

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**

**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.189/Nag./2022**

**(Assessment Year : 2016-17)**

Income Tax Officer  
Ward-5(3), Nagpur

..... Appellant

v/s

Shri Waman Mahadeorao Sarode  
Plot no.25, Shailesh Nagar  
Wathoda Ring Road, Near Lalita Public  
School, Nagpur 440 008 PAN-AETPS5079Q

..... Respondent

Assessee by : Smt. Veena Agrawal  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing - 19/09/2024

Date of Order - 24/09/2024

**ORDER**

**PER K.M. ROY, A.M.**

The Revenue has filed this appeal challenging the impugned order dated 06/05/2022, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2016-17.

2. The Revenue has raised following grounds:-

*"1. The Ld. CIT (A) erred in ignoring the statement on the oath of the assessee, recorded by the AO during the assessment proceedings, wherein he deposed that his only source of income is salary. The Ld. CIT(A) further erred in ignoring the fact that the assessee has not disclosed any agricultural income in return of income.*

2. The Ld. CIT(A) erred in ignoring the contradiction on the date of possession of the land as stated by the vendor in the statement on oath recorded by the AO during the course of assessment proceedings that he had handed over the possession of the land on 02.06.2014 whereas 'Kabja-Patra' states that possession was given in the year 2009. The Ld. CIT(A) also ignores the registered sale deed in which possession of the land was given on date of registration i.e. 24.07.2015.

3. The Ld.CIT(A) erred allowing the appeal without exercising the power vested him in u/s 250(4) of the IT Act in ascertaining the correctness of the fact regarding claim of the assessee and assessing officer. In view of these facts further appeal is suggested in this case.

4. Any other grounds which may be raised at the time of hearing with the permission of Hon'ble ITAT."

3. The Revenue, by way of letter dated 26/03/2024, has requested for raising additional grounds, which are as under:-

"i) The learned CIT(A) erred in deleting the addition based on the additional evidences presented by the appellant without taking into consideration the fact that those evidences were not presented during the assessment stage before the Assessing Officer.

ii) The learned CIT(A) erred in granting relief to the assessee in contravention FO Rule 46A of the Income Tax Rules, 1962."

4. Facts in Brief:- . The Assessing Officer received information from Income Tax Officer (I&CI)(Hq), Nagpur, that the assesses, during the year under consideration, purchased immovable property at Mouza Nari, Tahsil, District Nagpur, for a consideration of ₹ 16,35,000, in cash the market value of which is ₹ 1,76,90,000. The assessee has also paid stamp duty and registration charges as per the market value in cash ₹ 11,80,680. The assessee has not filed income tax return for A.Y. 2016-17. The cash payment against the purchase of property of ₹ 16,35,000, and stamp duty charges paid ₹ 11,80,680, needs further verification and difference in the sale consideration of ₹ 16,35,000, and market value of ₹ 1,76,90,000, needs to be

treated as income from other sources under section 56(2)(vii)(b) of the Income Tax Act, 1961 (*"the Act"*). Accordingly, the assessee's case was re-opened under section 147 of the Act by issuing notice under section 148 of the Act, requesting the assessee to file his return of income for the year 2016-17, in response to which the assessee requested to provide reasons to belief for re-opening the case and the same was provided by the Assessing Officer vide office letter dated 10/08/2019. By issuing notice dated 03/07/2019, the Assessing Officer sought explanation from the assessee requesting him to explain the source of cash for purchase of immovable property worth ₹ 16,65,000 and the Fair Market Value (FMV) of which is ₹ 1,76,90,000. The Assessing Officer also sought explanation from the assessee as to why the difference in purchase value and FMV should not be treated as his income from Other Source of Income. In response, the assessee filed his return of income for the assessment year 2016-17 on 24/06/2019, declaring income at ₹ 2,13,750. However, the assessee failed to explain the source of fund for purchase of immovable property in cash. The contention of the assessee is that, the said investment has been made from the saving account and agricultural income, which was not acceptable to the Assessing Officer, as the assessee failed to submit any documentary evidences explaining the source of cash payment for the immovable property purchased. The Assessing Officer also found that the return of income filed by the assessee for the assessment year 2016-17 and 2018-19, no agricultural income is offered for computation, which clearly contradicts the statement of the assessee regarding the cash payment which is out of agricultural income. The Assessing Officer held that the assessee has not followed the provisions of

section 56(2)(vii)(b) of the Act, as the assessee has not made payment by any mode other than cash. The assessee is not getting the benefit of the proviso to section 56(2)(vii)(b) of the Act. In view of the above discussion, the cash purchases of immovable property of ₹ 16,35,000, and the registration charges of ₹ 11,80,680, aggregating to ₹ 28,15,680, paid in cash, the sources of which are not explained by the assessee are treated as unexplained investment under section 69 of the Act and added to the income of the assessee. As the assessee has given possession on the date of registry i.e., on 24/07/2015 and therefore, the Market Value for Stamp Duty purpose is considered as sale consideration of the immovable property. Therefore, the difference in FMV and purchase value of ₹ 1,60,55,000, was treated as income from other sources, as per section 56(2)(vii) (b) of the Act.

5. The learned CIT(A), vide its impugned order, granted full relief. It is worthwhile to reproduce, in verbatim, the written submissions made by the assessee before the learned CIT(A) as under:–

*"35. In this regard, it is most humbly submitted that the AO made the addition of Rs.28,15,680/-, i.e. Rs.16,35,000/- for purchase of immovable property and a sum of Rs.11,80,680/- for registration charges, under the head of unexplained investment u/s 69 of the Act. It is the case of the Ld. Assessing Officer that the assessee has not explained the sources of the investment in cash and therefore, it is treated as unexplained investment u/s 69 of the Act.*

*36. It is most humbly submitted that the assessee was asked to explain the source of income vide letter dated 26.10.2019, as evident from para 7 of the Assessment order, as to "why the cash purchases of the property Rs. 16,35,000/- and Stamp Duty charges of Rs. 11,80,680/-, the source of which are not explained, should not be treated as unexplained investment u/s 69.*

*37. With regard to explanation sought by the Ld. AO in respect of "why the cash purchases of the property Rs. 16,35,000/- and Stamp Duty charges of Rs. 11,80,680/- the sources of which are not explained, should not be treated as unexplained investment u/s 69 and added to your income", the assessee submitted, vide letter dated 02.11.2019, that the property was purchased*

from the accumulated funds of the assessee which he earned over the period of time from agriculture income and other sources.

38. It is brought to your kind notice that the assessee is an individual and earns income under the head salary. The assessee works in the organization Mathadi and Unprotected Labour Board as a registered worker in the board for the year under consideration. The assessee earning salary since the year 1993. The assessee has accumulated a sizeable sum over the year which is duly evident from the Form 16A of the assessee. With this the assessee also earns income from agriculture income. 3. Job certificate of Mr. Waman Sarode and last 3 months salary sheets are attached as "Annexure-3".

39. It is also submitted that the assessee has discharged his onus of payment for the purchase of land in a small installment, i.e. the payment that he could have afforded. The assessee made a payment of Rs.9700, Rs.20,000, Rs.30,000 etc., these are small amount that can be easily afforded by any common man earning Rs.20,000/- per month.

40. That the following table shows the amount paid in pieces and miniscule amount. It can be seen that there is a reasonable time taken by the assessee between each payments. This is apparently shows the time period employed by the assessee to collect money and further make payments. The table is as follow:-

DATE	RECEIVER	PAYER	AMOUNT	MODE OF PAYMENT
13-10-2002	Bavankule	Waman Sarode	40,000	Cash
24-04-2002	Bavankule	Waman Sarode	30,000	Cash
20-01-2003	Bavankule	Waman Sarode	80,000	Cash
13-03-2003	Bavankule	Waman Sarode	35,000	Cash
13-03-2003	Bavankule	Waman Sarode	35,000	Cash
12-07-2003	Bavankule	Waman Sarode	2,00,000	Cash
22-12-2003	Bavankule	Waman Sarode	2,25,000	Cash
31-03-2004	Bavankule	Waman Sarode	2,41,000	Cash
28-04-2005	Bavankule	Waman Sarode	97,000	Cash
30-12-2005	Bavankule	Waman Sarode	15,000	Cash
30-12-2005	Bavankule	Waman Sarode	45,000	Cash
Total			9,55,700	

1. It is also stated that the assessee had made payments of the remaining amount from time to time and the full and complete payment at the time of possession was made which is evident from last paragraph of page 2 of possession letter, dated 10.02.2009, which is duly notarized.

1. Further, the assessee also made the payment by cheque i.e. cheque No. 17278 dated 20/09/2001 for an amount of Rs.50,000/-. The payment was also

*made in cash from time to time. The copy of ledger and cash book cannot be provided as the assessee did not have liability to maintain cash book and ledger accounts. A copy of Cheque dated 20/09/2001 is annexed as "Annexure-4".*

*1. It is most humbly submitted that the assessee is earning salary. All salaries are duly reflected in the bank account of the assessee. Salary is received in the bank account No. 509302010001997 of the Union Bank of India, Wardhaman Nagar. A copy of bank account is attached herewith as "Annexure-5".*

*1. It is most humbly submitted that under Sec. 69 of the Act, the onus to prove the investment is not beyond all reasonable doubts. The assessee had to reasonably explain the source of income for the investment.*

*1. It is further submitted that the assessee made the cash payment towards purchase of property. This fact is proved by the cash payment receipts duly stamped on revenue tickets. This documents was present before the Ld. Assessing Officer but he did not take it into consideration or even made a whisper of it in the order passed dated 27/12/2019. The cash payment receipts duly stamped on revenue tickets is annexed as "Annexure-6".*

*1. It is humble submission that the Sec. 69 of the Act does not provide for any guideline to measure the length and breadth of discretionary power vested in the hands of the Ld. AO for treating a matter as unexplained or unsatisfactorily explained. Therefore, it is only natural and expected from the Ld. AO to appreciate the reasonable explanation advanced before him i.e. the evidences produced before him about the nature and source of investment. He cannot make additions merely on surmises, conjectures as well as without any supporting evidences. The same view was laid down in the case of Ashok Kumar Rastogi V CIT (1991) 100 CTR 204.*

*2. For the sake of brevity Sec. 69 is reproduced below as follow:*

*"Where in the financial year immediately preceding the assessment year the assessee has made investments which are 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 the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.*

*1. It is brought to your kind notice that the scheme of Sec. 69 provides for the two conditions which need to be satisfied before Sec. 69 can be applied. The first is that there shall be some investment made in the current year which is not recorded in the books of accounts and explanation not offered or not satisfactorily offered. The term used under Sec. 69 is "And" and therefore both the conditions need to be satisfied in order for an addition under Sec. 69.*

*2. It is amply clear that so far as section 68 is concerned the onus is wholly upon the assessee to explain the source of the entry. But in cases relating under section 69, 69A etc the phraseology used goes to show that before any of these sections are invoked, the condition precedent as to existence of*

*investment, expenditure, etc. must be conclusively established by material on record/ evidence.*

*1. It is most earnestly submitted that the assessee purchased the land at a price which was pre-decided in the year 2009 and further the possession of land was handed over to the assessee in the year 2009. The transfer took place in the year 2009 and not in the year 2014-15, as contemplated by the Ld. Assessing Officer.*

*1. The assessee in this regard not only submitted notarized possession letter dated 10.02.2009 but also adduced other evidences like submitting details of notary and stamp vendor. The assessee vide letter dated 29/11/2019 submitted the details of notary as well as details of stamp vendor. The assessee further requested to examine the stamp vendor and notary before passing order. It is also submitted that the assessee also produced the affidavit of the notary regarding genuineness of the possession. The affidavit of notary is annexed herewith as "Annexure-7",*

*2. It is most humbly submitted that the Ld. AO did not appreciate the evidences and further passed the order in total disregard of the evidences. Passing of order without appreciating evidences does not only raise suspicion about the correctness of the order but also infringes the fundamental right to justice of an Individual.*

*3. The assessee explained his case to the hilt by putting forth evidences as well as case laws. The assessee put forth the notarized possession letter. The possession letter proves it beyond reasonable doubt that the transaction, was in fact, took place in the year 2009. On top of it, to prove his own case, the assessee supplied the details of stamp vendor and notary to supplant the case of the assessee.*

*A. The question arises is when the assessee proved the case reasonably then on what premise the addition could be made. The only invested in the property was from the hard-earned salary of the assessee and further from the agricultural income. Therefore, the addition made under Sec. 69 of Rs. 20,15,000/- is liable to be deleted."*

6. The learned CIT(A), considering the submissions of the assessee, granted full relief to the assessee by holding as under:—

*4.2. I have considered the facts of the case, assessment order and appellant's submissions. The AO noted that the assessee purchased a property for which he paid Rs. 16,35,000/- as purchase cost/price and stamp duty charges Rs. 11,80,680/-, totaling to Rs.28,15,680/-. On being asked source of investment, the assessee stated that purchase was made out of funds accumulated by him over the years from agricultural income and other Income, However, the AO did not accept the assessee's claim for want of evidence and accordingly made the addition of Rs. 28,15,680/- u/s. 69 of the Act. In the written submissions uploaded on the ITBA Portal, the appellant has submitted he employed with Labour Board as a registered worked in the board for the year under*

consideration and has been earning since salary since 1993 and out of eaming earned, the saved / accumulated a sizeable sum over the year which were invested in purchase of property. The appellant also submitted that he had been earning agricultural income in past years. Thus, the appellant claimed that entire investment was made out of disclosed and genuine sources. Considering the fact of the case and submissions of the appellant, I am inclined to agree with his claim. It is a fact that the appellant has been earning from past so many years as source of income was salary and agricultural income. One can easily presume that person earning from 25 many years had the enough earning or savings to deposit to make investment of Rs. 28,15,680/-, Moreover, by giving details of investments, the appellant has established that he had not paid this amount in one go. Rather the payments were made in the installment ranging between Rs. 15,000/- to Rs. 2,50,000/-. For a person who has meager earning it is easy to make payment between such ranges rather than making payment at one go in lacs. Here I may refer to the decision of the Hon'ble ITAT Kolkata Bench in the case of Sri Sudipta Ghosh Vs DCIT (LTA. No. 579/Kol/2016 for AY 2003-04 dated 31/01/2018) wherein the Hon'ble Tribunal decided the similar issue in favour of the assessee. The facts of this case were that the assessee had investments to the tune of Rs. 5,77,736/-, he explained these investments by submitting that the same were from salary savings. The AO did not accept assessee's claim. However, the Hon'ble Kolkata Tribunal held that "Keeping in view the overall facts of the case and the capacity of the assessee, I am of the considered opinion that no addition is called for under the facts and circumstances of the case. When a person receives salary in cash, his claim that the investments were made from such salary, cannot be brushed aside. Here it is not out of place to mention that the AO has failed to establish that the assessee could not save out of his salary. Once source of income is established, therefore, it is totally illogical to brush aside the fact of savings.

Moreover, I find that it is also fact that the appellant had agricultural income. So one can easily presume that the appellant might have saved something out of the agricultural income. The AO only focused on the fact the appellant did not show any agricultural income in the past. However, besides making this remark, the AO did not carry out any enquiry to ascertain the land holding of the assessee. In the case of Nanava vs. ITO [2018] 96 taxmann.com 605 (Delhi - Trib.), the Hon'ble Delhi Tribunal held that where a farmer claimed before AO that source of cash deposit was his agricultural income but did not submit relevant evidence on a belief that he was not required to substantiate same, he was to be given chance by Appellate Forum to lead required evidences. Therefore, it is not justifiable on the part of the AO to doubt the source of investment in property and treat the unexplained income of the assessee for the year under consideration. I may refer to the section 69 of the Act reads as under.-

"Unexplained investments.

<sup>94</sup>69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are 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 the investments or the explanation offered by him is not, in the opinion of the 95[Assessing] Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

The above section indicates that in order to be an income, there must be fulfillment of two conditions since the word "and" has been used in the section. The investments made in the current year must not be recorded in the books of accounts AND the explanation not offered or not satisfactorily offered. The conditions precedent to the application of the provisions of section 69 are: (1) the investments in question are not recorded in the books of account, if any, maintained by the assessee, and (2) the assessee either offers no explanation as to the nature and source of acquisition or the explanation offered is, in the opinion of the Assessing Officer not satisfactory. The use of the words 'if any' in the section indicates that it is not compulsory that the assessee must have maintained the books of accounts. He can prove the genuineness of the investments by some other evidence which proves investment out of disclosed source. The word 'explanation' indicates that the opportunity of being heard must be given to the assessee to prove the nature and source of investments. The use of word 'may' and absence of the word 'shall' in the section indicates that the Assessing Officer has discretion to treat the particular investment as the income of the investor-assessee depending of the facts and circumstances of each case at a particular situation of time. It may be noted that the AO is under obligation to give reasons for not accepting the explanations offered by the assessee. Any addition u/s.69 cannot be made at the whims or caprice or choice of an Assessing Officer. Making an assessment order is a judicial function.

The AO considered the investment in property as unexplained investment and ignored the past savings and agricultural income. Further it is also clear that if the assessee is able to provide appropriate explanation of the source of the entire cash deposits to the satisfaction of the AO, the AO will provide appropriate relief to the appellant.

For, applying Section 69, the Assessing Officer must first come to a finding that the assessee made investments which are not recorded in the books of account and thereafter call for an explanation from the assessee about the nature and source of the investments and if he finds that no such explanation was furnished by the assessee or the explanation offered by the assessee was not satisfactory, he could treat the value of the investments to be the income of the assessee of the financial year in which it has made the investment. In the instant, principally, there was no investment by the assessee but if it is construed as investment, the same is duly recorded in the books of accounts and source of the investment is duly explained with documentary evidence as such there is no justification on the part to the AO to apply provisions of sec. 69 in case of instant appellant.

Once, onus lying on the assessee is discharged, it is shifted to the AO who is required to find defect in the explanation submitted by the assessee on the basis of credible evidence and thereafter only, he may infer that explanation submitted by the assessee is not satisfactory. In the instant case, addition being purely on presumption, surmises and conjectures cannot override the evidences produced by the assessee in this behalf. Reliance is placed on following case laws:

- (i) CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349 (SC).
- (ii) CIT v. Kulwant Rai [2007] 291 ITR 36/163 Taxman 585 (Delhi)
- (iii) Anand Prakash Soni v. Dy. CIT [2007] 12 SOT 17 (Jodh) (URO)

(iv) *CIT v. Smt. P.K. Noorjahan [1999] 237 ITR 570/103 Taxman 382 (SC).*

*In the instant case, as discussed above, the appellant has satisfactorily explained the source of investment, therefore, in such a case there is no justifiable reason to invoke provisions of sec. 69 of the Act. Here I may refer to decision of the Hon'ble Apex Court in the case of Commissioner of Income-tax, Gandhinagar v/s. Suvas Hitendra Barot [2019] 108 taxmann.com 59 (SC) wherein the Hon'ble Court dismissed the SLP filed against Tribunal order holding that in course of assessment, Assessing Officer made addition in respect of unaccounted investment made by assessee in immovable property - Commissioner (Appeals) and Tribunal concurrently came to conclusion that materials on record did not establish any such unaccounted investments Accordingly, addition made by Assessing Officer was deleted High Court upheld order passed by Tribunal Whether, on facts, SLP filed against Tribunal's order was to be dismissed Held, yes [Para 2] [In favour of assessee]*

*In view of the above, it is held that the AO was not justified in holding that the assessee made investment of Rs.28,15,680/- out of undisclosed sources and further not justified in treating the investment to the extent of Rs. 28,15,680/- as unexplained income of the assessee u/s. 69 of the Act. The ground raised by the appellant regarding this issue is allowed."*

7. At this juncture, the Index of the Paper Book furnished by the learned Authorised Representative is reproduced below:–

- i) Screenshot of ITBA Portal of different dates showing replies along with documentary evidences uploaded;*
- ii) Certificate of Employment issued by Nagpur and Wardha District Mathadi & Unprotected Labour Board, Nagpur;*
- iii) Form 16 of the assessee from A.Y. 1993;*
- iv) Sale Deed dated 25/07/2015;*
- v) Possession Letter dated 10/02/2009;*
- vi) Excerpt of notary register;*
- vii) Affidavit of notary advocate; and*
- viii) Payment receipt copy.*

8. The certificate at serial no.(ii) above, in our view, is misleading, cryptic and nebulous. The learned Authorised Representative submitted that, out of

the above indexed documents, some documents might not have been furnished before the Assessing Officer. This is also apparent from the Written Submissions. Nothing was before the Assessing Officer. So, it is a clear-cut case of violation of provisions Rule-46A of the Income Tax Rules, 1962. The learned CIT(A) has abjectly failed to perform his duty under section 250(4) of the Act. The learned Authorised Representative vehemently submitted that all the evidences were available before the Assessing Officer, but she failed to adduce any clinching evidences. She neither had furnished any cash flow or financial statements to prove the source of investment, except making bold submissions, which are devoid of merits. We are in full consonance with the learned Departmental Representative that the assessee is in violation of provisions of Rule 46A of the I.T. Rules, 1962, who violated the entire proceedings. In our considered opinion, the learned CIT(A) has also done a miscarriage of natural justice by not remanding back the matter to the file of the Assessing Officer for thorough inquiry. Consequently, we hereby set aside the impugned order passed by the first appellate authority and restore the matter back to the file of the learned CIT(A) for denovo adjudication in the light of the discussion and findings given by us as aforesaid. Accordingly, all the grounds raised by the Revenue are allowed for statistical purposes.

9. In the result, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 24/09/2024

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 24/09/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
 By Order

Sr. Private Secretary  
 ITAT, Nagpur

		Date	Initial	
1.	Dictated on	19.09.2024		Sr.PS