

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.6003/Del/2017  
Assessment Year: 2011-12

Shiv Charan, S/o Shri Nakli Ram, Vill Adhmi, Distt. Panipat, Haryana 132103 <b>PAN AVNPC 4392 F</b>	vs.	ITO, GT Road, Panipat, Haryana 132103
(Appellant)		(Respondent)

For Assessee:	Shri J B Sharma, Adv.
For Revenue :	Shri S.L Anuragi, Sr. DR

Date of Hearing :	01.06.2023
Date of Pronouncement :	17.08.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

This appeal has been filed against the order of Ld. CIT(A), Karnal dated 02.08.2017 for AY 2011-12.

2. The grounds of assessee are as follows:-

*1 That on the facts and circumstances of the case, the Id AO has erred in law not following the procedure u/s 149- 151 of IT Act, 1961 before making the assessment in the case of appellant..*

*i) No enquiry was made by the Id O before issuing the notice u/s 148. The notice u/s 148 was issued mere on the basis of information from DDI(Inv), Panipat.*

*ii) That the copies of reasons recorded by the Id A O and approval given by the competent authority not provided to the appellant.*

*iii) That no show cause notice was issued by the Id AO to the appellant before making the assessment.*

2 That on the facts and circumstances of the case, the order of the Id AO is against the natural justice, while making the addition of Rs 6830000/- in the income of appellant, whereas the appellant has proved the source of cash deposited into his bank.

3 That on the facts and circumstances of the case, both the lower authorities have erred in law not providing opportunity of cross examination of the third person of which statement was used against the appellant in making/confirming the adverse order.

4 That on the facts and circumstances of the case, the Id AO has erred in law in applying sec 68 in the case of appellant.

5. That on the facts and circumstances of the case, both the lower authorities have erred in making/confirming the addition of Rs 6830000/-in the income of appellant. Lt Sh Nakli Ram (Father of appellant) sold his parental Ag land to one Sh Asgar Ali resident of same village and the sales consideration of Ag land was deposited into bank of appellant on same day or next day of sales of Ag land. Date wise detail of the Ag land sold, amount received and deposited into the bank of appellant is as under:-

(On 03-05-2010 Ag land ( measuring 39K-14M-7S @ Rs 23.20 lakh per acre) sold as per agreement dt 03-05-2010 for a total sum of Rs 11600000/- by Lt Sh Nakli Ram f/o appellant to Sh Asgar Ali, which was registered on dt 28-03-2011 for a sum of Rs 30.00 lakh on the request of purchaser as it is a prevalent practice in land transactions.

Date	Amount Received	Deposited into bank of appellant
03-05-2010	Rs 40.00 lakh As advance	Rs 38.00 deposited on 03-05-2010
28-03-2010	Rs 76.00 lakh cash	Rs 30.00 " 28-03-2010
		Rs 30.00 " 29-03-2010

There is a direct nexus between the Ag land sold by the father of appellant and the cash deposited into bank account of appellant.

6 That on the facts and circumstances of the case, addition of Rs 68.30 lakh in the income of appellant is based only on assumption and not on facts. In the light of facts of the case, the Hon'ble court is requested to accept the appeal, quash the orders of both the lower authorities and oblige.

3. The learned counsel submitted that the assessee does not want to press ground no. 1 hence the same is dismissed as not pressed.

#### Ground no. 2 to 6 of assessee

4. The learned counsel submitted that on the facts and circumstances of the case, the order of the Id AO is against the natural justice, while making the addition of Rs 6830000/- in the income of appellant, whereas the appellant has proved the source of cash deposited into his bank. He further contended that both the lower authorities have erred in law not providing opportunity of cross examination of the third person of which statement was used against the appellant in making/confirming the adverse order

despite that fact that provisions of section 68 of the I.T Act 1961 does not apply to the case of assessee.

5. Further drawing our attention towards assessment order the learned counsel submitted that on the facts and circumstances of the case, both the lower authorities have erred in making/confirming the addition of Rs 6830000/-in the income of appellant. Lt Sh Nakli Ram (Father of appellant) sold his parental Ag land to one Sh Asgar Ali resident of same village and the sales consideration of Ag land was deposited into bank of appellant on same day or next day of sales of Ag land. He also submitted that on 03-05-2010 Ag land ( measuring 39K-14M-7S @ Rs 23.20 lakh per acre) sold as per agreement dt 03-05-2010 for a total sum of Rs 11600000/- by Lt Sh Nakli Ram f/o appellant to Sh Asgar Ali, which was registered on dt 28-03-2011 for a sum of Rs 30.00 lakh on the request of purchaser as it is a prevalent practice in land transactions. Further placing reliance on the judgment of Hon'ble Allahabad High Court in the case of CIT vs Intezer Ali in ITA No. 162 of 2016 dated 26.07.2013 and order of ITAT Kochi Bench in the case of ITO vs. Shri Braham Vargese Charuvil in ITA No. 30/Coch/2017 AY 2013-14 dated 26.04.2017 submitted that when the assessee has sold his agricultural land which does not subject to provisions of long term or short term capital gain then the amount shown in the registered sale deed and amount of on money not included in the sale deed cannot be considered as unexplained money when the assessee successfully demonstrate the link between transaction of sale of agricultural land and cash deposit to his or his family members bank account. He finally submitted that the impugned amount of Rs. 68,30,000/- being part of consideration received by the assessee against sale of agricultural land which is not a capital asset, may kindly be treated as explained and AO may kindly be directed to delete the addition.

6. Replying to the above, the Id. Senior DR supported the assessment order and submitted that since the AO rightly held that the assessee is failed to explain source of impugned deposits to his bank account therefore the AO was right in making addition in the hands of assessee u/s. 68 of the I.T Act 1961 (for short the 'Act'). Therefore grounds of appeal may kindly be dismissed confirming the addition.

7. On careful consideration of above submissions, first of all, from the copy of agreement to sale of agricultural land executed by the father of assessee Shri Nakli Ram reveals that the father of assessee entered into in agreement to sale his 5 acre agriculture land @ Rs. 23,20,000/- per acre total agreed amount Rs. 1,16,00,000/- and received of Rs. 40 lakh advance in cash on 03.05.2010. Further from the copy of registered sale deed dated 28.03.2011 further reveals that the father of assessee executed registered sale deed in favour of Shri Asgar Ali mentioning total sale consideration of Rs. 30 lakh received in cash at the residence of seller Shri. Nakli Ram father of assessee.

8. Further from the assessment order we note that the AO has made addition u/s. 68 of the Act alleging that the assessee has failed to explain source of cash deposits made to his bank account on 03.05.2010 of Rs. 38 lakh, 07.07.2010 of Rs. 30,000/- and 29.03.2011 Rs. 30 lakh and made total addition of Rs. 68,30,000/-. The Id. CIT(A) uphold the same dismissing the contention of assessee based on order of ITAT Kochi Bench and considering the statement of Shri Asgar Ali. Regarding statement of Shri Asgar Ali the Id. counsel has submitted copies of request letters to the authorities below placed at pages 21 & 23 of assessee paper book wherein the assessee letter dated 14.10.2016 requesting the AO to provide of copy of statement of Shri Asgar Ali and to allow cross examination on the same during remand proceedings but from the report of the AO we are unable to see any action in this regard except providing copy of the statement only. From the copy of letter address to CIT(A) Karnal further reveals that the assessee again requested to provide cross examination on the said witness but the same was not provided. This inaction and omission on the part of AO as well as Id CIT(A) not providing cross examination on the statement of a witness who has been relied by the by them is fatal to the orders of the authorities below.

9. Even on merits the AO has not disputed the fact that the father of assessee Shri Nakli Ram entered into in agreement through sale his five acre land against consideration of Rs. 1.16 crores and received Rs. 40 lakh cash advance against the said agreement on 03.05.2010. This fact collaborates and supports contention of the assessee that the amount of Rs. 38 lakh cash deposited on 03.05.2010 to the bank account of assessee was out of said advance amount of Rs. 40 lakh and since father of assessee was not operating bank account therefore amount was deposited to the bank account of his son i.e. assessee. Further copy of sale deed registered on 28.03.2011 reveals that the father of assessee Shri Nakli Ram executed registered sale deed under the said agreement in favour of Shri Asgar Ali showing consideration of Rs. 30 lakh cash and the alleged amount of Rs. 30 lakh was deposited on 28.03.2011 which is matching with the quantum of consideration shown in the registered sale deed which is matching with the explanation of assessee.

10. Now we proceed to consider stand of the AO that the copy of registered sale deed and statement of Shri Asgar Ali reveals payment of sale consideration of Rs. 30 lakh in cash therefore amount of Rs. 30 lakh deposited on 28.03.2011 is explained but remaining amount of Rs. 68,30,000/- has not been explained. First of all, these observations based on the statement of Shri Asgar Ali are not sustainable in absence of cross examination opportunity to the assessee despite request to the AO during remand proceedings and to Id. CIT(A) during first appellate proceedings. Secondly, the copy of agreement dated 03.05.2010 cannot be ignored and kept aside in a situation when the said agreement reveals receipt of advance of Rs. 40 lakh in cash and the explanation of

assessee regarding deposit of 38 lakh cash to the bank account of assessee finds strong support from the said agreement. The assessee is consistently submitting before the authorities below that the purchaser of land in order to save stamp duty instead to show less consideration of Rs. 30 lakh and sale deed but his father Shri Nakli Ram received total amount of Rs. 1.16 crores against said transaction of sale of land in two installments first, at the time of agreement advance of Rs. 40 lakh on 03.05.2010 and the secondly, Rs. 76 lakh cash at the time of execution of registered sale deed on 28.03.2011 which covers entire amount of cash deposit of Rs. 98,30,000/- to the bank account of assessee.

11. The above factual position emerged from the submissions of Id. counsel of assessee required to be evaluated at the level of Assessing Officer as the assessee did not place all relevant documents and submissions before authorities below. The contention of assessee that the on money received by the seller in cash under transaction of sale of agricultural land, which is not subject to any capital gain or loss, deposited to the bank account cannot be treated as unexplained credit to invoke provisions of sec 68 of the Act particularly when the facts are coming from the bank statement or passbook or assessee and the assessee being farmer is not maintaining any books of accounts are also requires to be adjudicated by the Assessing Officer. Without any expression on merits, the sole issue on merits is restored to the file of Assessing Officer for afresh adjudication after allowing due opportunity of hearing to the assessee and without being influenced with the earlier assessment and first appellate order. The assessee shall be eligible to place all relevant documentary evidence and submissions during readjudication proceedings. Accordingly, grounds 2 to 6 of assessee on merits are allowed for statistical purposes.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17.08.2023.

Sd/-

(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Dated: 17<sup>th</sup> August, 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