

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-3' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-4332/Del/2014
(ASSESSMENT YEAR-2010-11)**

Sat Bir Singh, S/o-Sh. Kanshi Ram, VPO Fazilpur, Sonapat. PAN-AYVPS5346J (APPELLANT)	vs	ITO, Ward-2, Sonapat (RESPONDENT)
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Appellant by	Sh. Suresh Gupta, CA
Respondent by	Sh. Farhat Khan, Sr.DR

Date of Hearing	21.06.2016
Date of Pronouncement	19 .08.2016

ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the assessee assailing the correctness of the order dated 26.05.2014 of CIT(A), Rohtak pertaining to 2010-11 assessment year on the following grounds:-

- 1. "The Ld.CIT(A) has erred both in law and on facts in confirming the addition of Rs.11,23,276/- of the capital receipts in the form of compromise money arising out of legal suit u/s 138 of the Negotiable Instruments Act against the payer for dishonor of cheques.*
- 2. The appellant craves leave to add, delete, modify/amend the above grounds of appeal with the permission of the Hon'ble appellate authority."*

2. The Ld. AR inviting attention to the order dated 28.10.2015 in ITA No.4333/Del/2014 in the case of Jai Bhagwan vs ITO pertaining to 2010-11 AY submitted that the point at issue is covered as the facts are identical as herein also the cheque issued by the same buyer i.e. M/s Siddharth Co-operative Housing Building Society Ltd. had bounced and the assessee had filed a legal suit u/s 138 of the Negotiable Instrument

Act. As in the case of Jai Bhagwan the assessee herein also received compensation in an out of Court settlement on the filing of the said suit. Referring to the assessment order, it was submitted that the Revenue has accepted that it is an agricultural income as no Capital Gain has been worked out. Herein also the assessee entered into an "Agreement for sale" of agricultural land and the cheque in receipt of sale of the same bounced. As in the other case it was submitted full facts are not coming out from the assessment order accordingly following the precedent, the issue may be restored to the AO permitting the assessee opportunity to produce the sale deed etc. in respect of the specific agricultural land. Accordingly, it was his submission that since these obvious shortcomings are evident in the facts of the present case also the matter may be restored to the AO.

3. Ld. Sr. DR submitted that since the amounts have been received in an out of Court settlement it does not partake the nature of agricultural income. However no arguments were advanced why the order in the connected case should not be followed.

4. Having heard the submissions and perused the material available on record, I find that the facts of both the cases i.e. the case under consideration and the facts in the case of Jai Bhagwan vs ITO are identical inasmuch as on account of bounced cheques for purchasing agricultural land M/s Siddharth Co-operative Housing Building Society Ltd. made payments for out of Court Settlement in both cases as the assessee had filed suit u/s 138 of Negotiable Instruments Act. In the case of Jai Bhagwan, a remand has been directed by the ITAT for want of facts. Finding the facts and circumstances to be identical as in the absence of any contrary submission by the Revenue, respectfully following the precedent the issue is restored back to the file to the AO with an identical direction. For

ready-reference, the specific direction from ITA NO.4333/Del/2013 from order dated 28.10.2015 is extracted hereunder:-

5. "The submissions of the parties have been heard and the material available on record has been perused. It is seen that in the facts of the present case the assessee was required to explain various entries in its bank accounts. The assessee stated that these were resulting out of the sale of agricultural land and in the said circumstances the belief of the assessee that these facts were in the knowledge of the AO may not be misplaced. However, in the interests of substantial justice, it is considered appropriate to restore the issue back to the AO so as to enable the assessee to bring the necessary facts and evidences on record. The assessee is directed to produce the sale deed in respect of the specific ancestral agricultural land stated to have been sold to the M/s Siddharth Co-operative Housing Building Society Ltd. wherein reference to this specific cheque No. may have been made. The claim it is stated is also supported by the legal suit filed by the assessee u/s 138 of the Negotiable Instruments Act so as to demonstrate that the settlement was qua the sale of ancestral agricultural land on 15.06.2007 which was exempt. Supporting evidences in support of the said claim to be made available by the assessee. Thus since necessary facts and evidences have not been placed on record the impugned order is set aside and the issue is restored back to the AO with the direction to decide the same in accordance with law after giving the assessee a reasonable opportunity of being heard. Liberty is given to the assessee to place necessary facts and evidence in support of its claim before the AO."

5. Needless to say that in the facts of the present case also the AO shall pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard and the assessee shall have liberty to file fresh evidences in support of its claim before the AO.

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

The order is pronounced in the open court on 19th August 2016.

**Sd/-
(DIVA SINGH)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR,
ITAT NEW DELHI