

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

**SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.801/Del/2020

निर्धारणवर्ष/Assessment Year: 2011-12

Yogendra Kumar Sharma 565, Kalra Colony, Near City Hospital, Faridabad, Haryana.	<u>बनाम</u> Vs.	JCIT Range-61, New Delhi.
<b>PAN No. AHJPS6236J</b>		
अपीलार्थी <b>Appellant</b>		प्रत्यर्थी/ <b>Respondent</b>

निर्धारितकीओरसे / <b>Assessee by</b>	<b>Shri Abhishek Jain, CA</b>
राजस्वकीओरसे / <b>Revenue by</b>	<b>Shri Om Parkash, Sr. DR</b>

सुनवाईकीतारीख/ <b>Date of hearing:</b>	<b>01.09.2023</b>
उद्घोषणाकीतारीख/ <b>Pronouncement on</b>	<b>25.09.2023</b>

**आदेश /O R D E R**

This appeal has been filed by the assessee against the order of Commissioner of Income Tax, Delhi dated 29.11.2019 for AY 2011-12.

2. At the very outset, the Ld. Counsel of assessee submitted that the assessee does not want to press application dated 27.03.2022 seeking admission of additional ground, hence, the same is dismissed as not pressed.

3. Although the assessee has raised as many as seven grounds in this appeal but except ground no. 3 & 4 other grounds of appeal are

supportive to the main effective ground no. 3 & 4 which are as follows: -

- “3. That having regard to the facts and circumstances of the case, the Ld.CIT(A) has erred in law and on facts in confirming the addition of the Ld.AO in making addition of Rs.22,52,200/- as alleged undisclosed cash receipts including cash deposits into the bank account and that too without appreciating the material on record and without observing principles of natural justice and merely on the basis of surmises and conjectures.*
- 4. That in any case and in any view of the matter, action of Ld.CIT(A) in confirming the addition of Rs.22,52,200/- is bad in law and against the facts and circumstances of the case and without considering the material placed on record and by recording incorrect facts and findings.”*

4. The Ld. Assessee Representative submitted that the assessee Shri Yogendra Kumar Sharma was a practicing Advocate and after his death on 10.05.2021 this appeal is being pressed through legal heir his wife Smt. Madhu Sharma. The Ld. Counsel submitted that although the Assessing Officer has made addition of Rs.22,52,200/- on account of cash deposit to the two bank accounts of deceased assessee maintained with Axis bank and HDFC Bank but, in fact, there were total cash deposits of Rs.18,78,000/- to the said two bank accounts of the assessee and this fact is also clear from the reasons recorded by the AO for initiation of reassessment proceedings, wherein he has noted cash deposits amounting to

Rs.12,67,000/- and the assessee in all fairness submitted before the AO that the total cash deposits are Rs.18,78,000/- and this fact has also been noted by the AO in para 3.1 of assessment order.

4.1 The Ld. Counsel further submitted that since assessee was a legal practitioner and during the relevant financial period he received professional fees in cash amounting to Rs.5,18,500/- and there were cash withdrawals from the said two bank accounts amounting to Rs.6,92,500/- which were re-deposited to the bank accounts as surplus fund out of professional receipt and withdrawals from the banks. The Ld. Counsel further submitted that since the assessee was seriously ill and ultimately he expired, therefore, return of income was not filed for AY 2011-12 and in response to notice u/s 148 of the Act the assessee did file return of income, wherein the assessee has shown agricultural income of Rs.70,700/- which was accrued to him in cash and the AO in paragraph no.3.1 noted that the AR vide submission dated 26.11.2018 furnished copy of land record dated 04.04.2015 issued by Tehsildar Jewar which was not accepted by the AO on whims and surmises but disputing the factum of ownership of assessee on the agricultural land and merely mentioning that the said document did not contain details of crops

grown by the assessee and the amount received on sale of crop during FY 2010-11.

5. The Ld. AR submitted that when the assessee has shown documentary evidence showing ownership of agricultural land then the small amount of Rs.70,700/- exempt of agricultural income which has been shown by the assessee in his return of income should not be disputed.

6. The Ld. Counsel further submitted that the assessee had also received gift of Rs.2,50,000/- from his real sister in law and the assessee submitted copy of gift deed dated 28.05.2010 at page 55 of assessee's paper book, wherein Smt. Rajbati W/o Madan Mohan Sharma stated that after death of her husband Shri Madan Mohan Sharma as per last wish of her husband she gave cash gifts to the brothers of her husband Shri Yogesh Kumar Sharma & Shri Krishna Kumar Sharma amounting to Rs.2,50,000/- and Rs.1,50,000/- respectively. Gift deed has been signed and executed on the stamp paper. The Ld. Counsel further submitted that the assessee also received Rs.6 lakhs cash during his life time from his brother Shri Krishna Kumar Sharma as an advance against sale of plot of Rs.4 lakhs on 30.04.2018 and remaining amount of Rs.5 lakhs was agreed to be paid to the assessee within two years from the date of

agreement and hence, the assessee received an advance of Rs.4 lakhs cash against sale of plot. The Ld. Counsel also drawn my attention towards pages 52 to 54 of assessee's paper book, wherein an agreement executed on Rs.5.00 stamp paper and along with receipt has been placed. He further submitted that under said agreement to sale of plot the assessee also received Rs.2 lakhs cash on 11.02.2011 from Shri Krishna Kumar Sharma and thus, the AO was not correct in dismissing the contentions of assessee that he received Rs.6 lakhs from his brother on account of agreement to sale of plot.

7. The Ld. Counsel thus, submitted that when the actual cash deposit to the said two banks was noted by the AO in para 3.2 as Rs.18,78,000/- then the AO as well as the Ld.CIT(A) was not correct and justified in making addition of much higher amount of Rs.22,52,200/- without any basis.

8. The Ld. AR thus, submitted that if the amount of professional receipt of Rs.5,18,500/-, cash withdrawals of Rs.6,92,500/-, agricultural income of Rs.70,700/-, cash gift of Rs.2,50,000/- and advance of Rs.4 lakhs on 30.04.2010 and Rs.2 lakhs on 25.02.2011 as cash advance against agreement to sale of plot is considered and added to the opening cash balance of Rs.1,30,250/- then the total

cash deposit of Rs.18,78,000/- is covered and, therefore, no further addition is called for in the hands of the deceased assessee on account of cash deposits to the bank accounts.

9. Replying to the above, the Ld. Sr. DR strongly supported the orders of the authorities below. However, on being asked by the Bench the Ld. Counsel could not assist me showing me the basis taken by the authorities below for making and confirming the addition of Rs.22,52,200/- in the hands of the assessee on account of alleged cash deposit to his bank account. In all fairness, the Ld. Sr. DR submitted that there was total cash deposits of Rs.18,78,000/- to the bank accounts of the assessee as noted by the AO in para 3.1 of assessment order.

10. The Ld. Sr. DR submitted that the factum of exempt agricultural income, cash gift and cash advance against sale of plot has not been established by the assessee by way cogent and plausible documentary evidence, therefore, the authorities below were right in dismissing such claim of assessee explaining the source of cash deposit to the said two bank accounts of deceased assessee. Therefore, appeal of assessee may kindly be dismissed.

11. Placing rejoinder to the above, the Ld. AR submitted that since the assessee has expired, therefore, the widow wife of assessee is not able to procure other documentary evidences in support of assessee but the documentary evidence submitted by the assessee in the paper book spread over 58 pages clearly reveals the *bona fide* of deceased assessee explaining the cash deposit of Rs.18,78,000/- and the assessee may kindly be granted relief to the assessee and the AO may kindly be directed to delete the addition.

12. On careful of above submissions, first of all I note that although the AO as well as the Ld.CIT(A) has picked up an amount of Rs.22,52,200/- while making and confirming the addition on account of cash deposits to the said two bank accounts of the assessee but the copies of fund flow statement, details of cash deposits and withdrawals in the said two bank accounts available at assessee's paper book dated 01.09.2023 clearly reveals that there were total cash deposit to Rs.18,78,000/- to the said two bank accounts of the assessee. Therefore, I proceed to adjudicate the issue by considering the total cash deposit of Rs.18,78,000/- to the two bank accounts of the deceased assessee.

13. In the backdrop of above noted factual position, first of all, I note that the Ld. Sr. DR has not disputed that there were cash

professional receipt of Rs.5,18,500/- and assessee also withdraw cash of Rs.6,92,500/- from the said two bank accounts totaling to Rs.12,11,000/- in addition to opening cash balance of Rs.1,30,250/-.

The issue remains about the exempt agricultural income of Rs.70,700/- which has not been allowed by the AO. From para 3.1 of assessment order, I further note that the AO has noted that the assessee has furnished copy of land records dated 04.04.2015 issued by Tehsildar Jewar but he dismissed the same by merely observing that the said document did not contain details of crops grown by the assessee and amount received on sale of crop during FY 2010-11.

We are in agreement with the contention of Ld. AR that an amount received by the assessee on sale of crop is never mentioned in the Revenue records and thus, the basis taken by the AO for rejecting factum of cash consideration received against sale of crop is not correct and sustainable. Undisputedly, the assessee has shown exempt agricultural income of Rs.70,700/- in his return of income which cannot be disputed merely on the basis of suspicion or doubts.

Therefore, I am inclined to agree with the contention of the assessee that assessee earned exempt agricultural income of Rs.70,700/- as a result of agricultural activity on the agricultural

land and the assessee submitted documentary evidence before the AO in the form of Revenue records issued by Tehsildar Jewar.

14. So far as cash gift of Rs.2,50,000/- is concerned the AO has rejected the same by observing that the assessee has not submitted other cooperative evidence with regard to the identity, creditworthiness of the person giving advance gift but the copy of gift dated 28.02.2010 and copy of confirmation in the form of affidavit dated 04.11.2019 clearly reveals that Smt. Rajbati at the time of giving cash gift to the assessee and his brother Shri Krishna Kumar Sharma executed gift deed on stamp paper and again confirm the same fact in the affidavit sworn on 04.11.2019, therefore, the identity and capacity of cash gift provider cannot be disputed. In my humble understanding in case the AO was not satisfied with the explanation and documentary evidence filed by the assessee then he could have show caused the assessee asking him to produce the donor or he could have called the donor Smt. Rajbati directly by issuing summon/notice u/s 131 or 133(6) of the Act but there was no such exercise by the AO before dismissing the contention of the AO and dismissing the claim of assessee about receipt of cash gift from his sister in law Smt. Rajbati. It is not the case of the AO that the assessee has rooted his own unaccounted income through his

sister in law in the garb of gift. Therefore, I am inclined to agree with the contention of assessee that the assessee received cash gift of Rs.2,50,000/- from his sister in law as per last wish of his elder brother Shri Madan Mohan Sharma.

15. Now I am left with the last issue, wherein the assessee submitted that he has received amount of Rs.4 lakhs as advance on 30.04.2010 and Rs.2 lakhs cash on 25.02.2011, against agreement to sale of plot owned by him, from his brother Shri Krishna Kumar Sharma.

16. The Ld. AR contended that the assessee undisputedly owning a plot and the assessee entered into an agreement to sale the plot which is brother Shri Krishna Kumar Sharma on 30.04.2010 and received Rs.4 lakhs cash instantly and remaining amount of Rs.5 lakhs was to be paid by the purchaser to the assessee within two years from the date of the agreement. In this regard the Ld. AR has relied on the copy of an agreement to sale of plot has been placed on record at pages 52 to 54 of assessee's paper book. The said explanation has been dismissed by the AO by observing that the signature and the writing on the said document was not verified as the assessee has not submitted any other details of Shri Krishna Kumar Sharma proving his identity, genuineness of the transaction

and creditworthiness. The AO also dismissed second part of contention of assessee that the assessee on 25.02.2011 has also received cash of Rs. 2 lakhs from Shri Krishna Kumar Sharma and on the similar allegation. The Ld.CIT(A) also dismissed the contention of assessee upholding the conclusion of AO by observing that the assessee has not submitted the identity, genuineness and creditworthiness of Shri Krishna Kumar Sharma.

17. On the other hand, the Ld. Sr. DR has supported the orders of the authorities below to submit that the capacity and creditworthiness of Shri Krishna Kumar Sharma has not been established.

18. On careful consideration of submission, first of all I note that from the copy of gift deed dated 28.05.2010 and affidavit of gift provider Smt. Rajbati available at pages 55 and 58 of assessee's paper book reveals that as per last wish of her husband Shri Madan Mohan Sharma sister in law of assessee and Shri Krishna Kumar Sharma, Smt. Rajbati gifted Rs.2,50,000/- cash to assessee and Rs.2 lakhs cash to younger brother Shri Krishna Kumar Sharma and gift deed as well as affidavit sworn on 04.11.2019. In the said gift deed and affidavit, she supported the fact that the gifts in cash were given to assessee as well as to his brother Shri Krishna Kumar Sharma on

28.05.2010. Therefore, availability of cash of Rs.2 lakhs which Shri Krishna Kumar Sharma on 28.05.2010 i.e. during FY 2010-11 pertaining assessment year under consideration 2011-12 cannot be doubted or disbelieved. Regarding remaining amount of advance of Rs.4 lakhs the documentary evidence on record is not sufficient to establish capacity and creditworthiness of Shri Krishna Kumar Sharma hence, explanation of assessee to this extend is partly dismissed.

19. Therefore, in view of foregoing discussion explanation of assessee is partly allowed and I hold that the assessee was required to explain source of cash deposit of Rs.18,78,000/- and his explanation has been found to be acceptable to the extent of following sources: -

<i>(i) Opening cash balance as on 01.04.2010</i>	1,30,250/-
<i>(ii) Cash professional receipt</i>	5,18,500/-
<i>(iii) Cash withdrawals from two Bank Accounts</i>	6,92,500/-
<i>(iv) Agriculture Income in cash</i>	70,700/-
<i>(v) Gift from sister in law Smt. Rajbati</i>	2,50,000/-
<i>(vi) Advance from younger brother Shri Krishna Kumar Sharma</i>	<u>2,00,000/-</u>
	<u>18,61,950/-</u>

Therefore, the AO is directed to allow credit of Rs.18,61,950/- and thus, addition is restricted to Rs.16,050/- (18,78,000 - 18,61,950). Accordingly, grounds of assessee are partly allowed.

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

Order pronounced in the open court on 25/09/2023

Sd/-  
(C.M. GARG)  
JUDICIAL MEMBER

Dated: 25.09.2023

*\*Kavita Arora, Sr. P.S.*

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