

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

BEFORE SHRI R.P. TOLANI, JUDICIAL MEMBER
AND
SHRI K.G. BANSAL, ACCOUNTANT MEMBER

ITA Nos. 3558 to 3563/Del/2011
Assessment Years : 1996-97 to 2001-02

Rama Yadav,
C/o M/s RRA Taxindia,
D-28, South Extension Part I,
New Delhi.

Vs. ACIT (OSD),
Range-I,
Dehradun.

PAN : AAXPY4644F

(Appellant)

(Respondent)

Assessee by : Shri Ashwani Taneja/Shri Tarun Kumar,
Advocates
Revenue by : Shri Surender Pal, Sr. DR

O R D E R

PER R.P. TOLANI, JUDICIAL MEMBER:

This is a group of appeals filed by the assessee against the orders passed by CIT(Appeals)-II, Dehradun vide orders dated 27-1-2-11 on the reassessment orders passed u/s 143 (3)/147 by ACIT(OSD), Dehradun. Various grounds are raised including the grounds challenging the reopening of assessments. The assessee has not pressed grounds relating to reopening of assessment. Though various issues are raised in memo of appeals, learned

counsel for the assessee contends that only the following grounds be treated for consideration under these appeals:-

- i) One common ground raised in Assessment Year 1996-97 and 1998-99 as in respect of amount received by the assessee out of the will of the deceased father-in-law Shri Ram Bharosey Lal Yadav at Rs 19.05 lac in Assessment Year 1996-97 and Rs 8.95 lac in Assessment Year 1998-99.
- ii) The other common ground raised in all the years pertains to estimation of combined agricultural income of assessee and her husband:-

A.Y.	Shown by the assessee (Rs.)	Assessed by the Assessing Officer. (Rs.)	Added as income from other sources (Rs.)
1996-97	85,000/-	79,000/-	6,000/-
1997-98	1,33,000/-	82,000/-	51,000/-
1998-99	1,75,000/-	86,500/-	88,500/-
1999-2000	1,83,000/-	89,800/-	93,500/-
2000-01	1,90,000/-	93,300/-	1,05,450/-
2001-02	2,75,000/-	1,28,500/-	1,46,000/-

iib) Amount of Rs. 8 lacs received in AY 2000-01 by assessee from her brother Shri Yashpal Singh out of arrears of her past agricultural income.

1.1 The third common ground is the amount of advances received by the assessee for agreement to sell following agricultural land:

A.Y.	Amount	Area in Bigha	Rate per bigha	Name of vendee/relation
1997-98	3,75,000	2.0	Rs.1,85,000	Smt. Uma Yadav/sister
1998-99	4,60,000	2.5	Rs.1,84,000	Shri Yash Pal Singh/brother
1999-2000	5,75,000	3.0	1,91,666	Shri Ramesh Chand/brother in law
2000-01	4,68,000	2.5	Rs.1,87,200	Shri Zia Khan/unrelated

2. Brief facts are that the Assessing Officer received information from Co-ordination Cell Office, Dehradun that the assessee had invested in FDRs in her own name and in the name of other family members. On this basis reasons were recorded and notices u/s 148 were issued on 31.07.2002. In response thereto, the assessee filed returns of income and during the course of reassessment proceedings filed cash flow statements to explain the relevant investments in these years. According to the assessee these investments were made out of following sources:-

- a. Amounts received as successor to the will of her father in law late Shri Ram Bharosey Lal Yadav claimed to be a prosperous land lord, renowned citizen/ freedom fighter of the area and headed a prosperous family.
- b. Agricultural income of herself and husband.
- c. Advances received as consideration of agreement to sell, pieces of her agricultural land.

3. The assessee was required by AO to substantiate the claim of receipt of Rs.19.05 and 8.95 lacs under the will of Late Shri Ram Bharosey Lal Yadav dated 7-7-93, which was complied. In this regard matter was referred by AO to the Joint Director of Income Tax (Inv.), Agra to investigate the

genuineness of will and agriculture holdings claimed by the assessee in her name and in the name of her husband. The report dated 21-1-2003 was submitted by ADI (Inv.), which is placed on paper book.

3.1. The Joint Director (Inv.), Agra, after conducting discreet inquiries and after questioning a number of persons of that area, sent an exhaustive report. Relevant parts of that report dated 21-2-03 are being reproduced hereunder:-

“Kindly refer to the confidential letter F.No. ITO/Wd-1(2)/DDN/2002-03/dated 13.12.2002 of the ITO, Ward 1 (2), 83, Tagore Villa, Dehradun addressed to your goodself and enclosing there with certain photo copies of Khasra-Khatauni and a photo copy of the ‘Will’ for verification of their genuineness.

2. As per direction, the following persons were summoned u/s 131(1A) of the IT At, 1961 and their statements on oath were recorded. Original copies of their statements are also enclosed herewith:-

S/Shri

1. Yashpal Singh S/o Shri Sukhdeo Singh, R/o Rupdhani, Teh Aliganj, Distt. Etah.
2. Ramesh Chandra, S/o Late Chaudhary Ram Bharosey Lal, Vill. & Post Jaimnai, The Shikohabad, Distt. Firozabad.
3. Nawab Singh Yadav, S/o Late Shri Amrit Singh Yadav, Ex-Principal, Shri Nehru Smarak Higher Secondary School, Khatuamai (Madanpur), Teh. Shikohabad, and R/o Yadav Colony, Shikohabad, Distt. Firozabad.
4. Suresh Babu Yadav, S/o Shri Dilalsa Ram Yadav, R/o 15/9, Labour Colony, Shikohabad, Distt. Firozabad.
5. Vimlesh S/o Shri Vinod yadav, Servant, originally belongs to Vill & Post Vilaspur, The. Jasrana, Distt. Firozabad.
6. Bhwan Chandra S/o Late Shri Dhani Ram, Servant, Originally belongs to Vill. Kalona, Teh. Rani Khet, Distt. Almora.

7. Jeevan S/o Shri Gaya Prasad, Servant, Originally belongs to Madhav Ganj, Shikohabad.

The summons issued u/s 131 (1A) of IT Act, 1961 to following persons, whose names are appearing in the Khasra-Khatauni of Vill. Chitawali land, were returned unserved with the postal remark “*is naam kaa koi vyakti.....mein nahin hai*”

(1) Smt. Mohni Maheshwari, W/o Sh. Harendra Kumar, Vill. & Post Chitawali, Tehsil Shikohabad, Distt. Firozabad.

(2) Pankaj S/o Shri Ram Prakash, Vill. & Post Chitawali, Distt. Firozabad and

(3) Smt. Sudesh Kumari, W/o Shri Asarfi Lal, R/o Mohammad Mah, Shikohabad town, Distt. Firozabad.

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(a) The enquiries were conducted to verify the genuineness of ‘Will’ of late Shri Ram Bharosey Lal. S/Shri Suresh Babu, Advocate and Navab Singh who had witnessed the ‘Will’ have confirmed that Late Ram Bharosey Lal and made a ‘Will’. They have also confirmed the contents of the Will. But they showed their inability to state whether the will was got registered or not. S/shri Vimlesh, Bhuwan Chand and Jeevan, servants, in their statement on oath, have admitted to have received Rs.17,000/-, 17,000/- and Rs.16,500/- respectively from Shri Ramesh Chandra in cash after about one month of the death of Late Shri Ram Bharosey Lal as “Inam” for their service to the deceased Shri Ramesh Chandra, elder brother of Shri Rajeev Yadav, has admitted in his statement on oath recorded on 6.1.2003 that entire movable and immovable property left by his late father was divided amongst the coshares as per ‘Will’ of the deceased S/Shri Suresh Babu, Advocate and Nawab Singh have stated that since they have never heard about any dispute in the family regarding the division of the assets left by the deceased, they are of the view that the assets might have been distributed as per ‘Will’. The enquiry further revealed that the said ‘Will’ is an unregistered ‘Will’ and none of the persons have admitted to have seen the moveable assets mentioned therein. The entire cash of Rs.30,50,000/- and gold & Silver ornaments mentioned in the will is stated to be kept at home. However, no evidence could be furnished for the same. From the above stated facts, it

is hardly believable that any person may keep huge amount of cash amounting to Rs.30,50,000/-gold ornaments weighing 5 Kgs. and silver ornaments weighing 10 Kgs. at home, particularly when (1) there has been wide expansion of bank branches even in small town (2) keeping of such moveable assets at home is not safe because Shikohabad Tehsil is a criminal area (3) the deceased had got constructed a Kothi in Shikohabad town by making huge investment, and (4) he had performed social liabilities in marriage of his two sons and three daughters and other family members. It is also a major factor that late Ram Bharosey Lal had never been assessed to wealth tax. In absence of any documentary evidence, the availability of Cash of Rs.30,50,000 and gold and silver ornaments weighing 5 Kgs and 10 Kgs respectively with late Ram Bharosey Lal could not be ascertained.

(b) The Inspector was deputed to conduct local enquiry about house No.570, Nai Basti, Shikohabad, Distt. Firozabad. His report dated 13.1.2003 is enclosed. This house is stated to be got constructed by late Shri Ram Bharosey Lal in the years 1980 and 1981 on a plot of land measuring about 500 sq. yrs. It is a three storeyed building and looks like a Kothi. At present three sons of Shri Ramesh Chandra namely S/Shri Vinod Kumar, Alok Kumar and Arun Kumar are stated to be residing in this building along with their families. Since it is an old building, no comments are being offered with regard to investment made therein.

(c) No evidence could be brought on record to establish that late Ram Bharosey Lal had ever taken loan for any purpose.

“From the above stated facts, it is hardly believable that any person may keep huge amount of cash amounting to Rs.30,50,000/-, gold ornaments weighing 5 Kgs. And silver ornaments weighing 10 Kgs. At home, particularly when (1) there has been wide expansion of bank branches even in small town, (2) Keeping of such moveable assets at home is not safe because Shikohabad Tehsil is a criminal area, (3) the deceased had got

constructed a Kothi in Shikohabad town by making huge investment, and (4) he had performed social liabilities in marriage of his two sons and three daughters and other family members. It is also a major factor that late Ram Bharosey Lal had never been assessed to Wealth-tax. In absence of any documentary evidence, the availability of cash of Rs.30,50,000/- and gold and silver ornaments weighing 5 Kgs and 10 Kgs. respectively with late Ram Bharosey Lal could not be ascertained.

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.....

“The ITI has made local enquiry from some Lekhpals who were present at Tehsil headquarter, Shikohabad on the date of his visit. He has reported that in Shikohabad area, mostly potato crop is produced. He has reported average expenditure on this crop at about Rs. 5,000/- to Rs. 6,000/- per bigha and the income depends upon the opportunity availed for sale of potatoes. Keeping in view the statement of Shri Yashpal Singh and the report of the ITI, net saving of Rs. 1,500/- per bigha per annum appears to be reasonable.

(d) To enquire into the status of S/Shri Yashpal Singh, Ramesh Chandra and Smt. Rama yadav, their annual income and house-hold expenses etc.”

3.2 The assessee in response to this report filed detailed reply dated 12.12.2003, some relevant paras of the reply read as under.

“We would like to draw your kind attention to the fact that Shri Ram Bharosey Lal Yadav belonged to a well to do family which was ancestrally very sound in terms of wealth. Shri Ram Bharosey Lal Yadav lived in the rural area of Firozabad (UP). There is no bank in the near by area. The closed bank is 10 Km away. Moreover, as this area is a criminal inflicted area, all assets are kept under ones own possession. Banking, etc is not common primarily on the fact that the employees of the banks being local disclose the details of bank transactions to the public at large. This leads to kidnapping and consequently giving of ransoms. Wealth in the house was well guarded as necessary arms were available.

As such Mr. Ram Bharosley Lal Yadav did not maintain any bank account. All money that was transferred as per his will was in cash. Madam, here we would like to point out that a detailed examination has been done by the department in connection with the authenticity of the will and the land holdings of your assessee. The office of the ADI Agra conducted spot inquiries, verified the records with the land records department, examined under oath the witnesses to the will who were persons of great repute of the area, recorded the statements of the co-recipient of the will and other family members and the servants of late Shri Ram Bharosey Lal Yadav. The detailed report in this connection is with your goodself.”

3.3. The Assessing Officer on the basis of this report held that the claim of assessee to have invested a sum of Rs. 90,500/- in Assessment Year 1996-97 and an amount of Rs. 8.95 lac in Assessment Year 1998-99 out of the will executed by the said Shri Ram Bharosey Lal Yadav was not believable and the amount in question were accordingly added as assessee's undisclosed income. This addition has been confirmed by CIT(A).

3.4. Apropos assessee's claim of her own agricultural income as well as agricultural income of her husband Shri Rajiv Yadav, the Assessing Office held that the claim of agricultural income of the assessee and husband was to be estimated taking the yield of 2000-01 as base year and by applying the cost inflation index as published by the CBDT, agricultural income of the assessee and husband was to be estimated. Relevant observations for A.Y. 1996-97 are as under:

“Keeping in view above facts agriculture income of Sh. Rajeev Yadav is been estimated by applying cost inflation index no. of the relevant year as the assessee could not furnish any documentary evidence except confirmation from Sh. Ramesh Chand, the brother of Sh. Rajeev Yadav. Cost inflation index no. of financial year 1999-00 relevant to A.Y. 2000-01 is 389 and cost inflation index no. of previous year relevant to A.Y. 1996-97 is 281.

3.5. This resulted in difference between agricultural receipts declared by the assessee and adopted by the Assessing Officer. The additions on account of agricultural income have been reduced by Id. CIT(Appeals) holding the AO's estimate to be excessive. The difference is held to be income from other sources of the assessee and accordingly the remaining additions are challenged in these appeals.

3.6. Assessee's claim of receiving advances from sale of pieces of agricultural land in respective years was disbelieved, like wise claim of amount of Rs 8 lacs provided by Shri Yashpal Singh out of assessee's accumulated past agricultural income was also rejected. These additions have been confirmed by CIT(A).

3.7. Aggrieved, the assessee is before us.

4. Ld. Counsel contends that the Assessing Officer has made the additions in respect of the amount received by the assessee out of the will of her deceased father in law on presumptions and surmises. For explaining the investments made by the assessee in purchase of FDRs for every year assessee filed cash flow statements which are on the record. To verify the will and its contents and agricultural holdings, detailed inquiries were made by ADIT, Agra whose report is also placed on the paper book. AO has merely relied on some doubts raised by ADIT, Agra on the genuineness of the Will, ignoring the uncontroverted statements on oath of witnesses, beneficiaries and other persons. The Will has been discarded on the basis of surmises, conjectures and presumptive preponderances of probabilities. It is signed by witnesses who are duly identified and both witnesses i.e. Nawab Singh Yadav (Ex Principal) and Suresh Yadav (Advocate) are examined on oath by the Assessing Officer. In their statements on oath they have confirmed the execution of will, relevant circumstances and aspects of implementation. The statements and the report submitted by ADIT, Agra state the fact that these two witnesses verified the Will in question which was signed in their presence as the last and final will of Shri Ram Bharosey Lal Yadav.

4.1. The Will contained various beneficiaries including the assessee's husband, her brothers and house-hold servants. The other recipients/beneficiaries of the will i.e., Shri Ramesh Chandra Yadav brother in law of the assessee were also examined who verified the will to be true and correct. Three other servants of the family household of Shri Ram Bharosey Lal Yadav also were beneficiaries who also deposed about the correctness of the will and the fact of having received the amount as

mentioned in the will of Shri Ram Bharosey Lal yadav. With all this material available on record and in the absence of any contradiction in any of the statement, the will cannot be held to be an afterthought.

4.2. It is pleaded that the Assessing Officer has held the Will to be not genuine on presumptions without controverting the copious evidence on record or pointing out any defect, contradiction or infirmity in the statements on oath. It has been held as not believable, by following objections:-

- i) The will was not registered with any registering authority nor has been certified by the notary or other similar agency more so when one of the witnesses Shri Ram Baboo Yadav was a civil advocate and the other was a retired principal. It is not understood as to why they did not advise the testator to get it registered. Its authenticity is not therefore, proved beyond doubts.
- ii) Late Shri Ram Bharosey Lal Yadav was a farmer and appears to be marginally qualified and was of 79 years of age. But signatures on the will have been made in a very fast flow. Moreover, availability of huge cash of Rs.30,50,000/- appears to be quite impossible particularly in view of the fact that the area is badly affected by criminal activities.
- iii) Shri Ram Bharosley Lal Yadav had two sons and three daughters. The will of Rs.28,00,000/- in favour of the assessee and her husband out of total available cash of Rs.30,50,000/- appears to be quite abnormal in view of human psychology and probabilities.

iv) Cash of Rs.30,50,000/- gold jewellery of 5 Kg and silver jewellery of 10 Kgs has been mentioned in the will which was clearly chargeable to wealth tax. Shri Ram Bharosey Lal Yadav was never assessed to income tax and wealth tax. 5 Kg gold and 10 Kg silver ornaments have been allegedly passed onto three daughters of late Shri Ram Bharosey Lal Yadav i.e. Smt. Prabha, Pushpalata and Kanta. One third share of above ornaments is also chargeable to wealth tax in respective hands of daughters. The assessee could not set fourth any evidence to substantiate that any of the daughters of late Sh. Ram Bharosey Lal Yadav has ever been assessed to wealth tax.

v) Late Sh. Ram Bharosey Lal Yadav had constructed a large building in Shikohabad in 1982, which would have exhausted his funds in construction of building. More so no loan was taken for construction of building.

4.3. Ld counsel for the assessee assails these findings and contends that:

i. There is no law which prescribed registration of a will in India, it only requires that the testator should be in a state to depose a will, which should be in writing and attested by two witnesses. All these conditions are fulfilled, both the witnesses have been examined along with co beneficiaries, they all have confirmed the will. There is no obligation on witnesses advise that the Will registered more so in a village. Therefore no adverse inference can be drawn from this observation or finding by AO.

ii. If there was any issue about the signature of late Shri Rambharosey, AO could have referred to a hand writing expert. He can not assume the role of a handwriting expert and hold the signature to be forged merely on the assumption that he was marginally qualified. More so it has not been disputed that he was a leading citizen of area and freedom fighter. Therefore, no adverse inference can be drawn from this observation.

iii. As per Indian law, any testator can make a will as per terms for distribution among heirs as agreeable to him. No adverse inference can not be drawn of the fact that more cash was given to assessee and her husband and land and ornaments to others. Assessee's family was living away from the remaining family. As per Shri Rambharosey's understanding and wishes it was appropriate to give more cash to them in lieu of land. Thus the abnormality as pointed out by AO neither exists nor has any legal or circumstantial consequence.

iv. The assessee cannot be held responsible or liable for non filing of income tax and wealth tax returns of late Shri Rambharosey or his daughters. Besides this cannot invalidate a valid and duly executed will.

v. Adverse inference has been drawn from the fact that Shri Rambharosey constructed a three storied kothi in the village without any bank loan in 1981. It corroborates the contention that in villages prosperous families generally don't transact with banks. In villages unlike cities, houses are constructed in simple/ country style under self supervision. Thus adverse inference can not be drawn that his funds were exhausted; it is a pure surmise on the part of AO.

4.4. Ld counsel on the basis of these arguments contends that there is no justification or basis in AOs conclusion and additions holding that will is not genuine. Ld CIT(A) instead of deciding the issue in an objective manner dismissed the ground by following sweeping observations:

“The above contentions of the ld. AO are to the point and no appellate authority can dare ignore the obligation of the testator to he filed a return under the Wealth Tax Act if, admittedly, he was keeping Rs. 30,50,000/- with him as cash in hand and 5 kg. Of gold and 10 kg. Of silver jewellery over and above the cash amount. The appellate authorities would certainly be seen as aiding and abetting in tax evasion if they are to ignore the evidence available to the effect that the testator in this case ought to have filed a return under the Wealth Tax Act, paid taxes on wealth and the appellate authorities would not like themselves to be showing any keenness to accept the fabricated story of receiving the unexplained money under a will. It is, therefore, to be necessarily held that the entire statement of the appellant is untrue, no matter what kind of over-manipulated evidence is adduced to prove the correctn4ess of the will. The simple question is why an identical will with identical bequeathment was not left in favour the two sons and the other daughters? This question veers round the preponderance of human probability, a test on which the claim of the appellant roundly fails. Not to talk of the hard evidence of the appellant not being a wealth-tax assessee and that alone goes to prove that he could not have left the claimed amount under a will. The addition made by the ld. AO is, therefore, upheld.”

4.5. It is vehemently argued that CIT(A) has relied on probabilities and assumptions by terming the will as “an over manipulated evidence”. The evidence relied by assessee is to be controverted on the basis of cogent counter evidence or picking contradictions in the evidence furnished. The same cannot be discredited without pointing any contradiction and on mere presumptions. Such observations and references to probabilities based on

presumption cannot discard the credible evidence filed by the assessee. It is pleaded that these additions deserve to be deleted.

5. Apropos additions on the basis of agriculture income, it is pleaded that authorities below have recorded contradictory findings. Assessee filed detailed explanation supporting the claim of agricultural income included in the cash flow statements belonging to her and husband Shri Rajiv Yadav.

Part of the same is as under:

“2. Regarding the agricultural income, we would like to point out that both Mrs. Rama Yadav & Mr. Rajiv Yadav belong to agriculturist background. Mrs. Yadav has sum total of 80 bighas of land in her name & Mr. Rajiv Yadav has 90 bighas of agricultural land in his name. These lands are situated at their respective parental villages. Copies of Khasra & khatonies to support this fact were attached with the written submission for the asstt. Year 1996-97 as Annexure 3 thereto. As both Rama Yadav & her husband did not stay in their villages their land holdings were looked after their close family members. Mr. Yadav’s land was looked after by his elder brother Mr. Ramesh Chand Yadav. Mr. Rajiv Yadav’s father on his death left behind agricultural land, house, tractors and jewellery to be divided between his two sons (Mr. Rajiv Yadav & Mr. Ramesh Chand Yadav). Copy of this will was appended with the written submission for the Asstt. Year 1996-97 as Annexure 4 thereto. Mr. Ramesh Chand Yadav cultivated the said agricultural land of Mr. Rajiv Yadav, all expenditure on crops i.e. fertilizers, seeds, labour were met by Mr. Ramesh Chand Yadav, he also obtained the ale proceeds of these crops. From time to time he would give Mr. Rajiv Yadav his share his share of agricultural income depending on the output. However her ewe would like to point out that as this dealing was between brothers and especially when one brother did all the operations and the other brother enjoyed the returns therefrom what ever was given to Mr. Rajiv Yadav from his elder brother was taken as final. Regarding Mandi simiti he would like to bring to your kind attention that in Jaimai Distt Ferozabad Mandi Samiti was

not applicable for the year in question. As such Mandi samithi receipts does not come in question.

Mrs. Rama Yadavs too holds ancestral agricultural land in Rupdhani Distt. Etah. This land is looked after and cultivated by her brother Mr. Yashpal Singh. In her case too all expenses etc. Are borne & met by her brother and all sale proceeds are collected by him. From time to time amounts were given to her as net receipts from agricultural operations on her land. In Distt. Etah for the year in question, no mandi samithi was applicable.

Thus from the above it is clear that both Mrs. Yadav & Mr. Yadav had ancestral agricultural land. Both these lands are canal irrigated own tractors are used for cultivation. Your goodself can also verify this from the will of Mr. Rajiv Yadav's father wherein he left behind two tractors for his two sons. On both these lands, three crops are reaped in a year. Potato, Garlic, wheat, peas, mustard & chana from the major crop produced on these lands. Sir, keeping in view the land holding the amount of agricultural income fully justifies itself.

3) During the year in consideration agricultural income of Rs. 1,75,000/- was received by Mr. Rajiv Yadav. Copy of confirmation for the same are being appended herewith as annexure 3 showing net receipts from agricultural operations.”

5.1. More importantly the issue about investigation into the agricultural income declared by the assessee in cash flow statement was also referred by AO to ADIT(agra). The authority has submitted a detailed report about the agricultural land owned by assessee and her husband, estimated yield and family details. Following facts emerge from the report on the agricultural income aspect:

- a. Assessee belongs to very affluent agricultural families from paternal and in laws sides. She was gifted 62.5 Bighas of agricultural land on 18.3.70 from her maternal grand

mother. Further she purchased 16 Bighas of agricultural land in 1984.

b. The total holding of agricultural land is as under:

(i) Assessee Smt. Rama Yadav	80 bighas
(ii) Husband Shri Rajiv Yadav	<u>90 bighas</u>
	170 bighas

c. In an statement on oath assessee's brother Yashpal Singh confirmed that he was taking care of these fertile agricultural land and carrying out agricultural operations. The area being criminal infested crop was sold to local purchasers and not taken to Mandi which was 40 kms. away.

d. Lekhapal reported that in Shikohabad area potato crop was grown which yields Rs. 6000/- per bigha. However, on an average net saving of Rs. 1,500/- per Bigha was reasonable.

5.2. In AY 1996-97 – Though CIT(A) held that AO could have ignored the small discrepancy of Rs. 6,000/-, still an addition of Rs. 5000/- has been retained without any basis.

5.3. In AY 1997-98 and subsequent years - AO has estimated the agriculture Income of assessee and her husband by a mechanical formula of adopting yield on cost inflation index calculation. Ignoring the cultivated land area of 170 Bighas (90 Bighas of husband and 80 Bighas owned by assessee) and ADI's report which is based on the evidence of Tehsil Lekhapal which confirms Rs. 1,500/- per Bigha to be a reasonable agricultural income. CIT(A) has merely held that assesses written submissions do not overcome AO's contentions. Thus both the authorities have failed to appreciate proper facts on this issue. The claim of agricultural income is supported by the report of ADI, statement of Shri Yashpal Singh

and report of Lekhapal. AO though relies on the ADI's report on the issue of Will at the same time discards the reasonableness of agricultural income of Rs. 1500/- per bigha.

5.4. It is pleaded that authorities below have failed to dislodge the material and evidence available on record in support of agriculture receipt. AO has adopted a mechanical method of linking the agricultural income with cost inflation index.

6. Apropos the amount of Rs. 8 lacs shown in the cash flow statement as accumulated savings of past agricultural operations Id. Counsel contends that Shri Yashpal Singh brother of the assessee was in charge of the management of agricultural fields, operation, sale of produce and realization thereof. As per his statement the agricultural receipts were handed over to his sister from time to time. This methodology. It is common in agricultural families to safeguard the interest of agricultural operations of married daughters of the family. Yashpal Singh's statement on oath confirms his management of agricultural operations, thus identity and source of income i.e. agricultural lands and Shri Yashpal Singh are identified and transactions confirmed. AO has held it to be unbelievable on the reasons that creditworthiness of Shri Yashpal Singh is not proved and transaction is not through banking channels besides Shri Yashpal Singh has been handing over the agricultural income regularly then why there were unpaid past savings.

6.1. CIT(A) held it to be unbelievable by following observations:

“As regards, the claim of receipt of Rs. 8 lacs from Shri Yashpal Singh, the brother of the appellant, a claim in respect of which the addition of Rs. 8 lacs is agitated at ground no. (2), the AO has not believed the argument of Shri Yashpal Singh that agricultural income of various years prior to 1994

continued to accumulate and from that accumulated source a consolidated amount of Rs. 8 lacs was given to the appellant during the instant assessment year. As against this view of the AO, the written submissions do not bring out that Shri Yashpal Singh was actually growing cash crops and accumulating the sale proceeds over the years. Similarly, there is no evidence showing that Shri Yashpal Singh was cultivating the lands of the appellant as claimed. The whole explanation in the written submissions reproduced hereinbefore is more like a story intended to be told to someone who could buy it. There is no corroborative evidence in the form of accounts etc. which could substantiate the claim. Since agricultural income is not taxable and some family members own agricultural lands, an explanation has been prepared which is designed to substitute for a corroborative evidence. Such an explanation is, therefore, not acceptable. The addition made is, therefore, upheld.”

6.2. Ld counsel contends that authorities below have been ignoring a vital fact that the agricultural lands are situated in villages and the area is criminal infested where peasants don't believe in banking system for their own reasons. Most of the transactions are carried out in cash, people believe in self care and cash dealings, which is indicated in the ADIT(Agra) report also. The source of receipt i.e. agricultural lands are not disputed, the manager of the agricultural operations Shri Yashpal Singh has testified to this effect by giving details about the nature of crop and estimate of yield. Lekhpal's corroborative report is mentioned by ADI(Agra) in his report. As the record stands assessee has discharged her onus which has not been effectively rebutted and addition has been made on general assumptions. There is no question of creditworthiness of Shri Yashpal Singh, the amount represents assessee's past agricultural savings lying with him. The assessee having discharged her primary onus in explaining this credit, the addition should be deleted.

7. Last issue pertains to additions of credits in cash flow statement on account of advances received from agreement to sell pieces of agricultural lands. Ld counsel for the assessee, in respect of each advance contends that:

i. AY 97-98 - Smt. Uma Yadav- sister: She is married in a rich family and like assessee she also inherited regularly cultivated agricultural land from paternal side. Necessary confirmation about the advance along with her address and detailed reply was filed during the course of assessment proceedings. It is pertinent to mention that the details about her relation with assessee, her family status etc. finds mention in the ADIs report also. Ld AO without refuting her identity, agricultural holding and income has summarily held that her creditworthiness is not proved. Since ADIs report was being called nothing prevented AO from investigating this aspect also. Assessee discharged her primary onus by establishing identity, and creditworthiness of the purchaser/sister; the addition can not be made only on assumptions.

ii. AY 98-99 – Shri Yashpal Singh Yadav- Brother-

It is pleaded that Yashpal Singh is assessee's brother, since beginning he is in charge of carrying agricultural operations on the lands of family members including assessee. He lives in the village only. He also inherited vast agricultural land which are regularly cultivated. These facts are duly mentioned in the ADI's report to the effect that Shri Yashpal Singh stays in the village for agricultural operations and in that part of the country transactions are generally carried on cash basis. Assessee discharged her primary burden of proving the identity, genuineness and creditworthiness by filing the confirmation. His land holdings are on record and was always ready for examination by authorities. If AO was not satisfied, this issue also should have been referred to ADI Agra along with other inquiries.

iii. AY 99-2000- Shri Ramesh chandra Yadav- Brother in law- Mr. Ramesh Chand yadav is husband's brother). He also inherited a vast land consequent to execution of WILL, which are regularly cultivated by agricultural operations. For investigation into the will and agricultural income he was also examined by ADI Agra and statement on oath was recorded. These facts are duly mentioned in the ADI's report. He stays in village Jaimai to control and supervise agricultural operations and has stated that transactions in that part of the country are carried in cash. His address, identity, creditworthiness figures in the ADI's report itself. Written confirmation accepting the advance for purchase of land is on record. Thus the assessee discharged its primary onus of proving as contemplated by sec 68. If at all the ld. AO was not satisfied this issued should have been referred to ADI Agra or summoned him on his own. The assessee having discharged the primary statutory burden cannot be made to suffer for the non conducting of appropriate inquiries by the department.

(iv) Apropos AO's objection- "... It is not understood as to how the assessee has received advance against 10 bighas of land while the land under her ownership was only 5.32 Bigas". Ld counsel points out that the AOs objection is not correct as collectively 170 bigas of land were held by Sh. Rajiv Yadav & Mrs. Rama Yadav. Advances were received for different pieces of land in different years. Their land holding at village Chitavalli exceeded the land agreed to be sold. Evidence of the ownership of land is submitted before the ld. AO at the time of the assessment proceedings.

(v) Ld. AO has objected that all the confirmations bear the date 1-11-2002.

These confirmations were issued at the specific request of assessee to furnish the same to AO, as such the date of 1-11-2002 was put on them. This does not mean that the transactions were executed on this day, it merely means the date of issue of the confirmation letters.

(vi) From the statements and record it will emerge that both the families are at cordial terms, this is the essence of relationship in rural India where the word of honor and sensitivity of relationship is paramount. Since the advances were received from close family members there was no urgency of executing a written or registered agreement. The paper formalities will be completed as and when the transactions are fully materialized. Non execution of the written agreement between two close relatives in these facts and circumstances cannot be used to deny written confirmations as after thought. More so when AO could have included this aspect in investigation conducted through ADI Agra.

(vii) Ld. AO has observed in his order, "In regard to immovable property there is increasing trend of price but in the case of assessee the rate of land per bigha has varied to the downward trend which is an abnormal phenomenon".

It is pleaded that land has been agreed to be sold to sister, brother and broth in law at nearly same rates. The price cannot be subject matter of hard bargain between close family

members. Besides that the land in question is situated at Mainpuri Road, which is on Agra Highway with the increased commercial activity on the Highway the land rates shot up in 1995-96 and thereafter they have been stagnant. Even AO has not given any parallel sale instances to justify his adverse observation.

(ix) AY 2000-2001- Shri ZIA KHAN-

This advance of Rs. 4.68 lakhs for 2.5 bigas of land situated at Mainpuri Road Village Chitawali, Tehsil Shikohabad, distt. Firozabad was received from Shri Nawab Zia Khan. This confirmation disclosing his full identity & address was furnished. He stays in village Bhadurgarh, a rural area and advance was given in cash. He has confirmed this transactions with full address and identity. Assessee discharged the primary burden of proving the ingredients of sec 68, if AO was not satisfied, he could have summoned him or entrusted the investigation to ADI Agra.

7.1. Ld counsel pleads that AO has given unjustified importance to irrelevant facts as preponderance of probabilities and failed to appreciate following crucial facts:

- i. That the combined holding of the land owned by assessee and her husband in village Chitawali is more than 10 Bighas agreed to be sold by the assessee.
- ii. If there was any doubt on these aspects, AO should have referred it for investigation by ADI Agra along with other issues. AO ignored the evidence i.e. confirmations along with land holdings of these persons, neither assessee was asked to

- produce them, nor summons were issued. Importantly when the investigations were carried out through ADI Agra on the fund flow statement of assessee; investigations on the land advances also should have been made. Since same witnesses were called for examination it would have saved the trouble, both for the department and assessee.
- iii. Assessee has been constantly pleading that the general mode of transactions in this part of the country was cash; instead of appreciating this fact in proper perspective, AO has taken a stiff stand by making additions repeatedly on the reason that these are cash transactions.
- iv. All the purchasers i.e. Smt. Uma Yadav, S/Shri Yashpalsingh, Ramesh Chandra and Zia Khan have confirmed the advances given to assessee for purchase of agricultural land along with their land holdings, their identity has not been disputed.
- v. Non furnishing of income tax and wealth tax returns by late Shri Rambharosey and his daughters cannot be used against assessee as she had no control on their returns.
8. Ld Dr on the other hand vehemently contends that:
- i. The assessee in order to substantiate her fund flow details has created the gamut of evidence as an after thought.
- ii. The alleged WILL executed by late Shri Ram Bharosey Yadav is unbelievable. After construction of a 3 storied Kothi in the year 1981 in the village, it does not appeal to reasons that an amount of liquid cash of Rs. 30.5 Lakcs will be kept at home

along with 5 Kgs. of gold ornaments and 10 Kgs of silver utensils.

iii. These assets were not kept ever in any bank. Thus the entire evidence is based on personal handling of the assets Thus there was no independent evidence to support the claim. The excuse of village being criminal area is not substantiated and it cannot be justified as a reason for absence of independent evidence.

iv. None of the witnesses to the will or beneficiaries have seen the assets, therefore, their existence remains unsubstantiated.

v. No wealth or income tax return was filed by late Shri Ram Bharosey Yadav or beneficiaries of the will.

vi. AO & CIT(A) have rightly applied the preponderance of probabilities and human conduct while examining the genuineness of the WILL.

vii. Report of ADI Agra is relied on.

8.1. Ld DR further contends that the claim of agricultural income of the assessee is not based on any evidence. Authorities below have rightly estimated the agricultural income of the assessee and her husband to arrive at the availability of funds with her.

8.2. Apropos the claim about the credit in the fund flow statement in respect of Rs. 8 lacs provided by brother Yashpalsingh out of the assessee's past agricultural income savings, it is pleaded that the same is baseless. If the assessee had requirement of funds in that case she would have asked the brother to return the savings instead of selling her agricultural land. Besides

as per the statement of Yashpalsingh, agricultural income was regularly sent to his sitter. No evidence has been produced to establish as to which year these agricultural savings pertain, therefore, the addition has been rightly made.

8.3. Coming to the advances for land, Id DR contends that:

i. assessee has claimed to have received amounts of advances for sale of agricultural lands; from sister- Uma Yadav 3.75 lacs; brother-Yashpalsingh 4.60 lacs; Brother in law- Ramesh Chandra 5.75 lacs. Likewise from one Shri Zia Khan 4.68 lacs.

ii. Except confirmation of same date i.e. 1-11-2002 from all these persons, neither any agreement to sale nor any other evidence has been filed to substantiate the proposed sale.

iii. All these transactions are in cash and these persons are claimed to be agriculturist. Neither their bank accounts nor any other independent credible evidence has been brought on record.

iv. There are no details as to which advance is for assessee land and which for husbands.

8.4. Ld DR thus pleads that all the transactions are based on self created evidence, without specific details and on general assumptions. The burden to prove cash credits lies on the assessee, which is not discharged. In this eventuality additions have been rightly made.

9. Ld counsel in rejoinder contends that:

(i) The WILL is an independent evidence which is confirmed by as many as seven persons viz. Yashpalsingh, Rameshchandra, Nawabsingh Yadav- ex principal, Suresh babu

Yadav- Advocate, Vimlesh Yadav, Bhawan Chandra. Jeevan. None of the statement has been controverted by ADI Agra or AO.

(ii) The will is duly executed, properly implemented. Assessee is lady and cannot demand evidence from the family beyond this limit. Therefore, there is no basis in holding the WILL to be fake or bogus. Assessee has inherited the amount by due process of law, it can not be wished away on raising objections on assumptions.

(iii) Apropos agricultural income it is pleaded that AO has not disputed the land holdings of assessee and her husband, agricultural operations are regularly held by brother Yashpalsingh whose statement on oath is on record and not controverted by ADIT.

(iv) The estimate has been arrived at only by applying cost inflation index which is merely a mechanical method used only for the purposes of govt. parameters on dearness based on certain commodities and circumstances. This mechanical formula can not be applied to assesses agricultural operation which depend on many factors.

(v) The estimate is arbitrary and unjust, it is trite law that assesses claim should be accepted unless the contrary is proved whose burden lies on the department. There being no question about the land holding, fertility of land, cash crops and regular agricultural operations and reasonable yield of Rs. 1500/- per bigha, the estimate of authorities below is unjust, arbitrary and baseless.

(vi) Apropos advances it is pleaded that assessee discharged her primary onus of establishing the identity, genuineness and creditworthiness of the advances related operation. Investigations were already entrusted to ADI Agra; if AO had any doubts on the burden discharged by the assessee, issues about advances also should have been got investigate. AO cannot take a stand of neither investigating the matter nor rebutting the burden discharged by the assessee and going ahead with the additions.

9. We have heard the rival contentions and perused the material available on record. Notices u/s 148 were issued to assessee for all these years on the information received from the co-ordination cell. The issue about validity and genuineness are not before us as they same have not been pressed and only grounds mentioned have been pressed before us.

9.1. The issues revolve around the assesses fund flow statement to substantiate the source of FDRs purchased in own and family members names. It is pertinent to mention that AO chose only to get the issue about Will and agricultural holdings to be investigated by the ADI Agra, report was accordingly submitted dated. 21-1-2003 on these aspects.

9.2. Coming to the issue about genuineness of the Will, learned counsel for the assessee has countered the observations of AO as mentioned above. In our considered view the contention of learned counsel for the assessee has substance inasmuch as Indian law does not prescribe registration of the Will, it should be in writing, attested by two witness; there is no requirement of any registration or notarization thereof. In this case the Will is in writing

and duly attested by two witnesses, therefore, no adverse inference can be drawn on the aspect that witness did not advice for registration of the same.

9.3. Apropos the issue of flow of signature of late Shri Ram Bharosey Lal Yadav, in our view, the AO is not an handwriting expert, therefore, the observation amounts to a surmise. Besides, late Shri Ram Bharosey Lal Yadav is not disputed to be a freedom fighter and an affluent landlord, he is held to be marginally qualified. In our view, flow of writing as pointed out by AO cannot be held to be determinative to discard the Will, in the absence of any opinion of the handwriting expert.

9.4. ADI has examined the witnesses Shri Nawab Singh Yadav, ex-Principal and Shri Suresh Babu Yadav Adv., they have deposed the Will to be genuine, bearing signatures of deceased and about the distribution of assets. This fact has further been confirmed by the sons of the deceased and the servants who are also beneficiaries of the Will. In our view, this written record and statements cannot be ignored without pointing out any contradictions or inconsistencies therein.

9.5. The assessee cannot be held responsible for the non-filing of income-tax and wealth-tax returns by the deceased and his daughters after the distribution of the assets of the deceased, consequently, no adverse inference can be drawn on this count. The fact that late Shri Ram Bharosey Lal Yadav constructed a three storeyed village house in 1981 cannot be held as assumption that he must have exhausted all the savings even after a period of 12 years in 1993.

9.6. In our considered opinion, on the basis of material existing on record it cannot be held that Will was fake or an after thought. AO's adverse inference is not based on any cogent evidence but on assumptions and

probabilities. In our considered view when the direct evidence is available the issue cannot be decided on assumption without contradicting the statements on record. Consequently the additions in respect of the amount arising out of the Will are deleted.

9.7. Coming to the second issue i.e. estimation of agricultural income, ADIT(Inv.), Agra investigated about the land holdings of the assessee and her husband, which revealed that the assessee owned about 80 bighas of land out of the sources mentioned therein. Statement of Shri Yashpal Singh was recorded, as mentioned above, who stated that the agricultural produces, like wheat, potato, lahsun, peas, mustard, chana etc. were grown on fertile land.

9.8. Lekhpal of village stated that net savings per bigha reasonably came to about Rs. 1500/- after meeting the agricultural expenses. The ADIT's report ends with a note, "keeping in view the statement of Shri Yashpal Singh and the report of the Lekhpal, net saving of Rs. 1500/- per bigha per annum appears to be reasonable". The report of the Investigating officer itself suggest that agricultural income at Rs. 1500/- per bigha was reasonable. We see no material on record to go beyond the report of the ADIT on this aspect. AO has adopted a yardstick of estimating the agricultural income on the basis of cost inflation index which, in our considered view, may be useful for capital gain purposes but cannot be a yardstick for estimating the assessee's agricultural income.

9.9. It emerges from the record that the assessee own 80 bighas of land and her husband 90 bighas aggregating 170 bighas. From the report of Lekhpal and ADIT, average net agricultural income is reasonably estimated at Rs. 1500/- per bigha which works out to Rs. 2,55,000/-. In our view, the estimate as suggested by Lekhpal and ADIT (Agra, is reasonable. The one adopted by AO is purely mechanical based on cost inflation index. The relief

given by Id. CIT(Appeals) is not on any consistent basis and cannot be called a better estimate as compared with field investigation. In view of these facts we are inclined to allow the agricultural income as claimed by assessee. This ground is allowed.

9.10. Apropos third issue i.e. the advances received qua the alleged agreement to sell the land, in our considered view, when the matter about Will and agricultural income was referred to ADIT (Inv.), it was desirable to refer advance from sale of land also by some investigation. As the record stands, there are confirmations of Smt. Rama Yadav and Zia Khan along with confirmations and statement of , Shri Yashpal Singh (brother), Shri Rameesh Chand Yadav (brother-in-law). Adverse inference drawn by the AO rests only on the basis that all the transactions are in cash and these persons do not have sufficient creditworthiness. It has been vehemently argued that neither the confirmations are controverted nor the persons were called or asked questions during investigations in this respect. Excepting doubting the confirmations, additions have been made without further inquiries.

9.11. Similarly, the issue about amount of Rs. 8 lacs, cash given by Shri Yashpal Singh to her sister out of arrears of past agricultural income, is also to be examined by taking appropriate statement of Shri Yashpal Singh. The confirmation available on record along with the agricultural land holdings of these persons has been rejected on the basis of these adverse inferences. In our view, when the confirmations, creditors and their land records are available and the matter was partly referred for investigations, it would have been desirable that they are examined to ascertain the bona fides of these advances. In view of these facts and circumstances, we are inclined to set

aside these issues back to the file of AO to decide the same afresh in accordance with law. We order accordingly.

10. In the result, assessee's appeals are partly allowed for statistical purposes.

The order pronounced in the open court on 15-06-2012.

Sd/-

[K.G. BANSAL]
ACCOUNTANT MEMBER

Sd/-

[R.P. TOLANI]
JUDICIAL MEMBER

Dated: 15-06-2012.

MP

Copy forwarded to: -

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

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By Order,

Deputy Registrar,
ITAT, Delhi Benches