

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'C': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.5897/DEL/2019
[Assessment Year: 2009-10]**

Jitendra Kumar Yadav, C/o-Anil Jain D.D. & Co. 611, Surya Kiran Building, K.G. Marg, Delhi-11001	Vs	Income Tax Officer, Ward-35(4), New Delhi
PAN-AAHPY8780E		
Assessee		Revenue

Assessee by	None
Revenue by	Ms. Deepti Chandola, Sr. DR

Date of Hearing	03.10.2023
Date of Pronouncement	06.10.2023

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of the Ld. CIT(A)-34, New Delhi, dated 27.05.2019 pertaining to Assessment Year 2009-10.

2. The grounds of appeal raised by the assessee reads as under:-

“1. That on the facts and circumstances of the case and the provision of the law the Ld CIT (A) has failed to appreciate that the impugned order passed by the Ld AO under Section 143(3) of the Income Tax Act is illegal and bad in law.

2. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has erred in sustaining an addition of Rs. 15,00,000/- on account of agricultural income by treating the same as income from undisclosed sources.

3. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has erred in sustaining the addition of Rs. 22,00,000/- on account of Gift received in Cash from Father, Shri. Phool Chand Yadav.”

3. In this case, the assessee has shown agricultural income of Rs.15 Lakhs for the year under consideration. The Assessing Officer asked the assessee for the details of agricultural income. The assessee filed a copy of Khasra, Khatoni and receipts in support of agricultural income. The Assessing Officer observed that land is not owned by the assessee and it is in the ownership of Sh. Phool Chand Yadav, father of the assessee. It was also noted that the assessee has shown Rs.52,000/- and Rs.1,10,000/- for the Assessment Years 2007-08 and 2008-09 respectively. In these circumstances, huge agricultural income for the current year was found to be excessive and added to the taxable income of the assessee.

4. Upon assessee's appeal, the Ld. CIT(A) confirmed the addition on the ground that there is absence of ownership of land and agricultural expenditure. That there is no evidence of agricultural activity. The Ld. CIT(A) has held as under:-

“9.3. I have considered the facts of the case, finding of the AO and submissions of the appellant. The appellant has shown the agricultural income of Rs.15 lacs on the land which is owned by him and taken on lease without rent from his father Sh. Phool Chand Yadav. It is submitted by the appellant that he has furnished sufficient evidences of agricultural income in the form of khasra, khatoni and evidences of sale of agricultural product. But the contention of the appellant in respect of agricultural income is not acceptable as appellant has not brought any evidence on record which may prove that he has undertaken any agricultural activity during the year. Appellant has shown income from salary and business and how the agricultural activities have been carried out not

brought on record. Even he has not provided any detail of the expenses and person engaged for carrying out agricultural activity. On the basis of khasra, khatoni ownership of land and nature of crop could be ascertained and sale bills as furnished by the appellant could not be accepted as evidence unless it is proved that appellant has carried out agricultural activity on the land which alleged to have been utilized by him for agricultural purposes. For agricultural income some basic activities should be carried out like tilling of land, sowing seeds, growing crops etc. only then income arises from sale of agricultural produce is agricultural income. If appellant has purchased crops and sale in the market it is not considered agricultural income. Since in the case of the appellant he has not brought on record any evidence which may prove that actually agricultural operation undertaken by him and income in proportion of land holding, the claim of the appellant of agricultural income cannot be accepted. Considering the above facts, addition made by the AO at Rs.15 lacs is hereby confirmed treating it as income from other sources.”

5. Against this order, the assessee is in appeal before us.

6. We have heard Ld. DR and perused the records. None appeared on behalf of the assessee, despite several notices. Upon careful consideration, we find that there is no ownership of the land to the assessee. Land belongs to the father and there is no detail of agricultural activity and agricultural expenditure. That agricultural income shown is much higher than earlier assessment years. Hence, in our considered opinion, there is no infirmity in the order of the Ld. CIT(A). Accordingly, we uphold the same.

7. Another issue in this case is addition of Rs.22 lakhs made by the Aon account of gift received from his father. The assessee has received gift of Rs.22 lakhs from his father Sh. Phool Chand Yadav. The assessee has furnished certificate from his father stating that he had gifted Rs.22 lakhs in cash after withdrawing from the bank account maintained by

him. The Assessing Officer has not treated the gift received from his father as genuine and added to the taxable income of the assessee.

8. Upon assessee's appeal, the Ld. CIT(A) elaborately discussed this issues. He noted that the cash withdrawal and the gift are not matching. He has also noted that the entries of the passbook create suspicion. He confirmed the order of the Assessing Officer. The Ld. CIT(A) has held as under:-

“10.3. I have considered the facts of the case, finding of the AO and submission of the appellant. Appellant has received gift of Rs. 22 lacs from his father which has been claimed to have been given after making withdrawal from his bank account time to time. The appellant has filed the affidavit and confirmation from his father and also enclosed the copy of bank account and acknowledgement of IT in support of his contention. It is observed that in gift deed dates of making gift is not mentioned. The appellant has tried to justify the withdrawals made by his father in the previous year 2007-08 i.e. during the period of 18.02.2008 to 31.03.2008 and some of the withdrawals made during the relevant previous year i.e. 2008-09. The total withdrawal of Rs. 22 lacs in cash is not found to be made from the bank account. Further the funds withdrawn in earlier years and during the year is utilized for the purpose of making gift is not evidenced even from the gift deed as no date is mentioned in the gift deed for making the gift time and again. During the year appellant has claimed that Rs. 3 lacs withdrawn by his father on 11.08.2008 was received by him as gift, but it is observed that his father has deposited cash of equivalent amount on 09.08.2008 in the bank account before withdrawing the same from the bank account. These entries create suspicion about the genuineness of the transaction. The appellant failed to discharge the onus of proving the genuineness of the gift and he has not filed the copy of capital account of his father in spite of asking for the same. Considering the above facts, gift received at Rs. 22 lacs is not considered genuine and it is appellant's own money and income from undisclosed sources. Hence addition made by the AO at Rs. 22 lacs is hereby confirmed.”

9. Against the above order, the assessee is in appeal before us.

10. We have heard Ld. DR and perused the record. Upon careful consideration, we find that the ld. CIT(A) elaborately discussed the issue with reference to withdrawal from the bank and he has found that so-called gift received from his father is not genuine. We find that the Ld. CIT(A) has passed a well reasoned order and it does not need any interference on our part. Accordingly, we uphold the same.

11. In the result, this appeal filed by the assessee stands dismissed.

Order pronounced in the open court on 06th October, 2023.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Delhi; 06.10.2023.

Shekhar,

Copy forwarded to:

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

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi