

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 43/JP/2024  
निर्धारण वर्ष/Assessment Years : 2016-17

Om Prakash Sharma, Sanganer, Jaipur	बनाम Vs.	ITO Ward 4(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BKOPS 5112 G		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Ashish Sharma  
राजस्व की ओर से/ Revenue by : Sh. Anoop Singh, Addl. CIT

सुनवाई की तारीख/ Date of Hearing : 31/07/2024  
उदघोषणा की तारीख/Date of Pronouncement: 20/08/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Because the assessee is aggrieved by an order of the National Faceless Appeal Centre, Delhi dated 17/07/2023 [here in after Id. CIT(A) ] for assessment year 2016-17 the present appeal is filed on 18.01.2024. That order of the Id. CIT(A) passed because the assessee challenged order dated 24.12.2018 passed under section 143(3) of the Income Tax Act, by ITO, Ward 4(3), Jaipur before him.

2. The present is for the following grounds: -

“1. The A.O. erred in not following the principles of natural justice and in failing to provide adequate and meaningful opportunity and ignoring the evidence on record, without disproving/refuting it and thereby making additions of the entire credits deposited in the bank account totaling Rs. 1,54,15,000/-. In the facts and circumstances the additions are unsustainable and needs to be deleted.

2. The A.O. erred in summarily rejecting the details/explanation of the source of the depositors i.e. Shri Hanuman Choudhary, Ramwilas Choudhary and Madan Lal Choudhary, examined by him on oath without disproving/refuting it in any manner except stating "therefore, I have no option except to make an addition..." and in drawing adverse inference on a surmise and presumption. The action of the A.O. makes the assessment order invalid and liable to be quashed.

3. The A.O. queried the three persons summoned by him, on identical queries, but failed to provide to / confront with, the copy of their statement(s) with the assessee and passed a cryptic order, thereby denying natural justice to the assessee.

4. On the facts and in the circumstances of the case the learned AO has legally and factually erred in making an addition of Rs 631425 as unexplained short term capital income (gain).

5. The appellant craves your indulgence to amend, delete, modify, withdraw, add any one of the Grounds of Appeal before or during the hearing before your honour.

2.1 At the outset of the hearing the bench noted that the registry pointed out that the present appeal is time barred by 124 days. The assessee along with the appeal also filed a petition to condone the delay in bringing the present appeal which is delayed by 124 days. The petition filed in support of the reasons stating to be the sufficient reasons to condone the delay reads as under :

1. The appeal is delayed by about 145 days. That the assessee had filed an appeal before Commissioner of Income-tax (Appeals) which was being handled by the earlier authorized representative and from whom the appeal order, the information and details of the case was received late and thereafter, this appeal was filed through the new AR.

2. That the assessee is a villager and not familiar with email or other online mode and access to the IT Portal which was managed by earlier AR, who had the login ID and the Password for it.

3. That the fact of order being passed by the Commissioner of Income-tax (Appeals), NFAC came to the knowledge of assessee only when demand was informed to him.

4. It is requested that in the facts and circumstance the delay in filling of appeal before the Hon'ble ITAT was bonafide and may please be condoned. The appellant request that his appeal be kindly be decided on merits. It is submitted that refusing to condone delay will result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated and irreparable loss would result to the appellant.

5. That it is settled law when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

6. The Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. Mst. Katiji & Ors. reported in 1987 AIR 1353, which advocated a liberal approach. and concluded that :-

I. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

II. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

III. "Every day's delay must be explained" does not mean that a pedantic approach. should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

IV. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

V. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

VI. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

7. The Hon'ble Supreme Court has re-opened its decision in the case of
  1. Senior Bhonsle Estate, 419 ITR 732 /112 taxmann.com 134
  2. Golden time service, 412 ITR 102"

In support of the contentions so raised the assessee also submitted an affidavit. The Id. AR of the assessee also filed a declaration signed by the earlier counsel certifying the fact that he has upon receipt of the order on 17.07.2023 forwarded the mail to [Sharawanshare76@gmail.com](mailto:Sharawanshare76@gmail.com) and [amitkumar.tailor088@gmail.com](mailto:amitkumar.tailor088@gmail.com) but not to the assessee. Thus, considering that averments the assessee was not aware of the order passed till the recovery proceeding initiated against the assessee. Based on these set of the Id. AR prayed to admit the appeal in the interest of justice.

2.2. Per contra, Id. DR objected to the prayer of the assessee. The Id. DR submitted that the assessee is not serious his behavior is causal. It is not disputed by the counsel that the order was not served it was served and it the duly of the counsel to update the assessee. Thus, since there is no reasons having sufficient cause for the delay and therefore, the appeal filed by the assessee should not be admitted. He also objected to the fact that the assessee cannot be considered as village as is director in the company and is fully aware about his duties, so Id. DR strongly objected to the

condonation petition filed which are devoid of merits. In support of the contention so raised the Id. DR relied upon the following decisions:

- Ajmeer Sherriff & Co. vs. ITO [2015] 61 taxmann.com 301(High Court of Madras)
- Inderchand D. Kochar vs. ACIT [2016] 73 taxmann.com 96 (High Court of Madras)
- Perfect Circle India Ltd. vs. ACIT [2020] 120 taxmann.com 262 (High Court of Bombay)
- Mrs. P. S. Rajeswari vs. ACIT [2015] 56 taxmann.com 219 (High Court of Madras)
- Krishna Developers vs. DCIT [2019] 102 taxmann.com 51 (Mumbai-Trib.)
- Jyoti Chemicals vs. DCIT [2009] 27 SOT 433 (Mumbai-Trib.)
- Abhishek Transtel Ltd. vs. DCIT [2014] 51 taxmann.com 17 (Hyderabad-Trib.)
- JCIT vs. Tractors & Farm Equipment Ltd. [2017] 104 ITD (Chennai)(TM) (Chennai-Trib.)
- Ajay Kumar Jain vs. ACIT [2020] 121 taxmann.com 384 (Jaipur-Trib.)

2.3. We have heard the rival contentions and perused the material placed on record and the judicial precedent cited. The bench noted that the prayer by the assessee for condonation of delay of 124 days has merit as it is evident that the counsel in whose mail id the order is served has been forwarded to the other persons and not to the assessee. The evidence so procedure has further supported that counsel's declaration placed on record accepting the facts.

Therefore, the mistake of the counsel the assessee should not suffer. Considering the judicial decision and the fact that the assessee has sufficient reasons to bring the present appeal with delay and that reasons advanced along with the supporting evidence are sufficient to consider the delay in filling the present appeal and we consider that reasons as sufficient to condone the delay. As held by the apex court that there is a distinction between an explanation and an excuse, emphasizing that, mere excuses would not suffice; a satisfactory and acceptable explanation was required. The court also added that "there is no formula that caters to all situations and therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts." We therefore, feel that reasons assigned by the assessee with declaration of counsel and copy of the email being forwarded at wrong address are sufficient cause for filling the appeal belatedly. Therefore, we concur with the submission of the assessee and condone the delay of 124 days in filing the appeal by the assessee in view of the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

3. Succinctly, the fact as culled out from the records is that the assessee filed his return of income for the assessment year 2016-17 on 30-03-2017 declaring total income of Rs 5,83,320/-. The assessee has received salary income from Saathi Textiles Private Limited and remuneration and interest from Skyzone Technologies and capital gain income. The case was selected for scrutiny under CASS for Complete security. Reasons for selection are that "(i) Large cash deposits in saving bank account(s) (AIR 001, total turnover and other income in Part A - P&L of ITR). Notice u/s 143(2) of the Income Tax Act, 1961 was issued on 18-09-2017 which was duly served upon the assessee. Notice u/s 142(1) along with query letter was issued on 23-07-2018 fixing the case for hearing on 27-07-2018. In support of the income disclosed in the return of income the assessee furnished details of immovable property, details of cash deposits, copy of cash book, copy of cash statement account, details of sale deed, details of salary, interest and remuneration etc., copy of confirmation and Ikrarnama's receipts of the persons from the assessee received the cash.

3.1 During assessment proceeding the Id. AO noted that the assessee has cash deposited in Bank of Baroda for an amount of Rs. 1,08,15,000

and Rs. 46,00,000/- in Bank of Maharashtra account. The assessee was asked to furnish the source of cash deposited into the bank account in response the Id. AR of the assessee furnished seven Ikrarnama's receipts, some confirmations and cash statement account for source of cash deposits. The Id. AO asked to produce the persons who have given the cash amount to the assessee through Ikrarnama receipts. But the AR of the assessee failed to produce Ikrarnama receipts holders along with their copy of ITR and bank statement confirmations. The Id. AO issued summons to all Shri Hanuman Sahay Choudhary, Shri Roshan Lal Choudhary, Shri Kamlesh Sharma, Shri Bhanwar Lal Choudhary, Shri Kamal Sharma, Shri Madan Lal Choudhary and Shri Ram Vilash Choudhary. On the date appointed by the Id. AO Shri Hanuman Sahay Choudhary, Shri Ram Vilas Choudhary and Nadan Lal Choudhary attended the office and the statement were recorded.

3.2 As the per the statement recorded pn 14.12.2018 Shri Hanuman Sahay Choudhary stated that he is a farmer and doing agricultural activities and yearly earned Rs. 8,00,000/-. But he failed to produce the proof / source of agricultural income, not produce copy of ITR and also not produce his bank account for verification. In the absence of documentary

evidence, statement of Shri Hanuman Sahay Choudhary was not accepted by the Id. AO and he presumed that Shri Hanuman Sahay Choudhary has never given cash amount of Rs. 18,00,000/- to the assessee and that amount was considered as undisclosed cash deposit in hands of the assessee.

3.3 Statement of Shri Ram Vilash was recorded on 14.12.2018 wherein he stated to be farmer and doing agricultural activities and yearly earns Rs. 7 lacs. But he failed to support the contention by filling the ITR and not produced bank statement for verification. Therefore, the Id. AO noted that the Shri Ram Vilash has not given cash amount of Rs. 20 lac to the assessee and it was treated as undisclosed cash deposit of the assessee and added to the income of the assessee.

3.4 Statement of Shri Madanlal Choudhary was recorded on 14.12.2018 wherein he stated himself to be a farmer and engaged in the agricultural activities. He stated that he earns Rs. 3,50,000/-. But he failed to produce the proof / source of agricultural income and not produced ITR and bank statement. In the absence of evidence Id. AO noted that he has no option to make an addition of Rs. 20 lac as undisclosed income of the assessee. As per summons issued Shri Roshan Lal Choudhry, Shri Kamlesh Sharma, Shri Bhanwar Lal Choudhry and Shri Kamal Sharma not attended the

before the Id. AO. The total of these persons amount comes to Rs. 54,00,000/-. Thus, the total of those persons who attended comes to Rs. 58 lac and not attended comes to 54 lac totaling to Rs. 1,12,00,000/- was considered as unexplained. As regards the withdrawal of cash from the bank and subsequently redeposited into the bank account was not considered by producing any cogent evidence for withdrawals of cash from bank account and therefore, the reply for cash withdrawals was not accepted by the Id. AO. Based on the above Id. AO added a sum of Rs. 1,54,15,000/- was considered as unexplained cash deposited as income of the assessee.

3.5 The assessee in his return of income claimed deduction of cost of land of Rs. 3,81,925/- & 2,50,000/- , Id. AO asked the assessee to produce documents / evidence for claim of deduction of cost of land. The assessee could not file proper documents and therefore, the same was not allowed. Consequently the assessee total income of Rs. 1,66,29,757/- was assessed as against the returned income of Rs. 5,83,332/-.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. A propose to the grounds

so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:-

#### 5.2 Decision:-

I have perused the assessment order, grounds of appeal and submission of the appellant carefully. I find from the assessment order that during the period relevant to AY 2016-17, the appellant had deposited cash of Rs. 1,54,15,000/-. The appellant claimed during the course of assessment proceedings that the source of this cash deposits was advances received from 7 persons and in support of his claim, notarised copies Ikrarnamas, confirmation letters and cash statements were furnished. The AO had requested the appellant to produce the 7 persons for examination before AO but the appellant had failed to do so. Therefore the AO had issued summons u/s 131 to all 7 persons but only 3 persons namely Shri. Hanuman SahayChoudhary, Ram VilashChoudhary and MadanLal Choudhary attended before AO whose statements on oath were recorded. All the 3 persons accepted to have given advance by cash to the appellant of Rs. 18,00,000/-, Rs.20,00,000/- and Rs.20,00,000/- respectively for purchase of lands out of their agricultural income kept in home. The above 3 persons claimed that their annual agricultural income is Rs.8,00,000/-, Rs.7,00,000/- and Rs.3,50,000/- respectively but no supporting evidence was submitted. Remaining 4 persons did not respond to the summons issued. Since the creditworthiness of the 3 persons for giving advance in cash of Rs. 18,00,000/-, Rs.20,00,000/- and Rs.20,00,000/- respectively was not proved with supporting evidences and remaining 4 persons did not respond the summons, the AO rejected the claim of the appellant that the source of cash deposits of Rs.1,54,15,000/- is out advances received. Therefore the AO made addition of Rs.1,54,15,000/- u/s 69 of the IT. Act.

During the course of appellate proceedings the appellant has submitted that the copy of the summons was not provided to the parties and the copies statement recorded by the AO have not been provided to the appellant. The appellant had produced the evidences of land holding of the 7 persons from whom the advances claimed to have been received by the appellant.

I have perused the facts of the case and submission of the appellant. I find that during the course of assessment proceedings, the appellant failed to prove the creditworthiness of the 7 persons from advances of Rs. 1,54,15,000/- were claimed to have been received with supporting evidences and also failed to produce the said persons before AO for examination. Further when the AO issued the summons to those 7 parties, only 3 persons attended and the others neither attended nor filed adjournment requests seeking more time. The 3 parties though admitted to have given the advances to the appellant by cash, the source such income was not explained with supporting evidences while recording the statement nor such information was filed subsequently before the AO. Regarding

the claim of the appellant that the copies of summons were not provided to the parties appears to be incorrect since the summons were issued to the parties on 10/12/2018 whereas they attended on 14/12/2018. This shows that without receiving the summons, the parties could not have attended before the AO. Regarding the non receipt of copies of statements, I find that the statements were reproduced in the assessment order and the appellant has applied before the AO after 4.5 years and the appellant has not pointed out specific grievance. On the contrary I find that the said 3 person's statements are in favour of the appellant but are not supported by any reliable evidence as far as the sources of cash advances given to the appellant are concerned. The appellant neither submitted such evidence before the AO during the course of assessment proceeding nor produced the same during the appellate proceedings. Merely producing the land holding extract does not prove that the concerned persons were having that much agricultural income to give the advances to the appellant.

It is further noted from the appellant's submission that he had opted for VSV scheme but did not pay the due taxes as per Form No.3 issued under VSV scheme since as per the appellant, the relevant income is already taxed and hence there is double taxation. However appellant has not demonstrated with supporting evidences as to how the relevant income has already been taxed. I further find that the facts of the decisions relied upon by the appellant are not identical the facts of the present case. Therefore the contention raised by the appellant is not found acceptable.

In view of the above discussion, the ground raised by the appellant is dismissed.

#### 6.2 Decision:-

I have perused the assessment order, grounds of appeal and submission of the appellant. I find that the same information/evidences were also produced before the AO but the AO pointed of certain discrepancies and did not allow the deduction of cost of acquisition and expenses from the computation of short term capital gain. I find from the submission of the appellant and supporting evidences that the appellant is entitled for deduction of cost of acquisition and expenses incurred. Therefore, the addition made by the AO is directed to allow the deduction of cost of acquisition and expenses incurred from the short-term capital gain after due verification. Thus, this ground of partly allowed.

5. Assessee feeling dissatisfied from the above order of the Id. CIT(A) preferred the present appeal. To support the various grounds so raised by the Id. AR of the assessee, he relied on the written submissions in respect

of the various grounds raised by the assessee. The written submission is reproduced herein below:

GOA 1: The A.O. erred in not following the principles of natural justice and in failing to provide adequate and meaningful opportunity and ignoring the evidence on record, without disproving / refuting it and thereby making additions of the entire credits deposited in the bank account totaling Rs. 1,54,15,000/-. In the facts and circumstances the additions are unsustainable and needs to be deleted.

AND

GOA 2: The A.O. erred in summarily rejecting the details/explanation of the source of the depositors i.e. Shri Hanuman Choudhary, Ramvilas Choudhary and Madan Lal Choudhary, examined by him on oath without disproving / refuting it in any manner except stating *"therefore, I have no option except to make an addition..."* and in drawing adverse inference on a surmise and presumption. The action of the A.O. makes the assessment order invalid and liable to be quashed.

Submissions: (Paper book filed separately)

1. The AO, in page 2-4 of the order has noted the date-wise, cash deposits in the Bank of Baroda, account, (totalling Rs. 1,08,15,000/-) and in Bank of Maharashtra account (totalling Rs. 46 Lakhs) and sought details of the source of the deposits. The AO noted that, in reply to the questionnaire, issued on 16.11.2018.

The AR of the assessee attended the assessment proceedings and furnished details of immovable property, details of cash deposit, copy of cash-book, copy of cash statement account, details of sale deed, details of salary, interest and remuneration etc., copy of confirmation and Ikrarnama's receipts, of Svs. Shri Hanuman Sahay Choudhary, Roshan Lal Choudhary, Kamlesh Sharma, Bhanwar Lal Choudhary, Kamal Sharma, Madan Lal Choudhary (Aadhar card copy) and Ram Vilash Choudhary and also furnished copy of ITR of the Co. in which he is a Director.

2. The AO also noted that

On perusal of the information/details furnished by the AR of the assessee, he further asked to produce the complete details of cash deposits of Rs. 1,08,15,000/- in Bank of Baroda and Rs. 46,00,000/- in Bank of Maharashtra with documentary evidences. He was also asked to produce the details of copy of memorandum of company with their complete details i.e. copy of ITR, Bank statement etc. also furnish details in which the assessee has Director and furnish details of Salary and also explain the reasons for cash withdrawals and credit entries shown in bank account.

In response source of above cash deposits of Rs. 1,54,15,000/-. The AR of the assessee has furnished copy of seven Ikrarnama's receipts, some confirmations and cash statement account for source of cash deposits.

3. The AO further noted that :-

For verification of source of cash deposit, summons were issued to Ikrarnama's receipts holders Svs. Shri Hanuman Sahay Choudhary, Roshan Lal Choudhary, Kamlesh Sharma, Bhanwar Lal Choudhary, Kamal Sharma, Madan lal Choudhary and Ram Vilash Choudhary on 10-12-2018 and fixing the date for 14-12-2018.

On the fixed date Ikrarnama's receipts holders Svs Shri Hanuman Sahay Choudhary, Ram Vilash Choudhary and Madan lal Choudhary are attended the office and the statements were recorded.

4. The AO has reproduced extracts from these three recorded statements. It is pertinent to note that the queries (Number 8 & 9), of the AO, are identical in case of all three persons, and so are their stated responses (except for the change of amount).

Thus, for example, in case of one of them namely, Shri Hanuman Singh Choudhary, AO noted

In answer of question No. 8, Shri Hanuman Sahay Choudhary stated that "मैंने श्री ओम प्रकाश शर्मा को वित्त वर्ष 2015-16 में रुपये 18,00,000/- दिये थे। यह रुपये तीन बार में दिये थे। यह रुपये जुलाई, 2015 में दिये थे। मैंने रुपये 18,00,000/- रुपये तीन बार नकद में दिये थे। रुपये 8,00,000/-, फिर रुपये 5,00,000/- फिर रुपये 5,00,000/- दिये थे। मैंने कृषि भूमि खरीदने के लिए दिये थे। यह रुपये देते समय हमने एग्रीमेन्ट बनवाया था। एग्रीमेन्ट की कॉपी अभी मेरे पास नहीं है। मेरे पास रुपये 18,00,000/- देने को एग्रीमेन्ट के अलावा ओर कोई साक्ष्य नहीं है।

In answer of question No. 9, Shri Hanuman Sahay Choudhary stated that "मैंने बैंक में रुपये जमा नहीं कराये थे क्योंकि मुझे कृषि भूमि खरीदनी थी इसलिए रुपये घर पर ही रखे थे।

5. Despite this confirmation by Shri Hanuman Singh Choudhary, the AO, has drawn adverse conclusion.

As per statement recorded on 14-12-2018, Shri Hanuman Sahay Choudhary stated that he is a farmer and doing agricultural activities and yearly earned Rs. 8,00,000/-. But, he has failed to produce the proof/ source of agricultural income, not produce copy of ITR and also not produce his bank account for verification.

In absence of documentary evidences, statement of Shri Hanuman Sahay Choudhary is not acceptable and also not verifiable.

Therefore, it is presumed that Shri Hanuman Sahay Choudhary has never given cash amount of Rs. 18,00,000/- to the assessee. Therefore, I have no option except to make an addition of Rs. 18,00,000/- treated as undisclosed cash deposit income of the assessee and added to the total income to the assessee.

6. Similarly, the AO has reproduced extract from the statements of the other two examined person namely Shri Ram Vilas Choudhary and Shri Madan Lal Choudhary, which is identical to the statements of Shri Hanuman Singh Choudhary. Also the conclusion of the AO in their cases is also verbatim, the same as drawn for Shri Hanuman Singh Choudhary, (except for the change of amount) and thereby made addition of Rs. 1,12,00,000/- i.e. the total of the amount as per Ikarinama receipts with these three persons.

The truncated statements, of these three persons, reproduced by AO, are selective and misconstrued. Yet, even in these statements, the fact and quantum of the advances given by these person, to assessee to purchase agriculture land, for them have been confirmed and is supported by their notorised Ikarinama (Agreement), disclosing the receipts. Moreover, as land was still to be purchased, information of its location could not have been given. Therefore, the observation of the AO on page 7 that there is no mention of agricultural land and repayment of advance in case it is not purchased, is incorrect, misleading and contrary to records and the addition made for this reason is unsustainable.

7. In case of other Four persons namely Shri Roshan Lal, Shri Kamlesh Sharma, Shri Banwar Lal and Shri Kamal Sharma, who were not able to appear on 14.12.2018, in response to the stated summon dated 10.12.2018, the AO assumed that he had no option except to make addition for the amounts shown received from them i.e. (totalling Rs. 54 Lakhs).

The Ikarinama receipts/ confirmation of these four persons filed by the assessee on 26.11.2018, disclosing the receipts as per this Ikarinama were not acceptable, to the AO, since, in his opinion, these Ikarinama receipts lacked information of the agriculture land sold and time period of sale and did not specify as to how the advance was to be returned, if the assessee did not make any purchase of agriculture land for these persons. The addition of Rs. 54 Lakhs of the advances of these three persons, made on this surmise is unsustainable.

8. The AO also felt that the assessee in reply, furnished on 22.11.2018, had stated in reply to his query number 8, that he did not maintain books of account. Yet, later he has produced copy of the cash book which therefore, seems to be a manipulation and so was not acceptable to the AO.

This observation of the AO on page 7, is also misleading. In fact, the query made by AO was at point number 18 of his questionnaire which was "*Please furnish the particulars of books of accounts maintained by you for the relevant year*" (PB page number....).

The reply of the assessee was "*Books of account not prepared*" (PB page number....). This reply has been distorted by the AO and is a casual surmise, as seen from the fact that no proceedings were initiated u/s 271A of the Act for the stated default u/s 44AB. The cash book / books of account of the assessee were also not rejected u/s 145(3) of the Act. Hence, this cannot be a valid reason for rejection/disproving/refuting of the cash book.

9. In reply to the query of the AO, the appellant had explained (reproduced by AO on page 8 of the order), the purpose of the frequent withdrawals and deposit of cash. For a property dealer, the ready availability of cash was necessary to strike a good deal at the spur of the moment. The frequent deposit / withdrawal in the bank account was a normal feature in the nature of a real estate broker, arranging sale / purchases for the clients. Therefore, the withdrawals were made to keep cash handy and in case, the deal was not negotiated, the withdrawals were re-deposited. However, the AO discounted it without disproving or refuting but causally stating

On perusal of the written reply, it is noticed that the AR of the assessee has not produced any cogent reason for withdrawals of cash from his bank account. Therefore the reply for cash withdrawals is not acceptable.

10. It is pertinent to note that the appellant has not been provided the copy of the statements recorded on 14.12.2018 and of the summons issued u/s 131, dated 10.12.2018 and evidence of their service, despite repeated requests and application under RTI Act, dated 01.04.2024 (PB page number.....) / email dated .....(PB page number ...).

The appellant has obtained a copy of the summons issued by the AO (PB page number...) to four persons. It reveals that summons vide letter number 2616 dated 30.11.2018 was issued to Shri Madan Lal for 05.12.2018 (his statement was recorded on 10.12.2018, PB page number...). Further, vide letter number 2618 dated 30.11.2018 to Shri Bhanwar Lal (did not appear) for 05.12.2018 was issued (PB page number...). Thus, the statement of AO of having issued all summons on 10.12.2018 for appearing for 14.12.2018 was incorrect. In this context, it is necessary to ascertain if the summons were issued on the date specified and /of their service.

As such, the conclusion of the CIT(A) that the assessee had failed to produce these persons and that *“only 3 persons attended and the others neither attended nor filed adjournment requests seeking more time”*, without ascertaining the issue / service of the stated summons for compliance in the given short period was hurried, inappropriate and a conjecture. The CIT(A) further, compounded this mistake by observing.

*“I find that the statements were reproduced in the assessment order and the appellant has applied before the AO after 4.5 years (for copies of statements) and the appellant has not pointed out specific grievance”*.

This is a gross violation of the Principles of Natural Justice

11. The CIT(A) accepted that the three persons examined affirmed their advances to the assessee for purchase of agriculture land, and has not refuted the evidentiary value of the notarised agreements as well (Ikarinama). It is also admitted by the CIT(A) On page 10 of his order that *“The appellant had produced the evidences of land holding of the 7 persons from whom the advances claimed to have been received by the appellant”*.

Yet, the CIT(A) acted on a conjecture that *“Merely producing the land holding extract does not prove that the concerned persons were having that much agricultural income to give the advances to the appellant”*.

Thus, both the AO and CIT(A) required the assessee to explain the source of the source, and when it was also explained, the rejection was made on surmise and conjecture.

12. In these facts and circumstances, the premises drawn by the AO / CIT(A) for rejecting the notarised agreements, the statements recorded, confirmations filed, evidence in form of land holding Jamabandi and seeking the source of the source is contrary to law and facts in the case of the assessee and makes the addition, unsustainable. These grounds of appeal may please be allowed.

GOA 3: The A.O. queried the three persons summoned by him, on identical queries, but failed to provide to / confront with, the copy of their statement(s) with the assessee and passed a cryptic order, thereby denying natural justice to the assessee.

Submission:-

1. The AO has not provided the copy of statements, recorded by him, of the three persons in namely Shri Hanuman, Shri Ram Vilas and Shri Madan Lal. Moreover, The AO has not brought any evidence on record of issuing summons u/s 131 to the other four persons namely Shri Roshan Lal, Shri Kamlesh Sharma, Shri Banwar Lal and Shri Kamal Sharma, and their service upon them. The appellant requested the AO to provide copy of the statements and the summons on 19.06.2023 (PB page ....) and again vide RTI application dated 01.04.2024 / email, but the complete statements has not been provided yet.

2. In his order the CIT(A) admitted that the statements of three persons "are in favour of the appellant but are not supported by any reliable evidence as per as the sources of cash advances given to the appellant are concerned". The CIT(A) also observed on page 10 that "The appellant had produced the evidences of land holding of the 7 persons from whom the advances claimed to have been received by the appellant". (Emphasis supplied)

Yet, the CIT(A) contradicted himself by stating that

*"Merely producing the land holding extract does not prove that the concerned persons were having that much agricultural income to give the advances to the appellant"*.

3. Further, the CIT(A) ignored the Principles of Natural Justice, in observing that "*I find that the statements were reproduced in the assessment order and the appellant has applied before the AO after 4.5 years (for copies of statements) and the appellant has not pointed out specific grievance*" and that "*only 3 persons attended and the others neither attended nor filed adjournment requests seeking more time*".

4. Thus, not only the AO but also the CIT(A) were seeking the source of the source but also discounted the evidence produced before them on a surmise and conjectures and refuting/ disproving it in any manner. A document / statement has to be read as a whole and not in selective parts. The AO / CIT have not even produced evidence of issuing summons and their service upon all the person and have sought to justify the failure to provide copies of the recorded statements, in utter disregard to Principles of Natural Justice.

5. The assessment order is unsustainable on this ground alone and needs to be quashed.

GOA 4: On the facts and in the circumstances of the case the learned AO has legally and factually erred in making an addition of Rs 631425 as unexplained short term capital income (gain).

Submission :-

1. The AO had not allowed the claim of the cost of the acquisition i.e. Rs. 3,81,925/- and Rs. 2,50,000/- of the land sold by the assessee and evidenced by the copy of the possession letter and receipts of the colonizers dated 07.01.2014, and added these amounts as short term capital gains.

2. The CIT(A) reproduced the submission of the assessee in this regard, and noted

*"I find from the submission of the appellant and supporting evidences that the appellant is entitled for deduction of cost of acquisition and expenses incurred. Therefore the addition made by the AO is directed to allow the deduction of cost of acquisition and expenses incurred from the short term capital gain after due verification"*.

3. However, the CIT(A) in para 6.2 on page 15, of the order, directed the AO to allow the cost of acquisition and expenses incurred “*after due verification*”. In other words, though the CIT(A) was satisfied, on the basis of submission, that these deduction were to be allowed yet he set aside the addition for which he was not entitled under the law. Thus, his setting aside to the AO for “*after due verification*” is illegal

Therefore, the total disallowance (Rs. 3,81,925/- + Rs. 2,50,000/-) for computation of short term capital gain needs to be deleted and the related grounds of appeal to be allowed.

The ground of appeal number 3 and 4 are not pressed at present, since, the penalty has not been imposed yet.

The appellant craves your indulgence to amend, delete, modify, withdraw, add anyone of the Grounds of Appeal before or during the hearing before your honour.”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S NO.	PARTICULAR	PAGE NO FROM TO
	PAPER BOOK-I	
1	Copy of letter filed to ITO ward 4(3) in response to his notice u/s 142(1) including enclosures mentioned in this letter dated 23.07.2018	1-22
2	Copy of application to ITO ward 4(1) filed on 31/05/2023, seeking copy of statements. Copy provided to CIT(A) also submissions before CIT(A)	23
3	Copy of submissions filed before CIT(A) on 01/07/2023 and the paper book filed before CIT(A)	24-61

4	Copy of Jamabandi i.e. ' Record Of Right' of land owned by listed persons filed before CIT(A) on 13/07/2023	62-79
5	Copy of confirmation letter(s) filed before the AO	80-89

S.NO.	PARTICULARS	PAGE NO. FROM TO
	PAPER BOOK-II	
1	Copy of RTI application dated 01.04.2024	90-91
2	Copy of 131 summon vide letter number 2616, dated 30.11.2018 for appearance of 05.12.2018 (In case of Madan Lal).	92
3	Copy of 131 summon vide letter number 2618, dated 30.11.2018 for appearance of 05.12.2018 (In case of Bhanwar Lal).	93
4	Copy of 131 summon vide letter number 2683, dated 10.12.2018 for appearance of 14.12.2018 (In case of Hanuman Singh Choudhary).	94
5	Copy of 131 summon vide letter number 2685, dated 10.12.2018 for appearance of 14.12.2018 (In case of Ram Vilas).	95
6	Copy of letter of appellant dated 30.06.2018 to CIT(A), with Jamabandi's.	96
7	Copy of email dated requesting for copy of statement / summons	97-98

7. The Id. AR of the assessee submitted that three person summoned by the Id. AO were appeared and have confirmed to have given the money to

the assessee. Once they have appeared and confirmed the contention addition in the hands of the assessee cannot be made. As regards the other four person the Id. AO stated to have issued on 10.12.2018 but the same has been issued on 30.11.2018 and the same was also served after the date of remaining present to that summoned party Shri Bhawalal Chodhary. That copy of summons issued filed at page 93 of the paper book. So the contention that the summons were issued on 10.12.2018 is not correct. The assessee vide an application dated 01.04.2024 filed an application for Right to Information wherein the assessee has asked for the statement of the persons recorded and copy of the summons issued to those four persons who alleged to have not been appeared. The assessee at page 38 given the detailed break up of cash deposit and withdrawals. As regards the availability of cash the Id. AO did not find any mistake merely the withdrawal cash cannot be considered as unexplained. Based on this contention the Id. AR of the assessee submitted that the addition of Rs. 1,54,15,000/- is required to be deleted. As regards the cost of acquisition, the Id. CIT(A) should have granted the relief instead of sending back to the Id. AO for verification.

8. The Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. AO and Id. CIT(A). He stated that out of the 7 person wherein the assessee has alleged to have received the money 3 of them appeared before the Id. AO but four of them did not appear even though the summons were issued. Thus, so far as the three-person money they did not support the contention with any evidence and four of the person did not appear before the Id. AO so the conclusions received by the Id. AO and with that of the Id. CIT(A) is clearly support there the assessee did not support the contention of the receipt of the money by him. So since the creditworthiness is not proved the addition is rightly made as undisclosed income of the assessee. The Id. AO has categorically proved that the assessee did not support the contention that he has received the money for agricultural land at Rs. 1,12,00,000/- and the original ikrarnama were also not produced by the assessee. There is no mention about the basic details of what is the timeline, what are the condition for giving back the money etc. all these primary details are missing therefore, this Ikrarnama's is nothing but afterthought. As regards the contention that the in respect of the four parties whether the summons were issued or not let he submitted that in the

interest of justice the issue may be set aside to the file of the Id. AO as the issue of allowability is already pending with the Id. AO.

9. In the rejoinder the Id. AR of the assessee submitted that the money received and accounted in the cash book is supported by the ikrarnama and the details of the summons issued is also not correct and in the absence the details of the summons addition cannot be confirmed. The assessee being broker of property the withdrawal of cash and re-deposited cannot be doubted.

10. We have heard the rival contentions and perused the material placed on record. The bench noted that in the present case the assessee alleged to have received a sum of Rs. 1,12,00,000 on account of Ikranama for purchase of agricultural land for seven different persons. Out of those seven persons, three appeared before the Id. AO but could not justify the source of cash given to the assessee. As regards the four person the assessee alleged that date of summons mentioned in the order is not correct as the summons issued in the case of Shri Bhanwar Lal Choudhry the date of summons is 30.11.2018 and not 10.12.2018 as alleged by the Id. AO. Even the assessee was not given the statement of three persons

whose statement is relied upon by the revenue while making the addition, even though the assessee filed an application under RTI. Thus, we are of the considered view that the addition in this case is made without giving proper opportunity to the assessee to prove the source of Rs. 1,12,00,000/-. As regards the balance cash deposited into the bank account the assessee submission is that the cash has been withdrawn from the bank and the source of that is not disputed. Merely the purpose of the withdrawal is not explained the addition cannot be made of the money which has been withdrawn from the bank account. Here also we note that there is no clear finding of the lower authority as to why the same cannot be accepted. Looking to the overall aspect of the matter we deem it fit that the Id. AO should examine all the aspect of the matter a fresh regarding the source of cash deposited by the assessee in his bank account after affording proper opportunity of being heard to the assessee and after undertaking required verification. Based on these observations ground no. 1 to 3 raised by the assessee is allowed for statistical purposes. Ground no. 4 raised by the assessee is for allowability of deduction claimed against the capital assets sold by the assessee. This ground was raised before the Id. CIT(A) who has considered the evidence submitted by the assessee already set aside the

issue before the Id. AO and therefore, we do not find any merits to deviate from the finding of the Id. CIT(A) in the matter.

In the result, for statistical purposes, the appeal is treated as allowed.

Order pronounced in the open court on 20/08/2024.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20/08/2024

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- Om Prakash Sharma, Sanganer, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 4(3), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 43/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar