

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI

BENCH 'SMC', NEW DELHI

BEFORE

SHRI R.S. SYAL, VICE PRESIDENT

ITA No. 5938/Del./2017

Assessment Year : 2010-11

Balvinder Singh Udham Singh Nagar C-61, Shamia Lake City, Kashipur Road , Rudrapur, PAN : AOSPS9697B	Vs	ITO Ward 1(4), Rudrapur (US Nagar)
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Surjeet Singh, CA

Revenue by : Sh. B.R.Mishra, Sr. DR

Date of Hearing :18.06.2018	Date of Pronouncement : 19.06.2018
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ORDER

Per R.S.Syal, Vice President :

This appeal by the assessee is directed against the order dated 13.07.2017 passed by the Commissioner of Income Tax (Appeals) in relation to the assessment year 2010-11.

2. Concise grounds have been filed by the assessee in addition to the elaborative grounds taken in the Memorandum of appeal.

3. First issue raised in this appeal is against confirmation of addition of Rs.8,00,000/-, representing cash deposited in the Bank account of the assessee maintained with Yes Bank Ltd.

4. Briefly stated the facts of the case are that the Assessing officer, on the basis of certain AIR information, initiated reassessment proceedings and issued notice u/s 148. No return was filed pursuant to such notice. The Assessing Officer found that the original return was filed declaring total income of Rs.1,36,000/-. From a copy of bank statement received u/s 133(6) from Yes Bank Ltd., Rudrapur, the Assessing officer computed peak balance in the bank account at Rs.15,69,769/- on 8.5.2009. In the absence of the assessee participating in the proceedings before the AO, the assessment order was passed u/s 144 read with section 147 determining total income at Rs.17,05,769/- including the above income of Rs.15,69,769/-. The assessee preferred appeal before the Ld. CIT(A). A remand report was called from the Assessing officer in which it was asserted that there were only three cash deposit entries of Rs.3,40,000/- made on 02-04-2009, Rs.2,00,000/- made on 25-04-2009 and Rs.6,00,000/- made on 02-06-2009. The assessee tendered explanation in support of these three entries totaling

Rs.11,40,000/- . The Assessing officer discussed the details given by the assessee *qua* these three entries. The Ld. CIT(A), got convinced with the assessee's explanation in respect of the source of deposit of Rs.3,40,000/- and deleted the addition to that extent. He, however, confirmed the additions of Rs.6,00,000/- and Rs.2,00,000/-. The assessee is aggrieved against these two additions.

5. I have heard both the sides and gone through the relevant material on record. It is noticed from the assessee's explanation tendered before the AO during the remand proceedings that he was also engaged in business of Property & Land Dealings apart from doing the same on commission basis. An income of Rs.1,10,844/- declared as "Other Sources" head was from such business of Commission Agency of Property and Land Dealings. This fact has been recorded on page 11 of the impugned order.

6. As regards of first addition of Rs.2,00,000/-, the assessee submitted that he entered into a contract with one Sri Bhupendra Singh for sale of plot at Preet Vihar, Phase-III, Rudrapur, on 23.4.2009 for a consideration of Rs.4,60,000/-, out of which a sum of Rs.2,00,000/- was received as advance. The said amount was deposited in this bank account. A copy of agreement was filed with the Ld. CIT(A) to demonstrate that Sri Bhupindra Singh agreed to purchase his plot at

Preet Vihar. Since the transaction could not fructify, the assessee cancelled the agreement and paid back a sum of Rs. 2,50,000/- from his saving bank account on 23.09.2009, inclusive of Rs.50,000 towards damages. The payment transaction is also evidenced from a copy of the assessee's bank account with Yes Bank Ltd., which is available on record. The genuineness of this Agreement has not been doubted by the AO in remand proceedings. This shows that the assessee received cash of Rs.2,00,000/- from Sri Bhupinder Singh and returned the same with damages of Rs. 50,000/- again through his bank account. Both the transactions are recorded in the same bank account. Thus, it is palpable that the source of deposit of Rs.2,00,000/- in the bank account of the assessee is properly explained. As such, no addition is warranted on this score. The same is directed to be deleted.

7. Next addition is of Rs.6,00,000/-, which has been confirmed by the Ld. CIT(A). The facts of this addition are that the assessee agreed for purchase of a plot at Jalandhar from one Sri Harjeet Singh for a total consideration of Rs.13,50,000/-, out of which a sum of Rs. 6,60,000/- was paid by him by means of bearer cheque on 09-04-2009. A copy of agreement for purchase of plot has been appended in the paper book. Agreement was cancelled due to inability of the assessee to pay the remaining amount. That is how, Sri Harjeet Singh refunded Rs.6,00,000/- to the assessee in cash on 28.05.2009 deducting Rs. 60,000/- towards damages for cancellation of the agreement. A copy of

cancellation agreement has also been provided in the paper book. Again the genuineness of these documents has not been disputed by the AO in the remand proceedings. It is this receipt of refund of Rs.6,00,000/- by the assessee, which he deposited in the bank account. It is seen that not only a receipt of Rs. 6,00,000/-, which was deposited by the assessee in his bank account but the payment by the assessee to Sri Harjeet Singh for a sum of Rs. 6,60,000/- was also through the same bank account. Both the transactions of receipt and payment of cash are evidenced from a copy of the bank statement placed on record. As such, I am satisfied that the assessee has successfully explained the source of deposit of Rs.6,00,000/-, for which no addition is warranted. The same is directed to be deleted.

8. It is seen that the Assessing officer made an addition of Rs.15,69,769/-, being, the peak balance on 08.05.2009. During the course of remand proceeding, the assessee contended that there were only three cash deposit entries of Rs.2,00,000/-, Rs.6,00,000/- and Rs.3,40,000/-. The Assessing officer has also discussed only these three entries in his remand report. However while computing peak balance in the course of assessment proceedings, he also took into consideration opening balance of Rs.7,39,791/-. In my considered opinion, opening balance cannot be considered for making any addition in respect of cash deposit entries in the bank account for the instant year. As admittedly, there were only three cash deposit entries totaling Rs. 11,40,000/-, there

could have been no question of making any addition over and above that. The Ld. CIT(A) has deleted the addition of Rs. 3,40,000/-, against which the Revenue has not preferred any appeal. In so far as the other two additions of Rs.2,00,000/- and Rs.6,00,000/- are concerned, the same have been deleted hereinabove. *Ex consequenti*, there is no rationale in making any addition in respect of transactions arising out of deposits in Yes Bank Ltd. Account.

9. The assessee has also raised a ground challenging enhancement of income by the Ld. CIT(A) to the tune of Rs.6,60,000/-, representing loans raised by the assessee from two parties.

10. While dealing with the appeal filed by the assessee, the Id. CIT(A) noticed that the assessee received two loans of Rs.6,00,000/- and Rs.60,000/- from Sri Iqbal Singh and Sri Hariprit Singh respectively. The Id. CIT(A) enhanced income by making such addition u/s 68 of the Act. The assessee is aggrieved against such an enhancement made by the Id. CIT(A).

11. Having heard both the sides and perused the relevant material on record, it is seen that the only addition made by the Assessing officer in the assessment order is for a sum of Rs.15,69,769/-, being, peak cash balance in assessee's bank account on 08-05-2009. There is no discussion whatsoever in the assessment order about the loan entries in respect of which enhancement was made by the Ld. CIT(A). The

Hon'ble Delhi High Court in its full bench judgment in *CIT vs. Sardari Lal and Company (2001) 251 ITR 864 (Delhi) (FB)* has held that the first appellate authority has no power to enhance the assessment by discovering a new source of income, not considered by the AO in the order appealed against. Similar view has been taken by the Hon'ble Delhi High Court in *Gurinder Mohan Singh Nindraajog vs. CIT (2012) 348 ITR 170 (Del)*. Following the Full bench judgment of the Hon'ble Delhi High Court in *Sardari Lal (supra)*, the Hon'ble Kerala High Court in *CIT vs. B.P. Sherafudin (2017) 399 ITR 524 (Kerala)* has also reiterated the same view holding that no enhancement can be made by the Ld. CIT(A) in respect of any items which was not considered by the AO in the assessment order.

12. Turning to the facts of the instant case it is seen that the Ld. CIT(A) has made enhancement of Rs.6,60,000/- in respect of two loans raised from Sri Iqbal Singh and Sri Harjeet Singh, which were not the subject matter of assessment proceedings. There is no whisper, much less any discussion in the assessment order on these two loan transactions. Respectfully following the *ratio decidendi* flowing from the Full bench judgment of the Hon'ble Delhi High Court and others cases discussed above, I hold no enhancement could have been made in respect of such two loans. I, ergo, order to delete the addition of Rs.6,60,000/-.

13. In the result, appeal is allowed.

(Order Pronounced in the Open Court on 19/06/2018)

Sd/-

(R.S. Syal)

VICE PRESIDENT

Dated: 19/06/2018

Binita

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

Date of dictation	18.06.2018
Date on which the typed draft is placed before the dictating Member	18.06.2018
Date on which the typed draft is placed before the Other Member	18.06.2018
Date on which the approved draft comes to the Sr. PS/PS	18.06.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	19.06.2018
Date on which the fair order comes back to the Sr. PS/PS	19.06.2018
Date on which the final order is uploaded on the website of ITAT	19.06.2018
Date on which the file goes to the Bench Clerk	19.06.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

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