

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : A : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2108/Del/2023
Assessment Year: 2009-10

Arvind Kumar Singh,
282, BOUNDRY Road,
Civil Line,
Meerut,
Uttar Pradesh – 250 001.

Vs ITO,
Ward 3(4),
Hapur.

PAN: DBYPS2729Q

(Appellant)

(Respondent)

Assessee by : Shri Vinod Kumar Goel, Advocate
Revenue by : Shri Kanav Bali, Sr. DR

Date of Hearing : 29.02.2024
Date of Pronouncement : 21.05.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 20.06.2023 of the Commissioner of Income Tax (Appeals), NFAC, Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.CIT(A), Meerut/10186/2016-17 arising out of the appeal before it against the order dated 30.11.2016 passed u/s 144/147 of the Income Tax Act,

1961 (hereinafter referred as 'the Act'), by the ITO, Ward-3(4), Hapur (hereinafter referred to as the Ld. AO).

2. The facts in brief are that on the basis of AIR information about purchase of a property for Rs. 56,17,000/- the assessment was reopen u/s 147 of the Act. The assessee claims to have purchased said property for Rs. 13,54,350/- on which stamp of Rs.2,81,000/- was paid thus totaled to Rs. 16,35,350/-. The same was purchased with his brother Rishi Pal Singh from his father Shri Bhag Mal (Seller). Therefore, $\frac{1}{2}$ share of the assessee comes to Rs. 8,17,675/- only. The A.O. has made assessment u/s 144/147 of the Act, by making addition of Rs. 56,17,000/- treating the purchase on the basis of stamp value by invoking section 50C of the Act. Assessee claimed that in case of purchase, stamp value rates are not applicable and only sale value can be taken in consideration. On appeal Ld. CIT(A) partly allowed the appeal by restricting the addition to Rs. 8,17,675/-. Aggrieved, the assessee filed an appeal before the Tribunal taking following ground of appeal:

“1. That the A.O. has initiate proceeding U/s 147 as per address as per sale deed, however, PAN of the assessee is related to ITO, Ward-1 (I), Meerut, hence assessment made by A.O. without any jurisdiction and notice U/s 147 of I.T. Act was served upon the assessee. Hence assessment made by the A.O. U/s 144/147 is bad in law and CIT(A) has not justify rejecting the claim of the assessee.

2. That the assessee has submitted all the documents before A.O. as well CIT(A) under Rule 46A, therefore, CIT(A) has not justified in confirming the addition of Rs. 8,17,575/-.

3. *That the A.O. has not provided copy of Remand Report to the assessee, however during the Remand Proceeding the assessee's father has submitted all the documents and statement of his father was also recorded, the assessee also produce sale proceed of the agriculture land as well as gift received from his father.*

4. *That the assessee has right to add, delete or modify any grounds of appeal during the proceedings."*

3. Heard and perused the record. The ground wise findings are as follows.

4. Ground no. 1 arises out of issue of notice U/s 148 of the Act. The claim of appellant is that the A.O. has issued notice U/s 148 on the wrong address. The assessee claims that notice was issued on the address at Village Razwan, Garhmukteshwar, Distt. Hapur however, the correct address as per PAN of the assessee is 426/1, Bansal Palace, New Mohan Puri, Meerut. The assessee is filing his income Tax Return at, Meerut therefore notice issued by the A.O without serving the notices U/s 148 is alleged to be bad in law and order passed by A.O is alleged to be against principal of natural justice. However, we are of considered view that as assessee had not filed return, the AO was justified to issue notice u/s 148 of the Act on basis of address made available in AIR information and the sale deed. So the ground has no substance.

5. The ground no. 2 and 3 arise out of sustenance of addition to the extent of Rs. 8,17,575/-. The claim of assessee is that the assessee made investment to extent of half share of Rs. 8,17,575/-. The Ld. AR submits evidence were filed before the CIT(A) with regard to following facts, but same was ignored by CIT(A):-

- (i) On 26/07/2005 advance given Rs. 3,12,500/- that is half share of sale of agriculture land given to power of attorney holder Shri Bhagmal Singh.
- (ii) Rs.2,50,000/- given at the time agreement sale of tree situated on that agriculture land.
- (iii) Rs. 1,50,000/- received from father Shri Bhagmal singh as gift, copy of gift deed is enclosed.
- (iv) Rs. 1,05,675/- out of agriculture income and current income.

6. On hearing, it comes up that the CIT(A) has given part relief to the assessee on the basis of remand report and we consider it appropriate to reproduce the remand report which forms part of the order of the CIT(A) and on the basis of which alone the appeal of the assessee was allowed partly by the CIT(A):-

“Ground No. 2 & 3:- In the Remand Report the AO mentioned as under:-

4. A notice dated 05.04.2019 was issued to assessee for enquiry u/s 250(4) of I. T. Act, 1961 fixing the date of compliance on 15.04.2019. Vide this notice the assessee was asked to furnish as under

i) Total agricultural land holding during F.Y. 2008-09 along with proof thereof i.e. Khatauni for Fasli warsh 1417 to 1419. Also furnish details & proof of crops grown and their sales i.e. Khasra for Fasli warsh 1417 to 1419 and relevant bills/Mandi Parchi. Also furnish details & proof of Trees grown and their sales.

ii) furnish original gift deed by which an amount of Rs. 1,50,000/- was received by the assessee. Also furnish evidences in support of Identity of the donor, Genuineness of the transaction and Creditworthiness of the donor. Whether aforesaid gift deed was properly registered before state government authorities?

iii) furnish original agreement to sale made with Sh. Bhagmal Singh. Please state whether aforesaid agreement was properly registered before state government authorities? Explain source of advance given of Rs. 3,12,500/- to Sh. Bhagmal Singh.

5. In compliance to this notice Advocate Sh. Vinod Kumar Goel on 15.04.2019 and Sh. Bhagmal Singh & Sh. Arvind Kumar Singh, assessee, on 22.04.2019 attended the proceedings. Assessee also filed a written submission through Dak counter on 18.04.2019, in which assessee has again made available all the documents which were furnish before Appellate authority. In addition to this, assessee has also furnished Copy of a 'Will' dated 15.04.1993 signed by the grandfather of the assessee Sh. Tej Pal Singh, ITR-V/ acknowledgement of Sh. Bhagmal Singh from A.Y. 2000-01 to 2018-19 showing his address Resident of Khanpur, Khakhoda District Meerut, copy of pass book of a joint bank account of Allahabad Bank having entries from 09.03.2002 to 04.04.2006 and an affidavit of Sh. Bhag Mai Singh dated Apart from above, statement of Sh Arvind Kumar Singh and Sh. Bhagmal Singh were recorded during the course of his appearance in office and placed on file (copy enclosed). The material available on record, details & documents furnished and copies of statements recorded were perused and point-wise comments on assessee's submissions are made as under:

5.(i) In this case, a non PAN AIR was received, regarding aforementioned transaction made by the assessee during the previous year 2008-09 relevant to A.Y. 2009-10. Notice u/s 148 was issued to the assessee on the address given in AIR information and part of transaction deed made available by the SubRegistrar, Garhmukteshwar. The notice was sent on 29.03.2009 vide registered post S.No.RU313543065IN. Copy of Notice containing acknowledgement of Registered post enclosed. As appearing from the notice, it has been properly addressed and posted through registered post at the address available on record. Moreover, there is no evidence on record of this notice 'unserved' return by postal department. It would be appropriate to mention here that as per various documents filed, the assessee has three addresses one at village Sogarh urf Rawasan, Garhmukteshwar, 2^{ul} at village Khanpur, Kharkhoda, Meerut and 3^{ui} at Mohanpuri, Meerut. The assessee has failed to prove his jurisdictional address at Meerut in the previous year 2008-09 relevant to A.Y. 2009-10, which makes the jurisdiction of the undersigned correct over the assessee.

In this case, assessment order was passed on 30.11.2016 and sent to the assessee s address of Village Raswasan urf Sogarh, Garhmukteshwar, Hapur on 06.12.2016 through Registered Post bearing acknowledgement No. RU47476338125. Further, it is also bring to your kind notice that assessee has filed appeal on 23.12.2016 before your honour on the basis of aforementioned assessment order received by him on the same address. In

the light of discussion made above the claim of the assessee regarding non service of notice, appears to be an alter thought and deserve to be rejected.

5.(ii) The assessee has claimed that assessment has been completed for A.Y. 2009-10 in the Ward 3(5), Hapur in the case of his brother, Sh. Rishi Pal Singh, who was also a co-purchaser in this property transaction, at the total income of Rs. 8,17,675/- (at half share of total amount Rs. 16,35,350/- invested in purchase of property). However, in this case, the entire amount of Rs.56,17,000/- was assessed as income of the assessee, whereas, the amount of Rs.56,17,000/- was the circle rate of the property, only to pay the stamp duty charges to the state government. This claim of the assessee has been verified from the documents available on record and also with the records of Sh. Rishi Pal Singh & copy of the transaction deed. In view of the discussion made above the claim of the assessee appears correct and deserve to be accepted.

5. (iii) In this transaction, the seller Sh. Bhagmal Singh is father of the assessee and assessee purchased the land from his father for Rs. 16,35,350/- jointly with his brother Sh. Rishi Kr. Singh. Regarding source of investment of Rs. 8,17,675/- (1/2 share of total investment), the assessee has claimed he paid amount of Rs. 3,12,500/- to his father Sh. Bhagmal Singh out of sale proceeds received from sale of his agriculture land (having Vi share) sold on 25.07.2005 for an amount of Rs.6,25,000/- (1/2 of which is Rs.3,12,500/-). Further, ' in support of this claim, a confirmation receipt dated 26.07.2005 issued by Sh.Bhagmal Singh, furnished by the assessee, in which an amount of Rs.6,25,000/- has been confirmed to be received by Sh. Bhagmal Singh, in cash, from the assessee & his brother Sh. Rishi Kr. Singh in presence of witnesses named Sh.Jaikaran Singh S/o Sh.Ram Chandra & Sh.Kiran Pal S/o Sh.Phool Singh. On the contrary, a perusal of sale deed dated 19.12.2008 (page no.01), reveals that amount of Rs. 13,54,000/- has been received by Sh. Bhagmal Singh, in cash, in presence of witnesses named Sh.Gajendra Singh S/o Sh.Niramjan Singh & Sh.Charan Singh S/o Sh.Ram Prasad. Now it would be appropriate to mention here that how it is possible to pay an amount of Rs.6,25,000/- twice before different witnesses for the same transaction. In view of discussion made above, it is clear that this act of assessee appears to be an afterthought and deserve to be rejected.

5.(iv) The assessee, vide his submission made under rule 46A before your honor, has further claimed that amount of Rs.2,50,000/- was given by him, in his share of total invested amount of Rs. 8,17,675/-, at the time agreement sale of trees situated on that agricultural land. Vide notice dated 05.04.2019 the assessee was specifically asked to furnish the proof of trees grown & their sales. Assessee, vide his reply dated 18.04.2019, referred to page no.25 of sale deed mentioning about the presence of Mango & Eucalyptus trees that were sold by the assessee. Further, assessee also

claimed that he received sale proceed of Rs.2,50,000/- out of sale of 'Bagh Bahar' from the parental property that belongs to family HUF. It would be worthy to mention here that the HUF is treated as distinct entity for tax purposes and assessee could not substantiate his claim regarding existence of HUF & fails to provide details of land owned by the HUF.

Further, assessee was specifically asked to prove the receipt of Rs.2,50,000/-, but he furnish any evidence in support of his claim. In his statement also, assessee was specifically with the fact that till date he could not furnish any evidence in support of his claim regarding receipt of Rs.2,50,000/-. In response, he has submitted that his counsel Sh. Vinod Goei will reply the same. But, till date no evidence has been furnished by (the assessee or his counsel in this regard. In view of discussion made above, it is clear that this act of assessee appears to be an afterthought and deserve to be rejected.

5. (v) *The assessee, vide his submission made under rule 46A before your honor, has further Claimed that an amount of Rs.1,50,000/- was received by him as gift from his father Sh, Bhagmal Singh, Vide notice dated 05.04.2019 the assessee was specifically asked to furnish original gift deed by which an amount of Rs.1,50,000/- was received by the assessee and also the evidences in support of Identity & Creditworthiness of the donor and genuineness of the transaction. Assessee, vide his reply dated 18.04.2019, changed his stand and stated that the amount of Rs.1,50,000/- was received from his mother Smt.Raj Bala as gift. However, Sh. Bhagmal Singh, in his Statement, stated that the amount of Rs. 1,50,000/- was given by him to the assessee. The stand of the assessee has been changing again & again and not consistent.*

Further, it is pertinent to mention here that Sh. Bhagmal Singh had been maintaining three addresses one in Garhmukteshwar, 2nd at Vill. Khanpur, Kharkauda, Meerut and 3rd at Mohanpuri, Meerut. Apart from this, at that time, his son was dependent on him. From these facts it is clear that the available income in the hand of Sh. Bhagmal Singh was only sufficient to meet out his regular expenses, therefore, no past savings could be available with him. Moreover, Sh. Bhagmal Singh had no agricultural income during the A.Y. 2009-10 as declared in his return of income, copy of the same enclosed. Therefore, in the light of these facts, source of the aforementioned gifted amount of Rs. 1,50,000/- remains unexplained. In view of discussion made above, it is clear that this act of assessee appears to be an afterthought and deserve to be rejected.

5. (vi) *The assessee, vide his submission made under rule 46A before your honor, has further claimed that amount of Rs.1,05,675/- was received out of his agricultural & current income. Vide notice dated 05.04.2019 the assessee was specifically asked to furnish details & proof of agricultural*

land holding and crops grown & their sales during F.Y. 2008-09. Assessee, vide his reply dated 18.04.2019, again stated that Rs.1,05,.675/- was out of his agriculture income & current income. However, assessee did not furnish khasra & khatauni for Fasli warsh 1417 to 1419 or relevant bills/Mandi Parchi in support of his claim that could substantiate his claim. Therefore, the same remained unexplained. In view of discussion made above, it is clear that this act of assessee appears to be an afterthought and deserve to be rejected.

6. In light of the above facts, it is clear that the assessee has no disclosed source of investment amounting to Rs.8,17,575/- made to purchase immovable property and the above version of the assessee appears to be after thought and deserves to be rejected.

It is seen that the AO has mentioned that the assessee has failed to satisfy. The AO about the source of investment of Rs. 8,17,575/-.

I am satisfied with the AO's report.

Considering The AO's Report an addition of Rs. 8,17,575/- is confirmed.

The AO is directed to delete balance addition.

These grounds of appeal are partly allowed.”

7. The ld. AR has placed before us a paper book wherein copy of assessment order in the case of Bhagmal Singh, the assessee's father is made available at pages No.6-7. At page 8, there is a receipt dated 26.07.2005 in favour of the Shri Bhagmal Singh by which he had entered into an agreement as a power of attorney holder of his sister and received a sum of Rs.6,25,800/- from the assessee and his brother, Shri Rishi Kumar being half of the total sale consideration of Rs.13,54,350/-. Then, at pages No.9-17, copy of a sale deed dated 25.07.2005 is filed wherein Arvind Kumar and Rishi Kumar have jointly sold their land for which consideration of Rs.6,27,000/- was received. At page No.18, the assessee has provided copy of a letter given by Bhagmal Singh of a

gift of Rs.1,50,000/- in cash to his son, the assessee, Shri Arvind Kumar Singh. Further, at pages No.20-42, the assessee has provided a sale deed dated 15.12.2008 showing sale of land and standing trees. The assessee has further placed on record copies of bank statements of himself and his brother Shri Rish Kumar; copy of affidavit of his father about the gift; the ITRs of the father who is an Advocate along with the computation of income for AY 2000-01 onwards till 2009-10; and copy of Revenue record entries of the relevant pieces of land.

7.1. However, all these evidences placed before the CIT(A) on which the AO had made relevant enquiries and given a detailed report have been disregarded completely for the reason that the AO in remand report discredits the claim of the assessee being not consistent and not duly corroborated.

7.2 The CIT(A), on his part, has not made any appreciation of the evidences to draw an independent inferences. Accepting the remand report without examining the evidences independently filed before the CIT(A) under Rule 46A makes the exercise of jurisdiction by the CIT(A) as erroneous. The order of the CIT(A) is also silent on fact of assessee was given opportunity to rebut the remand report. Thus, accepting remand report completely was not justified.

7.3 We are of the considered view that the evidences filed by the assessee were sufficient to establish the source of payment of a sum of Rs.8,17,575/- for purchase of the land as a co-sharer with brother. The Revenue Officers being

quasi judicial authorities should have been more alive to the fact that in case of assessee coming from rural background and joint families such like transactions of purchase of land out of funds arranged within the family or by sale of land or standing trees is common. There cannot be too strict a burden on such assessee to prove every claim with direct and corroborative evidences. It is not a case where the assessee, without bringing on record any revenue record entries or bank statements which have corroborative evidentiary value had made a bald claim so as to doubt the genuineness of the source. Ld. AO in remand report has discredited claim on probative value of evidences without rebutting the same with any evidence. Thus, we are inclined to allow the grounds no 2 and 3.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 21.05.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 21st May, 2024.

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Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi