

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.847/Del/2015
Assessment Year: 2009-10

Shri Devender Hans, 117/128, Village Naharpur, P.O. Khandsa, Gurgaon PAN ABPPH 5499 G	vs.	The DCIT Circle 23(2), New Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Pulkit Saini, Adv.
For Revenue :	Shri Vipul Kashyap, Sr. DR

Date of Hearing :	19.04.2023
Date of Pronouncement :	07.07.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-1 Gurgaon dated 09.12.2014 for AY 2009-10.

2. The grounds raised by the assessee are as under:-

1. That the addition made by the Ld. Assessing officer (A.O.) u/s 143(3) and confirmed by the Ld. CIT (A) is illegal, bad in law and facts of the case. The addition/disallowance made by the assessing officer is without application of mind and against the provisions of the Income Tax Act, 1961 ("referred to as Act").

2. That the Ld. CIT (A) while confirming the addition made by the Ld. A.O. failed to consider that in the subsequent year the Revenue in scrutiny assessment for A.Y. 2010-11 has accepted the genuineness of the sale of 3 properties in question and cash received thereof and accordingly assessed the cash deposited as capital gain in that year.

3. That having assessed the cash deposit as capital gains in the subsequent assessment year(2010-11), the Revenue is precluded to treat the cash deposit as undisclosed income in the A.Y. 2009-10.

4. That despite producing registered sale deeds, the Id. CIT(A) erred in ignoring the explanation given by the assessee that the cash deposit primarily consisted of sale proceeds of the three properties sold by the assessee.

5. The Ld. A.O./C.I.T. (A) while passing the impugned addition has not doubted the ownership of the land as well as the factum of actual sale has not been controverted.

6. That the Ld. A.O. failed to make any enquiry about the vendees of the land, which power in fact is rested with the assessing officer and not the assessee under Section 131 of the Act. The whole basis of addition by the Revenue is suspicion.

7. That the Ld. CIT (A)/A.O. erred in making the addition of Rs. 49,85,000 without appreciating that the assessee has discharged its primary onus/burden of proof for the cash deposits, being partly obtained from identified and existing property buyers and partly from the available cash, which explanation remains uncontroverted and unrebutted.

8. The assessee has placed all the documentary evidences including written agreement, sale deed, cash books, cash flow statement, bank Account statements in support of his claim which has been completely overlooked by the authorities below.

9. That on the facts and circumstances of the case and in law, Ld. A.O. erred in making the addition of Rs.49,85,000 on the sole ground that registries are in name of different persons, which as held by the Hon'ble Apex Court in Uma Charan's case 37 IT 271 is insufficient to doubt the documentary evidence.

10. The impugned order passed by the Ld. CIT (A) is purely on the basis of surmises and conjectures and is therefore liable to be set aside.

11. That the Ld. A.O./CIT(A) erred in facts and in law while invoking the provisions of section 68 of the act, as the cash received by the assessee for the sale of the properties falls under chapter IV of the Act.

3. Although the assessee has taken as many as 11 grounds but the controversy for our adjudication revolves around a single issue and ground that the Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 49,85,000/- as unexplained cash deposit u/s. 69 of the I.T Act 1961 (for short the 'Act') without controverting or disproving the explanation and documentary evidence furnish by the assessee therefore addition based on the surmises and conjectures in violation of judicial precedents deserve to be dismissed and deleted. In addition to said contentions the Id. counsel also submitted reconciliation and clarification regarding documents and submissions place before the authorities below in respect of agreements to sale with Mr. Jai Pal and Mr. Ved Pal and eight registered document filed relating to said agreements in a chart form and submitted that the assessee executed power of attorney in favour of Shri Ved Pal authorizing him to do all work and proceedings before all the authority for the purpose of his plot of 100 yards situated at village Siwana Tehsil & District Gurugram. The learned counsel also drew our attention towards copies of the registered sale deeds available at pages 198 to 266 of assessee paper book and submitted that the assessee

successfully explained the source of impugned cash deposit of Rs. 49,85,000/- before the authorities below but the authorities below dismiss explanation of assessee supported with documentary evidence without any basis therefore the orders of the authorities below may kindly set aside. The learned counsel submitted that the case laws relied by Id. Senior DR in his written submissions filed on 09.07.2018 are pertains to the cases where issue of identity and creditworthiness of share application money contributors/investors and genuineness of transaction was involved were as in the present case the assessee has successfully demonstrated source cash deposit from agreements & sale deeds executed by the assessee which were also accepted by the Department in the subsequent AY 2010-11 by accepting capital gain arose to the assessee and Assessing Officer also granting benefit of sec 54F of the Act thereon. Therefore he submitted the case laws relied by the Senior DR are not applicable to the present case He also placed reliance judgments of Hon'ble Supreme Court to support his contention viz in the cases **of CIT vs Orissa Corpn. (P.) Ltd. 159 ITR 78, Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 & CIT v Daulat Ram Rawatmull 87 ITR 349.**

4. The Id. counsel drawing our attention towards pages 273 to 285 of assessee paper book and submitted that the assessee successfully demonstrated that during FY 2008-09 the assessee received Rs. 2 lac on 15.04.2008 and Rs. 13,50,000/- on 29.04.2008 from the Shri Ved Pal against agreement to sale of his plot measuring 100 sq yard. He further submitted that during the same period the assessee received Rs. 10 lac on 24.11.2008 Rs. 2 lac on 05.12.2008 against dishonor of cheque no. 164041 and Rs. 11 lac on 06.03.2009 and cheque of Rs. 2 lac on 13.03.2009 total Rs. 25 lac from Shri Jai Pal against agreement to sale of his land measuring 1470 sq yard for a total consideration of Rs. 1,26,42,000/-. He further contended that the assessee during the same period also received Rs. 2,70,000/- through cheque on 09.01.2009 and Rs. 7,90,000/- on 16.01.2009 against the sale of his plot measuring 200 sq yard sold to Shri Manoj Gera vide sale deed dt. 21.01.2009 and thus the assessee received total amount of Rs. 46,40,000/- in cash and Rs. 4,70,000/- in cheque against said three transactions.

5. The Id. counsel also submitted that as per the cash book there was total cash in hand in the beginning of financial period as on 01.04.2008 was Rs. 2,84,000/- and during said period there was cash withdrawal of Rs. 17,15,300/- and thus, total cash available with the assessee was Rs. 66,39,300/- which is much higher than the impugned cash deposit of Rs. 49,85,000/- therefore no addition is called for in this regard. The learned counsel also pointed out that the Assessing Officer has not mentioned any charging section in the para 6 of assessment order and the Id. CIT(A) has treated the amount under the charging provision of sec 69 of the Act which is not permissible as per scheme of the Act and particularly when the assessee is consistently depositing and withdrawing amounts from his saving bank account and there was no

investment by the assessee rather the documentary evidence of assessee clearly reveals that the assessee in fact entered into three transactions of sale of plot/land with Shri Ved Pal, Shri Jai Pal and Shri Manoj Gera and he received total amount of Rs. 49,10,000/- out of which Rs. 46,40,000/- was cash.

6. The Id. counsel also submitted that the said plots of land have been registered by the buyer in the name of other persons in the succeeding year 2009-10. He further submitted that the AO has presumed the sale agreement to be fake in the relevant previous year 2008-09 has accepted the same to be true and correct in the scrutiny assessment for the succeeding AY 2010-11 and computed the capital gains on it accordingly. The cash book drawn from 01-04-2008 has also been accepted by the revenue as true and relied upon also while calculating the capital gains for the succeeding AY 2010-11. It is respectfully submitted that the onus placed upon the assessee to explain the nature and source of cash credit has been discharged by the production of sale agreements and deeds, cash book and bank statements. It is submitted that once the assessee has submitted the documentary the onus shifts on the Assessing Officer to substantiate with evidence or enquiry that the explanation made by the assessee is not proper. The learned counsel drawing our attention towards prepositions rendered by Hon'ble Supreme Court (supra) submitted that the addition may kindly be deleted being bad in law.

7. Replying to the above the Id. Senior DR supported the orders of the authorities below and drew our attention towards relevant para 6 of assessment order dated 23.12.2011 u/s. 143(3) of the Act for AY 2009-10 to submit that despite several opportunities the assessee failed to submit and explain sources of impugned cash deposit to his saving bank account as the assessee has failed to produce parties with whom the agreements dated 24.11.2008 and 29.04.2008 were made thus the claim of assessee regarding sources of cash from those agreement was rightly declined by the Assessing Officer as well as Id. CIT(A) therefore orders of the authorities below may kindly be upheld.

8. On careful consideration of above submissions, first of all, I note that the main contention of assessee explaining the source of impugned cash deposit to his bank account amounting to Rs. 49,85,000/- is that the assessee was having opening balance of Rs. 2,84,000/- in the beginning of financial period as on 01.04.2008 and this fact has not been disputed or negated by the authorities below. Further the assessee submits that the assessee entered into three plot/land sale transactions and received cash of Rs. 15,50,000/- from Shri Ved Pal under agreement to sale of 100 sq yard land and Rs. 25,00,000/- from Shri Jai Pal out of which Rs. 23,00,000/- was in cash and Rs. 2 lac was through cheque. Assessee also stated that during the year he also sold a plot of 200 sq yard to Shri Manoj Gera receiving total consideration of Rs. 10,60,000/- out of

which Rs. 7,90,000/- was received in cash and remaining amount of Rs. 2,70,000/- through cheque. The assessee also claims that he withdrew Rs. 17,15,300/- during the financial period of FY 2008-09 and thus total amount including cash balance, sale proceed of sale of land measuring 200 sq yard to Shri Manoj Gera and agreement money received against agreement to sale of 100 sq yard plot to Shri Ved Pal and plot of 1470 sq yard plot to Shri Jai Pal comes to Rs. 66,39,300/- which is much higher than impugned amount of Rs. 49,85,000/-. Therefore no addition is called for.

9. From the orders of the authorities below, we note that the Assessing Officer dismissed contention of assessee by observing that the assessee is having no evidence in respect of cash received from the two agreements and there is no whisper regarding opening cash balance and property sale transaction to Shri Manoj Gera. The Id. CIT(A) considered the explanation of assessee and dismissed the contention regarding sale of land to Shri Manoj Gera by observing that the buyers name in agreement and sale deed are different. However, the Id. CIT(A) in para 3.5 noted that the available facts make it amply clear that the appellant could only explain the source of cash deposit to the extent of Rs. 7.90 lacs.

10. Further the Id. CIT(A) in para 3.6 and 3.7 evaluated the explanation of assessee regarding cash received from Shri Ved Pal and Shri Jai Pal under agreement to sale of land/plot but dismiss the same by observing that there was no correspondence entry of cash deposit for several months after the date on which cash advances were received by the appellant and also noted that there is a significant gap between the date on which cash deposits were made and advances were received on account of agreement to sale. However, except allegation regarding time gap between receipt of cash and deposit to bank account, the Id. CIT(A) has not doubted the existence of agreement to sale to said two persons and receipt of cash advance from them. At this juncture it is relevant to take cognizance of the assessment order of assessee for subsequent AY 2010-11 at pages 73 to 77 of assessee paper book, wherein the Assessing Officer has dealt the issue of cash deposit and execution of sale deed against consideration of Rs. 1,26,42,000/- and also allowed exemption/deduction under section 54F of the Act to the assessee. This fact supports the case of assessee that the agreements to sale were executed during FY 2008-09 and sale deed were executed during FY 2009-10 and the same was declared to the Department in the return of income for subsequent AY 2010-11 showing long term capital gain and claiming exemption u/s. 54F of the Act.

11. Copies of bank statements of assessee, copies of revenue records, copies of computation of capital gains, affidavits, cash book, purchase and sale deed, deposit details, copy of agreement to sale dated 24.11.2008 and to Shri Ved Pal dated 29.04.2008 and copy of registered sale deed dated 21.01.2009 executed in favour of Shri Manoj Gera cumulatively establish that during relevant financial period the

assessee executed one registered sale deed and entered into two agreement to sale of plot/land to Shri Ved Pal and Shri Jai Pal out of which he received total amount as sale consideration and advance of Rs. 46,40,000/- in addition to opening cash balance of Rs. 2,84,000/-. Copies of bank statement and cash book also reveals that there was sufficient cash withdrawals of Rs. 17,15,300/- during the year besides said amount. Therefore total cash available to the assessee was Rs. 66,39,300/- and the amount of cash deposit of Rs. 49,85,000/- as disputed by the Assessing Officer is much lesser than the said amount available to the assessee.

12. Before recording any conclusion, we also find it appropriate and necessary to consider case laws/preposition relied by both the parties. From careful perusal of written submission of Id. Senior DR dated 09.07.2018 we note that the Department has placed reliance on a number of prepositions which are related to the case where the Assessing Officer was confronted with the situation of evaluation of identity and creditworthiness of share applicants/investors and genuineness of transaction which is not a fact of present case. Present case pertains to dispute regarding source of cash deposit to the saving bank account of an individual assessee therefore we respectfully note that the benefit of preposition stated in the written submissions is not available for the revenue against the assessee in the present case having distinct and dissimilar factual position.

13. Now, we proceed to consider the preposition in the case of CIT vs. Orissa Corporation (P) Ltd. (supra) wherein it was held that where the revenue apart from issuing notices u/s. 131 of the Act to the creditors at the instance of assessee, did not pursue the matter further nor examine the source of income of said allege creditors then on such kind of adverse findings the assessee cannot be panelized. In the case of Lal Chand Bhagt Ambika Ram vs. CIT it was held that the onus of proving source of impugned amount was on the assessee and the assessee did it before the Tribunal then the findings recorded by the Tribunal cannot be disputed in absence of any adverse positive evidence against the assessee. In the case of CIT vs. Daulat Ram Rawatmull (supra) Hon'ble Supreme Court held that when the assessee is demonstrating and substantiating the source of deposits then such finding in absence of any adverse positive evidence against the assessee cannot be held as perverse particularly when there is no evidence to support the case of the revenue.

14. In the present case the assessee has successfully demonstrative by way of sustainable documentary evidence and other factual position including a very relevant fact that the sale consideration received by the assessee on execution of sale deed during subsequent FY 2009-10, under the agreements made during relevant FY 2008-09, was included in the return of income showing long term capital gain and claiming exemption u/s. 54F of the Act again supports the claim of assessee. The revenue

cannot be allowed to blow hot and cold at the same time by disputing receipt cash against sale agreements and considering the sale consideration for the purpose of long term capital gain in the subsequent assessment year. Accordingly, sole grievance of assessee is allowed and Assessing Officer is directed to delete the entire addition.

15. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 07.07.2023.

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER
Dated: 07th July, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to:

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

// By Order //

Asstt. Registrar, ITAT, New Delhi