

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 3663/DEL/2018
Assessment Year: 2009-10**

Deshraj Kasana, Village Mahiuddinpur, Kanawani, Indirapuram, Ghaziabad. PAN- ALXPD8938N	<u>Vs</u>	Income Tax Officer, Ward-1(2), Ghaziabad.
APPELLANT		RESPONDENT
Assessee represented by	Shri Ruchesh Sinha, Adv.	
Department represented by	Shri Vivek Kumar Upadhyay, Sr. DR	
Date of hearing	03.02.2024	
Date of pronouncement	29.04.2024	

ORDER

PER M. BALAGANESH, AM:

This appeal, by the assessee, is directed against the order of learned Commissioner of Income Tax (Appeals)-2, Noida, dated 28.02.2018, arising out of order dated 23.12.2016, passed by the Income-tax Officer, Ward-1(2), Ghaziabad, u/s 144/147 of the Income-tax Act, 1961, pertaining to the assessment year 2009-10.

2. Though the assessee has raised several grounds of appeal before us, the learned AR at the time of hearing stated that he is instructed to press only ground nos. 4 to 4.5

and not to press other grounds raised before us. The learned AR has indeed made endorsement in the grounds of appeal filed before us confirming this fact. Accordingly, all the grounds raised by the assessee, except ground nos. 4 to 4.5, are hereby dismissed as not pressed.

3. The only effective issue involved in ground nos. 4 to 4.5 is as to whether the learned CIT(A) was justified in confirming the addition of Rs. 52,08,690/- towards cash deposits in the facts and circumstances of the instant case.

4. We have heard rival submissions and perused the materials available on record. The original return of income for A.Y. 2009-10 was filed by the assessee on 21.06.2010 declaring total income of Rs. 1,48,470/-. Later this assessment was sought to be reopened by the learned Assessing Officer on the basis of AIR information, stating that assessee had deposited cash of Rs. 1,19,81,500/- in savings bank account during the year. A notice u/s 148 of the Act stood issued on 28.03.2016 and the same was sent through speed post, which was received back undelivered. The same notice was served upon the assessee through affixture by the Inspector of Income-tax on 25.05.2016. No compliance was made by the assessee in the reassessment proceedings. The learned AO on perusal of the savings bank account held Bank of Baroda, Indirapuram, Ghaziabad, that there were total credit entries in the said bank account totaling to Rs. 64,88,690/- which included cash deposit of Rs. 37,39,500/-. Since no details were furnished by the assessee with regard to the nature and source of those credits, the learned AO framed assessment u/s 144 read with Section 147 of the act on 23.12.2016 adding the entire credits in the bank account in the sum of Rs. 64,88,690/-.

5. Before the learned CIT(A), the assessee filed additional evidences in terms of Rule 46A of the I.T. Rules. The learned CIT(A) sought for a remand report from the learned AO with regard to those additional evidences. The remand report was submitted by the learned AO on 01.01.2018, wherein the learned AO objected to the admission of the additional evidences. Further, the learned AO on without prejudice basis, also gave his comments on the veracity of the additional evidences on merits by stating that the stand taken by the assessee in the remand proceedings were not supported by any documentary evidences. A copy of the remand report was furnished to the assessee and the assessee filed rejoinder to the same before the learned CIT(A). The learned CIT(A) admitted the additional evidences filed by the assessee and proceeded to consider the same on merits.

6. The assessee had explained that he was in receipt of cash gift from his sister of Rs. 10,00,000/- each on 04.09.2008 and 16.01.2009. The assessee also furnished a gift deed in support of his contention. The learned CIT(A) observed that in the statement of facts, furnished before him in Form no. 35, it was stated that assessee had received cash gift of Rs. 15 lakh, whereas in the gift deed it was mentioned as Rs. 20 lakhs. Accordingly, learned CIT(A) disbelieved the receipt of cash gift of Rs. 15 lakhs or Rs. 20 lakhs, as the case may be, as a source available to the assessee to make cash deposit in the bank account. Further, in Form no. 35 filed before the learned CIT(A), the

assessee had submitted that he has received cash amounting to Rs. 19,85,000/- from his two sons Mr. Mundraj Kasana and Mr. Jintendra Kasana, who had the cash available with them out of sale proceeds of agricultural land. The learned CIT(A) observed that there was no evidence on record to show that sons had received advance against sale of land on 24.09.2009 and hence the cash source available with the sons does not stand conclusively proved so as to become a consequential source for the assessee to prove the cash deposits made by him in his bank account. Hence, this explanation of the assessee was also rejected by the learned CIT(A). However, the learned CIT(A) observed that assessee was able to explain source of cash deposit to the extent of Rs. 12,80,000/- and gave credit for the same and sustained the remaining addition of Rs. 52,08,690/- made by the learned AO.

7. At the outset, we find that assessee had furnished an affidavit from Smt. Dhanwanti, sister of assessee, stating that she had gifted a sum of Rs. 20,00,000/- in cash on the following dates to the assessee:-

04.09.2008	Rs. 10,00,000/-
16.01.2009	<u>Rs. 10,00,000/-</u>
Total:	<u>Rs. 20,00,000/-</u>

8. In the said affidavit, the sister of the assessee had duly confirmed the fact of giving cash gift to the assessee on the aforesaid dates. The said affidavit also contained PAN and Aadhar number of the sister together with Aadhar number of assessee herein.

This is enclosed in page 48 of the paper book filed before us. Further, the assessee had also furnished the bank statement of Smt. Dhanwanti, sister of assessee, maintained with Bank of India, Surajpur Branch, vide S.B. A/c 715110110001399, duly proving that cash withdrawals made by her from her bank account from 16.04.2008 to 27.05.2008 periodically totaling to the tune of Rs. 28,50,000/-; and again on 06.06.2008 of Rs. 50,000/-, 07.06.2008 of Rs. 8,000/-, 10.06.2008 of Rs. 6,000/-, 20.06.2008 of Rs. 1,00,000/-; and on 24.06.2008 of Rs. 1,80,000/-. The sister also submitted that the credit appearing in her bank account represented compensation received on sale of land and, accordingly, the source was duly available with the sister, which enabled her to make cash withdrawals from her bank account, which in turn was used for giving cash gift to the assessee. This explanation is certainly a plausible explanation, duly supported with proper documentary evidence. It is trite law that affidavit of third party filed by an assessee during the course of proceedings, becomes an acceptable evidence and the contents therein need to be construed as true when the same was not put to test by the Revenue authorities. This issue is no longer res-integra by the decision of Hon'ble Supreme Court in the case of Mehta Parikh & Co. v. CIT reported in 30 ITR 181 (SC). Hence, the cash source available with the assessee to the extent of Rs. 20 lakhs needs to be accepted.

9. The assessee gave further explanation that he had received cash from his two sons, totaling to Rs. 19,85,000/-. The assessee had submitted that his sons had sold their agricultural land and had received sale proceeds thereon in the sum of Rs.

19,85,000/-. In support of this contention, the assessee duly placed on record, a copy of the registered sale-deed for Rs. 19,85,000/- sold by assessee's sons which are enclosed in pages 62 to 89 of the paper book. The consideration mentioned in the sale-deed duly matches with the cash received by the assessee from his two sons totaling to Rs. 19,85,000/-. Hence, we hold that assessee had duly explained the availability of cash with him in the sum of Rs. 19,85,000/-, which is supported by proper documentary evidences.

10. Hence, the entire cash deposits that has been subject matter of addition by the learned AO in the sum of Rs. 37,39,500/- becomes properly explained and there is no need for making further addition thereon.

11. However, with regard to cheque deposits of Rs. 14,69,190/-, no details whatsoever were filed by the assessee before the lower authorities or before us. However, in ground no. 4.3 the assessee has stated that two cheques which got credited in the bank account of the assessee in the sum of Rs. 7,50,000/- and Rs. 1,50,000/- respectively got bounced and the same were returned. Accordingly, it was pleaded that the said sum of Rs. 9,00,000/- should not be considered while calculating the gross credits in the bank account. This fact requires to be verified by the learned AO. Hence, we restore this aspect of the issue to the file of learned AO for factual verification and if the explanation given by the assessee is found to be correct, the addition of Rs. 9,00,000/- is required to be deleted.

12. With regard to remaining cheque deposit of Rs. 5,69,190/- (Rs. 14,69,190 – Rs. 9,00,000), we find that no submissions were made by the assessee with cogent documentary evidences. Hence, the said addition of Rs. 5,69,190/- is required to be sustained.

13. Ground nos. 4 to 4.5 raised by the assessee are disposed of in the above mentioned manner.

14. In the result, appeal of the assessee is partly allowed for statistical purposes.
Order pronounced in open court on 29.04.2024.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 29.04.2024.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI