A) vide order dated 26.10.2017 dismissed the appeal filed by the assessee, which is under challenge before us.

5. The Ld. Counsel for the assessee submitted that the Ld. Assessing Officer has erred in law in making addition of Rs.3,00,00,000/- as income from other sources without appreciating the fact that the said amount was received as advance money against the agreement of sale of immovable property, however, later on the agreements of sale revoked by mutual agreement of both the parties and Rs.3,00,00,000/- (Rs.1,00,00,000/- in cash and Rs.2,00,00,000/- through banking channel) was returned to Shri Iqbal Singh Sodhi and even after providing the statement of the bank and other details the same has not been considered by the lower authorities. Therefore, submitted that the grounds of appeal deserve to be allowed.

6. On the other hand, the Ld. DR vehemently submitted that the order of the CIT(A) requires no interference. Even after providing the sufficient opportunities, the assessee failed to substantiate the source of cash deposits in the bank accounts with the sufficient evidence and the assessee has also failed to produce the copies of agreement of sale which was relied by the assessee. Thus, submitted that the appeal filed by the assessee is liable to be dismissed.

7. We have heard the parties, perused the material. During the assessment proceedings, the Assessing Officer received information about Rs.1,00,15,000/- deposited in the savings bank account of the assessee. It is the specific contention of the assessee was that he had entered into an agreement to sale of agricultural land in Dunda Hera in Loni for sum of Rs.13,02,40,000/- and sum of Rs.3,00,00,000/- was taken as advance on the said agreement out of which Rs.1,00,00,000/- was accepted in cash and Rs.2,00,00,000/- was accepted by the bank draft deposited in the savings bank account. The assessee has also filed written reply on 11.02.2016 before the AO along with narration of credit entries in the bank account and copy of sale deed executed on 09.04.2009 for Rs.16,99,28,064/- and contended that the advance of Rs.3,00,00,000/- returned on 15.09.2008 after the agreement of sale dated 14.08.2008 was got cancelled. It is a case of the assessee that thereafter the mode of payment by purchaser given in the sale deed executed on 09.04.2009 for Rs.16,99,28,064/- got tailed with the credit entries mentioned in the bank account. The Ld. AO found that the copy of the bank statement when read with returned reply and sale deed does not depict the clear picture of financial affairs of the assessee. Thus, found that the assessee is withholding the information from the AO. The assessee has not produced the copy of the agreement to sale referred and relied by the assessee, therefore, the CIT(A) has dismissed the appeal filed by the assessee.

8. The Revenue authorities have turned down the contentions of the assessee on the ground that there are defects in the submissions made by the assessee viz-a-viz details given in the sale deed and bank account of the assessee and therefore, held the assessee failed to substantiate the source of cash deposits in the bank accounts with sufficient evidence. Even during the appellate proceedings the assessee failed to produce the copy of the agreement to sale referred and relied by the assessee.

9. In our considered opinion, if an opportunity is given to the assessee to substantiate the source of cash deposits and also to produce the copy of the agreement of sale relied by the assessee and if the CIT(A) considers the same and passes the order afresh, the substantial justice would be rendered. Irigo, we partly allow the grounds of appeal for statistical purpose by remanding the matter to the file of the CIT(A) with a direction to the assessee to substantiate the source of the cash deposits and also to prove the agreement to sale relied by the assessee and further we direct the CIT(A) to consider the same and pass appropriate order in accordance with law.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 15/03/2023

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Dated: 15/03/2023
**Kavita Arora, Sr. P.S.*

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi