

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 375/JP/2018
निर्धारण वर्ष / Assessment Year: 2009-10

Shri Laxman Singh Khokhar, Plot No. 1, Officer Campus Extn. Sirsi Road, Khatipura, Jaipur.	बनाम Vs.	I.T.O., Ward 3(5), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No : AGLPK 0488 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by Shri Sandeep Jhanwar (FCA)
राजस्व की ओर से / Revenue by : Shri Manmohan Kandpal (ACIT)

सुनवाई की तारीख / Date of Hearing : 20/11/2019
उदघोषणा की तारीख / Date of Pronouncement : 03/01/2020

आदेश / ORDER

PER: R.C. SHARMA A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Kota dated 19/01/2018 for the A.Y. 2009-10 in the matter of order passed U/s 147/143(3) of the Income Tax Act, 1961 (in short the Act).

Following grounds have been taken by the assessee:

- “1. Under the facts and circumstances of the case, the Id. CIT(A), Kota has erred in not quashing the assessment order passed U/s 147/143(3) of the IT Act, 1961 which is bad in law.
2. Under the facts and circumstances of the case, the Id. CIT(A), Kota has erred on fact and in law in confirming the addition

of Rs. 18,00,000/- on account of treating the cash deposits out of advance received against sale of agriculture land as income of the assessee from undisclosed sources.

3. *Under the facts and circumstances of the case, the Id. CIT(A), Kota has erred on fact and in law in confirming the addition of agriculture income of Rs. 1,30,800/- as non agriculture and treating the same as income from other sources.*
4. *The assessee craves right to add, alter or amend any of the grounds of appeal."*

2. Rival contentions have been heard and record perused. Facts in brief are that the assessee has deposited cash of Rs.19,07,500/- during the FY 2008-09 in his saving bank account with SBBJ Bank, Jaipur. Since no return of income was filed by the assessee, cash deposit made by the assessee was not found verifiable and thus the case was reopened. After reopening the assessment, the A.O. made addition of Rs. 18.00 lacs in respect of cash amount deposited in the bank account. By the impugned order, the Id. CIT(A) confirmed the reopening as well as merit of the additions so made by the A.O. against which the assessee is in further appeal before the ITAT.

3. I have considered rival contentions and carefully gone through the orders of the authorities below. With regard to validity of reopening, it was argued by the Id AR that the reasons

recorded for reopening indicate that the cash deposits aggregating to Rs.19,07,500/- have been made in the bank account of the assessee, but the mere fact that these deposits have been made in a bank account does not indicate that these deposits constitute an income which has escaped assessment and also non filing of return of income does not indicate that the assessee has not disclosed income. There can be number of sources of cash deposits by the assessee in the bank account. Unless and until it is brought out in the reasons to believe as to how the cash deposits represent income from undisclosed sources same cannot give justification to reopen the case under section 147/148 of the Act.

4. From the record I found that after recording sufficient reasons, the A.O. arrived at a conclusion that the income to the extent of cash deposit in the bank has escaped assessment, therefore, I do not find any infirmity in the reopening of the assessment.

5. With regard to merit of addition, it was contended by the Id AR that by producing parties from whom the assessee has received

cash and by filing relevant papers, the assessee has discharged his primary onus, thus the addition was not called for.

6. On the other hand, the Id DR has relied on the orders of the lower authorities.

7. With regard to merit of addition, I found that during the course of reassessment proceedings assessee was asked to explain the source of cash deposit. In reply vide letter dated 05.09.2016 assessee explained the source of cash deposit of Rs. 18,00,000/- is from the receipt on sale of agriculture land of about 10 bigha to Shri Jai Chand Khokhar and Shri Ram Niwas Khokhar and received Rs. 11,00,000/- and 7,00,000/- respectively in cash. The explanation of the assessee is that during the year, the assessee has taken this sum in lieu of transfer of his agricultural land of about 10 bigha to 2 persons, Shri Jai Chand Khokhar who paid Rs.11,00,000/- (for purchase of about 2/3rd portion of about 10 bigha land) and Shri Ram Niwas Khokhar who paid Rs.7,00,000/- (for purchase of about 1/3rd portion of about 10 bigha land). Assessee also handed over the possession as substantial money was received, however registry etc. is pending for the reason that the said land was part of the jointly held family land. The assessee also produced there 2

persons for verification and both of them confirmed the fact about making payment in lieu of agricultural land. The documents appended in the paper book describes, the facts. At Sl. No. 3 & 4 of the Paper Book, the assessee had placed affidavits/statements/documents of ownership of land proving their capacity of Shri Jai Chand and Shri Ram Niwas respectively. Documents at Sl. No. 5 shows the assessee's ownership of the captioned land. The affidavit of Shri Jai Chand at Page 21-22 & affidavit of Shri Ram Niwas at Page 32-33 of the Paper Book explains the confusion of AO regarding the quantum of land held by the assessee.

8. I also found from the record that the two persons appeared and confirmed the transaction. They also explained their sources/resources to prove their capacity. The manner of transaction in cash or bank depends on the ease of transacting as per the mutual consensus. As long as the law allows the transaction, the Id. AO should not question the manner of transaction. Transacting in cash cannot invalidate the transaction as far as the other persons are confirming the transaction.

9. The allegation of the A.O. was that the agreement was oral. As per my considered view even the oral agreements are well recognized in the Indian Contract Act. Further, the manner of transaction also depends on personal comforts, proven integrity of the parties etc. In case of any dispute the transaction can even be enforced through the Court of Law by the other parties on the basis of documents/statements given before the Assessing Officer in the income tax proceedings. In such circumstances, it is not justified to raise the said issue for doubting the transaction.

10. From the record I also observed that the possession of land has been handed over by the assessee and the land is now not cultivated by the assessee. He has not shown any agricultural income in his returns of income filed for the period subsequent to the transaction. He also explained that since the legal ownership of the entire land (as appearing on page 34 and supporting documents) is with various family members who reside at various places, registry could not happen. Further, the parties have confirmed the transaction and the balance of payment is outstanding because of the pending registration of the transaction.

11. It is also pertinent to observe that during the year under consideration, the assessee had shown agricultural income, however, in the subsequent assessment year 2010-11 and onwards which also shows the bonafide of assessee's explanation the possession of the land has been handed over and the land is being cultivated by others and not the assessee. Returns of the subsequent year were filed prior to notice under section 148 and therefore, there cannot be any presumption of afterthought. The details of various returns filed by the assessee are as under:

Sr. No.	A.Y.	Agriculture Income	Other Income	Total Income
1	2015-16	-	211959	211959
2	2014-15	-	206551	206551
3	2013-14	-	197480	197480
4	2012-13	-	205335	205335
5	2011-12	-	156310	156310
6	2010-11	-	170438	170438
7.	2009-10	130800	149096	279896
8.	2008-09	122650	98350	221000

The assessee has also explained the reason as to why he sold the agricultural land. He explained that during the FY 2007-08 the assessee has taken housing loan from Indiabulls Housing Finance Ltd and EMI of Rs.28,432/- was payable per month. However the

assessee was not able to pay the instalment of housing loan and several cheques returned unpaid mainly from the period 01.09.2008 to 10.02.2009. Due to failure on the part of the assessee in payment of EMI, the Indiabulls put the assessee under hard pressure. Thus, in order to pay the full amount assessee decided to sale his agriculture land at Village Ghasipura and received advance of Rs.18,00,000 which was deposited in the bank account to pay off his outstanding debts. Thus the assessee also explained the reasons behind sale of land to prove the genuineness of transaction.

12. It is also pertinent to mention that both the persons appeared before the AO as witness, shown documentary evidence of holding the agricultural land and their income from the agricultural land held by them hence shown their capacity to make payment for the purpose of buying agricultural land. Also in support of the said transaction the assessee has submitted the following documents:

- a. Copy of affidavit
- b. Copy of Jamabandi towards proof of capacity
- c. Copy of statement accepted the fact that amount was given to the appellant for purchase of his agriculture land.

Perusal of the above documents suggest that assessee has discharged his onus to prove the identity and creditworthiness of the lender.

13. In view of above discussion, I do not find any merit in the addition so made by the A.O.

14. During the year, the assessee has deposited cash Rs. 1,30,800/- in his bank account. The AO asked to explain the source of cash deposit. Assessee vide his reply dated 21.12.2016 submitted that the agriculture land of the assessee of around 10 Bigha is cultivated by Shri Banwari and he has paid Rs. 1,24,000/- towards annual crop and Rs. 6,800/- towards falling tree, hence the total agriculture income of Rs. 1,30,800/- received from Shri Banwari was deposited in the bank account. However, the A.O. considered the said income as non-agricultural income and added the same to the total income of the assessee. By the impugned order, the Id. CIT(A) has confirmed the action of the A.O., against which the assessee is in appeal before the ITAT.

15. I have considered the rival contentions and carefully gone through the orders of the authorities below. From the record, I found that the claim of assessee that assessee owned 10 bigha of

agriculture land is genuine and it cannot be said that the land hold by the assessee is not sufficient to generate quantum of income disclosed. I also found that Shri Banwari accepted the fact that he cultivated the agriculture land (approx. 10 bigha) belonging to Shri Laxman Singh Khokhar. He annually paid against the agriculture land amounting to Rs. 1,24,000/ and Rs. 6,800/- against falling tree.

16. In view of above facts and circumstances, I do not find any merit in the action of the A.O. in making addition by considering the same as income from other sources. Accordingly, I direct to delete the same.

17. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 03rd January, 2020.

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03rd January, 2020

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Laxman Singh Khokhar, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 3(5), Jaipur.

3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 375/JP/2019)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar

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