

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 768/JP/2024  
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Abhay Singh S/o Shri Ram, Vill: Banbirpur Tehsil: Tijara, Alwar 301 018	बनाम Vs.	The ITO Ward- Bhiwadi Bhiwadi
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: DEJPS 7079 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar, Advocate  
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 18/06/2024  
उदघोषणा की तारीख / Date of Pronouncement: 10/07/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 15-02-2024, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2011-12 raising therein following grounds of appeal.

“1. In the facts and circumstances of the case, the Id CIT(A) has erred in not considering the submission and supporting evidence submitted by the assessee during the course of assessment proceedings as well as appellate proceedings, hence the principles of natural justice has been violated.

2. In the facts and circumstances of the case, the Id CIT(A) has erred in confirming the addition of Rs. 25,49,912/- out of addition of Rs. 31,55,685/- made by the Learned Assessing Officer u/s 69A of the Income Tax Act, 1961 on account of unexplained cash deposits in the bank account of the assessee.

3. In the facts and circumstances of the case, the Id CIT(A) has erred in confirming the action of the Learned Assessing Officer by not considering the submission of the assessee that the entire cash deposited in the bank account pertained to the agricultural land sold by the assessee.’

2.1 At the outset of the hearing, the Bench noted that there is delay of 40 days in filing the appeal by the assessee for which the assessee has filed condonation application mainly praying therein as under:-

“The assessee is an agriculturist and not having income other than bank interest and agriculture income. In this case the Id. CIT(A) has passed the order on 15-02-2024 with a direction to the AO that “the AO is directed to verify the share of the assessee and allow relief of Rs.6,05,773/- (2177506 – 1571733) to the assessee, if found correct.” Hence the assessee was under the impression that entire relief will be granted by the AO after submitting the documents. But the AO has passed the order on 04-04-2024 by granting part relief of Rs.6,05,773/-. These facts came into knowledge of the assessee and his counsel when the assessee has contacted his counsel’s office for preparing income tax return on 18-05-2024. Then the appeal was prepared and is being filed now. The delay for 40 days which was bona fide and not intentional. It is submitted that this happened due to inadvertence and beyond the control and thus admit the appeal.

To this effect, the assessee has filed an affidavit deposing the above facts in late filing of the appeal.

2.2 On the other hand, the ld. DR objected such delay in filing the appeal by the assessee, however, submit that the Court may decide the issue as deem fit and proper in the case.

2.3 The Bench has heard both the parties and perused the materials available on record. The Bench noted that there is a merit in the submission of the assessee and thus the delay is condoned.

3.1 Apropos Ground Nos. 1 to 3 of the assessee, the facts as emerges from the order of the ld. CIT(A) who has confirmed the action of the AO by observing as under:-

“5.4 I have carefully considered the facts of the case, e-response made by the appellant. The assessee in his reply has stated his share proportion of land and sale consideration (Khasra No.56 registered dated date 27.12.2010) as below:

Name	Share in land	Share in Sales Consideration
Sube Singh	109/236	4714600*109/236 = 2177506
Abhay Singh	109/236	4714600*109/236 = 2177506
Jai Bhagwan	18/236	4714600* 18/236 =359588

Whereas the AO has taken 1/3rd share amounting to Rs. 15,71,733/- out of total sale consideration of Rs. 47,14,600/-

In view of above, the AO is directed to verify the share of the assessee and allow relief of Rs.6,05,773/-(2177506-1571733) to the assessee, if found correct.

5.5 Regarding the balance unexplained cash deposited in the bank, the appellant did not furnished proper documentary evidence to examine the genuineness of this cash deposit.

Further, the assessee has also not submitted the original documents before the AO for verification. Even during the appellate proceedings, the appellant didn't furnish any further evidence so as to allow relief.

In view of above, the addition of balance addition of Rs.25,49,912/- made by the AO is hereby confirmed.

6. In the result, the appeal is partly allowed.”

3.2 During the course of hearing, the ld. AR of the assessee submitted that the assessee is an individual having interest income from bank and agricultural income. Since the assessee was not having taxable income for the year under consideration, therefore, no return of income was filed for A.Y. 2011-12. In the case of the assessee, proceedings u/s 147 were initiated by the AO on the basis of information that there were cash deposits of Rs. 73,14,000/- in the bank account of the assessee. Notice u/s 148 was issued on 28/3/2018 and in response to notice u/s 148, the assessee filed return of income on 22/8/2018 declaring total income of Rs. 22,650/- and agricultural income of Rs. 85,000/-. Copy of acknowledgment of return along with computation of income is available on **Paper Book Page No. 1-2**. The AO completed the assessment on 15/12/2018 u/s 143(3) determining total income of Rs. 31,78,340/- and agricultural income of Rs. 85,000/-. The AO made addition u/s 69A of Rs. 31,55,685/- on account of alleged unexplained deposits in bank. The ld. AR of the assessee submitted that only issue involved in the case of the assessee is sale consideration received by him on sale of agricultural lands,

which were deposited in the bank account. During the course of assessment proceedings, it was submitted by the assessee that the various lands sold by him were having apparent consideration as per sale deeds lesser than the actual amount received by him, which was much more. The submission of the assessee before the AO was that in order to accommodate the purchaser, who wanted to save stamp duty, the sale consideration in the sale deeds was disclosed less than the actual amount received by him. It was further submitted by the assessee that he was an agriculturist and did not enjoy any other than except agriculture. To strengthen his case, the assessee, during the course of assessment proceedings, submitted copy of register maintained by the Notary Public, which contained full particulars in respect of agricultural land sold by him and this supported his case that more consideration was received than disclosed in the sale deeds. However, the AO rejected the submissions of the assessee without causing any inquiries. On further appeal, the Ld CIT(A) also confirmed the order of the AO except with a nominal relief of Rs. 6,05,773/-. Aggrieved with the order of the Ld CIT(A), the assessee is appeal before the Tribunal praying to delete the addition confirmed by him for which the assessee has filed detailed written submission before the Bench.

3.3 On the other hand, the ld. DR refuted the submissions of the ld. Counsel for the assessee and supported the order of the ld. CIT(A)

3.4 The Bench has heard both the parties and perused the materials available on record and noted from the records that the assessee is an agriculturist and his only source of income is agriculture. During the year under consideration, the assessee sold various pieces of agricultural land, which were owned by him individually as well as along with his brother and cousin. The assessee is illiterate and is not at all concerned with the complications of income tax. During the course of sale of agricultural lands, the purchasing parties pleaded with the assessee that in order to save stamp duty, they would be requiring that lesser amount be disclosed in the sale deeds. The assessee not knowing any implications of income tax agreed with the purchasers and accordingly more amount was received on sale of agricultural land than disclosed in the sale deeds. It is this amount which is in excess of sale consideration disclosed in the sale deeds, being deposited in the bank account, has been treated by the AO as unexplained. The AO brushed aside the plea of the assessee that actually the consideration received on sale of agricultural land are exceeded the sale consideration shown in the sale deeds. The full particulars of lands sold, consideration disclosed in sale deeds, actual consideration received, name of the purchasing parties, khasra number of the agricultural land and date of sale are shown in the following Table for the sake of convenience.

DETAILS OF LANDS SOLD BY THE ASSESSEE AND CONSIDERATION RECEIVED

ITA NO. 768/JP/2024  
ABHAY SINGH VS ITO, BHIWADI

S.No	Khasra No. of land sold	Name of sellers	Name of purchasers	Date of sale	Consideration as per sale deed (In Rs)	Actual consideration as per Notary records (In Rs)	Amount received in the hands of the assessee (In Rs)
1	129/130	Abhay Singh	Satish Dhawan, Durecor VBSC Delhi Value Homes P Ltd	27/09/2010	14,70,000	14,70,000	14,70,000
2	38&49	Abhay Singh & Sube Singh	Vijay Pal and Surender Kumar	27/12/2010	29,77,000	47,00,000	23,50,000 (1/2 of actual sale consideration)
3	56	Abhay Singh Sube Singh & Jai Bhagwan	Dharam Veeer	27/12/2010	47,14,000	73,31,420	36,65,871

In view of the above Table, the actual receipts in the hands of the assessee is of Rs. 74,85,871 (14,70,000 + 23,50,000+3665871). The AO found that there were deposits in the bank account to the tune of Rs. 76,85,518/- as under :-

27.09.2010	:	Rs. 12,00,000
27.09.2010	:	Rs. 18,00,000
27.12.2010	:	Rs. 44,50,000
27.12.2010	:	<u>Rs. 2,35,518</u>
Total		<u>Rs.76,85,518</u>

As against this, the AO found that the sale consideration as per sale deeds pertaining to the assessee was only of Rs. 45,29,833/- and, thus, addition was made of Rs. 31,55,685 (7685518 – 45,29,833). However, the Ld CIT(A) granted relief of Rs. 6,05,773/- . Thus, the effective addition stands reduced to Rs.25,49,912/- . Against this addition, the above Table discloses that the actual consideration received by the assessee is Rs. 74,85,871/- as against Rs. 45,29,833/- considered

by the AO. It is further noted that the assessee was having good agricultural income at his disposal and some amount running into few lacs was always available with the assessee at home. The position of addition works out as under :-

Total deposits in Bank	Rs. 76,85,518
Deposits considered by A.O. as explained	Rs. 45,29,833
Further deposits treated as explained by Id CIT(A)	<u>Rs. 6,05,773/-</u>
Total amount found explained by IT authorities	<u>Rs.51,35,606</u>
Thus addition works out after appeal is of	Rs.25,49,912
(Rs.7685518 – 5135606)	

The submission of the assessee is that if the actual consideration of Rs. 74,85,871/- is considered as against Rs. 51,35,606/-, then the assessee would be requiring more credits of Rs. 23,50,265/-. In other words, the AO should have considered this amount of Rs. 23,50,265/- while making the additions. The net additions after giving credit of Rs.23,50,265/- remains only of Rs.1,99,647/-. It is noted that the same was out of agricultural income savings lying at home. Thus, no addition in this case was called for. The picture is made clear as under :-

Total Deposits in Bank	Rs. 76,85,518
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**Sources of deposit**

a. Actual sale consideration falling to the share of the assessee as per Table above.	Rs.74,85,871	
b. Out of savings from agricultural income lying at home	<u>Rs. 2,00,000</u>	<u>Rs.76,85,871</u>

In support of the actual consideration as shown in the aforesaid Table, the assessee produced copy of register maintained by the Notary Public before whom the parties had agreed to sale the agricultural land. The register maintained by the Notary Public contains full particulars of the agricultural land sold by the assessee, such as, khasra number, date on which sale was agreed, actual amount of consideration for which agricultural lands were sold and on top of all, it contains the signatures of the purchasers and sellers. The copy of register of **the Notary Public is** which are available at pages 3 & 3 of the paper book. The Bench further noted that AO rejected the copy of Notary register terming it as "fabricated", without causing any inquiries. A copy of the Notary Register is available on **Paper Book Page No.3-4**. The action of the AO was not in accordance with law and further, the Ld CIT(A) also erred in confirming the action of the AO. It is noted that the documentary evidence submitted by the assessee in the shape of

Notary Register was not appreciated by the AO in right perspective. The AO treated it as fabricated. The Ld CIT(A) also ignored this piece of evidence. It is further noted that the copy of Notary Register bears signatures of the sellers as well as purchasers and that of the Notary Public. In case the AO entertained some doubts about the genuineness of the documents, the proper course for him would have been to call the parties, whose signatures were available on this Register and examine them with reference to the veracity of the contents. The minimum thing the AO should have done was to call the Notary Public who had maintained this register and examine him on this issue but this was not done. The AO summarily rejected the copy of register terming it as fabricated. It is not discussed by the AO in the assessment order as to what ground and on what basis he found the Notary register as fabricated. The submission of the assessee before the Bench was that a strong piece of evidence which established beyond doubt that the actual consideration of sale of agricultural land was far more than the consideration shown in sale deed, was rejected without any basis. If this piece of evidence is considered in right perspective, then no amount of deposit in bank remains unexplained. Thus, the addition made by the AO would not have any legs. It is also noted from the records that during the year under consideration, the assessee did not enjoy any income other than agriculture. Even while filing the return of income for the year under consideration, the assessee disclosed income from

agriculture at Rs. 85,000/-. The AO has accepted the agricultural income of Rs. 85,000/- as disclosed by the assessee. Besides this income, the assessee had also disclosed interest only from Bank on deposits made out of amounts received on sale of agricultural lands. A copy of the IT return along with computation are available at Page No.1-2 of paper Book. It is further that where the assessee had no other income except agriculture, the logical result of deposits in bank account would be that these were out of sale of agricultural land. In the case of **ITO Vs. Abraham Varghese Charuvil, the Hon'ble ITAT, Cochin Bench** (I.T.A No.30/Coch/2017) has held that receipt of on money on sale of agricultural land was in no way different from the receipt shown in the sale deed. The Tribunal rejected the contention of the Department that the balance value of agricultural land not shown in the sale deed is unaccounted money. The ratio of this decision is fully applicable to the facts of the case. In this case also, the assessee is an agriculturist and has no other source of income except agriculture. It is also not the case of the AO that assessee was deriving income from any other source besides agriculture. Therefore, the entire deposits in the bank account are from and on account of sale of agricultural lands and not from any other source. Therefore, the deposits in the bank account stand fully explained. The picture is made clear as under :-

Total Deposits in Bank	Rs. 76,85,518
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**Sources of deposit**

c. Actual sale consideration falling to the share of the assessee as per Table above.	Rs.74,85,871	
d. Out of savings from agricultural income lying at home	<u>Rs. 2,00,000</u>	<u>Rs.76,85,871</u>

Thus, the entire deposits in the bank account stand fully explained. No addition is called for. Hence, the addition made by the AO and confirmed by the Ld CIT(A) is directed to be deleted. It is also noted that in the case of the assessee, the AO made addition of Rs. 31,55,685/- under section 69 A of the IT Act, 1961, which stands reduced to Rs.25,49,912/- after partial relief of Rs. 605773/- granted by the Ld CIT(A). In this regard, the provisions of section 69 A are quoted below :-

***Unexplained money, etc.***

**69A.** *Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.*

The perusal of the aforesaid provisions reveal that it is attracted and applicable only in case assessee is **found to be the owner of any money, bullion, jewellery**

**or other valuable article.** In the case of the assessee, the AO has applied this section on the cash deposits made by the assessee, which have been treated as money found and owned by the assessee. It is noted from the records that transactions in bank or entries in the bank account cannot be considered as money owned by the assessee unless at the time of assessment, such money remained deposited in the bank. In the case of the assessee, the money did not remain lying in the bank account. The closing balance as on 31-3-2011 is only of Rs. 401538/- . Therefore, the AO was not justified in holding that assessee was found owner of money to the extent of additions made of Rs. 31,55,685/-. Therefore, addition made u/s 69 A is unlawful and deserves to be deleted. The following case-laws are quoted in support :-

**1. DURGA KAMAL RICE MILLS vs. COMMISSIONER OF INCOME TAX**  
*HIGH COURT OF CALCUTTA*

(2003) 183 CTR 0223, (2004) 265 ITR 0025, (2003) 130 TAXMAN 0553 - Section 69 A deals with unexplained moneys of which the assessee is found to be the owner. The material difference between section 68 and 69 A is that section 68 does not require that the amount is to be owned by the assessee. It only deals with any amount shown in the books of account of the assessee where section 69 A deals with money etc. owned by the assessee and found in his possession. Therefore, ownership is one of the considerations when the matter comes under section 69A.

**2. COMMISSIONER OF INCOME TAX vs. K.T.M.S. MAHAMOOD**  
*HIGH COURT OF MADRAS* (1997) 140 CTR 0282, (1997) 228 ITR

0113, (1997) 92 TAXMAN 0169 - In order to make the assessment under s. 69A for undisclosed income, the assessee must not only be a person, who is in possession of the undisclosed income, but he should also be the owner of the same.

**3. ASSISTANT COMMISSIONER OF INCOME TAX vs. JOTINDRA STEEL & TUBES LTD. IN THE ITAT DELHI BENCH 'C' (2022) 64 CCH 0042 DelTrib (2022) 94 ITR (Trib) 0359 (Delhi)**

Held that since no real money was found to be in possession and there was no mention of any name in seized document, impugned addition were merely based on presumption and was to be deleted.

Hence, in view of the above facts, circumstances of the case and case laws cited (supra), the Bench does not concur with the findings of the Id. CIT(A) Hence, the appeal of the assessee is allowed.

4.0 In the result, the appeal of the assessee stands allowed with no orders as to costs.

Order pronounced in the open court on 10 /07/2024.

Sd/-

(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10 /07/2024

\*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Abhay Singh, Alwar
2. प्रत्यर्थी / The Respondent- The ITO, Ward- Bhiwadi
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 768//P/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar