

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1124/DEL/2022
Assessment Year: 2011-12

Kamal Kishore Sharma 7392, Ram Gali, Rewari, Haryana-123401 PAN- BRUPS0866E	<u>Vs</u>	Income-tax Officer, Ward-1, Rewari, Haryana
APPELLANT		RESPONDENT
Assessee represented by	Shri Suresh Anand, CA	
Department represented by	Shri Om Parkash, Sr. DR	
Date of hearing	24.05.2023	
Date of pronouncement	24.05.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 21.03.2022, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

“1) The Appellant denies himself liable to be assessed on a total income of Rs. 31,07,430/- determined by the assessing officer and confirmed by the learned CIT (A) as against the income declared by the appellant of Rs.2,27,931/- on the facts and circumstances of the case of the appellant.

- 2) *The Ld' CIT(A) has erred in passing an ex parte order by confirming the addition of Rs.29,59,500/- on account of Cash deposited into the bank account without giving proper and sufficient opportunity of being heard and thus violated the principle of natural justice. Hence the order may kindly be quashed.*
- 3) *The Assessing officer has erred in **reopening** of the case of the assessee and the Ld' CIT (A) has sustained the addition wherein statutory provisions contained in section 147 to 151 of the Income Tax Act were not complied with and hence notice U/S 148 itself is nonest in law and therefore subsequent proceedings and passing of an order is also illegal and bad in Law.*
- 4) *The Ld' A.O and Ld' CIT (A) have erred in not appreciating that the cash deposited into the bank was made out of the token money and advance received from sale of property which was supported by the agreement to sell and confirmed by the Legal heir of the Purchaser about the transaction in a statement recorded U/S 131 of the Act.*
- 5) *The Ld' CIT (A) has erred in not appreciating that the assessee has discharged his onus of deposit of cash into the bank account by producing the legal heir of the purchaser who confirmed the transaction of token money and advance paid to the appellant by his father on account of agreement to purchase the property which took place between his father and the appellant.*
- 6) *The Ld' A.O and Ld' CIT (A) have erred in brushing aside the documentary evidence of Agreement to sell on the **erroneous** assumption that no such agreement existed in absence of original copy of Agreement in spite of the fact that the transaction was confirmed by the Legal heir of the purchaser.*
- 7) *The Ld' A.O and Ld' CIT(A) have erred in ignoring that it is the common practice that token money against the sale of property is being received as per the oral agreement. The written agreement was entered into*

between the assessee and the buyer after the 1st installment of advance was received by the seller in view of high amount involved

8) *The Appellant craves leave of this Hon'ble Tribunal to add, alter, modify, delete or substitute any of the grounds urged above”.*

2. Facts, in brief, are that in this case the AO had information that assessee had made cash deposits of Rs. 29,59,500/- with DCB Bank, Jharsa, Gurgaon, during F.Y. 2010-11 relevant to A.Y. 2011-12. After recording reasons and obtaining approval from the Pr. CIT, Rohtak the AO issued notice u/s 148 of the Income-tax Act, 1961 (the “Act”) to the assessee. In response to notice, the assessee filed his return on 03.10.2018 declaring income at Rs. 2,27,930/-. The AO completed the assessment u/s 143(3)/147 of the Act at an income of Rs. 31,87,430/- by adding Rs. 29,59,500/- to the returned income, treating the cash deposits of Rs. 29,59,500/- as income from undisclosed sources. Aggrieved against it the assessee preferred appeal to the learned CIT(Appeals), who dismissed the appeal by affirming the order of the AO, inter alia, observing as under:

“5. I have considered the grounds of appeal, statement of facts and the assessment order dated 14.12.2018. The addition in this case is on account of cash deposits to the tune Rs.29,59,500/- in the appellant’s bank account.

It is seen that the appellant in explanation to the source of the deposits before the Assessing Officer had stated that these deposits were in connection with the agreement made in respect of the sale of immovable property. Statutory notices u/s.143(2) and 142(1) calling for details were issued on 09.10.2018 and served to the appellant by the Assessing Officer. During the assessment proceeding the Assessing Officer called for

documentary evidences in support of his claim i.e. proof of cash deposits made in bank A/c. on 09.11.2018 and 16.11.2018 but the appellant could produce only a part reply. Further, the appellant's counsel had stated that on 28.11.2018 before the A.O. that the other party (Sh.Yudhister Kumar with whom agreement was executed has passed away. Hence the Assessing Officer called for his son (legal heir) to produce the original agreement but he failed to produce the same on 06.12.2018. But on that date neither the sources have been explained nor original agreement was produced and it was observed by the Assessing Officer that so called agreement executed during the F.Y.:2010-11 had also expired on 31.03.2014.

On the addition made the Assessing Officer in his order has stated the following:

In view of the above fact it is quite evident that the genuineness of the agreement is not proved due non-availability of original agreement made on 09.02.2011. Further, during the statement recording of the legal heir of the agreement executor i.e. Sh Vinay Kumar it has been recorded that he would produce original agreement in the department if it was traced. In general if father of only son Shri. Vinay Kumar invested Rs.30,00,000/- during agreement for purchase of an immovable property from the assessee, he must had its original copy. It is a suspicious matter if he Sh. Vinay Kumar it had not had original agreement. In case of death of his father he would be the owner of the said immovable property. Hence, due to non-presence of the original agreement it is not certain that this agreement is true or fake. A perusal of the reply reveals that the so called property in question was under dispute since 06.03.2009 then how the agreement was written on 09.02.2011. If the seller (here the assessee) kept the buyer unknown from this fact, then, why the buyer had not filed any suit against the assessee. Besides this fact the agreement had expired as on 31.03.2014 as per the contents of the agreement, it must be extended if was true. So, keeping in view the above facts and circumstances, it is ample clear that the so- called agreement is nothing but just a story to explain the sources of cash deposits in the bank account of the assessee. Hence, an addition of Rs. 29,59,500/- is made to the total Income of the assessee. I am satisfied that the assessee has concealed his income to the tune of Rs. 29,59,500/-.

As seen from the above, the appellant could not produce the original sale deed even after giving sufficient opportunities by the Assessing Officer. It is claimed that the purchaser expired. However, the legal heir of the purchaser

could not produce the original Sale deed in the Father's name or on his name being the legal heir. In view of this and since copy of the agreement expired on 31.03.2014. The claim of the appellant that the cash deposit to the tune of Rs.29,59,500/- was due to sale of immovable property cannot be accepted. Hence, the appeal is dismissed."

3. Aggrieved, the assessee is in appeal before this Tribunal.
4. Ground No. 3 relates to the legality of the reopening of the case. In this regard learned counsel for the assessee submitted that he does not wish to press the grounds. Accordingly, ground no. 3 stands rejected being not pressed.
5. Apropos to the rest grounds of appeal, learned counsel for the assessee submitted that the explanation of the assessee regarding bank deposits was that the deposit was made out of the money received from an agreement entered into for sale of land which has been duly confirmed by the legal heir of the purchaser. The learned CIT(Appeals) rejected the contention purely on the basis that the original agreement was not furnished by the assessee. He submitted that in support of the contention the assessee had also filed evidences. Learned CIT(Appeals) without giving sufficient opportunity rejected the contention and sustained the impugned addition.
6. On the other hand learned DR opposed the submissions and supported the orders of the authorities below.
7. I have heard rival submissions and perused the material on record. I find that

the learned CIT(Appeals) has recorded the factum of the agreement by the assessee, however the contention was rejected on the basis that on the date fixed original agreement was not produced. Therefore, considering the totality of the facts and circumstances I deem it proper in the interest of principles of natural justice that assessee be given an opportunity to produce the original agreement and relevant evidences in support of the claim that the bank deposits were made out of legal sources of money. Grounds raised are allowed for statistical purposes.

8. Appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced in open court on 24.05.2023.

**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