IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'SMC': NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA No.1957/Del/2024
[Assessment Year: 2017-18]

Jaivir Singh, H.No.655, Jawahar Colony, Faridabad, Haryana-121005	Vs	Income Tax Officer, Ward-1(3), New CGO Building, NH-4, NIT, Faridabad, Haryana-121001
PAN-AEOPI6081F		
Assessee		Revenue

Assessee by	Shri Jitender Wadhwa, CA
Revenue by	Shri Sanjay Kumar, Sr. DR

Date of Hearing	**15.10.2024**
Date of Pronouncement	**15.10.2024**

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal filed by the assessee is directed against the order dated 29.02.2024 of the National Faceless Appeal Centre, Delhi, relating to Assessment Year 2017-18 arising out of order u/s 144 dated 18.09.2019.

2. The grounds of appeal raised by the assessee reads as under:-

> *1. 1) That the appellant denies its liability to be assessed at total income of Rs.26,00,000/- and accordingly denies his liability to pay tax and interest thereon.*
>
> *2) That having regard to facts and circumstances of the case, the learned CITA) has erred in law and facts in making the addition of Rs.26,00,000/- u/s 69 A of Income Tax Act, 1961 on account of unexplained cash deposits (Rs. 9,00,000/- in Corporation bank and Rs. 17,00,000/- in Canara Bank) in the banks during demonetization period. However, this cash deposit directly related to the proceeds from sale of crackers,*

earning from Taxi hiring services, Sale of an ancestral property and sale of two cars during the year under consideration.

3. That having regard to facts and circumstances of the case, the learned CIT(A) has erred in law and facts by rejecting the submission of the assessee by holding that the appellant failed to prove that the property is ancestral property and further no settlement agreement was produced.

In this regard, it is to be submitted that the assessee has received a sum of Rs.10,00,000/- by relinquishing his share in the ancestral property. The said land was agreed to be transferred by the assessee in the name of his family members by way of oral settlement between the family members. The Ld. A O. erred in law by not placing reliance upon the settled legal preposition of law which reiterated in the judgment of Civil Appeal No(S).6141 of 2021 decided on 01-10-2021 in case titled Korukonda Chalapathi Rao & Versus Korukonda Annapurna Sampath Kumar which held that oral settlement between the family members is valid in the eyes of law and also held that even an unregistered document containing family settlement is valid in the eyes of law and can be used as a corroborative evidence.

4. That having regard to facts and circumstances of the case, the learned CIT(A) has erred in law and facts that the ownership of the cars are standing in the name of the assessee. As the assessee sold these cars for a total amount of Rs. 4,03,000/- and duly completed all necessary procedures to transfer the cars to the buyer. However, it was the buyer who were failed to get the vehicles transferred in their own names

In support of this matter the reliance is placed on the judgment of the Karikho Kri Vs. Nuney Tayang in Civil appeal no. 4615 of 2023 dated 09-04-2024 which states that the mere failure to get a transferred vehicle registered in the name of the new owner will not mean that the sale/gift transaction will get invalidated. Therefore, it cannot be presumed that the vehicles are still under the ownership, possession and control of the assessee. Hence, this addition is unwarranted.

5 That having regard to facts and circumstances of the case, the learned CIT(A) has erred in law and facts by not considering the fact that the appellant involved in the small business of selling fire crackers as it is cash and seasonal business. The appellant received an amount of Rs.10,22,920/- from sale of fire crackers and

subsequently, all the cash receipt is duly deposited into their bank account by the appellant.

6. That having regard to facts and circumstances of the case, the learned CIT(A) has erred in law and facts by not considering the fact that the appellant received 50,320/- from their Taxi hiring services in the year consideration which is duly deposited by the assessee in the bank account.

7. That having regard to the facts and circumstances of the case, the Ld CIT(A) has erred in law and on facts in not considering the documents submitted by the assessee at the time of filing the appeal and during the assessment proceeding.

3. Brief facts of the case:-The AO issued notice u/s 142(1) of the Income Tax Act, 1961 (hereinafter 'the Act') on 29.11.2017 to the assessee as no return was filed by the assessee. The AO had information that the assessee had deposited cash of Rs.9 lakhs and Rs.17 lakhs in Corporation Bank and Canara Bank respectively during the demonetization period from 09.11.2016 to 31.12.2016. The AO vide notice u/s 142(1) of the Act dated 29.11.2017 had asked the assessee to filed its return of income for AY 2017-18 by 29.12.2017. In response to it, no return was filed and no compliance to the notice u/s 142(1) was made.

3.1. The AO issued a show-cause notice on 08.07.2019, in response to which, the assessee submitted that the assessee has done business of taxi hiring services upto FY 2015-16 and during FY 2016-17, he had started trading of fire cracker for children. The assessee further submitted that he had cash receipts from taxi hiring services and sale of crackers and selling of two cars and that he had also receipt Rs.5 lakhs each from Mr. Satvir Singh and Mr. Ram Hari out of division of ancestral property which was the source of cash deposits.

3.2. During the assessment proceedings, the AO asked the assessee to submit necessary evidences in this regard. The AO recorded that necessary evidences were not submitted and further the explanation of the assessee was also not correct in respect of his claim of having income from taxi hiring business and therefore held that the cash deposit of Rs.9 lakhs and Rs.17 lakhs in Corporation Bank and Canara Bank respectively during the demonetization period from 09.11.2016 to 31.12.2016, totaling Rs.26 lakhs was out of undisclosed sources and treated as income u/s 69A of the Act r.w.s. 115BBE of the Act vide order u/s 144 dated 18.09.2019.

4. Aggrieved with the above order, the assessee appealed before the ld. CIT(A). The Ld. CIT(A) agreed with the finding of the AO and did not accept the claim regarding the source of cash deposit by the assessee and dismissed the appeal of the assessee.

5. Aggrieved with the order of the ld. CIT(A), the assessee is in appeal before the Tribunal.

6. The ld. Counsel for the assessee submitted the details of the cash deposits in his bank account totaling Rs.26 lakhs as under:-

Sr. No.	Amount (in Rs.)	Explanation	Reference to paper book/application for additional evidence
1	Rs.10 lakhs	Received on account of family settlement	Page no.45 to 50 of the paper book and page no.1 to 28 of the application for additional evidence
2	Rs.4,03,000/-	Received from sale of two cars	Page no.29 to 32 of the application for additional

			evidence.
3	Rs.50,320	Cash receipts from taxi hiring services	--
4	Rs.10,22,920/-	Cash sales of fire crackers	Page no.33 to 34 of the application for additional evidence

6.1. The assessee vide letter dated 15.07.2024 before us made a request for acceptance of additional evidence under Rule-29 of the ITAT Rules, 1963. The AR submitted that the assessee had tried to submit all the documentary evidences available with him before the ld. CIT(A) and the AO during the respective proceedings. However, due to some unavoidable reasons and long passage of time, the assessee was not able to obtain many documentary evidences from other parties involved in this case. He further submitted that the assessee had obtained some documentary evidences, which were crucial for the case. The documents in support of its claim and its relevance for deciding the above appeal has been explained by the assessee as under:-

> *1.* ***Memorandum of family settlement*** *(Page No. 01 to 28)*
>
> *1.1 The appellant had received Rs. 10,00,000/- in cash on settlement of ancestral property and this fact was not accepted by the Ld. A.O because as per him the appellant failed to prove the reasonable nexus between the cash alleged to be received on settlement of ancestral property and the cash deposited during demonetization period in the bank.*
>
> *1.2 In this regard, it is respectfully submitted that first of all the land was agreed to be transferred by the appellant in the name of his family members by way of oral settlement between the family members and it is settled legal preposition of law that oral settlement between the family members with regard to transfer of immovable properties are valid in the eyes of law. Furthermore, the affidavits submitted by the appellant (of Mr. Satvir Singh i.e., appellant's brother and Mr. Ram Hari i.e., son*

of appellant's brother) during the appeal proceedings contains each and every particulars of land as well as details of his family members. Appellant was in possession of nearly 350 square yards of land in ancestral property in his village falling in Abadi Deh. For that he has already placed on record details of revenue record.

1.3 Now, all the terms which was orally agreed and thereafter acted upon has been executed in writing between the parties by way of memorandum of family settlement and the same in enclosed for your kind reference. Further, in order to clarify the things and for just decision of the case, appellant is placing reliance upon the Memorandum of Family settlement executed between the family members of the appellant. It is respectfully submitted that the said Memorandum of family Settlement prepared after the family arrangement had already been made and that is for the purpose of the record. The Hon'ble Supreme Court in Civil Appeal No(S).6141 of 2021 decided on 01-10-2021 in case titled Korukonda Chalapathi Rao & Versus Korukonda Annapurna Sampath Kumar has held that family settlement document which merely records past transaction does not require compulsory registration. Relevant para of the judgment is reproduced as under :-

> *"16. It is to be noted that in this regard emphasis is placed by the appellants on the decision of this Court in Subraya M.N. v. Vittala M.N. (supra). Therein, in regard to the dispute to plaint items 1 and 2 properties, there was D22 resolution passed by the village panchayat signed by the Panchayatdar, plaintiffs 3 and 4 and defendant. It was, inter alia, mentioned therein that the defendant, in whose favour the plaintiffs 3 and 4 relinquished the rights, had paid Rs. 15,000/- each to the said plaintiffs. Dealing with the impact of Section 17 and 49 of the Registration Act this Court, inter alia, held:*
>
> > *"16. Even though recitals in Ext. D-22 are to the effect of relinquishment of right in Items 1 and 2, Ext. D-22 could be taken as family arrangements/ settlements. There is no provision of law requiring family settlements to be reduced to writing and registered, though when reduced to writing the question of registration may arise. Binding family arrangements dealing with immovable property worth more than rupees hundred can be made orally and when so made, no question of registration arises. If, however, it is reduced to the form of writing with the purpose that the terms should be evidenced by it, it required registration and without registration it is inadmissible; but the said family arrangement can be used as*

corroborative piece of evidence for showing or explaining the conduct of the parties. In the present case, Ext.D-22 panchayat resolution reduced into writing, though not registered can be used as a piece of evidence explaining the settlement arrived at and the conduct of the parties in receiving the money from the defendant in lieu of relinquishing their interest in Items 1 and 2." (Emphasis supplied)

17. This view has been also followed in Thulasidhara v. Narayanappa 4. Paragraph-9.5 reads as below:

"9.5. As held by this Court in Subraya M.N. [Subraya M.N. v. Vittala M.N., (2016) 8 SCC 705] even without registration a written document of family settlement/family arrangement can be used as corroborative evidence as explaining the arrangement made there under and conduct of the parties. In the present case, as observed hereinabove, even the plaintiff has also categorically admitted that the oral partition had taken place on 23-4-1971 and he also admitted that 3 to 4 panchayat people were also present. However, according to him, the same was not reduced in writing. Therefore, even accepting the case of the plaintiff that there was an oral partition on 23-4-1971, the document, Ext. D-4 dated 23-4-1971, to which he is also the signatory and all other family members are signatory, can be said to be a list of properties partitioned. Everybody got right/share as per the oral partition/ partition. Therefore, the same even can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. Therefore, in the facts and circumstances of the case, the High Court has committed a grave/manifest error in not looking into and/ or not considering the document Ext. D-4 dated 23-4-1971."

2. ***Affidavits of the Car Buyers*** *(Page No. 29 to 32)*

2.1 The appellant had received Rs. 1,47,000/- from Mr. Tarun Sehgal, on sale of car having registration no HR51E-0271 and Rs. 2,56,000/- from Mr. Brham Chand, on sale of another car having registration no. HR51K-2460. Since the appellant was not in contact with the buyers, he could not obtain any confirmation from them at the time of appeal proceeding. He has somehow managed to contact with them and they have provided their respective affidavits confirming that they had purchased the cars from the appellant and due to some

reasons, they could not update their name in the government records. The affidavits of Mr. Tarun Sehgal and Mr. Brham Chand are enclosed for your reference.

2.2 The said affidavits are necessary for the case as they prove that the appellant had actually sold his cars to the respective buyers and it was the fault of the buyers that the cars were not registered by them in their respective names. Further, it is settled preposition of law as held by the Hon'ble Supreme Court of India in case titled Karikho Kri Vs. Nuney Tayang in Civil appeal no. 4615 of 2023 by way of judgment dated 09-04-2024 "that mere failure to get a transferred vehicle registered in the name of the new owner will not mean that the sale/gift transaction will get invalidated". Relevant para of the judgement is reproduced as under :-

> *"27. Mere failure to get registered the name of the new owner of an already registered vehicle does not mean that the sale/ gift transaction would stand invalidated and such a vehicle, despite being physically handed over to the new owner, cannot, by any stretch of imagination, be treated as still being in the possession and control of the former owner"*

3. Ledger Confirmation from Mr. Shyam Lal Wadhwa in support of business of Crackers) (Page No. 33-34)

> *During the year under consideration, the appellant was engaged in the business of fire crackers. He had also submitted that he had purchased goods from M/s Shyam Lal Wadhwa. But due to some reasons the ledger confirmation could not be submitted at the time of appeal proceeding.*
>
> *Hence, the appellant wants to submit the copy of the ledger and ledger confirmation from M/s Shyam Lal Wadhwa for the A. Y 2017-18.*

In respect of the above submission, it is our humble request to your honor that kindly accept the additional evidence under Rule 29 of the ITAT Rules.

7. The Ld. DR supported the order of the authorities below.

8. We have heard the rival contentions and perused the material available on record. Considering the facts in totality, it is seen that in this case, the additional evidences submitted by the assessee are relevant factors in deciding the appeal of the assessee. Further, the explanation

submitted by the assessee regarding its non-submission during the assessment and appellate proceedings are reasonable in the given facts of the case. Therefore, the same are admitted under Rule 29 of the ITAT Rules, 1963 and the assessment is set-aside to the file of the AO for considering the additional evidences filed and frame the assessment *de novo* after giving due opportunity of being heard to the assessee.

9 In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15th October, 2024.

Sd/-	**Sd/-**
[ANUBHAV SHARMA]	**[BRAJESH KUMAR SINGH]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated 15.10.2024.

Shekhar

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi,