

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.67(Asr)/2015
Assessment Year:2005-06

Sh. Surinder Arjun
C/o S.S.Enterprises
1717 Kucha Chajju Misra
Amritsar

Vs. Dy. CIT,
Circle-V, Amritsar

PAN:AEDPA6739F

(Appellant)

(Respondent)

Appellant by: Sh. Parveen Jain (Ld. Adv.)
Respondent by: Sh. Rajeev Gubgotra (Ld. DR)

Date of hearing: 07.03.2018
Date of pronouncement: 16.03.2018

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee/Appellant, on feeling aggrieved against the order dated 13.11.2014 passed by the Ld. CIT(A), Amritsar, u/s 250(6) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The assessee has raised the following grounds of appeal.

"1. The Worthy Commissioner of Income tax (Appeals) has erred in law, facts and circumstances of the case in confirming an addition

of Rs.22,00,000/- raised as LOAN from Shree Durgiana Committee, Amritsar despite the fact that there was an agreement subject to counterbalancing obligation to repay the sum, which prevents it being a gain for income tax purposes.

2. The worthy Commissioner of Income Tax (Appeals) has erred in law, facts and circumstances of the case in confirming an addition of Rs.22,00,000/- ignoring the fact that the said appeal is an outcome of a group rivalry and the Appellant has been roped in only because he belongs to the faction opposite to the group presently manning the management.

3. The question for consideration before this Honourable court is that whether a genuine loan transaction by way of cheque supported with an agreement to payback with a part of profit earned by the Appellant be termed as embezzlement merely on the statement of the rival group.

4. The question for consideration before this Honourable court is that whether a genuine hardship to the Appellant can be termed as 'no intention to return the loan'.

5. That the additions made by the Ld. Assessing Officer are arbitrary, illegal, illogical, unreasonable, and unwarranted with considering the facts and circumstances of the case and law on the point."

3. All the issues are connected with each other, hence, for the sake of convenience and brevity are taken together for disposal simultaneously.

4. In the instant case, it is alleged that the assessee had secured a loan of Rs.22,00,000/- on dated 26th Nov. 2004 by an agreement executed between the assessee and President of Durgiana Committee, Amritsar, which was alleged to be

embezzled fund. The Assessing Officer by treating the said amount as embezzled fund, added it to the income of the assessee, which was challenged by the assessee before the Ld. CIT(A), who also upheld the addition of Rs.22,00,000/- by treating the loan transaction as embezzlement of money.

5. The assessee challenged the said order of the Ld. CIT(A) before us. It is a matter of record that in the instant case FIR was lodged against the assessee and thereafter, commission of enquiry was constituted who vide order dated 31st August, 2017, recommended cancellation of the FIR. It is also the case of the assessee that the assessee had secured the loan in order to procure the property through auction by DRT-II, Chandigarh but due to legal entangle, the said amount was stuck up with the DRT, and finally directed to be released to the assessee by order dated 23rd May, 2011, which on subsequently released from the Bank, was deposited in the account of Sh. Durgiana Committee through RTGS No.YESBR52016100600001889 dated 06/10/2016 (Yes Bank, Hall Bazar Account No.046599000003340) to the account of Sh. Durgiayana Committee (President) [Account No.01010100010637 Bank of Broda]. It was further submitted by the Ld. AR that the case of embezzlement was only initiated on political rivalry, however, in our view that is not a matter before us to go into detail in view of the enquiry commission report which is part of the record, by which the cancellation of FIR has already been recommended.

We also realized that in the instant case, Civil Suit for declaration of the alleged agreement by which the amount of Rs.22,00,000/- have been taken by the assessee, was also filed which came to be compromised through Mediation Center and compromise has been duly recorded by the Ld. Civil Judge (Senior Division, Amritsar) vide its order dated 29th Feb., 2010. By the said agreement, the assessee had agreed to repay the loan amount to the loaner and in pursuance thereof already repaid the amount, therefore, considering the enquiry report as well as order passed in Mediation Center, we are of the considered view that the amount of Rs.22,00,000/- which alleged by the assessee to be a loan amount, cannot be subjected to tax on the pretext that the same was embezzled fund as well as also considering the fact that the amount under consideration has already been repaid by the assessee and which has not been disputed by the Department and or otherwise by the Durgiana Committee, hence, we are of the considered view that the said amount cannot be considered as income of the assessee because the source thereof and its genuineness and identity of the loaner have already been established from the facts apparent from the records and, therefore, the addition of the said amount is liable to be deleted, hence, the addition made by the Assessing Officer and confirmed by the Ld. CIT(A) stands deleted.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 16.03.2018.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated:16.03.2018

/PK/ Ps.

Copy of the order forwarded to:

- (1) M/s Surinder Arjun, 1717 Kucha Chajju Misra, Amritsar
- (2) The DCIT, Circle-V, Amritsar
- (3) The CIT(A), Amritsar
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

True copy

By order