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

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ITA 101/2017Date of decision: 14th March, 2018

KRISHAN KUMAR SETHI PROPRIETER OF M/S. SETHI AUTO
CENTRE Appellant
Through Mr. Salil Kapur, Advocate.

versus

COMMISSIONER OF INCOME TAX-XX & ANR..... Respondent
Through Mr. Deepak Anand, Jr. Standing
Counsel.

CORAM:**HON'BLE MR. JUSTICE SANJIV KHANNA****HON'BLE MR. JUSTICE CHANDER SHEKHAR****SANJIV KHANNA, J. (ORAL)**

Appellant-Krishan Kumar Sethi has filed the present appeal under Section 260-A of the Income Tax Act, 1961 ('Act' for short), which relates to assessment year 2005-06 and impugns the order dated 8.7.2016 passed by the Income Tax Appellate Tribunal (Tribunal).

2. In the return of income filed for the AY 2005-06, the appellant had declared taxable income of Rs.4,05,265/- from the business of sale/purchase/financing of three-wheeler/scooters on commission basis and income earned under the head "income from house property".

3. The Assessing Officer ('AO'), vide assessment order dated 28.12.2007, made addition of Rs.36,80,000/- as income from undisclosed sources invoking Section 68 of the Act on account of unexplained cash



deposits of Rs.92,80,000/- in the bank accounts of the appellant and his minor sons- Master Sahil Sethi and Sarik Sethi. These deposits were made on different dates and sometimes there were multiple deposits even on a single day. The appellant, on being asked, could not furnish details and explain source of deposits. The AO had made addition of peak cash in hand of Rs.36,80,000/-.

4. The appellant in the appeal, for the first time, took the stand and position that he had had received Rs.33,00,000/- as advance in cash from Anuj Garg, R.K. Garg, Gaurav Gupta and Dinesh Garg, with whom he and his wife had entered into two Agreements to Sell dated 27th August, 2004 for Rs.45,00,000/- in respect of property No.F-2/25, Krishna Nagar, Delhi. This amount and personal savings of Rs.3,00,000/- had been deposited in the bank account of the appellant and his minor sons - Master Sahil Sethi and Sarik Sethi on different dates. The Commissioner of Income Tax (Appeals) [CIT(Appeals)] accepted the aforesaid explanation and deleted the addition vide order dated 27th March, 2009, recording as under:-

“6. Determination:

The submissions made by the appellant have been carefully considered in view of the facts and circumstances of the case and the provisions of law. It is observed that the Assessing Officer has made the addition u/s 68 of the Act on account of bank deposits on the basis of AIR information received in this case, on the ground that the assessee could not justify the same. This, however, cannot be taken as a sufficient ground for making such addition in the absence of any cogent reasons or evidence to the contrary brought on record.



6.1. The Ld. Authorised Representative on the other hand has furnished the relevant details in this regard, which have been placed on record. It has been submitted that the assessee is doing the business of sale/purchase (financing of three wheeler scooters) on commission basis. He'also derives income from house property. The assessee has filed his Income-tax return for the assessment year 2005-06 declaring net income of Rs. 4,05,265/-.

6.2. It has been submitted that the assessee owns property No. F 2/25, Krishna Nagar, Delhi, along with his wife, Smt. Jyoti Sethi. The said property is given on rent to Axis Bank. The rental income from the bank has been duly reflected in the Income-tax return. The bank also deducts tax from the payments of rent. TDS certificate has already been filed along with the return. Copy of purchase deed of property was filed along with the return for A.Y. 1997-98 when the assessee had purchased the said property. Copy of the same has been furnished in support which has been placed on record.

6.3. It has been submitted that during the year *under* consideration, the assessee and his wife, Smt. Jyoti Sethi, entered into an agreement for sale of the above property with Sh. R.K. Garg, Sh. Gaurav Gupta, Sh. Dinesh Garg and Sh. Anuj Garg on 27.08.2004 for a consideration of Rs. 45 lakhs. Copy of agreement for sale has been furnished in support which has been placed on record. The documents in original have also been produced for verification during the course of the appellate proceedings.

6.4. It has been submitted that the assessee and his wife received a sum of Rs.33 lakhs as advance for sale of property from the proposed buyers, namely, Sh. R.K. Garg, Sh. Gaurav



Gupta, Sh. Dinesh Garg and Sh. Anuj Garg, Rio 8-256, Suraj Mal Vihar, Delhi-110092. Confirmation letters along with PAN Nos. and Income-tax returns of the above persons have been furnished in support which have been placed on record.

6.5. It has been submitted that the assessee has deposited the said amount in UTI Bank, Krishna Nagar, Delhi, in two bank accounts opened in the names of his sons, Sh. Sahil Sethi and Sank Sethi. Both his sons are minor and the account is being operated by him as their guardian. The amount has been deposited in the said account on various dates. He has also withdrawn cash from the bank on various dates and again deposited the same at times. Copies of bank statements have already been filed before the Assessing Officer which have been placed on record.

6.6. It has been submitted that subsequently, the buyers could not arrange the balance amount of sale consideration agreed upon, with the result that the deal for the sale of property did not mature and the assessee had to pay back the amount received as advance from the said buyers. At present, the property is still owned by Sh. K. K. Sethi & Smt. Jyoti Sethi.

6.7. It has been submitted that in the assessment order, the Assessing Officer has calculated Rs.36,80,000/- as peak cash in the hands of the assessee. Out of this, Rs. 33,00,000/- is the cash received as advance for sale of property from Sh. R.K. Garg, Sh. Gaurav Gupta, Sh. Dinesh Garg and Sh. Anuj Garg as aforesaid, and Rs. 3,80,000/- from personal savings. It has been submitted that the assessee has been paying Income-tax for the last so many years and was having sufficient cash balance as his personal savings. Copies of the last four Income-tax



returns filed by the assessee have been furnished in support which have been placed on record.

6.8. It is, thus, observed that the appellant has furnished satisfactory explanation in regard to the transactions made in his aforesaid bank accounts in question.

6.9. In view of the above discussion, it is hereby held that the Assessing Officer was not justified in making addition u/s 68 of the Act on account of bank deposits as above. The addition of Rs.36,80,000/-made on this count is, accordingly, hereby deleted.”

5. Aggrieved, the Revenue preferred an appeal, which was allowed by the Tribunal vide order dated 14th May, 2010, after making adverse comments and reasoning given by the first appellate authority.

6. The appellant preferred ITA No. 209/2010 under Section 260A of the Act before the High Court, which was partly allowed vide order dated 17th February, 2011, remanding the matter to the Tribunal for fresh consideration. Lest there be any confusion, the order dated 17.2.2011 is reproduced:-

“1. Notice. Mr. Deepak Anand enters appearance and accepts notice on behalf of Revenue.

2. Having regard to the nature of arguments raised by the learned counsel for the appellant and the order we propose to pass, it is not necessary to take into consideration the facts of the case in detail. The issue pertains to addition made under Section 68 of the Income Tax Act. There were certain deposits made in cash in the bank account from time to time. According to the



Assessing Officer, assessee could not explain some of these entries and taking into account the peak of cash in hand, on Rs.36.80 lakhs addition was made under Section 68 of the Income Tax Act. CIT (Appeal), however, deleted this addition. In the circumstances, the Department preferred further appeal before the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal").

3. Learned counsel for the appellant has produced certain papers indicating that in the appeal notice was issued to the assessee for January, 2010, when the assessee appeared. However, on that date the representative of the Department filed an application for adjournment on the ground that he wanted to see the assessment records. Case was adjourned to 16th March, 2010. On that date again, the departmental representative sought an adjournment stating that he intended to file a paper book. Acceding to his request, the case was again adjourned to 5th May, 2010. It is pointed out by Mr. Kapoor, learned counsel for the appellant, that paper book was not filed, which could have contained the material/document on the consideration whereof CIT (Appeal) had deleted the addition. However, on 5th May, 2010, the appeal was heard without the paper book and without even giving chance to the assessee to file the papers, the Tribunal has allowed the appeal *inter alia* stating that no evidence had been brought on record by the assessee to suggest that amounts deposited On various dates had come out from the sale consideration received in advance form the prospective buyers. His submission is that there was sufficient evidence, which was produced before the CIT (Appeal) and since the



Revenue was the appellant before the Tribunal, it was for the Revenue to file the entire paper book. Even if the Revenue had not filed the paper book, it is submitted that in those circumstances chance should have been given to the assessee to place the papers on record.

4. After hearing the learned counsel for the parties, we find substance in the aforesaid submissions. In these circumstances, without commenting upon the merit of the order passed by the Tribunal, we set aside the said order on the aforesaid ground giving liberty to the assessee to file the paper book containing the documents on which the appellant wants to-rely in support of his submissions. The Tribunal shall hear the parties afresh and take into consideration the said material to decide the issue again.

5. The appeal and the application are disposed of with the aforesaid direction.”

7. After remand, the appellant had filed paper book, enclosing photocopy of agreements to sell dated 27th August, 2004, copy of confirmations from the proposed purchasers and cash flow statement in case of the appellant and his minor sons. The appellant had also furnished copy of the remand report filed before the CIT(Appeals) in response to his application for admission of additional documents under Rule 46A of the Income Tax Rules, 1962. Appellant had asserted that the sale did not materialize and, in April, 2005, Rs.33,00,000/- was returned to Anuj Garg, R.K. Garg, Gaurav Gupta and Dinesh Garg again in cash. Confirmations in this regard were filed.



8. Tribunal, by the impugned order dated 8.7.2016, has accepted the Revenue's appeal and confirmed the addition of Rs.36,80,000/- made by the AO by setting aside the order of the CIT(Appeals).

9. Counsel for the appellant accepts that the issue raised in the present appeal relates to facts. It is, however, submitted that the decision of the Tribunal is perverse on two counts. Firstly, the Tribunal had directed the appellant to furnish documents/details in the form of cash flow statements, affidavits of intending purchaser and confirmations, which were furnished, but these have not been considered and given due evidentiary weightage. Secondly, in case further enquiry and investigation was required, the matter should have been remitted to the AO for detailed scrutiny.

10. We have considered the said contention but do not think that the order passed by the Tribunal would fall and can be categorized as a perverse order i.e. an order which no reasonable person well versed in the field would have passed in the given facts and circumstances. Relevant facts and evidence has been considered.

11. The facts of the case are rather glaring and one-sided. The appellant accepts and admits that cash deposit of Rs.92,80,000/- were made in bank accounts belonging to him and his two minor sons during the period relevant to the AY 2005-06. These cash deposits were made on different dates and there were multiple deposits on one day. There were also multiple withdrawals. The peak cash credit was Rs.36,80,000/-. To this extent, there is no factual dispute. It is accepted that the appellant was engaged in the business of financing and sale/purchase of scooters. On the question



whether the appellant was able to show source of funds and receipt of Rs.33,00,000/- in cash from proposed purchasers, the following facts need to be highlighted:

(i) The appellant had not given explanation or relied on propounded Agreements to Sell before the AO. This explanation was given belatedly before the CIT(Appeals).

(ii) The property in question was a commercial property, which was rented out to a bank.

(iii) It was *per se* unbelievable that the proposed purchasers would pay 75% of the sale consideration of Rs.33,000,000/-, out of Rs.45,00,000/-, in cash. Not even a rupee was paid by bank instrument.

(iv) Cash payment purportedly received from the proposed buyers were not deposited on one date, but allegedly on different dates.

(v) The Agreements to Sell, it is alleged, did not materialize and were finally cancelled in the next AY. As per the appellant, Rs.33,00,000/- was returned to the proposed buyers in cash.

(vi) As per the documents filed by the appellant, for the assessment year 2004-05, Anuj Garg had declared income of Rs.1,48,185/-, Rajendra Kumar Garg had declared income of Rs.1,54,000/- and Gaurav Gupta had declared income of Rs.69,616/-. Details with regard to Dinesh Gupta were not furnished. Thus, the financial capacity of the proposed buyers was not established.

(vii) The AO, in his remand report, had objected to the admission of additional documents.

(viii) The date on which the agreements were cancelled, was not indicated.



12. Agreements to sell and receipt of Rs, 33,00,000/- in cash were sham and make belief. This story was concocted after the appellant was cornered and confronted without answer before the AO, for the first time in the appellate proceedings. In view of the aforesaid factual background, we do not think that any substantial question of law arises for consideration. The appeal is dismissed, without any order as to costs.

SANJIV KHANNA, J.

**MARCH 14, 2017
NA/VKR**

CHANDER SHEKHAR, J.

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