

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: SMC: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.1909/Del/2020
Assessment Year: 2011-12

Ram Kishan, H.No. 60, Ward No. 10, Mohalla Chowk, VPO- Alik, Near Atta Chaki, Palwal, Haryana 121102 PAN AWTPR 6023 R	vs.	ITO, Ward-2(2) Faridabad, Haryana 122001
(Appellant)		(Respondent)

For Assessee :	Shri Gurjeet Singh, CA Shri Shaantanu Jain, Adv. Shri Sharad Agarwal, Adv. Ms. Monika Ghai, Adv.
For Revenue :	Shri Om Prakash, Sr. DR

Date of Hearing :	13.03.2023
Date of Pronouncement :	22.05.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A) Faridabad dated 21.01.2020 for AY 2011-12.

2. Delay of 237 days in filing appeal before the tribunal. I have heard arguments of both the sides on the prayer of appellant seeking condonation of delay of 237 days in filing appeal before the tribunal as per learned counsel of assessee, the copy of order of Id. CIT(A) dated 21.01.2020 was received belatedly and the appeal should have been filed latest by 27.03.2020 but the lockdown due to pandemic of Covid-19 was started from 23.03.2020 and appeals could have been filed only on 27.11.2020 by the delay of 237 days therefore in view of order of Hon'ble Supreme Court dated 27.04.2021 bearing miscellaneous application no. 665/2021 in suo moto Writ Petition, SMW(C) No. 3/2020, the Hon'ble Supreme Court of India has again restore the order dated 23.03.2020 and in continuation of the order dated 08.03.2021 direct that the period of limitation as prescribed under any general or special law in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further order. In view

of above it is concluded that the delay in filing appeal before the Tribunal is covered by the extended period as per judgment of Hon'ble Supreme Court (supra). Accordingly, appeals are admitted of consideration and adjudication as having filed within prescribed extended time limit.

3. The learned counsel of the assessee submitted that the assessee does not press legal grounds no. 1 to 4 hence the same are dismissed has not pressed. Remaining grounds no. 5 to 7 are as follows:-

5. That the Ld. CIT(A) has erred in confirming the addition of Rs. 17,50,000/- made applying the provisions of section 69A of the Act, whereas the source of cash deposit has been duly explained by way of cash withdrawal from the bank.

6. That the Ld. CIT(A) has erred in making enhancement by making the addition of Rs. 20,00,000/- applying the provisions of section 69A of the Act, whereas, the source of cash deposit has been duly explained during the assessment as well as appellate proceedings.

4. The learned counsel of the assessee submitted that the Id. CIT(A) has erred in confirming the addition of Rs. 17,50,000/- made u/s. 69A of the Act, whereas the source of cash deposit has been duly explained by way of submitting copy of bank statement showing cash withdrawals prior to the deposits. The learned counsel also submitted that the Id. CIT(A) has also erred in making enhancement of Rs. 20 lakh u/s. 69A of the Act, whereas the assessee successfully demonstrated an established the source of cash deposits during assessment as well as first appellate proceedings.

5. The learned counsel also submitted that the assessee is an individual and having income from agricultural sale proceeds and being earning an exempt income and no return for the said impugned year has been filed. However, the case of the assessee has been reopened vide notice date 22.03.2018 w/s 148 of the Act where the amount of Rs 17,50,000/- has been deposited in the saving bank account maintained by assessee with HDFC Bank bearing account no 04591570002719 and the said amount has been treated as unexplained income and has been charged w/s 69A of the Act. It is submitted that the assessee has filed submissions before Ld. CIT(A) that the amount of addition of Rs. 17,50,000/- made by Ld. AO on account of cash deposit is not sustainable as this amount was already scrutinized by the Ld. AO in the case of assessee's wife only i.e., Smt. Ratni (Assessment order is in the Paper Book) who is holding joint bank account with Assessee in HDFC bank. The said amount was questionable during the course of assessment proceeding in the case of Smt. Ratni and the very same bank account was also scrutinized during the process which is subject to the said assessment of Sh. Ram Kishan also and further it is also to mention that the interest earned on the said amount was offered to tax by Smt Ratni during the said

year and was accepted by Ld. AO while passing the assessment order in her case. It is further submitted that the amount deposited in assessee's account (Rs. 17,50,000) is the said amount which was withdrawn on the earlier occasion as can be seen from the debit entries and the same was to be put to use for agricultural purpose however the same could not be accomplished, as such the said amount was deposited back in the bank on different dates. Copy of the chart is enclosed. However, despite submitting the facts of the case, Ld. CIT(A) enhanced the amount by Rs. 20,00,000/-. The submission filed during the course of the appellate proceedings was not been taken into consideration. The amount of Rs. 20,00,000/- that has been enhanced by Ld. CIT(A) was part of Rs.40,00,000/- received by Smt. Ratni as the advance against the sale of land on 18.10.2010 and the same was deposited in the joint bank account with Sh. Ram Kishan and the balance Rs.20,00,000/- was deposited in the bank account of their son Sh. Dinesh. It was the arrangement between the parties that the amount of Rs.40,00,000/- paid in cash as advance will be refunded after receiving the entire consideration amount of Rs. 1,82,00,000/- in bank. Further, to the said understanding, the cheque of Rs. 14,76,087/- and Rs. 1,24,00,000/- was received by Smt. Ratni qua the Sale Deed dated 08.12.2010 and later was deposited in the joint bank A/c of Sh. Ram Kishan (assessee and Smt. Ratni on 10.12.2010 and 08.02.2011 respectively (Balance Rs. 43,23,913/- was received in the bank A/c of Smt. Sona who is the sister of Smt. Ratni and the joint holder of the said property). The advance of the sale of land of Rs.40,00,000/- was later refunded to the purchaser after making complete withdrawals from the said joint bank account of Sh. Ram Kishan and Smt. Ratni Devi, as at that time of making the repayment Sh. Dinesh was gone for some work outside the city and the commitment was made by Smt. Ratni that the advance cash amount will be refunded at the earliest to the purchaser. The said submissions was also made before the Ld. CIT(A) which is been reproduced in the impugned order at Pg. 12. The aforesaid submission would also be evident from the chart (Sh. Ram Kishan) which would show that after the deposit of second cheque of Rs. 1,24,00,000/-on 08.02.2011 in the joint bank account of Sh. Ram Kishan and Smt. Ratni, there are withdrawals of Rs.48,00,000/- within five days (Total withdrawals of Rs.54,00,000/- minus total deposit of Rs. 6,00,000/-, after 08.02.2011). Without prejudice, even the chart (Sh. Dinesh) would show that after 08.02.2011 there are total withdrawals of Rs. 17,00,000/- (Total withdrawals of Rs. 19,00,000/-minus total deposit of Rs.2,00,000/-, after 08.02.2011).

6. The learned counsel also submitted that from 20.10.2010 to 20.05.2011 within the financial period of from 01.04.2010 to 31.03.2011 there was cash deposit of Rs. 17,50,000/- and cash withdrawals of Rs. 54,45,000/- therefore the amount of cash deposit is much lesser than the withdrawals therefore the addition of Rs. 17,50,000/- made by the AO do not survive. The ld. counsel also submitted that the assessee was having joint bank account with his wife Smt. Ratni Devi who sold agricultural land

jointly owned with sister of wife Smt. Sona received advance in cash of Rs. 40 lakh from the purchaser on the condition that the cash will be returned at the time of completion of transaction of sale of land and entire consideration against sale of land will be given by the purchaser to the seller that is Smt. Ratni and her sister Smt. Sona through cheque or draft. The learned counsel submitted that the above understanding wife of assessee received Rs. 40 lakh in cash out of which Rs.20 lakh was deposited to the joint bank account of Smt. Ratni with her husband Shri. Ramkrishan/Assessee and Rs. 20 lakh to the bank account of their son Shri Dinesh on 19.10.2010. The learned counsel further explained that the sale deed was executed by Smt. Ratni and her sister Smt. Sona on 08.12.2010 in favour of purchaser receiving consideration of Rs. 1,82,00,000/- through cheque before registration authority. The learned counsel drawing our attention towards page 11 of assessee paper book submitted that the assessee was under obligation to refund cash advance of Rs. 40 lakh to the purchaser on receipt of entire sale consideration therefore the cheque of Rs. 1,24,00,000/- was presented for clearing before the HDFC Bank Palwal Branch which was cleared on 08/09.02.2011. thereafter the assessee made withdrawals of Rs. 2 lakh & Rs. 37 lakh on 11.02.2011 and Rs. 9,50,000/- on 16.02.2011 total Rs. 48,50,000/- out of which Rs. 40 lakhs cash of advance was returned to the purchaser as per understanding at the time of entering into the contract of sale of land. The learned counsel also explained that the amount of Rs. 20 lakh was deposited to the bank account of Shri. Dinesh son of assessee and at the time of returning said amount was to be withdrawn from his bank account but since he was away from home due to his job therefore the assessee had to refund entire amount of Rs. 40 lakh from the withdrawals of his joint account with his wife Smt. Ratni.

7. The learned counsel submitted that considering the bonafide explanation of the assessee entire addition including enhancement may kindly be deleted.

8. Replying to the above, the learned Senior DR supported the orders of the authorities below and submitted that since the assessee could not explain source of cash deposit therefore entire addition may kindly be upheld.

9. On careful consideration of above submissions, first of all, I note that the Id. Senior DR have not controverted the factual position stated by the learned counsel of the assessee and noted in the earlier paragraph 6 of this order. From the copy of the bank statement available at page 11 of the assessee paper book it is clear that the assessee was having a joint bank account with his wife Smt. Ratni Devi in HDFC Bank wherein Rs. 20 lakh cash was deposited on 19.10.2010 and subsequently a cheque of Rs. 1,24,00,000/- was also deposited and cleared to his joint bank account. Thereafter Rs. 2 lakh and Rs. 37 lakh cash was withdrawn on 11.02.2011 and Rs. 9,50,000/- on 16.02.2011 total cash Rs. 48,50,000/- was withdrawn from the said bank account.

Therefore the contention of Id. counsel of the assessee holds the field that as per understanding at the time of entering into the agreement of sale of land the assessee received Rs. 40 lakh cash which was to be returned in cash on completion of transaction on receipt of consideration through cheque or DD. The pattern of deposit of Rs. 20 lakh on 19.10.2010, deposit of cheque on 08/09.02.2011 and subsequent withdrawals on 11.02.2011 and 16.02.2011 totaling cash of Rs. 48,50,000/- cumulatively substantiate that the assessee successfully demonstrated source of deposit of Rs. 20 lakh cash and its refund to the purchaser including Rs. 20 lakh deposited to the bank of his son Shri Dinesh who was away from home due to his job/work at the time of returning of cash on completion of transaction as agreed between seller i.e. wife of assessee and the purchaser.

10. The learned Senior DR have also not controverted the cash flow chart submitted along with brief synopsis and which was also submitted before the authorities below by the assessee. On cross verification of copy of bank account available pages 11 and 12 of assessee paper book from where it is amply clear that the assessee during period from 19.10.2010 to 25.02.2011 within the financial period of from 01.04.2010 to 31.03.2011 there was cash deposit of Rs. 37,50,000/- and cash withdrawals of Rs. 96,26,000/- therefore the amount of cash deposit is much lesser than the withdrawals therefore the addition of Rs. 37,50,000/- made by the AO do not survive. It is also pertinent to note that in the beginning on 19.10.2010 there was first deposit of Rs. 20 lakh and thereafter total cash of Rs. 17,50,000/- were deposited on five occasions. This fact has not been controverted by the authorities below that the wife of assessee Smt Ratni Devi along with her joint owner sister Smt. Sona sold agricultural land and part payment of Rs. 1,24,00,000/- was deposited through cheque to the bank account of Smt. Ratni Devi out of which Rs. 2 lakh & 37 lakh was withdrawn on 11.02.2011 and Rs. 9,50,000/- was withdrawn on 16.02.2012 and by using this amount the wife of assessee and her sister returned back of Rs. 40 lakh cash security/advance to the purchaser as agreed at the time of entering agreement to sale of land. I also find force in the contention of learned counsel of the assessee that although originally after receipt of cash of Rs. 40 lakh, Rs. 20 lakh each were deposited to the joint bank account of assessee and his wife & Shri Dinesh their son but at the time of returning the cash Shri Dinesh was away from home therefore this amount was completed from withdrawals from the joint bank account of assessee and his wife.

11. In view foregoing, I reach to a logical conclusion that the assessee has successfully demonstrated with supporting evidence source of cash deposit to his bank account during FY 2010-11 relevant year under consideration and therefore no addition was required to be made in the hands of assessee and therefore we allow the grounds of assessee on merits and direct to delete the entire addition.

12. Ground no. 7 pertaining to imposition of penalty is consequential which does not survive due to my conclusion recorded for ground no. 5 & 6.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 22.05.2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 22nd May, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi