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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 08.02.2021

\+ **ITA 16/2021**

JATINDER PAL SINGH ..... Appellant

Through: Mr. Ajay Vohra, Senior Advocate with Mr. Rohit Jain and Mr. Aniket D. Agrawal, Advocates.

versus

DY CIT CENTRAL CIRCLE 9 NEW DELHI ..... Respondent

Through: Mr. Deepak Anand, Senior Standing Counsel with Mr. Vipul Agarwal, Advocate for Income Tax Department.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral)

CM APPL. 4249/2021 *(for condonation of delay)*

1. For the reasons stated in the application, the delay of 25 days in re-filing the present appeal is condoned.

2. The application stands disposed of.

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3. The present appeal under Section 260A of the Income Tax Act, 1961 is directed against the order dated 1st November, 2019 passed under Section

254(1) of the Income Tax Act, 1961 [*hereinafter referred to as* '***the Act***'], by the Income Tax Appellate Tribunal [*hereinafter referred to as* '***ITAT***'] in ITA No. 621/DEL/2015 for the Assessment Year 2011-12, whereby the appeal of the Appellant-Assessee was dismissed and consequently the addition to the extent of ₹ 2 crores to his income made by the Assessing Officer has been upheld.

4. The brief factual matrix giving rise to the present appeal is that a search operation was conducted by the Central Bureau of Investigation [*hereinafter referred to as* '***CBI***'] at the premises of the Appellant, during which cash of Rs. 2 crores was seized. Subsequently, based on the information provided by the CBI, the Director of Income Tax (Investigation) conducted another search under Section 132 of the Act on the very same day. In this search proceeding, the statement on oath of the Appellant was recorded under Section 132(4) of the Act, wherein he sought to contend that the amount of Rs. 2 crores was received by him as advance for sale of agricultural land at Faridabad. Total area of the land was stated to be 50 acres and agreed price for the sale was disclosed as ₹ 6 crores. He further stated that the amount was received from one Mr. Sharma and receipt against the advance of ₹ 2 crores was issued by the Assessee, although at the time of the search, the Appellant did not possess a copy of the same.

5. Subsequently, in the assessment proceeding for AY 2011-12, the Appellant submitted that he had received the cash amounting to ₹ 2 crores as advance from one Mr. Rahul Ahuja through the broker- Mr. Sanjeev Kumar Sharma. Independent enquiries were conducted by the Assessing Officer, notice under section 133(6) of the Act was issued to Mr. Ahuja, and documents were obtained from him, which included a copy of a Memorandum of Understanding dated 12th April, 2010 purported to be executed between him and the Appellant for purchase of the said agricultural

land [*hereinafter referred to as '**MOU**'*]. Mr. Ahuja submitted that the payment of ₹ 2.01 crores was made to the appellant in cash, which was withdrawn from the bank account maintained him. Later, the authorised representative of Mr. Ahuja orally stated that the latter had filed a suit for recovery of the advance of ₹ 2.01 crores against the Appellant. In order to carry out further enquiry and verification in relation to the source of the cash found and seized from the premises of the Appellant, the Assessing Officer recorded the statements of Mr. Ahuja and Mr. Sharma, pursuant to summons issued under section 130 of the Act. Ultimately, the Assessing Officer, after consideration of the testimonies and other evidence furnished by the Appellant, framed the assessment *vide* order dated 28th March, 2013 and added the amount of Rs. 2 crores to the income of the Appellant. Aggrieved with the aforesaid order, the Appellant preferred an appeal before the Commissioner of Income Tax (Appeals) [*hereinafter referred to as* '***CIT(A)***']. The CIT(A), after considering the submissions of the Appellant, directed the Assessing Officer to conduct further enquiry by summoning all persons involved in the alleged transaction of sale and to confirm the status of the pending suit of recovery in the court at Faridabad. Pursuant thereto, the Assessing Officer, furnish a remand report, considering which, the CIT(A) rejected the submissions of the appellant and confirmed the addition. The matter was then carried up in further appeal before the ITAT which upheld the order passed by the Assessing Officer, as confirmed by the CIT(A) and sustained the impugned addition of Rs. 2 crores in the hands of the Appellant. Aggrieved, the Appellant has preferred the present appeal under section 260A of the Act, raising substantial questions of law as follows:

(i) 'Whether on the facts and in the circumstances of the case, the Tribunal erred in law in upholding the addition of ₹ 2 crores made by the Assessing Officer in the hands of the appellant representing cash found and seized during the course of search?

(ii) Whether on the facts and in the circumstances of the case, the order passed by the Tribunal is perverse inasmuch as it relies upon various irrelevant facts and fails to consider the relevant/ material facts?'

6. Mr. Ajay Vohra, learned Senior Counsel appearing for the Appellant, submits that the CIT(A) and the Tribunal, while upholding the addition, have been completely silent as to under which provision of the Act, the aforesaid addition was sustainable. He presses that even if assuming the exercise of the Assessing Officer to be in terms of the scheme of the Act, the only provision which provides for bringing to tax the purported "unexplained money" in the hands of an assessee is Section 69A of the Act. He submits that in order to qualify for addition under said provision, the conditions specified therein are required to be fulfilled, which evidently is not in the present case. He puts forth that the appellant had duly and fully explained the "nature and source" of the amount of Rs. 2 crores found and seized by the CBI in the course of the search conducted by it, however, the Assessing Officer, on the basis of mere conjectures and suspicion, disregarded the explanation offered by the appellant by placing reliance on the enquiry conducted by the CBI. Mr. Vohra further submits that the addition under section 69A can only be made in respect of an assessee who is found to be the owner of the money. The findings of the Assessing Officer do not support the conclusion drawn by him for making the addition. The Assessing Officer has held, the amount recovered pertained to illegal gratification obtained for securing favour for Gyan Sagar Medical College and Hospital, Patiala. Thus, he submits that in view of the above finding, the Appellant can only be held to be acting merely as a conduit for the passage of money and cannot be deemed to be the 'owner' of such cash, warranting additions

in his hands under section 69A of the Act. In these circumstances the cash cannot partake the character of income assessable in the hands of the appellant. Mr. Vohra also argues that there was sufficient explanation given by the Assessee during the course of the assessment proceedings to explain the nature and source of the amount of Rs. 2 crores recovered from his possession, and thus the findings of the Assessing Officer as well as the other tax authorities disregarding the same are perverse. In an attempt to demonstrate that the reasoning of the Assessing Officer is based on suspicion and conjectures, Mr. Vohra also drew our attention to a table wherein explanation/rebuttal is given to the findings of the Assessing Officer regarding the discrepancies in the statements of the appellant vis-à-vis those of Mr. Sharma and Mr. Ahuja.

7. Mr. Deepak Anand, learned Senior Standing Counsel appearing on an advance notice, submits that in the instant case the Appellant should in fact be prosecuted for making false statements. He referred to several contradictions and discrepancies in the stand taken by the Appellant and urged that the Appellant has not been able to offer any satisfactory explanation for the cash in question and thus, the conclusion drawn by the Assessing Officer is justified. He argues that the material on record demonstrates that the Appellant did not correctly disclose the area of the land that sought to be sold under the purported MOU. The Appellant also did not produce the original MOU and further the manner in which the suit filed by the purchaser was compromised indicates that the entire version put forth by him to explain the cash found in his possession was concocted and contrived to escape taxation.

8. We have given our thoughtful consideration to the rival contentions of the parties. The findings of the tax authorities and in particular the Assessing Officer, are based on the testimonies and evidence gathered during the

course of the assessment. When the cash was found during the search conducted at the premises of the Appellant and his statement was recorded under section 132(4) of the Act, he did not disclaim ownership over the same. On the contrary, he sought to explain the 'nature, purpose and source' of the said amount by contending that the amount was received by the Appellant as an "advance for sale of agricultural land at Faridabad". In the course of the ensuing assessment proceedings, the Appellant submitted that the amount of ₹ 2 crores was received in the form of cash advance from Mr. Rahul Ahuja, through a broker. Appellant made full efforts to support this contention and testimonies were recorded. The said explanation has not been accepted since there were glaring discrepancies in the statement made by the Appellant vis.-à-vis. the statements made by Sh. Sanjeev Sharma and Sh. Rahul Ahuja. Their stand was divergent even on basic facts such as the area of the land and the agreed price. The Assessee has deposed that no agreement was signed, however Mr. Rahul Ahuja submitted a copy of MOU dated 12th April, 2010 and in this view of the matter, the statement of Mr. Rahul Ahuja was held to be unreliable. As rightly pointed out by Mr. Deepak Anand, it is indeed strange that the original MOU was not produced during the assessment proceedings. The Assessing Officer carefully and meticulously examined the statements and arrived at a conclusion that the purported transaction of sale was sham. He then observed that the appellant had presented a story "*to cover up the cash found and seized by the CBI at his residence*". In this regard, he has referred to the findings of CBI and observed that the *"findings are further corroborated by the investigations carried out by the CBI and the charge sheet".* In this background the AO concluded *"the amount of cash recovered was not any advance money received by him for sale of so called land at Faridabad*." The ITAT has agreed with the conclusions drawn by the AO while observing as under:

"*7. (...) There is a discrepancy with regard to land agreed to be sold was whether for 50 Acres or 30 Acres. The consideration also differ whether it was for 6 Acre or 4 Acre. Nothing have been explained by the assessee to the satisfaction of the authorities below. The assessee has stated in his statement that no agreement was signed. However, Shri Rahul Ahuja submitted copy of MOU Dated 12.04.2010. Therefore, the statement of Shri Rahul Ahuja was not reliable. It would not prove any genuine transaction entered into between the assessee and Shri Rahul Ahuja. The assessee never produced original of the MOU or receipt before the authorities below. The photo copies of the MOU produced was not having back side to show stamping done by the Stamp Vendor as to when the said papers were purchased for preparing the MOU. It is also a fact that no copy of MOU or receipt of amount were found from the possession of the assessee during the course of search by the CBI or Income Tax Department. Though the assessee claimed to have agreed to sale 50 Acres of land for a consideration of Rs.6 crores, but, the MOU allegedly signed by Shri Rahul Ahuja and assessee clearly mentioned the land under sale to be 30 Acres and was sold for a consideration of Rs.4 crores only. The Ld. CIT(A) on examination of the documents on record has given a specific finding that share of the assessee comes to 30/130 share i.e., approximately 4 Acres of land. Learned Counsel for the Assessee during the course of arguments did not explain any of the discrepancy found in the statement of these persons and the calculation made by the Ld. CIT(A) regarding area of the land to be approximately 4 Acres. There are contradictions in the statements of assessee and others with regard to month of the first meeting, place of meeting, area of land to be sold and sale consideration which is not explained by the assessee through any reliable and cogent evidence. The figure of the sale consideration is also differed as assessee has stated it to be Rs. 2 crores received as advance, but, other 02 persons stated it to be Rs. 2.01 crores. Shri Rahul Ahuja while explaining the source has stated in his statement that he has withdrawn the cash from his Bank account in January and February, 2010, but, did not explain why huge cash was kept when he was having banking facility. There is a significant gap between cash withdrawn from the Bank account of Shri Rahul Ahuja in January and February, 2010 and allegedly paid to the assessee in April, 2010. The assessee failed to explain this discrepancy as well. Shri Rahul Ahuja filed suit against the assessee on 23.01.2013 after lapse of several years when the matter was going on at*

assessment stage. The inconsistencies in the statements of these persons have not been explained by assessee. Thus, there are serious doubts about the alleged transaction of sale of land. It is highly unbelievable that a person who is having banking facility kept substantial amount of Rs.2 crores in cash with him for more than two months. The assessee at the time of making statement has clearly agreed that no Agreement to Sell pertaining to the sale of agricultural land was executed between the parties. When there was a substantial difference between the area of the land to be sold and consideration, there was no reason to record lesser amount or lesser area in MOU signed by the assessee. The assessee at the time of search by CBI did not explain the details of persons who has given the amount in question to the assessee. No mode of payment was also explained. It, therefore, appears that entire story have been cooked-up by the assessee later on and is clearly an afterthought. According to Section 110 of Evidence Act when assessee was found in possession of Rs. 2 crores at the time of search by CBI and assessee denied the ownership of the same, the burden would be upon the assessee to prove as to who was the owner of the cash found from his residence and possession. However, the assessee failed to discharge onus upon him to prove as to who is the lawful owner of the cash found during the course of search. Therefore, it is the liability of the assessee to explain the possession of the cash found during the course of search by CBI. It may also be noted here that during the course of arguments, Learned Counsel for the Assessee did not made any allegation against CBI who have recovered Rs. 2 crores from the residence of the assessee during the course of search. (...) There was specific information received by CBI and conversation of all the persons have been recorded by the CBI. Nothing have been explained in this regard with regard to allegations made against the assessee and others in the charge-sheet submitted by the CBI and reproduced by the Assessing Officer in the assessment order. Considering the totality of the facts and circumstances of the case and that there was substantial gap between withdrawal of cash by Shri Rahul Ahuja and alleged payment to the assessee. Therefore, assessee has failed to explain source of the cash of Rs. 2 crores found from his possession during the course of search by the CBI. The entire case set-up by the assessee is clearly an afterthought. The MOU and receipt are sham documents and fabricated by the assessee and others later on which fact is further strengthened by the fact that no original of MOU and receipt have

been produced before the authorities below. Otherwise, the same could have been subjected to verification by CFSL. Copy of the MOU was produced, but, it was not having the back side which could have throw light on the fact as to when the said stamp paper were purchased and whether stamp papers were genuine or not. All these facts and circumstances clearly prove that assessee has no explanation whatsoever of the cash found from his possession during the course of search by the CBI. The Hon'ble Supreme Court in the case of ***Durga Prasad More*** *82 ITR 540 (SC) and in the case of* ***Sumati Dayal*** *214 ITR 80 (SC) has held that "*the Courts and Tribunals have to judge the evidence before them by applying the test of human probability*". If the said test is applied in this matter, it is clearly established that the assessee has failed to prove source of Rs. 2 crores found during the course of search by the CBI at his residence. Thus, appeal of assessee has no merit (...)*"

9. The Appellant was found to be in possession of the amount in question. Thus the onus lay on him to explain the 'nature and source' and on this account, the appellant has failed and therefore the amount is unexplained/unaccounted for. The explanation offered by the appellant has not been found to be satisfactory by the tax authorities in light of the discrepancies and anomalies in the statements of the appellant vis-à-vis those of Mr. Sharma and Mr. Ahuja. In terms of Section 69A of the Act, in case the assessee offers no explanation about the nature and source of the acquisition of money, or in case the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the value of the money may be deemed to be the income of the assessee. The concurrent and consistent findings of fact recorded by the tax authorities rejecting the explanation given by the assessee has resulted in adding the amount in question to the income of the assessee under Section 69A and we do not find any perversity in the same in order to entertain the present appeal. The test of human probabilities applied by the tax authorities buttresses the conclusion drawn by them and justifies the denunciation of the incredulous story portrayed by the Appellant. In *Sukh Ram v. ACIT*, [2007] 159

TAXMAN 385(Delhi), this Court has taken the view that for an addition under Section 69A, possession is evidence of ownership, and the presumption of ownership is the strongest in case of cash, because its title can be transferred by mere delivery of possession, and thus onus is on the Assessee to prove that he is not the owner of the currency in his possession.

10. The aforesaid findings are purely findings of fact which have been concurrently accepted by the CIT(A) as well as the ITAT. We cannot re-appreciate the evidence, particularly when we see no perversity in the findings of the ITAT. As regards the contention of Mr. Vohra, that the finding recorded by the Assessing Officer that the amount of Rs. 2 crores was for an illegal gratification, contradicts the conclusion drawn by him, we would say that firstly, we perceive no such contradiction. Secondly, on a pointed query raised by the Court, Mr. Vohra refutes that the amount in question was illegal gratification. Thus, the plea of being a conduit is a pretext to evade tax. Thirdly, to our mind, the observations of the tax authorities are on independent examination of the case and not entirely resting on the case which has been set up by the CBI. As far as the Income Tax proceedings are concerned, since the explanation offered by the Appellant has not been found to be satisfactory, the addition is in accordance of law. In view of the consistent findings of the fact, no questions of law, much less any substantial question of law, arises for our consideration.

11. In view of the above, the present appeal is dismissed.

RAJIV SAHAI ENDLAW, J.

12. I have perused the order aforesaid dictated by Sanjeev Narula, J. and though concur in entirety with the same but would like to address another aspect.

13. The senior counsel for the appellant, being fully aware that from the concurrent findings of fact, of the Assessing Officer, CIT and ITAT, no substantial question of law arises, stressed on substantial question of law qua interpretation on Section 69A of the Act, arising in the facts of the case. It is his contention that for addition to income to be made under Section 69A, the assessee has to be found to be the owner of the money. It is argued that neither the Assessing Officer nor the CIT nor the ITAT have found the appellant in the present case to be the owner of the money found in cash in possession of the appellant and added to the income of the appellant. It is further argued that on the contrary there is a specific finding, of the appellant not being the owner of the said money.

14. Section 69A is as under:

> ***"69A. Unexplained money, etc****.—Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."*

15. Attention is next drawn to the impugned order of the ITAT, recording from the order of the Assessing Officer, as under:

> *"The above facts and discussion proves beyond doubt that the transactions claimed to have been made by the assessee with Sh. Ahuja is only a sham transaction. It was purportedly done to cover up the cash found and seized by CBI at his residence which was illegal*

gratification meant to obtain favour from S. Ketan Desai, the then President of Medical Council of India for obtaining recognition of courses and grant of permission in respect of M/s Gyan Sagar Medical College and Hospital, Patiala. The above findings are further corroborated by the investigations carried out by the CBI and the chargesheet (under Section 173 Cr.P.C.) .... against Dr. Ketan Desai and others."

AND

recording the arguments of the Revenue before the ITAT as under:

"In this matter, the CBI received a source information, on the basis of which, enquiry was conducted during which, mobile phones were intercepted. The team was deployed at the residence of the assessee who was coming to deliver the bribe amount of Rs.2 crores. The CBI apprehended Dr. Kamaljeet Singh while coming out of the residence of the assessee on 22.04.2010 at about 12:50 hours. On his disclosure, Rs.2 crores was recovered from the office located at the ground floor of the residential premises of the assessee at Vasant Vihar, New Delhi. All these facts are mentioned in the bail order of the assessee..... the transcript of the conversations between Dr. Ketan Desai, Sukhwinder Singh and assessee, Sh. Kamaljeet Singh, Sh. K.A. Paul and Sh. N.S. Bhango reveal that conversations were corelatable to the dates on which the event took place. The conversation clearly reveals that it was a bribe amount to be paid.... "

AND

to the findings of the ITAT itself, as under:

"Therefore, there is no reason to disbelieve the case set up by the CBI and the Income Tax Department against the assessee. The Assessing Officer has reproduced certain material based on chargesheet filed by the CBI against the assessee and others, in which the CBI has clearly

mentioned that there was a criminal conspiracy between assessee, Dr. Sukhwinder Singh and others to get a favour from Sh. Ketan Desai for approval of MBBS course..... the entire case set up by the assessee is clearly an afterthought. The MOU and receipt are sham documents and fabricated by the assessee and others later on which fact is further strengthened by the fact that no original MOU and receipt have been produced before the authorities below."

16. The senior counsel for the appellant, on the basis of the aforesaid contended that since the Assessing Officer, CIT and ITAT have held the said sum of Rs.2 crores to be bribe money, in possession of the assessee, for payment to Dr. Ketan Desai, the assessee cannot be said to have been found to be the owner thereof within the meaning of Section 69A.

17. We are however of the opinion that no substantial question of law arises. A plain reading of Section 69A shows the expression "found to be the owner", to be meaning, found to be exercising any right as owner. Possession and / or custody of money is a facet of ownership and thus, during the raid by CBI and Revenue authorities, the assessee was found to be the owner of the said money. Section 69A thereafter permits the assessee to offer an explanation about the nature and source of acquisition of money and empowers the Assessing Officer to deem the said money to be the income of the assessee, only if finds the explanation offered to be unsatisfactory. It is not as if the explanation of the appellant with respect to the sum of Rs.2 crores found in his possession / custody, was, of the same being with him in transit, for onward delivery as bribe to Dr. Ketan Desai. On the contrary, the assessee offered the explanation of the same being advance received by him towards consideration for sale of agricultural

land and which explanation was not found satisfactory, neither by the Assessing Officer nor by the CIT nor by the ITAT. It is for this reason that the same was deemed to be the income of the assessee.

18. Had the explanation offered by the assessee with respect to the money found in his possession / custody been, of the same being with him in transit for onward delivery to Dr. Ketan Desai, the assessee could have argued that since the case of the CBI was the same, the explanation offered by the assessee was satisfactory. On the contrary, the assessee offered some other explanation and with which he failed to satisfy the Assessing Officer. We have rather, during the hearing also enquired from the senior counsel for the appellant / assessee, whether the appellant / assessee is even now willing to change the explanation offered by him and to bring it in consonance with the case of the CBI. The answer of the senior counsel for the appellant / assessee, on instructions, is expectedly in the negative.

19. In this context, we may also notice that Section 69A empowers the Assessing Officer to only adjudicate whether the explanation offered by the assessee is satisfactory or not. The Assessing Officer is not empowered to return a finding, of the sum of Rs.2 crores found in possession / custody of the appellant being with the appellant in transit, for onward payment as bribe. The Assessing Officer as well as the ITAT referred to the same, only in the context of the chargesheet of the CBI and to observe that the explanation offered by the assessee was an afterthought. The assessee thus cannot argue that there is any finding of the said money being bribe money. The jurisdiction to return a finding in that respect is only of the Criminal Court and not of the authorities under the Income Tax Act.

20. As far back as in ***Chuharmal Vs. Commissioner of Income Tax*** (1988) 3 SCC 588 the Supreme Court approved the approach of the High Court; the High Court held the assessee to be the owner of the wrist watches found in his premises during a search and seizure operation and relied on Section 110 of the Evidence Act, 1872 stipulating that when the question is whether any person is owner of anything of which he is shown to be in possession, the onus of proving that he is not the owner, is on the person who affirms that he is not the owner; it follows, that normally unless contrary is established, title always follows possession and since possession of the wrist watches was found to be of the assessee in that case and the assessee did not discharge the onus of proving that the wrist watches did not belong to him, the High Court held the value of the wrist watches to be the income of the assessee.

21. Thus no substantial question of law qua interpretation of Section 69A also arises.

22. Dismissed.

SANJEEV NARULA, J

RAJIV SAHAI ENDLAW, J

FEBRUARY 8, 2021
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