

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**I.T.A .No.-4749/Del/2018
(ASSESSMENT YEAR-2013-14)**

SMT. SANTRO DEVI, W/O SH. JAI PAL SINGH, VILL. BAROLI, BABARPUR MANDI, DISTT. PANIPAT-132103 (PAN No. GWWPS3066J) (APPELLANT)	vs	ITO, WARD-4, PANIPAT (RESPONDENT)
Appellant by		Shri J.B. SHARMA, ADV.
Respondent by		Shri S.L. ANURAGI, SR. DR

ORDER

This appeal filed by the Assessee is directed against the order dated 21.05.2018 of the Ld. CIT(Appeals), Karnal relevant to assessment year 2013-14 on the following grounds of appeal: -

1. That on the facts and circumstances of the case, the order of the Ld. CIT(A) confirming the addition made by the AO is bad in the eyes of law.
2. That on the facts and circumstances of the case, the order of the CIT(A) confirming the addition made by the AO is not maintainable as the Ld. CIT(A) Karnal not touched / considered the Preliminary objection raised by the appellant during the course of appeal regarding

reopening the without application of mind by the AO. The facts of the case of the appellant are identical to the case of Sh. Mahavir Parsad vs. ITO, Riwari (ITAT-Delhi) ITA No. 924/Del/2015.

3. That on the facts and circumstances of the case, both the lower authorities has erred not appreciating the savings of a family which during all life time has earned income and made provisions for their future to purchase the Ag. land.
4. That on the facts and circumstances of the case, the AO made the addition in the income of the appellant on estimated basis and not based on facts and the CIT(A) also confirmed the same without considering the history of the poor family. The appellant or any family member have not business income.
5. That the appellant hereby appeals to delete the addition made by the AO and confirmed by the CIT(A).
6. That the appellant craves to add, forego, amend and to substitute any further ground/s of appeals at the time of hearing of and in any case before the disposal of this appeal.

2. The brief facts of the case are that on the receipt of information from the office of DDIT (Inv.), Panipat, AO observed that the assessee deposited cash of Rs.62,70,000/- on 27.04.2012 in the Saving Bank Account No.2032101002715 maintained by her with Canara Bank, Babarpur Mandi, G.T. Road, Panipat. The assessee did not make any compliance of the verification letters issued by the DDIT(Inv.), Panipat. The source of cash deposited in saving bank account could not be verified as no income tax return was filed by the assessee. The case of the assessee was re-opened by initiating proceedings u/s 147 of the Income Tax Act, 1961 (in short "Act") and Notice u/s 148 of the Income Tax Act, 1961 dated 30.04.2015 was issued and duly served on 08.06.2015 requiring her to file return of income for the asstt. year 2013-14 within 30 days from the service of this notice. The compliance of the said notice was not made within the stipulated period. Thereafter, statutory Notice u/s 142(1) of the Act dated 03.06.2016 was issued and duly served on 07.06.2016 requiring the assessee to file her return of income, bank statements with narration of each debit and credit entries, and the details of immovable assets purchased/sold during the year under assessment. The assessee furnished return of income by way of e-filing on 14.07.2016 declaring total income at Rs.1,61,740/-. Thereafter, statutory Notice u/s 143(2) of the Act dated 20.07.2016 was issued and duly served on the assessee on the same day fixing the

assessment proceedings for 04.08.2016. In response to the statutory notices, the counsel for the assessee attended the assessment proceedings from time to time and filed the necessary information/documents, as called for from time to time. The assessee filed her return of income u/s 44AD of the Act declaring net dairy income of Rs.1,45,500/- and 'Income from other sources' at Rs.26,236/- and after claiming deduction under chapter VIA at Rs.10,000/- the total income was declared at Rs.1,61,736/-. The assessee was maintaining S.B. Account No. 2032101002715 with Canara Bank, Babarpur Mandi, Panipat. The assessee deposited cash of Rs.62,70,000/- in her bank account on 27.04.2012. During assessment proceedings it was submitted that assessee's husband Sh. Jaipal sold agriculture land measuring 40 kanal 1 maria for a consideration of Rs.47,56,000/- to Smt. Sukhdai W/O Sh. Jaipal r/o Village Gagsina, Karnal on 27.04.2012 and the said sale proceeds of agriculture land was deposited by the assessee in her bank account. In support of the sale of agriculture land a photocopy of the registration deed was also furnished. The source of the remaining cash deposit amount of Rs. 15,14,000/- (62,70,000 - 47,56,000) was explained by the assessee as under:-

- i. Rs.4,00,000/- contributed by her husband Sh. Jai Pal.
- ii. Rs.2,64,000/- contributed by her son Sh. Pawan.

iii. Rs.8,50,000/- from her past savings of dairy work and sales of live stock etc.

2.1 During assessment proceedings it was stated by the counsel of the assessee that a plot was sold by assessee's husband for a consideration of Rs.4,00,000/- and the said sale proceeds of the plot was given by him to his wife Smt. Santor Devi, the assessee. The counsel of the assessee was asked to produce the purchaser of plot for verification. The purchaser of plot, Sh. Rajender S/O Sh Ram Prashad r/o Village Barauli, Distt. Panipat was produced for verification on 20.09.2016. In his statement Sh. Rajender admitted the purchase of plot measuring 175 sq. yds. from Sh Jai Pal, husband of the assessee for a consideration of Rs.4,00,000/- on 20.09.2016. It was further stated by Sh. Rajender that the plot was situated within the 'Lai Dora Limit' of Village Barauli, therefore, the registration deed of the plot was not executed. Regarding the source of the amount invested in the purchase of plot it was stated by Sh. Rajdener that he alongwith his two sons were carrying out the work of 'Mason' and out of the savings of mason work he purchased the plot, It was further stated by Sh. Rajender that Rs.2,00,000/- was paid at the time of purchase of plot i.e. on 9.4.2012 and the remaining amount was paid in four equal installments of Rs.50,000/- each during the next two years. The said statement was recorded in the presence of Sh. Bhardwaj, Adv. and Sh.

Jai Pal, husband of the assessee and duly witnessed by both of them. Therefore, contention of the assessee's husband Sh. Jai Pal that Rs.4,00,000/- was given by him to his wife out of the sale proceeds of plot is not acceptable as the purchaser of plot Sh. Rajender had given only Rs.2,00,000/- on 9.4.2012 i.e. at the time of purchase of plot and remaining amount was paid by him in four equal installments of Rs.50,000/- each during the next two years. For verification of the source of the amount of Rs.4,00,000/- statement of Sh. Jai Pal, husband of the assessee was also recorded on 07.10.2016. It was stated by him that he had given Rs.4,00,000/- to his wife Smt. Santro Devi, the assessee out of the sale proceeds of plot measuring 175 sq. yds. sold by him to Sh. Rajender. He was confronted with the statement of Sh. Rajender. He was told that Sh. Rajender had given only Rs.2,00,000/- on 9.4.2012 and the remaining Rs.2,00,000/- was given by him in four equal instalments of Rs.50,000/- in next two years. Therefore, you were having only Rs.2,00,000/- and he was asked to explain the source of remaining amount of Rs.2,00,000/- claimed to have been given by him to his wife Smt. Santro Devi. It was stated by Sh. Jai Pal that at present he did not remember from where he had given the remaining amount of Rs.2,00,000/- to his-wife. He was asked whether he wanted to take some more time for furnishing the source of the remaining amount of Rs.2,00,000/-. He refused and stated that he

did not want to take any more time for explaining the source of the amount of Rs.2,00,000/-. Since Sh. Jai Pal failed in explaining the source of remaining amount of Rs.2,00,000/- he was asked as to why the said amount may not be added to his wife's income by treating the same as her income from undisclosed sources. It was stated by him that he could not say anything about this. Also statement of Smt. Santro Devi, assessee was recorded on 7.10.2016 in the presence of Sh. J.B. Sharma, Adv. and her statement was duly witnessed by the counsel. She was asked to explain the source of the remaining amount of Rs.2,00,000/- as her husband Sh. Jai Pal has failed to furnish the source of the said amount. She simply stated that Rs.4,00,000/- given to her by her husband and he can explain the source of the said amount. She was confronted with the statement of Sh. Jai Pal and she was again told that her husband has failed in explaining the source of the remaining amount of Rs.2,00,000/- therefore, as to why the said amount may not be added to your taxable income. It was stated by her that her husband could give answer and she had no knowledge about the same. If any sum is found credited in the bank account of the assessee the onus lies on her to prove the source of the same. The onus is on the assessee to discharge the onus that the cash creditor is a man of means. The creditworthiness of Sh. Jaipal could not be proved. The assessee has failed in proving the source of the cash of Rs.2,00,000/- deposited in

the bank account, therefore, the same is added to her total income by treating the same as her income from undisclosed sources. Further, during assessment proceedings it was submitted by the assessee that Rs.2,64,000/- was given by her son Sh. Pawan. Statement of Sh. Pawan was also recorded on 7.10.2010. It was stated by him that he did graduation (B.A.) in 2009 from Arya College, Panipat. He worked with his father in the fields during the year 2010 and he joined Pepsi Company during the month February, 2011 @ Rs.5,500/- p.m. and presently he is drawing Rs.6,800/- p.m. from the said Company. It was further stated by him that he used to give all the salary to his parents. Sh. Pawan joined the job in February,2011 @ Rs.5,500/- p.m. in this way he had given only Rs.77,000/- to his parents from February, 2011 to March, 2012. He was confronted the submissions regarding giving of Rs.2,64,000/- by him to his mother Smt. Santro Devi and asked to explain the source of the remaining amount of Rs. 1,87,000/- (2,64,000 - 77,000). It was stated by him that during his college time, on Sunday and holidays if he got any labour work he did the same. It was stated that he usually did the spray work of pesticides on crops and also put the fertilizers in the fields @ Rs. 300/- per day. He was asked how much amount was received by him for doing the work as a labourer. He could not quantify the amount received by him of the work done as a labourer. Statement of Smt. Santro Devi, mother of Sh. Pawan was also

recorded on 7.10.2016. She was confronted with the statement of Sh. Pawan. She was told that salary amount of her son for the period of fourteen months from February, 2011 to March, 2012 @ Rs.5,500/- p.m. works out to Rs.77,000/-, therefore, please explain the source of the remaining amount of Rs. 1,87,000/-. It was stated by her that she is an illiterate lady and she had no knowledge how much amount of labour work was given by her son Sh. Pawan to her. She was again asked during college time it is not possible for a student to do labour work. However, if it is presumed that her son Sh. Pawan had carried out any labour work then state how much earning of labour work was paid by Sh. Pawan to her. She again stated that she had no knowledge how much amount of earning of labour work was given by her son to her. During college days it is very difficult for a student to do any work as a labourer. However, by considering the submission of the Sh. Pawan benefit of labour work of Rs.50,000/- is allowed to him and an addition of Rs. 1,37,000/- (1,87,000 - 50,000) is made to the taxable income of the assessee by treating the same as her income from undisclosed sources as the assessee has failed in proving the creditworthiness of Sh. Pawan. It was submitted by the assessee that she deposited cash of Rs.8,50,000/- out of her past savings of dairy work and sales of live stock etc. Statement of the assessee was recorded on 7.10.2016 and she was asked to explain the source of Rs.8,50,000/-. It was stated by

her that they were rearing 4 to 5 buffaloes and were selling milk for Rs.4000/- to Rs.5,000/- p.m. She was asked how much live stock was sold and also state the period when the same was sold. It was stated that she did not remember when the live stock was sold and the number of live stock sold. The assessee was asked where she kept Rs.8,50,000/-. It was stated that the cash amount of Rs.8,50,000/- was kept at home. The assessee has been maintaining bank account with Canara Bank, Babarpur Mandi since 1991. The assessee's family were almost remained in the fields, school/colleges, therefore, assessee's version that the huge cash amount of Rs.8 50,000/- was lying at home does not appear to be correct. If any person has so much huge amount of cash he will keep the same in bank for safe custody and for earning interest income thereon. There were seven members in the assessee's family i.e. the assessee he self, her husband Sh. Jai Pal, her sons Sh. Pawan and Sh. Satish, wife and two daughters of Sh. Pawan. The educational qualification of Sh. Satish is 10+2. He completed 10+2 one and half year back. Sh. Satish was working as a security guard on the ATM machine of Indian Bank located in the village of the assessee. He joined as security guard approximately four months back and is drawing salary of Rs.7,000/- p.m. The assessee was asked when the marriage of Sh. Pawan was solemnized. It was stated that her son Sh. Pawan was got married in the year 2011 it was a simple marriage and only

Rs.50,000/- was incurred on the marriage. All the above narrated facts do not strengthen the version of earning of Rs.8,50,000/- from past savings. The assessee's version cannot be accepted in toto. However, it is presumed that the assessee may be able of saving some amount from milk selling and from selling of live stock. The assessee's past saving from selling of milk and from selling of live stock is estimated at Rs.2,50,000/- and addition of Rs.6,00,000/- is made to the taxable income of the assessee by treating the same as her income from undisclosed sources. In view of above, the AO completed the assessment at Rs. 10,98,740/- by making addition of Rs. 2,00,000/- on account unexplained cash deposits in assessee's bank account; Rs. 1,37,000/- on account of unexplained cash deposits in assessee's bank account and Rs. 6,00,000/- on account of unexplained cash deposits in assessee's bank account vide order dated 10.10.2016 passed u/s. 147/143(3) of the Act. Aggrieved by the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 21.5.2018 has dismissed the appeal of the assessee. Against the impugned order, assessee is in appeal before the Tribunal.

3. Ld. Counsel for the assessee has stated that the reopening of the case of assessee u/s. 148/147 of I.T. Act, 1961 only on the basis of amount/cash deposited into bank is arbitrary and baseless. It was further submitted that the case of assessee is covered by the decision of

the ITAT, Delhi in case of Shri Mahavir Prasad, Narnaul vs ITO, Rewari in ITA no 924/Del/2015 in which the ITAT, Delhi has favored the assessee observing the facts of the case. Some of the highlights/abstracts from the above decision are as under:-

- a) Mere deposits into bank can't be treated as income for notice u/s 147/148 of I T Act, 1961
- b) All receipts are not income and all incomes are not taxable.
- c) There can be no. of sources of cash deposit by the assessee in the bank a/c. Unless and until it is brought out in reasons to believe as to how the cash deposits represents income from undisclosed sources, same cannot give justification to reopen the case u/s 147/148 of I.T. Act, 1961.

3.1 It was further submitted that in the case of assessee, the notice u/s 147/148 of I.T. Act, 1961 issued is also bad in the eyes of law. The orders of assessment made/confirmed by both the lower authorities is invalid and be quashed.

3.2 It was further submitted that the total addition Rs 937000/- on diff. counts as under, which are not based on facts but only on presumption basis be deleted.

- a) Addition of Rs 200000/- out of Rs 400000/- is baseless as the head of the family Sh. Jai Pal has admitted in his statement that the amount was given/deposited into the bank account of the assessee.

b) Addition of Rs 137000/- out of Rs 264000/- contributed by the son of appellant is baseless as Sh Pawan (son of appellant) in his statement admitted that was a earning hand. To allow partly the source declared by the son of appellant is totally based on assumption.

c) Addition of Rs 600000/- out of Rs 850000/- the savings of family of appellant from dairy work, sales of live stocks, agriculture produces etc is also base on presumption the AO. The family assessee was not maintaining day to day account to show all the savings of family members.

3.3 That the family of the assessee is based on agriculture. After, compulsory acquisition of Ag land, the family of the assessee made the provision to purchase another Ag land for the future of family, which they did later on and purchased another Ag land on dt 12-12-2013 from the provisions made from the sales of Ag land and the accumulated savings of the family. A copy of Ag land purchased by the assessee is enclosed herewith. In light of above submission and the facts of the case, it was requested to accept the appeal delete the addition made/confirmed by both the lower authorities and oblige.

4. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records especially the impugned order. As regard ground no. 1 relating to additions in

dispute, I find that with regard to addition of Rs. 2 lacs is concerned, the assessee's submission is that her husband did not understand the technical questions raised by the AO falls flat on the ground as the queries made by the AO were quite straightforward and there was nothing complicated in the line of questioning regarding the source of amount advanced by him. Hence, the assessee cannot take shelter under such submissions regarding illiteracy etc. , therefore, the addition of Rs. 2 lacs was right confirmed, which does not need any interference on my part, therefore, I uphold the action of the Ld CIT(A) on the issue in dispute and reject the grounds raised by the Assessee. As regard addition of Rs. 1,37,000/- is concerned, I find that AO has clearly brought out the facts where the assessee was unable to explain the source of the said amount purportedly received from her son. I, therefore, confirm the said addition by upholding the order of the Ld. CIT(A) on this issue and reject the ground raised by the assessee. As regards addition of Rs. 6 lacs on estimation basis is concerned, it is noted that the assessee deposited cash of Rs.8,50,000/- out of her past savings of dairy work and sales of live stock etc. Statement of the assessee was recorded on 7.10.2016 and she was asked to explain the source of Rs.8,50,000/-. It was stated by her that they were rearing 4 to 5 buffaloes and were selling milk for Rs.4000/: to Rs.5,000/- p.m. She was asked how much live stock was sold and also state the period

when the same was sold. It was further stated that she did not remember when the live stock was sold and the number of live stock sold. The assessee was asked where she kept Rs.8,50,000/-. It was stated that the cash amount of Rs.8,50,000/- was kept at home. The assessee has been maintaining bank account with Canara Bank, Babarpur Mandi since 1991. The assessee's family were almost remained in the fields, school/colleges, therefore, assessee's version that the huge cash amount of Rs.8,50,000/- was lying at home does not appear to be correct. If any person has so much huge amount of cash he will keep the same in bank for safe custody and for earning interest income thereon. There were seven members in the assessee's family i.e. the assessee herself, her husband Sh. Jai Pal, her sons Sh. Pawan and Sh. Satish, wife and two daughters of Sh. Pawan. The educational qualification of Sh. Satish is 10+2. He completed 10+2 one and half year back. Sh. Satish was working as a security guard on the ATM machine of Indian Bank located in the village of the assessee. He joined as security guard approximately four months back and is drawing salary of Rs.7,000/- p.m. The assessee was asked when the marriage of Sh. Pawan was solemnized. It was stated that her son Sh. Pawan was got married in the year 2011 it was a simple marriage and only Rs.50,000/- was incurred on the marriage. All the above narrated facts do not strengthen the version of earning of Rs.8,50,000/- from past savings,

hence, the assessee's version cannot be accepted in toto. However, AO presumed that the assessee may be able of saving some amount from milk selling and from selling of live stock. The assessee's past saving from selling of milk and from selling of live stock was rightly estimated at Rs.2,50,000/- and addition of Rs.6,00,000/- was made to the taxable income of the assessee by treating the same as her income from undisclosed sources, which Ld. CIT(A) has also upheld. In view of above, I confirm the action of the Ld. CIT(A) on this issue and reject the ground raised by the assessee.

5.1 Since the ground no. 2 was not pressed by the Assessee before the Ld. CIT(A) and therefore, it was not arisen from the order of the Ld. CIT(A), hence, the same is dismissed as such.

6. In the result, the Appeal of the Assessee is dismissed.

Order pronounced on 20-05-2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 20/05/2019

SRBhatnagar

Copy forwarded to: -

1.Appellant 2. Respondent 3. CIT 4.CIT (A) 5. DR, ITAT

By Order,

Assistant Registrar, ITAT, Delhi Benches

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