

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "E" NEW DELHI)
BEFORE SHRI I.C. SUDHIR AND SHRI J.S. REDDY

ITA No. 6339/Del/2013
Assessment Year: 2009-10

Income-tax Officer,
Ward-2,
Fatehabad.

vs. Sh. Mahender Singh S/o
Sh. Birbal Singh, C/o.
M/s. Bhambu Contractor,
89-B, Anaj Mandi,
Fatehabad.
(PAN: BLDPS3179K)
(Respondent)

(Appellant)

Appellant by: Shri P.Dam Kanunjna, Sr. DR.
Respondent by: N o n e

Date of hearing : 16.06.2015
Date of pronouncement: 17:06.2015

ORDER

PER I.C. SUDHIR: JUDICIAL MEMBER

The Revenue has questioned First Appellate Order on several grounds involving the sole issue as to whether the Learned CIT(Appeals) was justified in deleting the addition of Rs.13,72,252 made by the Assessing Officer.

2. Heard and considered the arguments advanced by the learned Sr. DR in view of orders of the authorities below.

3. The facts in brief are that assessee is a contractor. The Assessing Officer inquired about the deposits made in the saving bank account with HDFC Branch, Fatehabad. The assessee explained that besides being a contractor, the assessee is also an agriculturalist. It was stated that the deposits in the said bank were made out of cash withdrawal of Rs.9,25,000 made from his agricultural account with M/s. Birbal Singh & Sons, Anaj Mandi, Fatehabad. It was submitted that the deposits were also made in the said bank account out of earnest money amounting to Rs.20 lacs (Rs.10 lacs received on 21.5.2008 and Rs.10 lacs received on 10.1.2009) received from Smt. Surjit Kaur and Smt. Gurdeep Kaur, in pursuance of an agreement to sell of agricultural land. The Assessing Officer did not agree with the assessee and made addition of Rs.13,92,252 (Rs.21,97,252 – Rs.8,25,000) by treating the same as income of the assessee from undisclosed sources. The assessee questioned the above addition before the Learned CIT(Appeals) and the Learned CIT(Appeals) deleted the addition.

4. In support of the grounds, the Learned Sr. DR has basically placed reliance on the assessment order.

5. Having gone through the orders of the authorities below, we find that the Assessing Officer had made addition basically on the basis that as per the

agreement to sell, the sale deed was to be executed by 15.5.2009 but the same was not executed till date and that the assessee despite opportunity failed to produce before the Assessing Officer the so called purchaser of land i.e. Smt. Surjit Kaur and Smt. Gurdeep Kaur. Again before the Learned CIT(Appeals), the assessee tried to explain the source of the amount on which the Learned CIT(Appeals) called for remand report from the Assessing Officer and considering the same in view of the explanation of the assessee, the Learned CIT(Appeals) has come to the following conclusion:

“5. I have carefully considered the issue and submissions made by the AR as well as the comments of the A.O. It is a matter of fact that the appellant had withdrawn Rs.5,45,000 from his saving bank account with OBC, Fatehabad. Copy of OBC saving bank account is very much available on the file of the A.O. and a certified copy of the same was submitted by the AR during the course of appellate proceedings. Further, the A.O. in his remand report has admitted regarding difference of Rs.1.00 lacs regarding withdrawals made from M/s. Birbal Singh & Sons, Fatehabad. The A.O. has also pointed out that reverse entries of Rs.116604 (216604-100000) may also be considered on merits. So far as the advances received against sale of agricultural land concerned, the same are genuine as the appellant submitted copy of agreement and sale deed of the agricultural land of the buyer in support the sources of investments/advances made by them. Further, the appellant also submitted the affidavits of the buyers in support of the advances made by them. The claim of the appellant

cannot be rejected only on the ground that the appellant could not personally produce the purchaser of land as the purchasers of land had received the summons but did not appear, the assessee could not be blamed for all this as held by the Hon'ble Bombay High Court in the case of CIT vs. UM Shah, Prop. Shrenik Trading Co. Ltd. (1973) 90 ITR 396 (Bom.) and by the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Ashok Arora (2009) 29(1) ITCL 40: (P&H – H.C) (2009) 24 DTR (P&H) 227 and by the Hon'ble ITAT Delhi in the case of CIT vs. Surinder Nath Singla (1995) 51 TTJ (Del.Trib) 179. It is each and every individual entry, on which the mind has to be applied by the A.O., when an explanation is offered by the assessee. If no explanation has been offered in respect of a particular entry then the A.O. will be justified in coming to the conclusion that the said investment is unexplained. It is not the totality of the credit entries which are to be allowed or to be disallowed as made in the above case. The appellant had discharged its burden of proof by producing the affidavits and circumstantial evidences on the facts of the case. Therefore, I find no plausible reason to dispute the contention of the assessee that cash deposit in the HDFC bank stand explained. In view of the above addition made by the A.O. of Rs.13722252 is deleted and the grounds of appeal are allowed.”

6. The Learned CIT(Appeals) has discussed the issue in detail before coming to the above conclusion. The First Appellate Order on the issue is comprehensive and reasoned one as the assessee has been able to

successfully explain the source of the amount in question. We thus do not find reason to interfere with the First Appellate Order in this regard. The same is upheld. The grounds involving the issue are thus rejected.

7. In result, the appeal is dismissed.

Decision pronounced in the open court on 17 .06.2015

Sd/-
(J.S. REDDY)
ACCOUNTANT MEMBER

Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Dated: 17/06/2015
Mohan Lal

Copy forwarded to:

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

ASSISTANT REGISTRAR

	Date
Draft dictated on computer	17.06.2015
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Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	