

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 614/MUM/2024
Assessment Year: 2011-12**

Rambilas Radhakishan Joshi,
201, Shanti Darshan, Station Road,
Bhayander (W),
Dist. Thane-401101.

**PAN NO. ADGPJ 1395 Q
Appellant**

ITO, Ward 2(2),
Room No. 26, B Wing, 6th floor,
Ashar IT Park, Road No. 16Z,
Wagle Ind. Estate,
Thane-400604.

Vs.

Respondent

Assessee by : None
Revenue by : Mr. R.R. Makwana, Sr. DR

Date of Hearing : 17/12/2024
Date of pronouncement : 20/12/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 13.12.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2011-12, raising following grounds:

1. The Hon. CIT (A) erred in upholding addition of Rs.16,87,500/- made u/s 68 of the I. T. Act 1961, on account of amount credited to



the capital account of the appellant, being part of proceeds from sale of agricultural land at village Dantiwada, Dist. Jodhpur, Rajasthan, inspite of appellant placing all relevant documents on record. The addition of Rs.16,87,500/- being not justified may kindly be deleted.

2. The Hon. CIT (A) erred in upholding addition of Rs.7,39,294/- made u/s 68 of the I. T. Act 1961, as unexplained cash credit, in respect of amounts deposited in the savings bank A/c no. 215231 with Bassein Catholic Co-op. Bank Ltd., Bhayender Branch, not appreciating that the said deposits were reflected by the financial statements of the appellant and duly supported by sufficient evidences and that the addition being not justified may kindly be deleted.

3. The Hon. CIT (A) erred in upholding addition of Rs.25,87,500/- as short-term capital gain arising on sale of agricultural land at village Dantiwada, Dist. Jodhpur, Rajasthan, not appreciating that

- (i) The land sold was "agricultural land covered by the exception contained in section 2(14)(iii) of the I.T. Act 1961, and that the Id AO had taken adverse view based on erroneous assumption that the agricultural land was situated in District Pali, whereas the appellant's land was situated in District Jodhpur.*
- (ii) The gains arising on sale of said agricultural land inherited by the appellant from his father was long term in nature and not short term as held by the Id AO.*
- (iii) The addition without granting the deduction for indexed cost of acquisition as per section 48 of the I.T. Act, 1961 was unjustified.*

4. The Hon. CIT (A) erred in upholding addition of Rs.9,09,090/- made on account of conveyance dt. 16.12.2010 executed by the power of attorney holder of the appellant to give effect to land sold by the father of the appellant on 08.06.1982, not appreciating that in the year under appeal there was no transfer of asset warranting any addition as long term capital gains in the hands of the appellant and that further (without prejudice) bringing to tax sale consideration without grant of deduction for indexed cost of acquisition as per sec. 48 was not appropriate.

2. At the outset, we may like to mention that notice issued to the assessee by the registered post for hearing dated 16.12.2024 was duly served and did not return by postal authorities although the notices issued for hearing on earlier occasions i.e. on 23.10.2024 issued on 25.12.2024 and notice for hearing dated 13.06.2024 issued on 18.04.2024 returned back by the postal authorities with



remark not known. Despite notifying neither anyone attended on behalf of the assessee nor was any adjournment sought. In the circumstances, we were of the opinion that assessee was not interested in prosecuting the appeal and therefore, appeal was heard ex-parte qua the assessee after hearing the Ld. Departmental Representative (DR).

3. We find that in the instant case, the Assessing Officer has made various additions/disallowance as follows :

1. Estate of deceased Radhakrishan Joshi as unexplained cash credit to the tune of Rs. 16,87,500/-
2. Unexplained credit entries of SB A/c 21531 in Bassein Catholic Bank to the tune of Rs. 7,39,294/-
3. Short term capital gain due to sale of property at Dantiwara to the tune of Rs. 25,87,500/-
4. Long term capital gain of the property registered with Sub Registrar, Bhayander to the tune of Rs. 9,09,090/-

3.1 On further appeal, the Ld. CIT(A) upheld the additions/disallowances observing as under:

“6. Decision

6.1 Unexplained cash credit u/s 68 for Rs. 16,87,500/-

In his submissions, appellant has stated that the agricultural land at Dantiwada was sold vide agreement dated 07.04.2010 for total consideration of Rs. 25,87,500/-. Further, he stated that as per family arrangement Rs. 9,00,000/- was paid to his brother Shri Jugal R.Joshi and the balance Rs. 16,87,500/- to the capital account of the appellant as receipt from the estate of deceased Radhakrishan Joshi.

Regarding this issue, appellant has produced the sale deed and Bank pass book. No documentary evidence were produced to treat this amount Rs. 16,87,500/- as capital in the Balance sheet. In the absence of documentary evidence, I disallow this appeal.



6.2 Unexplained credit entries in SB account for Rs. 7,39,294/- In his submissions, appellant has stated the following explanation:

Date	Amount	Explanation
13.01.2011	1,89,294/-	Maturity proceeds of LIC policy
21.01.2011	4,50,000/-	Advance received from brother Subhash Joshi
15.02.2011	1,00,000/-	Advance received from brother Subhash Joshi
Total	7,39,294/-	

From the documents submitted by the appellant, it is evident that the above said transactions have taken place. Regarding maturity proceeds of LIC policy, appellant has not produced satisfactory evidence. Also, regarding advances from brother Subhash Joshi, he has submitted confirmation letter as per his books of accounts, but not submitted the relevant books of accounts. Hence, I disallow this appeal.

6.3 Short term capital gain of Rs. 25,87,500/-

In his submissions, appellant has produced a letter from the Sarpanch of Khatiyasani village stating that the land is situated 37 km away from Jodhpur and the land is used for agricultural purposes.

The letter from the Sarpanch of Khatiyasani village simply states that the land is used for agricultural purposes, but didn't tell what crops are grown and the relevant period of the agricultural practices made as per Girdawari document. In absence of satisfactory documents/evidences, I disallow this appeal.

6.4 Long term capital gain of Rs. 9,09,090/- In his submissions, appellant has stated that the land at Goddeo village, Bhayander, Thane was transferred to Smt Sitadevi R. Agarwal & 3 others by his late father Shri Radhakishan N. Joshi alongwith 5 ther co owners on 08.06.1982. Again this land was sold by Smt Sitadevi

R. Agarwal & 3 others to Smt. Manju R. Bhandari, Proprietor of M/s M.R.Enterprises vide agreement dated 31.03.2005. Again this land was sold by Smt Manju R. Bhandari to Shri Kiranraj Uttamchand Birawat vide agreement dated 13.12.2010. Further he states that, as per the agreement, the entire consideration of Rs. 1,00,00,000/- was received by the last holder of the land i.e. Smt Manju R. Bhandari.

Deed dated 13.12.2010 states that Rambilas Radhakishan Joshi & 5 others are legal heirs and representatives of late Shri Radhakishan N. Joshi and Smt Manju R. Bhandari is their Power of attorney i.e confirming party of the sale proceed. Hence, I uphold the stand of Assessing Officer.”



3.2 We find that the addition for the unexplained cash credit of Rs.16,87,500/- has been sustained by the Ld. CIT(A) in absence of any documentary evidence filed by the assessee either before the AO or before the Ld. CIT(A). The next addition for unexplained credit in saving bank account for Rs.7,39,294/- has also been upheld by the Ld. CIT(A) for lack of satisfactory documentary evidence. Similarly, the addition for sale of land treating the same as short term capital gain amounting to Rs.25,87,500/- has been sustained by the Ld. CIT(A) for lack of documentary evidence. The assessee was required to justify by way of certificate from the Land Revenue Authority as to whether the land was used to agricultural purposes. Whereas the assessee filed certificate from a 'Sarpanch' of 'Khatiyasani' village which has been rejected by the Ld. CIT(A). Accordingly, we do not find any infirmity in the finding of Ld. CIT(A) in rejecting the claim of the assessee of the land as agricultural land due to absence of satisfactory documentary evidence from the Land Revenue Authority. Further, the addition for long term capital gain on land of Rs.9,09,090/- has been sustained by the Ld. CIT(A) for the reason that in lease deed dated 13.12.2010 the seller party is the assessee and five others representing as legal heirs of Late Shri Radhakishan N. Joshi and the party Shri Manju R. Bhandari is appearing only as a confirming party of sale proceed. Therefore, the additions have been sustained by the Ld. CIT(A) for lack of the documentary evidence in support of claim of the assessee. Accordingly, we do not find any infirmity in the finding of the Ld.



CIT(A) on the issue in dispute. The grounds raised by the assessee in its appeal are accordingly dismissed.

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

Order pronounced in the open Court on 20/12/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 20/12/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai