

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.2750/Del/2015
Assessment Year: 2006-07

Sh. Naresh Chander, S/o- Sh. Sukh Pal, R/o- H. No. 437, Sector-7, Gohana, Sonapat	Vs.	ITO, Ward-2 Sonapat
PAN :AQEPC2840A		
(Appellant)		(Respondent)

Appellant by	Sh. R.K. Vashisht, Adv.
Respondent by	Sh. Mahesh Thakur, Sr.DR

Date of hearing	12.07.2021
Date of pronouncement	16.07.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 19/02/2015 passed by the Learned Commissioner of Income Tax (Appeals)-Rohatak [in short 'the Ld. CIT(A)'] for assessment year 2006-07 raising following grounds:

- That appellant was not granted sufficient and reasonable opportunity of hearing to plead and represent his case and also to furnish the evidence before the Assessing Officer. Thus the impugned order dated 19.02.2015 upholding the order dated*

- 31.10.2013 of the A.O. is in violation of rules of natural justice thus the impugned order dated 19.02.2015 confirming the orders of the A.O. is illegal and liable to be set aside on the ground alone.
2. That learned CIT (appeals) Rohtak is wholly erroneous and illegal in as much as the finding recorded by learned CIT confirming the addition made by the A.O. are not supported by laws , facts, reason , material on record and the submissions made by the learned counsel before the CIT appeal. Therefore the impugned order is liable to be quashed.
 3. That learned A.O. has absolutely as erred in law in estimating the income of the appellatant at Rs. 54,50,000/- purely on estimated basis and same is liable to be quashed being wholly unfounded and misconceived.
 4. That when the appellatant father approached the said vender Sh. Krishan to fulfil his obligation and part performance of his agreement then he turned dishonest and he neither returned the amount of advance money of Rs. 1500000/- nor performed his part of performance of his agreement and illegally made a complaint of the appellatant before the honourable commissioner Karnal the head of the serving department of the appellatant who assigned entrusted the enquiry to the SDM Gohana who after recoded the statement of the witnesses and making through enquiries exonerated the appellatant from the complaint vide his report dated 30.05 2011 which was submitted to the said commissioner.
 5. That the appellatant father Sh. Sukhpal executed an affidavit dated 17.02.2009 stating therein that he executed a sale agreement dated 02.12.2004 in favour of one of my son namely Naresh chander the appellatant herein being his trustworthy son out of his four sons and the vender in respect of land detailed in sale agreement dated 02.12.2004 and in case the land comes to my hand by virtue of said sale agreement the same shall be partitioned / devided and distributed among his four sons in equal shares before the Executive Magistrate Gohana. Since the said affidavit was not in the knowledge of appellatant before 15.03.2015 being which came to the knowledge of appellatant only in the month of April 2015 and could not be presented/ produced before the CIT Appeal Rohak and same in the custody of Parveen son of Sukhpal brother of the appellatant, as such the appellatant was prevented by sufficient cause and circumstance beyond his control to produce the same before the A.O. and CIT (appeals).
 6. That since the appellatant was not provided / afforded sufficient, reasonable and full opportunity by the learned A.O. to present / produce / adduce the said relevant documentary and oral evidence i.e. his father and his affidavit to the effect that the sale agreement was executed by the appellatant on his direction being his eldest son. The appellatant was prevented by sufficient cause

and circumstances beyond his control to produce the same before the A.O. and since some of the documentary evidence were not in the knowledge of appellant.

7. *That the Learned A.O. absolutely erred in law in making the addition of Rs.150000/- on account of salary purely on estimated basis without making the enquiries from his department . Appellant earned salary income of Rs. 100000/- during the year under appeal which is under taxable limit and was not chargeable to tax and thus the appellant was not liable to file any income tax return and the same is liable to be deleted.*
8. *That the assessment u/s 144 of Income Tax Act has been framed against the appellant on the basis of false complaint and forged and fabricated documents just to harass humiliate and to cause mental agony to the appellant . Therefore assessment dated 31.10.2013 is unjust, arbitrary, illegal and is liable to be set aside.*
9. *That the material and the basis of the best judgment gathered at the back of the appellant was neither disclosed nor confronted to him appellant so as to enable him to rebut the same if he can through a notice, hence the entire ex-parte proceedings and orders against the appellant and the judgments / order passed by A.O. and Ld. CIT (A) Rohtak are neither sustainable nor tenable and are liable to be set aside*
10. *That the appellant was not granted any opportunity to cross examine the complainant and in this way the allegations and alleged unaccounted investment at the hands of the appellant was not proved.*
11. *That orders of the authorities below are non speaking, non detailed non judicious and are based on self conjectures and surmises and are liable to be set aside.*

2. Briefly stated facts of the case are that the assessee is a salaried employee during the year under consideration. In the case of the assessee, the Assessing Officer observed that a land was purchased for which payment of ₹ 30 lakh was made in financial year 2004-05 corresponding to assessment year 2006-07 and payment of ₹ 53 lakh was made in financial year 2005-06 i.e. corresponding to assessment year 2006-07. In view of the payment of Rs.53 lakh in the year under consideration, the Assessing Officer commenced reassessment proceeding by way of issue of notice under section 148 of the Act. In view of the failure

on the part of the assessee to explain the source of the investment in purchase of the land, the Assessing Officer held the investment in purchase as undisclosed income of the assessee, in his order dated 31/10/2013. The Ld. CIT(A) upheld the addition of observing as under:

“3. I have examined the submissions made by the assessee and the facts on record. It is seen that at the time of assessment proceedings for the FY 2004-05 (AY 2005-06) the assessee has stated that he had signed an agreement for purchase of land at Garhi Ujale Khan village Gohana with a person called Shri Krishan for a consideration of Rs 83 lakhs. The assessee, by his own admission, stated that Rs 83 lakhs were paid by his father but no evidence of this was filed. A sum of Rs 30,00,000/- being payments made on 04.12.2004 (Rs 15,00,000) and 28.02.2005 (Rs 15,00,000) were added for AY 2005-06. Similarly, a sum of Rs 53 lakhs was paid in this year. The assessee was unable to substantiate how the agreement signed by him is not true. Moreover, no additional evidence has been furnished before me as per the remand report of the AO dated 16.01.2015. The appellant has not been able to discharge his onus in proving that he was not a party to the said transaction. To state that his father made his “sign a paper” and that his father entered into an agreement with one Shri Krishan is not an acceptable explanation. There was repeated non compliance before the AO. Even before me, no new material has been placed on record to prove the appellant’s claim.”

3. We have heard both the parties, who appeared through Video Conferencing facility. We have also perused the orders of the lower authorities and order of the Tribunal (ITA No. 2749/Del/2015) in the case of the assessee for assessment year 2005-06.

“5. Both the parties have been heard. In order to ascertain the correctness of the assertions made by the parties before the Bench, it is necessary to first address the facts. It needs to be brought on record as to what specific land as per agreement to sell has been purchased by the assessee. Mere mention of a village in a document by itself does not form the evidence that a specific land was owned by way of purchase by the assessee. In the fact of the denial of the assessee that the signature does not belong to him the Revenue first needs to address the status of the specific land.

Namely bring on record the exact description of land and ascertain whether it has been purchased by the assessee. In case the alleged agreement to sell was never acted upon even in that situation in the face of the denial of the assessee that the signature is not his the Revenue will need to seek forensic examination of the same by having an expert's opinion on the handwriting. The fact that this is a case of tax evasion petition wherein there is an assertion of the assessee that the signature does not belong to him and the assessee has argued that apart from Wagon-R car and construction of a house after obtaining a house loan from ICICI Bank Ltd. vide loan A/c No.LBPNP00000350493 on a plot in Sector-7, Gohana there is no other property owned by the assessee all facts which need to be addressed. . The assessee may be called for to file a sworn declaration under penalty of perjury to address his version of facts if need be before proceeding to seek forensic evidence addressing the signatures etc. However, as far as the impugned order is concerned it cannot be sustained as there is no discussion whatsoever on the arguments recorded in the said order. Once the assessee says that the signature does not belong to him and the property referred to has also not been purchased by him. Then, these basic facts and arguments have to be addressed and the order to proceed further and hold the same as assessee's undisclosed income the Revenue needs to demonstrate by way of evidences the fallacies of the assessee's claim. In the absence of any discussion on the relevant facts after hearing the parties the issue is restored back to the AO to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard."

3.1 We find that alleged investment in the year under consideration, the second installment in respect of the purchase of the land, for which first installment falls in assessment year 2005-06 and the said issue has been restored by the Tribunal to the file of the Assessing Officer for deciding afresh. In the facts and circumstances of the present case, the issue-in-dispute is also restored to the file of the Learned Assessing Officer for deciding afresh, following the direction of the Tribunal (supra). The grounds of the appeal of the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open court on 16th July, 2021.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

**Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

Dated: 16th July, 2021.

RK/-(DTDC)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi