

**THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, DELHI**

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER

**ITA No.5323/Del/2024
(Assessment Year 2012-13)**

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| Nakul Singh House No. 100, Penga-1, PENGA MODINAGAR, Dist. Ghaziabad Uttar Pradesh – 201204 | Vs. | ITO, Ward 2(2)(5) House No. 100, Penga-1 PENGA MODINAGAR Dist. Ghaziabad Uttar Pradesh – 201204 |
| स्थायीलेखासं. / जीआइआरसं. / PAN / GIR No:DQMPS3893G | | |
| Appellant | .. | Respondent |

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| Appellant by : | Sh. Shantanu Kanungo, Adv & Ms. Shyantani Kanungo, Adv & Sh. Ashok Yadav, Adv. |
| Respondent by : | Sh. Sanjay Kumar, Sr. DR |

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| Date of Hearing | 17.03.2025 |
| Date of Pronouncement | 21.05.2025 |

ORDER

PER MADHUMITA ROY, JM:

The instant appeal filed by the assessee is directed against the order passed by the Ld. CIT(A) NFAC, Delhi, dated 20.09.2024 arising

out of the Assessment Order passed by the ITO, Ward 2(2)(5), Ghaziabad dated 04.12.2019 under Section 144/147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for Assessment Year 2012-13.

2. The brief facts leading to the case are that on the basis of AIR information that the assessee deposited cash of Rs.13,70,000/- in his saving bank account being No. 11552110809 lying with SBI, ADB Newari, Ghaziabad and further sold a property of Rs.64,00,000/- on 01.06.2011 from SRO Modi Nagar, Ghaziabad during the year under consideration, reasons were recorded and upon obtaining approval from the PCIT, Ghaziabad, notice under Section 148 of the Act dated 28.03.2019 was issued and served upon the assessee.

3. The notice under Section 143(2) was issued on different dates along with questionnaire asking for statement of details and/or information/documents regarding source of such cash deposits in reply where to submission of documents in support of the immovable property sold on 01.06.2011 for a consideration of Rs.64,00,000/- along with the brother of the assessee Shri Sahdev was duly made mentioning assessee's shares at Rs.32,00,000/-. Further fact of purchase of two agricultural properties of Rs.19,20,000/- each along with the ITR and declared income of Rs.43,955/- with the agricultural income of Rs.15,50,000/- was filed by the assessee before the Ld. AO. Relevant to mention that the assessee duly submitted khasara issued by the State Revenue Authorities along with other documentary evidences being ITR, computation of income, bank statements, documents from land Revenue departments in order to substantiate the sale of agricultural land and income thereof. However, such documents were not found to be

acceptable and addition to the tune of Rs.13,70,000/- on account of cash deposit treating the same as unexplained and undisclosed income of the assessee was made which was further confirmed by the First Appellate Authority. Hence, the instant appeal before us.

4. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee has drawn attention of the Bench to the reason recorded dated 18.03.2018 further approved by the Ld. PCIT dated 28.03.2019 wherefrom it appears that the allegation of selling of property for a consideration of RS.64,00,00,000/- has been levelled against the assessee. Further that no reply in response to the notice issued under Section 133(6) was made by the assessee and therefore, the entire sale consideration of Rs.64,00,00,000/- was taken as capital gain income on the sale of the said properties found to have been undisclosed and reason to believe of escaping assessment to the tune of Rs.64,00,00,000/- was made and proceeding under 147 of the Act was initiated.

5. In fact, the assessee sold the said plot of land jointly along with his brother Sahdev for a total consideration of Rs.64,00,000/- and out of his share of Rs.32,00,000/- he made investment in two agricultural lands within the same Assessment Year for which he further declared income amounting to Rs.43,955/-. The entire set of documents in support of such sale and subsequent purchase was duly supplied to the authorities below as it is evident from the paper book filed before us. Apart from that the assessee submitted a detailed report dated 24.09.2019 with comprehensive explanation of his reported income, the

documents of land holding from the land department issued by the land department, State of Uttar Pradesh affirming the legitimacy and authenticity of the transaction that attributed to his agricultural income. The appellant further submitted the certified copy of the khasara khatauni for all his cultivable land obtained from the Land Revenue Department evidencing farming activities including the details of specific crops cultivated and the method of irrigation. Needless to mention that these documents have also been placed before us by way of a paper book by the assessee. The assessee before us, also filed affidavits of certain villagers who had confirmed the fact of agricultural purchase from the appellant. However, these documents were never placed before the Ld. CIT(A) as candidly submitted by the Ld. AR before the Bench. More importantly, it was submitted by the Ld. AR that no notice under Section 143(2) of the Act was ever issued to the assessee and hence the entire proceeding in the absence of such statutory compliance made by the authorities below is vitiated. It was further contended by the Ld. AR that there was no allegation of deposit of cash by the assessee in the reason so recorded by the Ld. AR whereas the addition has been made to the tune of Rs.13,70,000/- being cash deposit made by the assessee in SBI Newari Ghaziabad treating the same as undisclosed and unexplained income of the assessee. In spite of requisite documents being filed by the assessee in support of such cash deposit made by the assessee the same were not considered. However, as the same was not part of the reason recorded by the AO for reopening of assessment, the assessment is without jurisdiction and thus, liable to be set aside.

6. We have heard the rival submissions made by the respective parties and we have further perused the relevant materials available on record.

So far as the non issuance of notice under Section 143(2) as submitted by the Ld. AR is concerned, the Ld. DR has not been able to controvert such fact neither been able to show any document evidencing issuance of notice under Section 143(2) of the Act and service thereon to the assessee.

7. Apart from that having regard to the fact of agricultural income of the assessee as declared in the return of income and the property sold by the assessee along with his profit, considering the evidence so submitted by the assessee in support of these two financial sources as placed before us, this bench does not find any reason for not accepting those documents in support of the case made out by the assessee by the authorities below rather the same speaks volume in regard to the source explained by the assessee in support of cash deposit made by him. Moreso, it is found that in the reason recorded the consideration received by the assessee to the tune of Rs.64,00,00,00/- is also found to be incorrect; the same would have been Rs.64,00,000/- which further establishes the fact of non-application of mind by the Ld. AO while recording the reason for reopening of assessment and further approval granted by the Ld. PCIT, Ghaziabad.

8. Thus, having regard to the entire aspect of the matter the addition made on the basis of wrong finding of fact in the reason recorded by the Ld. AO and further on consideration of the evidences galore submitted by the assessee in support of the case made out and also the documents as directed to be placed by the assessee and particularly in absence of issuance of notice under Section 143(2) of the Act, the entire proceeding

is found to be vitiated, bad in law. It is noticed that the documents placed by the assessee are found to be sufficient enough to support the cash deposit made by the assessee and therefore, addition is found to be without any basis, not sustainable in the eyes of law and thus, deleted.

9. The appeal of the assessee is allowed.

Order pronounced in the open court on 21.05.2025

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated 21.05.2025

PS: Rohit

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI