

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 668/Del/2020
(Assessment Year: 2013-14)**

Shri Kewal Singh, 162, Tower Wali Gali, Professor Colony, Fatehabad, Haryana (Appellant) PAN: BCAPS2250P	Vs. ITO, Ward-1, Fatehabad (Respondent)
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Assessee by :	None
Revenue by:	Ms. Indu Bala Saini, Sr. DR

Date of Hearing	06/12/2023
Date of pronouncement	05/03/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.668/Del/2020 for AY 2013-14, arises out of the order of the Commissioner of Income Tax (Appeals)-5, Ludhiana [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 253/ROT/IT/CIT(a)-5/LDH/2018-19 dated 07.11.2019 against the order of assessment passed u/s 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.02.2016 by the Assessing Officer, ITO, Ward-1, Fatehabad (hereinafter referred to as 'ld. AO').

2. The assessee has raised the following grounds of appeal before us:-

"1. That the order of learned CIT(A) is bad in law, against facts of the case and equity.

2. That on the facts and in the circumstances of the case and in law, learned CIT (A) erred in dismissing the appeal of appellant without considering the submissions made and documents furnished by it in totality.

3. That on the facts and in the circumstances of the case and in law, Id CIT(A) erred in sustaining the assessment framed by AO ex parte by taking

recourse to section 144 of the Act, on the basis of unrealistic assumptions, conjectures and surmises and without giving proper opportunity to the appellant to rebut the same.

4. That on the facts and in the circumstances of the case and in law, Id CIT(A) erred in sustaining the addition of a sum of Rs. 5629282/- made by AO by making addition in respect of cash deposit in bank account out of legitimate and explained sources, no addition was to be made or sustained.

5. That the appellant craves leave to add, amend, modify, rescind, supplement or alter any of the grounds of appeal before the appeal is finally adjudicated upon."

3. None appeared on behalf of the assessee despite service of notice in physical mode as well as in electronic mode. The case was listed for hearing on 6.7.22 for the first time and thereafter, the appeals were listed on 4.10.22, 2.1.23, 5.4.23, 1.6.23, 3.8.23, 5.10.23 and finally on 6.12.23 (i.e. today). On none of the occasions, there was any appearance from the side of the assessee. Hence we proceed to dispose of this appeal on hearing the Id. DR and based on materials available on record.

4. We find that the assessee had filed his return of income for the Asst Year 2013-14 on 11.5.2014 declaring taxable income of Rs 1,74,220/- and agricultural income of Rs 2,50,000/-. The assessment was completed u/s 144 of the Act on 29.2.2016 determining total income of the assessee at Rs 86.09,420/- after making addition of Rs 84,35,200/- towards unexplained cash deposits made in Corporation Bank (Rs 22,61,700/-) and HDFC Bank (Rs 61,73,500/-) as income u/s 69 of the Act. No details were furnished by the assessee before the Id. AO which eventually led to framing of aforesaid addition in the assessment. Before the Id. CIT(A), the assessee filed various additional evidences which were sent to the Id. AO calling for remand report. The assessee filed rejoinder to the remand report submitted by the Id. AO. The Id. CIT(A) had granted partial relief to the assessee to the extent of Rs 28,05,918/- and sustained the remaining addition of Rs 56,29,282/- by observing as under:-

"3.2 Grounds of Appeal Nos. 2 & 3 are regarding making the assessment by resorting to best judgment assessment on the basis of cash deposited in the bank account of the assessee. The AO has mentioned that the assessee filed return

declaring income of Rs. 1,74,220/- (plus agriculture income at Rs. 2,50,000/-) on 11.05.2014 and subsequently the case was selected for scrutiny for verification of source of huge cash deposited into the bank account of the assessee. The AO has mentioned the details of the notices & questionnaire issued/served upon the assessee and the proceedings were attended by Sh. Ajay Gilhotra, Advocate, the counsel of the assessee. The AO has mentioned that even after repeated opportunities, no reply was filed in response to questionnaire and finally a notice u/s 142(1) was issued on 15.02.2016 making it clear that in case of non-compliance, the proceedings shall be finalized ex-parte on the basis of material available on record. The AO has reproduced the same in the assessment order and mentioned that the assessee did not furnish any information/explanation/document. As per the AO, the proceedings were finalized ex-parte on the basis of information available and tabulated the cash deposited in the two bank accounts of the assessee, totaling Rs. 84,35,200/- which is grossly disproportionate to the income declared in the return filed by the assessee. As per the AO, the assessee failed to discharge the onus of proving the source of huge cash deposited, hence the same was treated as income of the assessee u/s 69 9 of the Income Tax Act, 1961 and addition of Rs. 84,35,200/- was made.

The facts of the case, basis of passing the ex-parte order u/s 144 & making the addition by the AO and the arguments of the AR during the course of appellate proceedings have been considered. The AR has filed submission on the assumption of jurisdiction u/s 144 as well as on the merits of the addition. Regarding the ex-parte order, it is submitted that no real opportunity was provided to the appellant for explaining his case. It is however seen from the assessment order and also the notices enclosed by the AO with the remand report submitted during the appellate proceedings, that proper & sufficient opportunity was provided to the assessee as per the various notices mentioned in the assessment order. It is mentioned that the assessee's counsel Sh. Ajay Gilhotra, Advocate attended & furnished the copies of the assessee's bank accounts and requested for adjournment to file remaining information, however even after many opportunities, the source of cash deposit was not explained. It was incumbent upon the assessee to explain the source of cash deposit during the assessment proceedings before the AO and the AO has started the proceedings u/s 271(1)(b) also for non-compliance by the assessee. On the basis of facts mentioned by the AO in the assessment order, in the remand report and the notices issued to the assessee which were duly served on him, the AO was well within the law to pass the ex-parte assessment order after providing final opportunity vide letter dated 15.02.2016 before doing so. Hence, the arguments of the AR on this aspect are found without merits.

As regards the source of cash deposits in the bank account of the assessee, the AR filed documents which were sent to the AO for comments and copy of the report has been provided to the appellant also. The AR has claimed various sources for explaining the cash deposits and filed a cash flow statement. It is claimed that an amount of Rs. 22,72,700/- was out of cash withdrawn from the bank accounts during the same year on nearby dates. It is further claimed that an amount of Rs. 2,50,000/- was deposited out of agriculture income and Rs. 30,00,000/-, Rs. 11,50,000/-, Rs. 6,53,500/- and Rs. 10,00,000/- were out of sale proceeds of various lands. As regards, the cash deposit out of withdrawal from the two saving bank accounts reflected in the cash flow statement, no adverse

have been made by the AO and the withdrawals are duly appearing in the bank accounts. It is however relevant to note that in the computation of income, the assessee has claimed deductions on account of housing loan repayment of Rs. 72,636/- and interest payment of Rs. 47,646/- which have nowhere reflected in the cash flow statement. The returned income of Rs. 1,74,220/- plus agriculture income of Rs. 2,50,000/- have been presumed to have been utilized to meeting the household expenses by the AO and this conclusion of the AO has not been challenged by the appellant. Therefore, out of withdrawal of Rs. 22,72,700/- an amount of Rs. 21,52,418/- (Rs. 22,72,700 - Rs. 1,20,282 (Rs. 72,636 + Rs. 47,646)) can be considered to be available to explain the cash deposits in the bank account. Further, an amount of Rs. 11,50,000/- is taken as opening cash-in-hand out of land sold by the father. It is claimed that this land was sold on 15.11.2010 for total consideration of Rs. 29,92,500/-. In the remand report, it is brought out by the AO that there is large gap between the sale of land on 15.11.2010 and showing the cash-in-hand as on 01.04.2012 and thus the contention is not found acceptable. It is also mentioned that keeping huge cash at home when the assessee is maintaining bank account and frequently doing the transactions, makes this explanation unbelievable. Also, this cash-in-hand has not been declared anywhere to prove its authenticity and in the absence of the documentary evidence, this claim of the assessee is not found acceptable and hence rejected. The appellant has also claimed agriculture income of Rs. 2,50,000/- towards source of cash deposits i.e. Rs. 1,32,000/- on 18.07.2012 and Rs. 1,18,000/- on 02.11.2012 taken in the cash flow statement. In the remand report submitted by the AO, it is mentioned that no evidence in respect of agriculture produced in the shape of Jamabandi, Girdawari, Form-J etc. have been filed by the assessee in support of this. In the cash flow statement, the assessee has not debited any expense toward the agricultural operation. Even in the rejoinder, no such documents have been filed and hence this claim is not found acceptable and therefore rejected. Another sum of Rs. 10,00,000/- is claimed as earnest money received on 31.10.2012 against sale of land sold vide registration deed dated 14.03.2013. However, in the remand report, it is pointed out that no evidence of byana agreement in respect of this amount has been enclosed and in the registration deed dated 14.03.2013, there is no mention of receipt of this amount on 31.10.2012 as claimed by the appellant. No such documents have been filed at the time of rejoinder also and the sale proceeds of land sold on a later date cannot explain the source of cash deposited six month prior to such sale. Hence, this claim is also not found acceptable and therefore rejected. Further, the assessee has claimed receipt of advance of Rs. 30,00,000/- as source of cash deposit out of repayment of advance upon cancellation of sale agreement. It is however noted that no evidence of this Byana/Agreement in respect of such advance have been enclosed and the AO has pointed out that there is large gap between the claim of byana paid on 12.09.2011 and alleged receipt back on 15.10.2012. As per the AO, generally there is three months period in respect of earnest period payment and finalization of registration deed and as per the general the byana is forfeited, if the purchasers cancelled the agreement. A perusal of the documents shows that an affidavit of Sh. Darshan Singh has been filed in this regard who was neither the owner of the land nor a party to the alleged agreement. In fact there is no valid record of ownership of the alleged land nor any documentary trial for the same and hence the claim regarding Rs. 30,00,000/- is also not found tenable. Also, an amount of Rs. 6,53,500/- is stated

in the cash flow statement to have been received on 29.08.2012 out of sale of agriculture land by the mother of the assessee. The AR has filed a copy of the registration deed of the land sold on 29.08.2012 vide registration deed no. 4029 in cash. Nothing has been mentioned by the AO regarding this issue and on the basis of documents filed, the source of Rs. 6,53,500/- is found acceptable and the appellant is entitled for relief on this account. To sum-up, the appellant can be said to have explained the source of Rs. 21,52,418/- (out of cash withdrawal from the bank account) and Rs. 6,53,500/- (out of the sale proceeds of the land on 29.08.2012) and hence entitled for relief of Rs. 28,05,918/-. On the basis of facts mentioned by the AO in the remand report, the addition to the extent of balance Rs. 56,29,282/- is confirmed. Accordingly, these grounds of appeal are partly allowed."

5. We find that before us, no contrary material has been brought on record by the assessee to controvert the aforesaid findings of the Id. CIT(A). Hence we do not deem it fit to interfere in the said order of the Id. CIT(A). Accordingly, the grounds raised by the assessee are dismissed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 05/03/2024.

-Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:05/03/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi