

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्रीसंदीपगोसाई, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 667/JP/2023
निर्धारणवर्ष/AssessmentYear :2014-15

Shri Badluram S/o ShriBah Ram, Fauladpur, Neemrana Alwar	बनाम Vs.	The ITO Ward Behror Alwar
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: CBLPB 2745 K		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओरसे /Assesseeby : Shri P.C. Parwal, CA
राजस्व की ओरसे /Revenue by: Shri A.S. Nehra, Addl. CIT-DR

सुनवाई की तारीख /Date of Hearing : 06/12/2023
उदघोषणा की तारीख /Date of Pronouncement: 20 /02/2024

आदेश /ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 26-09-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2014-15 wherein the assessee has raised the following grounds of appeal.

1. The Ld. CIT(A), NFAC has erred on facts and in law in upholding the order of AO holding that agricultural land sold by the assessee at Khasra No.331, Mohaldia is a capital asset and thus computing the short term capital gain on sale of said land in which assessee has 1/3rd share at Rs.1,34,55,777/- by taking deemed sales consideration at Rs.2,92,84,200/- (1/3rd of Rs.8,78,52,600/-) instead of actual sales consideration at

Rs.1,46,42,100/- (1/3rd of Rs.4,39,26,300/-) by not appreciating that (a) agricultural land sold by the assessee is not a capital asset u/s 2(14) of the Act (b) the stamp authorities have adopted the value of land at double the DLC rate since as per rules sales to pvt. ltd. co. was to be registered at double the DLC value whereas the DLC rate of land was same as the actual sales consideration and such rule is also withdrawn by Rajasthan Government.

2. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.1,58,28,423/- u/s 69 of the Act in respect of purchase of above land ignoring that the source of land purchased is out of funds received from sale of ancestral agricultural land at village Shanjhapur on 06.03.2013 for Rs.3 crore out of which assessee received Rs.2.50 crore which is source of purchase of said land

3. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.36 lacs (40% of Rs.90 lacs) on purchase of land at village Dhodhakari on 24.08.2013 ignoring that the source of land purchased is out of funds received from sale of agricultural land as stated in Ground No.2 (correct Ground No.1) above.

4. The Ld. CIT(A), NFAC has erred on facts and in law in holding that return filed on 19.09.2021 in response to notice u/s 148 dt. 22.04.2020 when there was complete lock down in the entire country and never served on the assessee is a non-est return and thereby increasing the liability of interest u/s 234A.

5. The Ld. CIT(A), NFAC has erred on facts and in law in upholding the validity of order passed by AO u/s 144/147 of the Act ignoring that notice u/s 148 is not served on assessee and even when return filed by assessee is considered as non-est, issue of notice u/s 143(2) and consequent order passed is illegal & bad in law.

2.1 Apropos Ground No. 1 of the assessee, brief facts of the case are the assessee is a retired government employee. His regular source of income is pension income and interest income which is below the maximum amount not chargeable to tax and therefore he has not filed the regular return of income. It is noted from the assessment order that theAO on the basis of information available on insight portal of department noted that the assessee has sold certain land and alsopurchased certainland. Based on that set of facts ld. AO issued notice u/s 148

dated 20-04-2020. In response to the notice the assessee filed return declaring total income of Rs.2,04,500/- (PB 84-85) wherein it is stated that assessee sold an ancestral agricultural land which is not a capital asset u/s 2(14) of the Act and therefore, it is not shown in the income tax return. The ld. AO at Pg 6 to 8, Para 2.10 to 2.14 of his order observed that assessee has sold a property at Khasra No.331, Mohaldia on 11.12.2013 for Rs.4,39,26,300/- in which 1/3rd share of assessee is Rs.1,46,42,100/-. This land was purchased on 17.07.2013. It was not used for agriculture purpose. It was sold to a builder M/s Novel Buildwell LLP. It is situated at less than 1 km from the Delhi Ajmer Expressway and 4.5 kms from Nimrana. The DLC value of this land is Rs.8,78,52,600/- and thus 1/3rd of this amount is Rs.2,92,84,200/-. The cost of acquisition of land pertaining to assessee's share is Rs.1,58,28,423/-. Accordingly, he assessed short term capital gain on sale of this land at Rs.1,34,55,777/-.

2.2 In first appeal, the Ld. CIT(A) at Pg 4-9 while deciding the appeal on the issue as to whether the land is agriculture land or not at Pg 9 observed that assessee has argued that land was 17 kms away from Nagar Palika, Behror for which certificate from Sarpanch of village Mohalariyan is filed but the Sarpanch is not from the same village but from village Pratapsinghpura which is a separate village. It appears that assessee never carried out any agriculture activity on this land and therefore it is a capital asset u/s 2(14) of the Act. On the issue of adopting the DLC

rate, the Ld. CIT(A) at Pg 10 of the order held that the contention of assessee that circle rate are doubled for limited purpose only and the same was later on withdrawn by Rajasthan Government is not acceptable since the evidence filed is sketchy and doubtful due to overwriting. Accordingly, he confirmed the short-term capital gain computed by the AO.

2.3 Being aggrieved by the order of the Id. CIT(A), the assessee carried the matter before this Bench and submitted that the short term capital gain calculated by the AO is incorrect and the same should be deleted and the Id. AR of the assessee argued the various aspects of the matter as narrated in the written submission filed. The written submission filed and relied is reproduced herein below:-

Submission:-

1. The limited issue in this ground is whether the agricultural land sold by the assessee is a capital asset or not and whether for the application of section 50C, the stamp duty charged by the sub-registrar at twice the DLC rate is to be adopted or not.

2. It is submitted that the Sarpanch of village Pratapsinghpura vide his letter dt. 11.04.2016 (**PB 166**) has certified that the land at village Mohaldia falls in gram panchayat Pratapsinghpura, it is agriculture land and 12 kms from the municipal limit of Behror. Thereafter Patwari of village Pratapsinghpura has also confirmed the same (**PB 167**). The sale deed of agriculture land sold is at **PB 153-158**. Thus when Sarpanch and Patwari have certified that land sold by the assessee is agricultural land is beyond 12 kms of the municipal limit, observation of Ld. CIT(A) that the certificate is not produced from the Sarpanch of village Mohaldia is superfluous. Further this land is at 12 kms of the nearest municipality of Behror. For classification of land as agricultural land, section 2(14) nowhere

lays down any condition that it should be used by the assessee for agricultural purpose. Wherever there is a condition of user of agricultural land, it is specifically so provided like in section 54B. Therefore, what is relevant to look into is whether the land sold is an agricultural land or not as per the revenue record and it satisfies the condition of section 2(14). Reliance in this connection is placed on the following cases:-

CIT Vs. Borhat Tea Company Ltd. 138 ITR 783 (Cal.) (HC) (Case laws compilation PB 1-4):-For the purpose of land being agricultural land, actual agricultural operations or cultivation or tilling of the land is not necessary. What is to be seen is whether such land is capable of agricultural operations being carried on.

Hindustan Industrial Resources Ltd. Vs. ACIT (2009) 335 ITR 77 (Del.) (HC) (Case laws compilation PB 5-8): -Tribunal clearly held that the land in question was agricultural land at the point of time when the assessee purchased it and the document of award made by the District Collector (Land Acquisition) has established beyond doubt that the land was agricultural land. Thus, it is apparent that the nature and character of land did not change in the transitional period. Fact that the assessee intended to use the land for industrial purposes did not in any way alter the nature and character of the land. Also, the fact that the assessee did not carry out any agricultural operations did not result in conversion of the said land into industrial land. In view of the aforesaid findings, Tribunal ought not to have gone into the question of intention of the assessee or the intention of the land acquiring authority. Thus, Tribunal's finding that the land was not agricultural land being contrary to its own record is perverse. Therefore, the land in question was agricultural land and no capital gains could be charged on acquisition thereof.

CIT Vs. Smt. Debbie Alemao (2010) 331 ITR 59 (Bom.) (HC):- Admittedly, the land was shown in the revenue records as agricultural land and no permission was ever obtained for non-agricultural use by the assessee. Permission for non-agricultural use was obtained for the first time by the purchaser after it purchased the land. As regards the contention of the Revenue that no agricultural income was shown from this land, it was explained by the assessee that the agricultural income derived by sale of coconut grown on the land was just enough to maintain the land and there was no actual surplus. Hence, no agricultural income was shown from this land. If an agricultural operation does not result in generation of surplus that cannot be a ground to say that the land was not used for the agricultural purpose. Thus, the finding recorded by the two authorities below that the said land was used for the purpose of agriculture is based on appreciation of evidence and application of correct principles of law.

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Mrs. Sakunthala Vedachalam Vs. ACIT (2015) 369 ITR 558 (Mad.) (HC) (Case laws compilation PB 9-14):-Once the Tribunal has accepted that the classification of lands as per the revenue records are agricultural lands, which are evidenced by the Adangal and the letter of Tahsildar and satisfies other conditions of sec. 2(14), the Tribunal has misdirected itself in confirming the addition of long term capital gain tax. Thus, Tribunal was not right in holding that the lands in question were not agricultural lands for the purpose of application u/s 2(14)(iii)(b).

Shankar Dalal &Ors. Vs. CIT (2017) 150 DTR 197 (Bom.) (HC):-In this case it was held that merely because assessee could not use and utilise the land fully by employing labours and/or were unable to keep the crop, statements should have been the criteria to decide whether land is agricultural land or not. The relevant para 15 & 16 of this order is reproduced as under:-

“15. This Court further requires to consider that a person who wants to use such agricultural land for any non agricultural purpose, requires to submit an application to the concerned Authority, which is subject to the order/decision and/or permission if sanctioned, such agricultural land can be used and converted into and/or usable for non-agricultural purpose and not otherwise. By any act or inaction of unauthorised use of such agricultural land to non-agricultural purpose, in no way, legally converts such agricultural land to non-agricultural land. It is only subject to penalty and/or charges for such use of agricultural land to non-agricultural purpose. Admittedly, there is nothing on record to show that such application was ever filed at any point of time prior to the date of its transfer and/or even thereafter at least by the assessee or by the third party after purchase of such property. The owners of such property are always at liberty to convert and/or take action. Even otherwise such subsequent action or inaction, in no way is sufficient to prove such tax liability (Long-term capital gain) upon the original vendor, who sold the property as the ancestral agricultural property.

16. The tax law is very clear that it requires clear provision and clear facts and defaults and/or act of suppression or inaccurate submissions of facts to avoid tax liability. The case in hand, therefore, requires to be considered in the background of geographical as well as physical conditions of the agriculture property and its use and utilization for the stated "agriculture" purpose. The agricultural purpose, so defined, under the Code therefore, always remains same one who owns such property and so also the purchaser and/or the third party. Therefore, merely because the assessee could not produce and/or could not use and utilize the land fully by employing labourers and/or unable to give the crop statements should not have been the criteria, specifically when the assessee and the owners of the land had been using the products for their personal consumption. The whole approach of the Tribunal and the AO is incorrect and unsustainable in law.”

3. So far as the decision of Hon'ble Supreme Court relied by the AO in case of Smt. Sarifabibi Mohmed Ibrahim & Others Vs. CIT 204 ITR 631 is concerned, the same is distinguishable on facts. In this case, the land was situated within the municipal limits, it was situated at a distance of onekilometre from the Surat railway station. The land was not being cultivated from the year 1965-66 until it was sold in 1969. The appellants had entered into an agreement to sale with a housing co-operative society to sell the said land for an avowed non-agricultural purpose, namely, construction of houses. They had applied in June, 1968 and March, 1969 for permission to sell the said land for non-agricultural purposes under s. 63 of the Bombay Tenancy & Agricultural Lands Act and obtained the same on 22nd April, 1969. Soon after obtaining the said permission they executed sale-deeds in the following month, i.e., in May, 1969. The purchaser society commenced construction operations within three days of purchase. On these facts, the Hon'ble SC held that the aforesaid facts establish that the land was not an agricultural land when it was sold. The appellants had no intention to bring it under cultivation at any time after 1965-66, certainly not after they entered into the agreement to sell the same to a housing co-operative society. Though a formal permission under s. 65 of the Land Revenue Code was not obtained by the appellants, yet their intention is clear from the fact of their application for permission to sell it for a non-agricultural purpose under s. 63 of the Bombay Tenancy & Agricultural Lands Act. Thus, land was not an agricultural land at the time of its sale and that the income arising from its sale was not exempt from the capital gains tax. Hence, the facts of this case are not at all applicable to the case of the assessee.

In view of above, since the land sold by the assessee is an agriculture land u/s 2(14) of the Act, no capital gain on its sale is chargeable to tax.

4. The sub-registrar for the purpose of stamp duty has taken the value of this land at Rs.8,78,52,600/- (**PB 155**). In fact the DLC value of agricultural land at village Pratapsinghpura effective from 26.03.2012 is Rs.45,91,950/- per bigha (**PB 169A**). The total agriculture land sold is 2.295 hectare. One hectare is equal to 3.954 bigha. Thus the total agriculture land sold is 9.07 bigha. On this basis the DLC value of land sold works out at Rs.4,16,69,329/- whereas the actual consideration of sale of the agricultural land is Rs.4,39,26,300/-. As per the Notification of Government (**PB 168-169**) where the agriculture land is sold to any company or firm, the stamp duty would be levied by taking the value at twice the DLC rate. Thus this rate is applicable only for specific purpose and is not the general DLC rate. This notification is also subsequently withdrawn vide Notification dt. 09.03.2015 (**copy enclosed**) where in Para 6 it is stated that rates of agriculture land purchased by the companies, firms or institutions shall be equal to the rates of agriculture land for that area. Therefore, when the DLC rate of land sold is same at which it is actually sold, the value adopted by AO by

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considering 1/3rd of Rs.8,78,52,600/- as against 1/3rd of Rs.4,39,26,300/- is incorrect and consequently the capital gain calculated is also incorrect.

5. It may also be noted that assessee along with others purchased the land on 17.07.2023 through three sale deeds (**PB 105-118, 120-135, 136-152**). The DLC value at the time of purchase is same as the actual sale consideration. Therefore, it is incorrect to presume that within 5 months its DLC would be twice the actual sale consideration. Even if the contention of assessee is not acceptable to AO, he ought to have referred the matter u/s 50C(2) to DVO but the same is not done and therefore also the DLC value adopted by AO for calculating the capital gain is incorrect.

In view of above, short term capital gain calculated by AO is incorrect and the same be deleted.’’

2.4 On the other hand, the ld. DR supported the order of the ld.CIT(A) and argued that the assessee is raising the issue of the notice not being served issued u/s. 148 for the first time. Reasons were given the assessee has not filed any return of income and therefore, notice u/s. 148 was issued to the assessee. The bank account relied upon are not eligible. Gift of brother given but the credit worthiness of the brother is not given. Considering these aspects of the matter he relied upon the findings of the lower authority.

2.5 We have heard both the parties and perused the materials available on record. We noted that AO at Pg 6 to 8, Para 2.10 to 2.14 of his order observed that assessee has sold a property at Khasra No.331, Mohaldia on 11.12.2013 for Rs.4,39,26,300/- in which 1/3rd share of assessee is Rs.1,46,42,100/-. This land was purchased on 17.07.2013. It was not used for agriculture purpose. It was sold to a builder M/s Novel Buildwell LLP. It is situated at less than 1 km from the

Delhi Ajmer Expressway and 4.5 kms from Nimrana. The DLC value of this land is Rs.8,78,52,600/- and thus 1/3rd of this amount is Rs.2,92,84,200/-. The cost of acquisition of land pertaining to assessee's share is Rs.1,58,28,423/-. Accordingly he assessed short term capital gain on sale of this land at Rs.1,34,55,777/-. The Ld. CIT(A) at Pg 4-9 of his order has observed that assessee has argued that land was 17 kms away from Nagar Palika, Behror for which certificate from Sarpanch of village Mohalariyan is filed but the Sarpanch is not from the same village but from village Pratapsinghpura which is a separate village. It appears that assessee never carried out any agriculture activity on this land and therefore it is a capital asset u/s 2(14) of the Act. On the issue of adopting the DLC rate, the Ld. CIT(A) at Pg 10 of the order held that the contention of assessee that circle rate are doubled for limited purpose only and the same was later on withdrawn by Rajasthan Government is not acceptable since the evidence filed is sketchy and doubtful due to overwriting. Accordingly he confirmed the short term capital gain computed by the AO. We find that Sarpanch of village Pratapsinghpura vide his letter dt. 11.04.2016 has certified that the land at village Mohaldia falls in gram panchayat Pratapsinghpura, it is agriculture land and 12 kms from the municipal limit of Behror. Thereafter Patwari of village Pratapsinghpura has also confirmed the same. Thus when Sarpanch and Patwari have certified that land sold by the assessee is agricultural land is beyond 12 kms of the municipal limit, observation

of Ld. CIT(A) that the certificate is not produced from the Sarpanch of village Mohaldia is superfluous. Further this land is at 12 kms of the nearest municipality of Behror. For classification of land as agricultural land, section 2(14) nowhere lays down any condition that it should be used by the assessee for agricultural purpose. Wherever there is a condition of user of agricultural land, it is specifically so provided like in section 54B. Therefore, what is relevant to look into is whether the land sold is an agricultural land or not as per the revenue record and it satisfies the condition of section 2(14). We note that the various cases relied by the assessee in support his case and the case of Hon'ble Supreme Court relied by the AO in case of SarifabibiMohmed Ibrahim & Others Vs. CIT 204 ITR 631 is distinguishable on facts. Therefore we hold that the land sold by the assessee is an agriculture land u/s 2(14) of the Act and hence no capital gain on its sale is chargeable to tax. Otherwise also, the DLC value of this land adopted by stamp duty authorities is not the general DLC rate since as per the Notification of Government where the agriculture land is sold to any company or firm, the stamp duty would be levied by taking the value at twice the DLC rate. Thus this rate is applicable only for specific purpose and is not the general DLC rate. This notification is also subsequently withdrawn vide Notification dt. 09.03.2015 where in Para 6 it is stated that rates of agriculture land purchased by the companies, firms or institutions shall be equal to the rates of agriculture land

for that area. Further when on purchase of land on 17.07.2023, the DLC value was same as the actual consideration, it would be hard to presume that within 5 months its DLC value would be twice. Therefore, when the DLC rate of land sold is same at which it is actually sold, the value adopted by AO by considering 1/3rd of Rs.8,78,52,600/- as against 1/3rd of Rs.4,39,26,300/- is incorrect and consequently the capital gain calculated is also incorrect. In any case since we have held that the agricultural land sold by the assessee is not a capital asset u/s 2(14) of the Act, the short term capital gain of Rs.1,34,55,777/- is directed to be deleted. Thus this ground No. 1 is allowed.

3.1 Apropos Ground No. 2 of the assessee, the AO at Pg 8, Para 3 of his order observed that land was purchased by the assessee on 17.07.2013 from Kedarnath & Ors. at Rs.4,74,85,270/- and there is mismatch between the income sources declared and investment made. In the bank account there is no enough balance to make the said purchase. Accordingly, he treated the amount of Rs.4,74,85,270/- as unexplained and made the addition u/s 69 of the Act. The relevant narration as made by the AO in his assessment order is as under:-

“3. Further, for the land purchased by him on 17-07-2023 from Kedarnath & Others at Rs.4,74,85,270/-, there is mismatch between the income sources declared by him in his reply where he says that he is just a pensioner and pension and interest income are his only sources of income. On perusal of his bank account statement for the period as well it is seen that there is not enough balance as his account to purchase amounting to

Rs.4,74,85,270/-. Hence, the sources of income for purchasing the above mentioned property remains unexplained. Therefore, this amount of Rs.4,74,85,720/- is treated as unexplained investment u/s 69 and added back to the assessee income under the head of "Income from Other sources."

3.2 In first appeal, the Ld. CIT(A) at Pg 10-11, Para 4.5 after reproducing the finding of AO held that assessee has explained that source of investment is out of certain agricultural land sold but income declared is meagre. In the bank account there are huge cash deposit and withdrawal, and debit/credit entries remains unexplained. Thus he confirmed the addition made by AO u/s 69 at 1/3rd of Rs.4,74,85,270/-, i.e. Rs.1,58,28,423/- considering the assessee's share in the land.

The narration as made by the ld CIT(A) at para 4.5 is reproduced as under:-

"4.5 Ground of appeal No.5 pertains to the addition of Rs.4,74,85,720/- on account of purchase of land by the appellant. The ld. AO in para 3 of the assessment order has discussed the issue, the same is reproduced as under:-

"3. Further, for the land purchased by him on 17-07-2023 from Kedarnath & Others at Rs.4,74,85,270/-, there is mismatch between the income sources declared by him in his reply where he says that he is just a pensioner and pension and interest income are his only sources of income. On perusal of his bank account statement for the period as well it is seen that there is not enough balance as his account to purchase amounting to Rs.4,74,85,270/-. Hence, the sources of income for purchasing the above mentioned property remains unexplained. Therefore, this amount of Rs.4,74,85,720/- is treated as unexplained investment u/s 69 and added back to the assessee income under the head of "Income from Other sources."

In response to the findings of the AO, the appellant has submitted that the source of purchase of said land was explained

before the AO. In his explanation before the AO, the appellant mentioned that he sold certain ancestral agricultural land and the transactions were made through banking channels. The appellant also submitted copy of bank accounts during the appellate proceedings. He has also submitted copy of his ITR return for AY 2014-15 which is showing income of Rs.2,14,504/- and no tax. The contentions made by the appellants were examined and noticed that there are huge cash deposits and withdrawals in the said bank account and debit and credit entries remains unexplained. The Id.AO rightly observed that the appellant was not having creditworthiness to purchase such property. The Id AO rightly invoked section 69 of the Act. The addition made by the AO u/s 69 of the Act to the tune of Rs.1,58,28,423/- is confirmed which is the share of the appellant. The rest of the amount is deleted in his hand i.e. Rs.3,16,56,847/-. This ground of appeal of the appellant is partly allowed.”

3.3 Being aggrieved by the order of the Id.CIT(A), the assessee carried the matter before this Bench with the prayer that addition confirmed by the Id.CIT(A) by treating the source of investment in purchase of said land as unexplained is incorrect and the same should be deleted for which the Id AR filed the following written submission.

‘Submission:-

‘1. It is submitted that both the lower authorities have not correctly appreciated the facts. In fact assessee along with Sh. Gogan Prasad Singhal & Sh. Naveen Kumar Singhal purchased land at village Mohaldia through 3 sale deeds from Smt. Manorma, Chand Kishore, Kailash Chand, Ganesh Agarwal, Kedarnath and Brijmohan on 17.07.2013. The details are as under:-

Description of land with assessee's share	Cost of land and registry charges	Details of payment & Remarks
Khasra No.331, 343, 333, 334, 335, 337, 338, 339	Rs.4,51,10,000/- Rs. 25,63,100/-	Paid Rs.1 crore (25 lacs + 75 lacs) vide cheque no. 978210 & 278208 dt. 05.03.2013

&342 measuring 3.06 hectare in which assessee has 2/5 th share (PB 105-119)	<u>Rs.4,76,73,100/-</u> 2/5 th share- Rs.1,90,69,240/-	(PB 99) and Rs.16,60,000/- (5.30 lacs + 8.60 lacs + 2.70 lacs) by Sh. Udhay Bhan, son of assessee vide cheque dt. 05.06.2013 (PB 103-104) .
Khasra No.332, 341, 340 measuring 1.039 hectare in which assessee has 3/5 th share (PB 120-135)	<u>Rs.1,83,90,000/-</u> <u>Rs. 9,36,640/-</u> <u>Rs.1,93,26,640/-</u> 3/5 th share- Rs.1,15,95,984/-	Paid Rs.35 lacs vide cheque no. 978204 dt. 05.03.2013 (PB 99) and Rs.76,30,000/- (21.10 lacs + 14.10 lacs + 2.70 lacs + 9.80 lacs + 28.10 lacs + 0.50 lacs) by Sh. Udhay Bhan, son of assessee vide cheque dt. 05.06.2013 (PB 103-104) .
Khasra No.342, 346, 347, 348, 349 measuring 0.9184 hectare in which assessee has 2/5 th share (PB 136-152)	<u>Rs.1,68,70,000/-</u> <u>Rs. 8,48,270/-</u> <u>Rs.1,77,18,270/-</u> 2/5 th share- Rs.70,87,308/-	Paid Rs.75 lacs vide cheque no. 978207 & Rs.40 lacs vide cheque no. 978206 dt. 05.03.2013 (PB 99) and Rs.5,10,000/- by Sh. Udhay Bhan, son of assessee vide cheque dt. 06.06.2013 (PB 104) .

From the above it can be noted that source of payment is fully verifiable from the bank account. In fact assessee and his brother Sher Singh sold an ancestral land on 06.03.2013 for Rs.3 crores **(PB 89-96)** to G.T. Buildcon LLP in which assessee received Rs.1.25 crore (Rs.50 lacs on 30.11.2012 and Rs.75 lacs on 05.03.2013) in the bank account **(PB 98-99)** and his brother also received the same amount which he gifted to the assessee on 05.03.2013 & 06.03.2013 as per gift declaration dt. 06.03.2013 **(PB 97-98)**. Further his son Sh. Uday Bhan received an amount of Rs.1 crore by Adarsh Buildestate Ltd. on 05.06.2013 from which he made the payment for purchase of above land on behalf of assessee and this amount he received back from the assessee on 12.07.2014 which is used by him for repaying back to Adarsh Buildestate Ltd. **(PB 103-104)**. Thus the source of payment for purchase of the said agricultural land is fully established. Hence the addition confirmed by Ld. CIT(A) by treating the source of investment in purchase of said land as unexplained is incorrect and the same be directed to be deleted.”

3.4 On the other hand, the ld DR supported the order of the ld. CIT(A), who has decided the issue based on the material placed on record. The assessee has not placed on record the required information and therefore, the view taken is based on the available record. The assessee has in fact not purchased the agricultural land but is engaged in the purchase and sale business.

3.5 We have heard the rival submissions and perused the material available on record. We noted that the AO at Pg 8, Para 3 of his order observed that land was purchased by the assessee on 17.07.2013 from Kedarnath&Ors. at Rs.4,74,85,270/- and there is mismatch between the income sources declared and investment made. In the bank account, there is no enough balance to make the said purchase. Accordingly he treated the amount of Rs.4,74,85,270/- as unexplained and made the addition u/s 69 of the Act. The Ld. CIT(A) at Pg 10-11, Para 4.5 after reproducing the finding of AO held that assessee has explained that source of investment is out of certain agricultural land sold but income declared is meager. In the bank account, there are huge cash deposit and withdrawal and debit/credit entries remains unexplained. Thus he confirmed the addition made by AO u/s 69 at 1/3rd of Rs.4,74,85,270/-, i.e. Rs.1,58,28,423/- considering the assessee's share in the land. We find that source of payment is fully verifiable from the bank account. In fact assessee and his brother Sher Singh sold an ancestral land on 06.03.2013 for Rs.3 crores to G.T. Buildcon LLP in which assessee received Rs.1.25 crore (Rs.50 lacs on 30.11.2012 and Rs.75 lacs on 05.03.2013) in the bank account and his brother also received the same amount which he gifted to the assessee on 05.03.2013 & 06.03.2013 as per gift declaration dt. 06.03.2013. Further his son Sh. UdayBhan received an amount of Rs.1 crore by AdarshBuildestate Ltd. on 05.06.2013 from which he made the payment for purchase of above land on

behalf of assessee and this amount he received back from the assessee on 12.07.2014 which is used by him for repaying back to AdarshBuildestate Ltd. Thus the source of payment for purchase of the said agricultural land is fully established. Hence the addition confirmed by Id. CIT(A) by treating the source of investment in purchase of said land as unexplained is incorrect and the same is deleted. Thus this ground No. 2 is allowed.

4.1 Apropos Ground No. 3, the AO at Pg 9, Para 4 of his order observed that assessee purchased a land at village Dhodhakari on 24.08.2013 for Rs.36 lacs. In the bank account there is no proveof enough credit to purchase the property and therefore he made addition of Rs.36 lacs u/s 69 of the Act. The narration as made by the AO in his assessment order is as under:-

“4. In addition to this, assessee also purchased at Dhodhakari, Khasra No.360 of Rs.36,00,000/- on 24-08-2013. The assessee in his replydated 23-03-2022 has just said that payment was done through cheque. In his bank account statement submitted in reply dated 23-03-2022, there is no proof of enough credit to purchase a property worth Rs.36,00,000/- on 24-08-2013. Since the assessee did not explain the source of income for purchasing the above mentioned property. Therefore, this income of Rs.36,00,000/- is treated as unexplained investment u/s 69and added back to the assessee computation under the head of “Income from Other sources.”

4.2 In first appeal, the Ld. CIT(A) at Pg 11, Para 4.6 after reproducing the finding of AO held that assessee has claimed that he received gift from his brother and some amount as sale consideration of certain property but has failed to give

complete details and therefore he confirmed the addition. The narration so made by the Id.CIT(A) is reproduced as under:-

“4.6.....The appellant claimed that the source of purchase of property was explained to the AO during the assessment proceedings. During the appellate proceedings, the appellant claimed that he received gifts from his brother Shri Sher Singh to the tune of Rs. 1,25,00,000/- and he also received some amount as sale consideration of certain property. The appellant failed to give complete transition details including the capital gains arising out of such sale. The sources explained by the appellant cannot be accepted as the same is not reflected in his IT and his income and his income for the year is only around Rs.2,00,000/-. Hence, the addition made by the AO is confirmed.”

4.3 Being aggrieved by the order of the Id. CIT(A), the assessee carried the matter before this bench and submitted that both the lower authorities have not correctly appreciated the facts. In fact assessee along with Sh. Googan Prasad Singhal, Sh. Naveen Kumar Singhal, Sanjay Kumar Agarwal & Vipul Agarwal purchased agricultural land at village Dhodhakari from SNK Realtors Pvt. Ltd. for Rs.90 lacs on 23.08.2013 (**PB 159-165**) in which assessee's share is 40% (**PB 162**). Thus the share of assessee in this land is Rs.36 lacs. However, he made the entire payment of Rs.90 lacs (35 lacs + 65 lacs) which cleared from his bank account on 28/29.08.2013 (**PB 100**) out of the amount of Rs.90 lacs received from PVR Group. This amount is repaid on 16.11.2013 as evident from the bank statement out of the sale proceeds of agriculture land referred in Ground No.1 above. Thus the source of payment for purchase of the said agricultural land is fully established. Hence the addition confirmed by Ld. CIT(A) by treating the

source of investment in purchase of said land as unexplained is incorrect and the same be directed to be deleted.

4.4 On the other hand, the ld. DR supported the order of the ld.CIT(A).

4.5 We have heard the rival submissions and perused the material available on record. We noted that theAO at Pg 9, Para 4 of his order observed that assessee purchased a land at village Dhodhakari on 24.08.2013 for Rs.36 lacs. In the bank account there is no prove of enough credit to purchase the property and therefore he made addition of Rs.36 lacs u/s 69 of the Act. The Ld. CIT(A) at Pg 11, Para 4.6 after reproducing the finding of AO held that assessee has claimed that he received gift from his brother and some amount as sale consideration of certain property but has failed to give complete details and therefore he confirmed the addition. We find that both the lower authorities have not correctly appreciated the facts. We noted that assessee along with Sh. Googan Prasad Singhal, Sh. Naveen Kumar Singhal, Sanjay Kumar Agarwal & Vipul Agarwal purchased agricultural land at village Dhodhakari from SNK Realtors Pvt. Ltd. for Rs.90 lacs on 23.08.2013 in which assessee's share is 40%. Thus the share of assessee in this land is Rs.36 lacs. However, he made the entire payment of Rs.90 lacs (35 lacs + 65 lacs) which cleared from his bank account on 28/29.08.2013 out of the amount of Rs.90 lacs received from PVR Group. This amount is repaid on 16.11.2013 as evident from the bank statement out of the sale proceeds of agriculture land

referred in Ground No.1 above. Thus the source of payment for purchase of the said agricultural land is fully established. Hence the addition confirmed by Ld. CIT(A) is deleted. Thus this ground No. 3 is allowed.

5.1 As regards the Ground No. 4 & 5 of the assessee (supra), it is noted that the AO at Pg 2 of the assessment order has observed that notice u/s 148 dt. 22.04.2020 was issued and served upon the assessee by e-mail and also shared with assessee's e-proceeding account. Thereafter notice u/s 142(1) dt. 24.08.2021 was served through e-mail/e-proceeding account against which objection was filed on 14.09.2021 which was disposed off vide order dt. 15.03.2022. The assessee in the meanwhile filed return in response to notice u/s 148 on 19.09.2021 but since the assessee has not filed the return on or before 21.05.2020 in response to notice u/s 148, the same is non-est. Accordingly he completed the assessment u/s 144 of the Act and charged interest u/s 234A at Rs.38,81,094/- as per computation sheet from 01.08.2014 to 30.09.2021, i.e. for 86 months on Rs.45,12,900/-. It is noted that that AO has issued notice u/s 148 on 22.04.2020 but assessee claimed that copy of this notice is never received by the assessee nor it is provided to him nor it was issued by post or mail or shown in the e-proceeding. The assessee came to know about issuance of such notice only on 14.09.2021 when intimation letter dt. 30.07.2021 (**PB 88**) was received by the assessee on 14.09.2021 where the Document Identification Number (DIN) of notice issued u/s 148 was provided. All

these facts were explained in the objections raised on 14.09.2021 (**PB 76-83**).

Copy of notice was again requested from the AO vide letter dt. 14.03.2022 (**PB 66-67**) & 24.03.2022 (**PB 37-43**). However, AO disposed off the objection vide order dt. 15.03.2022 (**PB 59-63**) by only stating that as per the departmental records notice u/s 148 was issued on 22.04.2022 (the correct date should be 22.04.2020) and the same is communicated vide intimation letter dt. 30.07.2021 (**PB 61**).

5.2 The Id. CIT(A) at para 4.1 observed that this issue was not raised in the assessment proceedings. The AO at para 2.2 of the assessment order had discussed the issue of service of notice. The notice was served through E-Mail as well as the E Proceedings Portal. Even if physical notice was not served, the same was validly served through other means. Accordingly, the ground of the assessee was rejected.

5.3 Being aggrieved by the order of the Id CIT(A), the assessee carried the matter before us and submitted that when the entire country was under lockdown from 25.03.2020 to 31.05.2020 (**PB 176-181**), all Government offices were under lockdown, there was no movement except for certain essential services and on 22.04.2020 the offices of income tax department were under lockdown, how notice u/s 148 can be issued on that date. In fact this notice is still not appearing on the income tax portal for which the screenshot is **enclosed**. Further as per CBDT Circular No.19/2019 dt. 14.08.2019 (**PB 174-175**) all communications issued on or after 01.10.2019 would not be treated as valid and shall be deemed to have never

been issued unless it is allotted a DIN and quoted in the body of such communication. However, if communication is issued manually it has to be regularized within 15 working days of its issuance. Thus when there is no evidence on record that notice u/s 148 was issued on 22.04.2020 and the DIN of alleged notice has been communicated by the AO vide letter dt. 30.07.2021 which is much beyond 15 days grace period provided by CBDT, the notice/communication so issued is barred by limitation, illegal & bad in law and therefore, entire reassessment proceedings be quashed. Reliance in this connection is placed on the following cases:-

1. CIT(IT) Vs. Brandix Mauritius Holdings Ltd. (2023) 224 DTR 361/ 293 Taxman 385 (Delhi) (HC) (Case laws compilation PB 15-21)
2. Ashok Commercial Enterprises Vs. ACIT (2023) 229 DTR 433 (Bom.) (HC) (Case laws compilation PB 22-26)

5.4 We have considered the rival submissions and perused the materials available on record. Since, we have decided ground No. 1 , 2 and 3 in favour of the assessee, therefore, the Ground No. 4 & 5 taken by the assessee becomes infructuous and thus the same are dismissed.

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

Order pronounced in the open Court on 20 /02/2024

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20 /02/2024

Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- ShriBadlu Ram, Alwar
2. प्रत्यर्थी / The Respondent- The ITO, Ward Behror, Alwar.
3. आयकरआयुक्त / The Id CIT (
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.667/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar