

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I.T.A. No. 148/(Asr)/2016

Assessment Year: 2011-12

Income Tax Officer,
Ward-6(4),Gurdaspur

(Appellant)

Vs. Joginder Singh s/o Sh. Sukhdev
Singh C/o Evercharge Auto Works
G.T. Road, Gurdaspur
[PAN: ARGPS 5763B]

(Respondent)

Appellant by : Sh. A. N. Mishra (D.R.)

Respondent by: Sh. Ashwani Kalia (C.A.)

Date of Hearing: 16.05.2018

Date of Pronouncement: 24.05.2018

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Revenue, directed against the Order by the Commissioner of Income Tax (Appeals)-2, Amritsar ('CIT(A)' for short) dated 31.12.2015, partly allowing the assessee's appeal contesting his assessment u/s. 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 30.03.2014 for the Assessment Year (AY) 2011-12.

2. The facts of the case in brief are that the assessee failing to explain the nature and source of the cash deposits in his different bank accounts during the relevant year, as under, the same were deemed as his unexplained income:

Sr No.	Name of the Bank	A/c Number	Amount (Rs.)
1.	Bank of India	3770	49,500/-
2.	Bank of Maharashtra	9361	22,10,000/-
3.	ICICI Bank	501599	43,21,000/-
4.	State Bank of Patiala	7217	43,000/-
	Total		66,23,500/-

Reliance for the purpose was placed by the Assessing Officer (AO) on the decisions in *Roshan Di Hatti v. CIT* [1977] 107 ITR 938 (SC); *Kale Khan Mohammad Hanif v. CIT* [1963] 50 ITR 1 (SC); *Sumati Dayal v. CIT* [1995] 214 ITR 801 (SC); and *Sreelekha Banerjee & Ors. v. CIT* [1963] 49 ITR 112 (SC) (refer paras 2 and 3 of the assessment order). In appeal, the assessee explained that he is in the business of manufacture of batteries, maintaining accounts. All the four bank accounts, deposits in which were enquired during assessment, find reflection in his regular books of account. The source for the same, with reference to his cash book, was explained as under:

<u>Particulars</u>	<u>Amount (Rs.)</u>
(a) Receipt from sundry creditors	3,38,569/-
(b) Job work income	1,35,331/-
(c) Cash withdrawals from his bank accounts	
(d) Sales	12,00,910/-
(e) Advance against sale of plot	15,00,000/-

Evidences, apart from his books of account and final accounts, in the form of agreement for sale dated 28.04.2010 (toward advance for sale of plot) and cancellation deed dated 23.03.2011 (toward returning the advance), were also furnished in the appellate proceedings. The Id. CIT(A), on examination thereof, found the assessee to have satisfactorily explained all the credits except that

attributable to sundry creditors in-as-much as no evidence had been furnished in respect thereof. He, accordingly, directed for the deletion of the entire addition, save that explained with reference to the cash receipt from sundry creditors, i.e., at Rs.62,84,931 (66,23,500 – 3,38,569). Aggrieved, the Revenue is in appeal, raising the following grounds:

‘(i) The Ld. CIT(A) has erred in not appreciating the fact that the AO had made addition of cash deposits after making a detailed enquiry and the assessee had not co-operated despite he was provided adequate opportunity to present his case.

(ii) The Ld. CIT(A) has erred in admitting the additional evidences without calling the remand report, because the AO had repeatedly asked to explain the source of deposits but the assessee did not produce the cash-book.

(iii) The Ld. CIT(A) has erred in allowing the relief of Rs.62,84,931/- without appreciating that books of A/c were not produced by the assessee before the A.O.’

The Revenue’s sole objection, for which it before us places reliance on the decision in *CIT v. Ranjit Kumar Choudhury* [2007] 288 ITR 179 (Gau), is that there has been a clear contravention Rule 46A of Income Tax Rules, 1962 (‘the Rules’ hereinafter). Neither has there been a recording of reasons by the ld. CIT(A) for admitting the additional evidences furnished before him for the first time, nor did he call for a remand report from the AO in the matter.

3. We have heard the parties, and perused the material on record.

There has clearly been an omission on the part of the ld. CIT(A) to observe the clear mandate of rule 46A, prescribing conditions for admission, as well as the consideration, of the additional evidence/s furnished by an assessee before the first appellate authority for the first time. There is nothing in his order, nor any material brought on record by the assessee-respondent, to contradict this patent omission. Why, not only he admits the additional evidences without recording any reason/s justifying the same, he further proceeds to consider the assessee’s case on merits

without allowing the assessing authority an opportunity to verify as well as to rebut the same, as contemplated u/r. 46A(3). Rather, we find no specific finding by him with regard to the cash deposit explained, as it appears, with reference to the withdrawal/s from his bank account/s by the assessee, which would work out to the balance amount of Rs.34,48,690/-, for which deletion though has been directed by him.

So, however, having admitted the additional evidences, we only consider it proper, in the facts and circumstances of the case, that the matter is restored back to the file of the Id. CIT(A) for observing the procedure u/r. 46A, i.e., to allow the AO an opportunity to examine and even rebut the said additional evidences, of course after allowing the assessee a reasonable opportunity of being heard. The AO shall do so without being influenced by the findings of the Id. CIT(A) on merits, which stand hereby set aside; our adjudication being guided by the consideration to address the primary objection by the Revenue, which we have found as valid, i.e., of the Id. CIT(A) as having failed to observe the mandatory procedure under law. Needless to add, this shall be followed by fresh adjudication by the Id. CIT(A) upon considering the entire material on record, as well as hearing the parties before him.

We decide accordingly.

4. In the result, the Revenue's appeal is allowed for statistical purposes.

Order pronounced in the open court on May 24, 2018

Sd/-
(N. K. Choudhry)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Date: 24.05.2018

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Income Tax Officer, Ward-6(4),Gurdaspur
- (2) The Respondent: Joginder Singh S/o Sh. Sukhdev Singh
C/o Evercharge Auto Works G.T. Road, Gurdaspur
- (3) The CIT(Appeals)-2, Amritsar
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

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By Order