

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No. 768/Del/2020
(Assessment Year: 2010-11)**

Kishan Singh, VPO-Jakhoda, Tehsil- Bahadurgarh, Distt. Jajjar, Bahadurgarh, Haryana (Appellant) PAN: DQLPS9421M	Vs. ITO, Ward-2, Rohtak (Respondent)
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Assessee by :	Shri Naveen Gupta, Adv
Revenue by:	Shri Sandeep Kr. Mishra, Sr. DR

Date of Hearing	13/05/2024
Date of pronouncement	22/05/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.768/Del/2020 for AY 2010-11, arises out of the order of the Commissioner of Income Tax (Appeals), Rohtak [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/APL/S/250/2019-20/1018782887(1) dated 11.10.2019 against the order of assessment passed u/s 144/147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 15.12.2017 by the Assessing Officer, ITO, Ward-2, Rohtak (hereinafter referred to as 'Id. AO').

2. At the outset, there is delay in filing of appeal by 51 days by the assessee before us. The order of the Id CIT(A) dated 11.10.2019 contained clerical mistake wherein instead of sustaining the addition for ₹13 lakhs, the Id CIT(A) sustained the addition for ₹18 lakhs. The assessee filed rectification petition before the Id CIT(A) in this regard and was persuading the alternative remedy. Subsequently, corrigendum stood issued by the Id CIT(A), restricting the addition to ₹13 lakhs. Hence, considering from the date of corrigendum, there is no delay in filing of appeal by the assessee. Even otherwise, since the assessee was

persuading the alternative remedy, which is permissible in law, the delay of 51 days is to be condoned, and the appeal of the assessee is hereby admitted for adjudication.

3. The assessee has challenged the validity of assuming the jurisdiction u/s 147 of the act vide ground No. 2 before us.

4. We have heard the rival submissions and perused the material available on record. The assessee is an agriculturist and was deriving agricultural income. Hence, there was no obligation for the assessee to file return of income in the absence of taxable income. During the year under consideration, the assessee brought agricultural land for ₹38 lakhs purportedly out of agricultural income. The reasons were recorded by the Id AO for reopening of the assessment which is enclosed in page 26 of the paper book that assessee had not filed his return of income for AY 2010-11, but had purchased immovable property during the year under consideration, which value is more than the maximum amount not chargeable to Income Tax. Hence, we hold that the Id AO had valid reason to believe that income of the assessee had escaped assessment warranting reopening. Hence, the ground raised by the assessee challenging the validity of reopening of assessment is hereby dismissed.

5. The assessee vide ground No. 3 and 4 had challenged the sustenance of addition of ₹13 lakhs towards unexplained investment in the property by the Id CIT(A).

6. We have heard the rival submissions and perused the material available on record. It is not in dispute that during the year under consideration that the assessee had indeed purchased agricultural land at Village Kharbala for ₹76,13,000/- in joint ownership with his real brother Siri Chander Bhan. The assessee's share in the agricultural land is 50%. The Id AO added the entire value at ₹76.13 lakhs as an unexplained investment by the assessee, which was reduced to ₹13 lakhs by the Id CIT(A) in following manner:-

50% share of value of property

– Rs. 38 lakhs

Less-source explained by way of cumulative agricultural income	- Rs 25 lakhs
Difference added as unexplained investment	- Rs 13 lakhs

7. The Id AR before us argued that Id CIT(A) having given relief for ₹25 lakhs and accepted the source to have emanated out of agriculture income, ought not to have sustained the addition of ₹13 lakhs. Per contra, the Id DR stated that the primary onus for explaining the source for purchase of any property including agricultural land is always casted on the assessee which when not explained becomes unexplained investment made by the assessee because the onus was not discharged by the assessee. He placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Devi Prasad Vishwanath reported in 72 ITR 194 (SC) and in the case of Yadu Hari Dalmia Vs. CIT reported in 126 ITR 48 (SC).

8. In the instant case, we find that the assessee has been deriving some agriculture income. The Id CIT(A) had categorically stated that the assessee owns 7.5 acres of land and that there is no proof of cultivating 10 to 15 acres of land on lease, which was allegedly given to the assessee. It is a case that the assessee had not provided any evidence with regard to details of crops cultivated in the agricultural lands owned by him, no evidence produced for agricultural land taken on lease, if any, from any 3rd party; details of lease rent paid on those agricultural lands to the 3rd Party; details of income derived from those agricultural lands year on year; details of some certificate from the village administrative officer certifying the fact that certain crops were cultivated on the agricultural lands by the assessee etc. Despite the absence of all these primary and basic details to prove the existence of agricultural income, the Id CIT(A) had been magnanimous enough to grant relief to the extent of ₹25 lakhs by accepting it as a source for meeting investment in agricultural land and had sustained the remaining balance of ₹13 lakhs as unexplained. On plain reading of provisions of section 69 of the Act and based on the decisions of the Hon'ble Supreme Court relied upon by the

Id DR supra, we find that the primary onus would be always on the assessee to prove this with satisfactory explanation the source for making the investment made by him. The source for purchase of agriculture land actually had not been specifically explained by the assessee in the instant case by even furnishing the aforesaid details. Despite this fact, we find that the Id CIT(A) had granted relief to the extent of ₹25 lakhs, against which the revenue is not in appeal before us. The case laws cited by the Id AR are factually distinguishable and are against the provisions of section 69 of the Act and the outside the judicial precedence of the Hon'ble Supreme Court supra. Hence, the case laws quoted by the Id AR are ignored and we hold that the action of the Id CIT(A) in sustaining the addition of ₹13 lakhs calls for no inference in the facts and circumstances of the instant case. Accordingly grounds raised by the assessee are dismissed.

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

Order pronounced in the open court on 22/05/2024.

-Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 22/05/2024
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi