

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

**BEFORE SH. SAKTIJIT DEY, VICE PRESIDENT
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.614/Del/2020
Assessment Year: 2017-18

DCIT Central Circle – 05 New Delhi	Vs.	Sh. Ashok Kumar Singh C-6,7/6529, Vasant Kunj, New Delhi -110070 PAN No.AAXPS1360E
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Zafarul Haque Tanweer, CIT DR
Respondent by	Sh. Gautam Jain, Advocate Sh. Lalit Mohan, CA

Date of hearing:	21/12/2023
Date of Pronouncement:	02/01/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-24, New Delhi dated 27.11.2019 pertaining to A.Y. 2017-18.

2. The solitary grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs. 90 lacs made by the AO u/s. 68 r.w.s. 115BBE of the Act.

3. Briefly stated the facts of the case are that a search and seizure operation u/s. 132 of the Act was carried out on 07.04.2016 and accordingly statutory notices were issued and served upon the assessee. Assessee filed his return of income declaring income of Rs.785850/-.

4. During the course of the scrutiny assessment proceedings and on perusal of the bank statement a number of credit entries were found which were not satisfactorily explained by the assessee. The AO issued following show cause notice :-

"You have submitted that you have received Rs. 1,00,000/- from Shashi Singh. Kindly submit confirmation along with supporting documents from the party. Also explain the nature along with supporting documents of incoming payment of Rs. 9 lakhs on 27.03.2017 from Sh. Anil Kumar Singh & four credits entries of Rs. 9,00,000/- each on 16.11.2016, 18.11.2016, 21.12.2016 & 22.12.2016 in you HDFC bank account no. 05881930001930. Also explain th two credits entries of Rs. 9,00,000/- each on 19.11.2016 & 28.12.2016 in your Syndicate bank account. Further you have not submitted bank account statement for bank a/c no. 05881000015393 with HDFC bank."

5. While reply dated 24.12.2018 the assessee stated that receipts from Sh. Anil Kumar Singh are in the nature of advance for a property transaction. In support of his contention the assessee submitted that a copy of agreement to sell. On perusal

of the details the AO found that the assessee has received advance of Rs.90 lacs against the value of the property of Rs.8 lacs. The AO dismissed the explanation of the assessee and made the addition of Rs.90 lacs u/s. 68 r.w.s. 115BBE of the Act.

6. Assessee agitated the matter before the CIT(A) and reiterated that the said deposit of Rs.90 lacs is the advance received for sale of agricultural land. It was explained that the assessee has purchased the said property for a sum of Rs. 8 lacs and on that property the assessee has paid stamp duty for Rs.36.50 lacs. It was strongly submitted that the AO never questioned the identity of the creditor nor has doubted the genuineness of the agreement as the transaction was through banking channel.

7. After considering the facts and the submissions the CIT(A) was agreed with the assessee that the AO did not question the identity of Sh. Anil Kumar Singh. The CIT(A) further observed that the sale deed was executed subsequently and infact there were two sale deed of Rs.72.14 lacs. The CIT(A) further observed that though the AO declined the explanation of the assessee but did not make any enquiry on his own. Being satisfied with the factual demonstration the CIT(A) deleted the addition of Rs.90 lacs.

8. Before us the DR strongly supported the findings of the AO and read operative part.

9. The Counsel reiterated what has been stated before the lower authorities.

10. We have given a thoughtful consideration to the orders of the authorities below. It is a trite law that the initial burden u/s.68 is on the assessee and to discharge this initial burden all that is required is to prove the identity, genuineness of the transaction and the capacity of the lender.

11. The AO has never questioned the identity of Sh. Anil Kumar Singh. The transaction has been done through banking channel through account payee cheque and the capacity of Anil Kumar Singh is fairly demonstrated by his audited financial statements which are exhibited at pages 47—53 of the paper book. In the balance sheet under the schedule deposits and advances there is a specific mention for advance for land – Ashok Kumar Singh- 90,00,000/-.

12. All these evidences go on to show that the assessee has conclusively discharged the initial onus cast upon him by the provisions of section 68 of the Act, therefore, findings of the CIT(A) cannot be faulted with.

13. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 02.01.2024.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

NEHA

Date:- .01.2024

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI