आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "एकल सदस्यीय',चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH'SMC' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM

आयकर अपील सं./ITA No. 199/CHD/2019
निर्धारण वर्ष /Assessment Year : 2010-11

ShriNaresh Sharma, GargGarg& Associates, Kothi No. 35, First Floor, Sector 7, Kurukshetra/	बनाम VS	The AO, Ward-2, Kurukshetra.
स्थायी लेखा सं./PAN No:BLZPS7706Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None (Adjournment Application of ShriAshwani Kumar, C.A.)
राजस्व की ओर से/Revenue by : Shri Ashok Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 04.03.2021
उदघोषणा की तारीख/Date of Pronouncement : 04.05.2021

Hearing conducted via Webex

आदेश/ORDER

The present appeal has been filed by the assessee wherein the correctness of the order dated 16.01.2019 of CIT(A), Karnal pertaining to 2010-11 assessment yearis assailed on the following grounds :

> *"1. In the facts and in the circumstances, the Worthy CIT (A) has erred in not considering and appreciating the amended grounds of appeal.*
>
> *2. On the facts and in the circumstances, the Worthy CIT (A) has erred in not considering and appreciating the new facts which could not be placed at the time of assessment due to reasons and circumstances beyond the control of appellant.*

> *3. That on the Amended facts and in the circumstances, all the deposits in the bank can not be taken as income but at best be taken as sales or turnover only.*
>
> *4. The Appellant craves leave to add, delete or modify any or all grounds of appeal*

2. At the time of hearing, an adjournment application has been moved on behalf of the assessee wherein no reasons for seeking adjournment appear to have been given. The stated reason read as under:

> *"Dear Sirs,*
>
> *With reference to above, the Bench is requested to kindly adjourn the hearing in the case.*
>
> *Thanks and Regards."*

3. However, on considering the above mentioned grounds, in the context of the facts on record after hearing ld. Sr.DR, it was deemed appropriate to proceed with the present appeal ex-parte qua the assessee appellant on merits.

4. The relevant facts of the case are that an addition of Rs. 40 lacs was made in the hands of the assessee on account of deposits found made in the assessee's bank account. The assessee explained the same as being sourced from sale of land measuring ***11.28 Marla (Muraba No. 51, Kila No. 4/1/1 Khewat No. 246, 277)sold to Shri Mehar Singh S/o Shri Babu Ram of Pehowa, who was the purchaser.*** The relevant extract from the assessment order reads as under:

> "2.........*cash of Rs 40.00.000/- was deposited in his bank account out of sale of property to Sh Mehar Chand S/o Sh Babu Ram, Pehowa during the financial year 2009-10 relevant to assessment year 2010-11. From the perusal of lkrarnama dated 02.06 2010, it is noticed that agreement was made between mother of the assessee. Smt Krishna Devi W/o Sh Ramesh Kumar R o Pehow and* Shri *Mehar Chand S'oShBabu Ram. Pehowaon 02,06.2010 to sell land measuring 11.28 Marla (Muraba No. 51, Kila No. 4/1/1 Khewat No. 246, 277) for Rs 40,00,000/- and the whole amount of Rs 40,00,000/- has been received in cash.......*"

4.1 However, the purchaser as per record denied having paid 'Biyana' in terms of 'Ikrarnama' to the assessee in his statement given to the AO. In view of this statement, addition was made in the hands of the assessee.

5. The assessee carried the issue in appeal before the CIT(A) and also advanced an alternate argument namely that the deposits made were from his known sources of business. The said submission was dismissed holding that the claim could not be said to be explained by filing of a mere affidavit.

6. Aggrieved the assessee is before the ITAT.

7. The ld. Sr.DR relied on the orders of the tax authorities.

8. I find on a careful consideration of the two respective orders of the authorities that the tax authorities erred in considering the evidences and explanations offered as irrelevant, the orders are untenable. Accordingly, the decision on merits consequently also cannot be upheld as the

reasoning, process and conclusion against the settled legal principles are untenable in law.

9. On the first and basic issue, the reliance for the primary explanation offered has been placed on *'Ikrarnama'* i.e. the Agreement to Sell and that these cash deposits were explainable from the sale proceeds arising from sale of this land. The said document admittedly is a written document allegedly signed by the assessee's mother and the alleged purchaser Shri Mehar Chand. However, I notice no finding is given by the tax authorities on the relevant aspects namely: was the assessee/his mother owner at the relevant point of time of that land; secondly, was it ultimately sold to the concerned signatory or any other person at the relevant point of time or thereafter; and if yes, at what price. These issues in the face of the alleged denial by one of the signatories are crucial and relevant facts on which findings need to be given. When a document duly relied upon by one of the parties is allegedly signed by both parties, the fact that it is the only document which has been made available as an evidence cannot be whimsically discarded. The order is silent on the aspect whether ultimately pursuant to this IkrarNama/ Agreement to Sell any Sale Deed was finally executed in respect of the said land between the parties or not. I agree that the prevalent practice of under-reporting of Sale price generally by

the purchaser to reduce the stamp duty costs etc., are realities which cannot be overlooked and also can neither be ignored by the Tribunal as the final fact finding authority. The purchasers have been seen to be avoiding the need to explain the availability of moneys spent to make the purchases and have been noticed to under- report the purchase price. No doubt there may be times where the sellers may also help the purchasers "innocently or knowingly" to hoodwink the authorities. It goes without saying that these condemnable efforts whenever in connivance or unilaterally in violation of the laws of land are to be strictly restrained and penalized. The fact that the direct beneficiary of such under reporting etc. generally are the purchasers cannot be disputed. The motive to reduce Stamp duty costs and utilize funds on which income tax has not been paid cannot be brushed under the carpet to the prejudice of ignorant agriculturist land owner selling their farm lands and receiving cash payments for such sale. These are largely non-taxable events for the agriculturists. These observations of prevalent practices is not a justification for condoning such insupportable actions as it goes without saying that such acts of under-reporting by either the purchaser or the seller are unacceptable in law. The practices have been noted only to address the evidence applying the test of human probabilities and prevalent practices noticed judicially. It is

not necessary in the present proceedings to refer to the multiple attempts made by various Central and State authorities, the Legislature and the Judiciary to address these malpractices. However, the truth of these factual scenarios cannot be ignored especially where one party seeks to deny the document signed by it. In such an eventuality in order to address the malpractice, the evil has to be nipped in the bud and the exercise has to be carried to the logical conclusion.

9.1 It is well settled that the rigours of the rules of evidence contained in the Evidence Act are not generally applicable but that does not mean that the Taxing Authorities are prevented from invoking the principles of the Act in the proceedings before them as has been laid down by the Hon'ble Supreme Court in Chaharmal V CIT (1988) 172 ITR 250 SC, upholding the approach, the Apex Court noted as under:

> *"The Court of Bombay held that what was meant by saying that the Evidence Act did not apply to proceedings under the Act was that the rigour of the rules of evidence contained in the Evidence Act was not applicable but that did not mean that when the taxing authorities were desirous of invoking the principles of the Act in proceeding before them, they were prevented from doing so. Secondly, all that section 110 of the Evidence Act does is that it embodies a salutary principle of common law jurisprudence which could be attracted to a set of circumstances that satisfy its conditions."*

9.2 It is not out of place to briefly refer at this stage to Chapter VI of the Indian Evidence Act which addresses both the issues of oral evidence as well as documentary

evidence. The Chapter begins with Section 91. Section 91 deals with the exclusion of oral evidence by documentary evidence. The Section contains two exceptions, two explanations and five illustrations, it is seen that in order to avail of the shelter of this Section, it is necessary that the document be produced so as to prove its contents. It may be considered that the said Section enunciates that the admission of oral evidence be excluded for proving the contents of the document duly signed and excluded by the two parties except in cases where secondary evidence is allowed. This principle as I understand is based on the **'best evidence rule'**. The best evidence rule does not demand the greatest amount of evidence which can possibly be given of any fact, but its aim and purpose is to prevent the introduction of any evidence other than the document itself duly signed by the two consenting parties. The Rule is there on the Statute for the prevention of fraud or when better evidence available with a party is withheld. In such a background it can be fair to presume that the party has some sinister motive for not producing the best evidence which if offered his design would be frustrated. Herein the reduction of Stamp Duty paid or consequences for the purchaser under the Income Tax Act are valid areas of concern. It need be clarified that Section 91 alongwith

the addendum Sections of the Indian Evidence Act referred to lays down the best evidence rule but it does not prohibit any other evidence where writing is capable of being construed differently and which may show how the parties understood the document.

9.3 Here, it needs to be also borne in mind that a written document duly signed by both the parties has a certain sanctity as parties having taken care to put in writing their intention at a point of time intended to abide by the agreed upon terms therein. Thus, if a party pleads that it has acted in pursuance to the said Agreement, then the party which seeks to discard the same necessarily needs to deny his signatures on the document and on such denial being found to be untrue upon forensic examination may need to informed of the perils of being prosecuted for perjury. In such an eventuality, the correctness of the counter claims necessitates that the document and signatures have to be put to forensic examination and enquiry before it can be discarded. In case the signatures are not denied and the different pleas are taken including modification thereafter, then mere oral assertions of denial and reduction of Sale price, may not be acceptable keeping in view the test of human probabilities, that invariably no seller would be willing to reduce the Sale consideration already settled unless of course, some changed facts or

circumstances are brought on record and found to be recorded in the Sale deed and also surrounding circumstances which Taxing authorities are entitled to look into in order to find out the reality of the recitals in any document. The reasoning for this can be understood by the sanctity given to the written words and signed documents. It needs to be understood that the very object for which the terms were reduced in writing would presuppose the need to perpetuate the memory of what is written down. The document duly signed is necessarily with the intent to furnish permanent proof of it in the eventuality such a need arises which is why in order to give effect to this, the document itself it is seen is required to be produced. In the facts of the present case the document has been produced and hence, in view of basic principles set out in Section 61 read with Sections 91 and 92 of Indian Evidence Act casual unsupported, Oral evidence stands excluded. For the purpose of contradicting, varying, adding to, or subtracting from the terms of the written document or Contract and primary evidence some unimpeachable documentary evidence needs to be brought on record to show that the Ikrarnama/ Agreement to Sell was subsequently altered and the alteration was mutual and not unilateral.

10. Reverting to the facts of the case, it is seen that in the facts of the present case, as noticed earlier also, the preliminary facts i.e. ownership of the specific land with the assessee/his mother; subsequent sale thereof if any, and if 'Yes' at what price have not been addressed.

11. Addressing the alternate explanation filed at the appellate stage by way of an Affidavit, I am of the view that the explanation cannot be out rightly discarded. It needs to be borne in mind that some assessee's like the present assessee are not necessarily seasoned tax litigators. The assessee's exposer to the nitty-gritty of tax litigation and the available legal expertise cannot be expected to be at par with the legal and tax administrative training of the Appellate Authority. The explanation which possibly could and should have been given at the first instance many a times has been seen to come at the Appellate stage. Thus, even if the explanation offered apparently out of desperation, was an alternate explanation by way of Affidavit, as the assessee admittedly had failed to get relief on the main plea even then it is not expected from the tax authorities to arbitrarily reject it without any discussion. If the rejection of the Affidavit has to be upheld then its rejection must be in accordance with law. No legal infirmity in the Affidavit has been addressed by the tax authorities. I find that in fact there is no discussion on the contents of the Affidavit

itself. Consequently the finding given that the evidence was to be rejected cannot be upheld in the absence of any discussion as the correctness of the conclusion, cannot be adjudicated upon. For enabling adjudication, there has to be a discussion on the contents of the Affidavit followed by reasons for the conclusion why it is to be accepted or rejected. In the absence of any discussion, the correctness of the conclusion cannot be determined. Namely it is not possible to give a finding that the rejection was maintainable in law as no reason for the arbitrary finding is on record. In such a situation the tax authorities were necessarily required to address the correctness or otherwise of the claims made in the affidavit. Such a flawed legal approach cannot be upheld. It goes without saying that even in the eventuality of a deficiency etc. in the affidavit it was necessarily incumbent on the tax authorities in a fair exercise of power and justice dispensation to point out the shortcoming so as to enable the assessee to make good the deficiency etc. if any. The authority before whom the affidavit is filed, is necessarily required to address and discuss the contents of the same and record the reasons on the basis of record or logical inference, justifying why it is being accepted or discarded.

11.1. It is seen that there is no discussion whatsoever even on the nature of assessee's business. In the absence of any

discussion thereon in the circumstances, the affidavit of the assessee asserting that the deposits, fully or partly, could also be explained from the business cannot be out rightly discarded. Relevant facts have to be referred to, critically examined and considered before any such claim may be allowed or rejected.

12. Having addressed the manner in which the documentary evidence, namely the 'Ikrarnama' – Agreement to Sell and the Affidavits are to be considered where the basic/primary facts itself are missing namely whether the ownership of the specific land ever vested with the assessee/his mother or not and if yes, was it ultimately sold and if yes, then again to whom and at what price, I am alive to the possibility that the necessary queries and findings may also throw up some contrary facts not placed on record. It needs be addressed that the presumption that claims are correctly made are open to verification and in case the ownership of the land by the mother of the Assessee itself is disputed, then the assessee may be forewarned of the possible consequences that would come into play. No doubt, the correctness of the alternate claim be examined on merits. However, in case the ownership at the relevant time is established and further sale thereof is also an accepted fact then keeping the prevalent malpractices and deprecating them for the purposes of the present proceedings

since only the correct income is to be brought to the tax, in addition to the test of human probabilities, it may be necessary to examine what was the correct value of the specific land at the relevant point of time. This enquiry in the facts is necessary and crucial for determining the source of cash deposit and its taxability. It needs to be borne in mind that not to so enquiry would tantamount to placing an unfair and impossible burden on a Seller to plead with the purchaser to acknowledge and accept the fact that part payment may have been from his/ purchasers unaccounted money. The tax authority at least for semi-literate economically depressed agricultural land holders stand in the position of *locus parentis* as they may not be aware of the manipulative practices and being interested only in receiving the payment, for sale of their land may simply sign on the dotted line. In such transactions, it is the wily purchasers who would take advantage of honest seller who has deposited the entire Sale consideration including that received in cash in their banks. It is not difficult to visualize the motives a purchaser may have to record different amounts in the Sale Deed vis-à-vis Agreement to Sell only to escape the rigors of tax laws and reduce Stamp Duty etc., and then, after the Sale stands concluded, to subsequently very conveniently deny the correctness of the Agreement to Sell 'Ikrarnama'. If the document has been signed

and signatures are not denied consequences follow. In case, signatures are denied then forensic examination becomes necessary. Hence in such circumstances the correctness of the 'Ikrarnama' cannot be out rightly discarded and the authenticity of the same, including the signatures of the parties need to be forensically examined and the witnesses to the document also would need to be examined. Parties cannot be allowed to treat the document/agreement entered into between them casually or disown them at their convenience as such actions may invite criminal consequences for the crimes of forgery and perjury.

13. In the facts of the present case, the tax authorities therefore need to ascertain and verify whether the signatures on the Agreement to Sell 'Ikrarnama' has been disowned by the purchaser as a forgery. These are all relevant issues for consideration and the tax authorities cannot evade the responsibility to ensure that only correct and due taxes are collected and no taxpayer lacking in proper legal advice/suffering a handicap on account of proper legal advice is burdened with unfair additions and steam rolled in the haste for collection of taxes. In the facts of the present case, it appears on record that the assessee apparently did not have the benefit of proper advice as perjury and forgery are serious

issues which cannot be tolerated and treated lightly by a law abiding economic society.

14. The issue, accordingly, in view of the above detailed reasons is set aside back to the file of the CIT(A) who is directed to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard after making necessary enquiries etc. for arriving at a conclusion.

15. The assessee in its own interests is advised to participate fully and fairly in the proceedings. Said order was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

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

Order pronounced on 04th May, 2021.

Sd/-
(दिवा सिंह)
(DIVA SINGH)
न्यायिक सदस्य/Judicial Member

*Poonam &
*Ranjan
आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :
1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH.
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
Assistant Registrar