

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'A', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.1270/Chd/2017
(Assessment Year : 2011-12)

Sh.Devinder Kumar, Vs. The Income Tax Officer,
14, Surya Vihar, Ward-VII (1),
Rishi Nagar, Ludhiana. Ludhiana.

New Address:
C/o M/s Shree Aum Hospital
Aashiana Complex, Bari Brahmana,
Jammu. (Jammu & Kashmir).

PAN: AENPK0344L
(Appellant)

(Respondent)

Appellant by : None
Respondent by : Ms. Deepika Mohan, JCIT
Date of hearing : 16.05.2018
Date of Pronouncement : 30.05.2018

ORDER

PER ANNAPURNA GUPTA, AM:

This appeal has been preferred by the assessee against the order of learned Commissioner of Income Tax (Appeals)-4, Ludhiana (hereinafter referred to as CIT(Appeals)) dated 19.6.2017 relating to assessment year 2011-12.

2. The facts of the case in brief are that the assessee who is an architect by profession had filed his return of income for the year under consideration on 21.03,2012 declaring therein an income of Rs.2,33,090/- which was stated to be processed under section 143(1) of the Act at the returned income. However, the assessment in this case was completed by the Assessing Officer vide order under section 143(3) of the Act dated 15.01.2014 at an assessed income of

Rs.19,30,496/- . making the following additions to the returned income of the assessee:-

- | | | |
|-------|---|---------------|
| (i). | <i>Addition on account of unexplained cash deposits in Various bank accounts maintained by the assessee with Different banks</i> | Rs.7,30,500/- |
| (ii) | <i>Addition on account of disallowance of interest by invoking provisions of section 36(1)(iii) of the Act on the ground that assessee has given interest free loans advances to related/unrelated parties/concerns which were considered by the Assessing Officer for Non-business purposes.</i> | Rs.5,99,330/- |
| (iii) | <i>Addition on account of unproved Unsecured loans</i> | Rs.3,50,000/- |
| (iv) | <i>Addition on account of disallowance Of expenses by invoking provisions Of section 14A of the Act</i> | Rs.17,576/- |

3. Aggrieved by the same, the assessee carried the matter before the Ld.CIT(Appeals). The appeal was fixed for hearing on various occasions which were either not attended or adjournment sought by the assessee. The details of the same are reproduced at para 5.1 of the CIT(Appeals)'s order. Thereafter the CIT(Appeals) noted that even no written submissions were filed in support of various grounds of appeal and, therefore holding that the assessee being not interested in pursuing the appeal ,he proceeded to dispose off the same ,ex-parte, on the basis of material available on record. The Ld.CIT(Appeals) noted thereafter that various additions made in the case had been made after considering the reply filed by the assessee from time to time and since no submissions had been made in support of various grounds raised in appeal despite sufficient opportunities

provided to the assessee, the Ld.CIT(Appeals) was of the opinion that the assessee had nothing to say in the matter with regard to various additions. Further noting that the assessee could not demonstrate how the additions made by the Assessing Officer were incorrect and that there was nothing on record to suggest that the additions made were not correct, the Ld.CIT(Appeals) held that the Assessing Officer was fully justified in making various additions and thereby dismissed the appeal filed by the assessee.

4. Aggrieved by the same the assessee has come up in appeal before us raising the following grounds:

- “1. *That the Ld. Commissioner of Income Tax (A)-4, Ludhiana has erred in dismissing the appeal and hence confirming all the additions made by the Assessing Officer.*
2. *That the Ld. CIT(A) has erred in not considering that no sufficient and reasonable opportunity was afforded to the assessee to represent the case before him and also the assessee was prevented by sufficient/reasonable cause in not appearing before him.*
3. *That the Ld. CIT(A) has failed to take into consideration that though email sent to his office, it has been communicated to him that the appellant had undergone heart surgery and was admitted to the hospital and, therefore, requested for time and which has been ignored.*
4. *Notwithstanding the above said grounds of appeal, it is submitted that even otherwise while dismissing the appeal, the Ld. CIT(A) has erred in not considering the submissions filed by the assessee during the course of proceedings before the Assessing Officer and all other documents and material already on record before the Assessing Officer.”*

5. Before us also despite various opportunities given to the assessee either adjournment was sought verbally or none came present, on the dates fixed for hearing. Even on 16.05.2018, when the case was finally heard, none

appeared on behalf of the assessee despite the adjournment of the hearing of the case to the said date i.e. 16.5.2018, being made in the open court on the last date of hearing i.e. 22.03.2018, when Shri Gaurav Sharma, proxy counsel for the assessee who had sought adjournment verbally, was present in person. We, therefore, agree with the Ld.CIT(Appeals) that the assessee is not interested in pursuing the appeal, having nothing to say with regard to various additions made in this case and even the grounds raised before us relating to reasonable opportunity of hearing not being granted to the assessee ,or that there was reasonable and sufficient cause with the assessee for not appearing before the CIT(Appeals). We therefore dismiss ground No.2 & 3 raised by the assessee in this regard.

6. Further vis-a-vis the ground raised by the assessee against the act of the CIT(Appeals) in confirming all additions made by the Assessing Officer, we shall be separately dealing with each addition made on the basis of orders of the lower authorities below us, which is the only material available with us, since even before us the assessee has not filed any submissions in writing.

7. On perusing the order of the Assessing Officer we find that the addition made on account of unexplained cash found deposited in Bank, of Rs.7,30,500/-, was made after considering the reply filed by the assessee. The Assessing Officer had noted that there was cash deposited in the various Bank accounts of the assessee to the tune of

Rs.92,10,000/-. On asking the assessee to explain the same, the assessee filed reply, reproduced in para 2 of the Assessing Officer's order, after considering which the Assessing Officer accepted the explanation of the assessee vis-a-vis cash deposits to the tune of Rs.84,79,500/-. The balance, to the extent of Rs.7,30,000/-, was held to be still remaining unexplained and addition made of the same to the income of the assessee. Since the Assessing Officer has made the addition after considering the assessee's reply and the assessee has nothing to say on the issue, as noted above by us, we find no infirmity in the order of the CIT(Appeals), upholding the addition so made of Rs.7,30,500/- on account of unexplained cash deposits.

8. Regarding the disallowance of interest u/s 36(1)(iii) of the Act, we find, that the Assessing Officer had noted that the assessee had advanced interest free loans to his family members and family concern/trust and at the same time had paid interest on loans to financial institutions and banks. The same was confronted to the assessee asking him why interest @ 10% be not disallowed on the interest free loans/advances given, to which, we find the assessee replied that they were all friendly loans and loans given to charitable trusts and therefore no interest was charged. Further opportunities were also given to the assessee wherein he contended that the loans raised were for business purpose only. The Assessing Officer after considering the reply filed by the assessee, held that the

assessee had failed to establish the commercial expediency for making the said loans and also that the loans raised were used in the business of the assessee. He therefore held that the assessee had diverted interest bearing funds for non business purposes and disallowed interest pertaining to the same, resulting in disallowance of interest of Rs.5,99,330/-. Since the Assessing Officer has made the disallowance after considering the assessee's reply and the assessee has nothing to say on the issue, as noted above by us, we find no infirmity in the order of the CIT(A), upholding the disallowance made of interest u/s 36(1)(iii) of the Act, of Rs.5,99,300/-.

9. The Assessing Officer, we find also made disallowance of unsecured loans taken by the assessee amounting to Rs.3,50,00/- from one Smt.Saroj Bhatia, for the reason that the assessee had failed to discharge his onus of proving the identity & creditworthiness of the loanee and also the genuineness of the transaction. With respect to the same, we find that the Assessing Officer had noted that the loan was not taken in the impugned year and was outstanding as at the end of the preceding year also i.e 31-03-2010, pertaining to A.Y 2010-11. In view of the same, we hold that the said loan cannot be treated as income of the assessee for the impugned year. The addition so made to the income of the assessee amounting to Rs. 3,50,000/- is therefore deleted.

10. The Assessing Officer, we find, has also made disallowance of expenses incurred in relation to income earned which is exempt from tax, as per section 14A of the Act, amounting to Rs.17,576/-. The Assessing Officer had noted that the assessee had made investment in mutual funds/shares, income from which by way of dividend was exempt from tax. He therefore asked the assessee as to why expenses relating to the same be not disallowed u/s 14A of the Act, to which the assessee denied incurring any expenses and also denied earning any exempt income from the said investments. The AO dismissed the assessee's contentions and proceeded to disallow expenses calculated as per Rule 8D of the Income Tax Rules, 1962, which amounted to Rs.17,576/-.

11. With regard to the said disallowance made u/s 14A, we are not in agreement with the AO/CIT(A). The AO has noted the fact that no dividend income was earned by the assessee on the said investments. In view of the said fact, we hold that no disallowance u/s 14A is warranted. The Hon'ble jurisdictional High Court in the case of CIT vs Lakhani Marketing Incl (2014) 272 CTR 265 (P&H) has held that no disallowance u/s 14A is warranted when no exempt income is earned. Respectfully following the same we delete the disallowance made u/s 14A of the Act amounting to Rs.17,576/- .

In view of the above we delete the additions made on account of the following:

Unexplained loan Rs.3,50,000/-
U/s 14A Rs.17,576/-

While the additions/disallowances made on account of the following is upheld:

Unexplained cash deposited in bank Rs.7,30,500/-
Interest u/s 36(1)(iii) Rs.5,99,330/-

12. In the result, the appeal of the assessee is, therefore, partly allowed.

Order pronounced in the Open Court.

Sd/-

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 30th May, 2018

Rati

Copy to:

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

Assistant Registrar,
ITAT, Chandigarh