

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. N. K. Saini, AM and Sh. Kuldip Singh, JM

ITA No. 501/Del/2014 : Asstt. Year : 2010-11

Smt. Suchitra Kumari, C/o Sh. Shamsheer Singh, Adv., Chamber No. 7 th & 8 th , 1 st Floor, Star Plaza, Near Bachcha Park, Meerut-250001	Vs	Income Tax Officer, Ward-2(3), Kota
(APPELLANT)		(RESPONDENT)
PAN No. AJHPK3246H		

Assessee by : Sh. P. S. Kashyap, CA

Revenue by : Sh. Amit Jain, Sr. DR

Date of Hearing : 16.04.2018	Date of Pronouncement : 02.07.2018
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 28.11.2013 of the Id. CIT(A), Kota.

2. Following grounds have been raised in this appeal:

“1. That Ld, CIT (Appeal) has erred in dismissing the ground of appellant in respect of invalid & improper service of statutory notice. The notice u/s 143(2) was not properly served upon assessee within stipulated time as specified under proviso to clause (ii) of subsection (2) of section 143 of I.T. Act, 1961, the affixture of service of the aforesaid notice as allegedly made by the Notice server was not valid and proper.

2. That Ld CIT(Appeals) has erred in observing the valid assessment made by the A.O. in absence of proper and valid

service of statutory notice as per provisions of section 282 of I.T. Act.

3. The Ld. CIT(Appeals) has erred in not considering the facts that just after receiving the first statutory notice, the appellant has made a request for transfer her case records to the jurisdictional A.O. at that point of time, at Ghaziabad (U.P.), but the request was not acceded to. The proper opportunity of being heard was not made by A.O. even at the time of remand proceedings in appeal.

4. That the Ld. CIT (Appeals) has also erred to sustain the addition of Rs. 12,06,000/- out of total cash credit of Rs. 15,66,000/- without considering the facts that the confirmations alongwith affidavits of the lenders alongwith complete details of re-payment of such loan amount made through account payee cheques to the appellant were filed and these evidences were also admitted by the I.T. Authorities in appeal proceedings. Thus, the identity of the creditors and genuineness of loan transactions have been proved and the addition sustained aforesaid is unjust, unwarranted and uncalled for.

5. Ld. CIT(Appeals) has erred in not considering the facts and submission made by the appellant in respect of deposit made in bank account, a sum of Rs.4,64,000/- and Rs,5,20,000/- on account of current & past savings of appellant's husband, Shri G.P. Shamra and by herself respectively.

6. Ld. CIT(appeals) has also erred in not allowing the deduction for 'Income from house property' u/s 24 of the I.T. Act, as claimed by the appellant at Rs.1,09,227/-, whereas the relevant materials have already been brought on records in respect of such claim of deduction. ”

3. Ground Nos. 1 to 3 were not pressed so these are dismissed as not pressed.

4. Vide ground nos. 4 & 5, the grievance of the assessee relates to the sustenance of addition of Rs.12,06,000/- out of total cash credit of Rs.15,66,000/- and the addition of Rs.9,84,000/- (Rs.4,64,000 + Rs.5,20,000/-) in respect of deposits made in the bank account.

5. The facts related to this issue in brief are that there was a joint bank account of the assessee and her husband, total cash deposit in the bank account was Rs.25,50,000/- out of which Rs.4,64,000/- was claimed to be savings of Sh. G.P. Sharma, husband of the assessee and Rs.5,20,000/- personal savings (Istri Dhan). Rest of the amount of Rs.15,66,000/- was claimed to be loan from relatives in cash, repayment of which was made through account payee cheques. The assessee claimed that loans were taken because she had to make timely repayment of cheques given to the builder. However, the AO was not satisfied from the explanation of the assessee and made the addition of Rs.25,50,000/-.

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the cash credit shown in the assessee's bank passbook and bank statement does not fall within the ambit of Section 68 of the Income Tax Act, 1961 (hereinafter referred to as the Act) and as such the sums credited in the bank passbook were not chargeable to tax. It was further submitted that the assessee received the cash loan of Rs.15,66,000/- due to urgent need and Rs.4,64,000/- was personal savings of her husband Sh. G. P. Sharma, the remaining amount of Rs.5,20,000/- was her personal savings. The assessee also furnished copies of cheques issued for repayment to Smt. Ritu Rani, Sh. D. K. Sharma, Sh. Nand Kishore Sharma, Smt. Manju Sharma, Sh. Lalit Kaushik and also furnished affidavits of Smt. Manju Sharma and Sh. Nand Kishore Sharma. The Id. CIT(A) admitted the new evidences because the order was passed by the AO *ex-parte*. The Id. CIT(A) asked the remand report from the AO who issued summons u/s 131 of

the Act in response to which Sh. Harlal Gujar, Sh. Nand Kishore Sharma and Sh. Ramavtar Sharma attended on 27.08.2013 and their statement were recorded. However, the AO did not accept the loans as genuine by observing that the persons were not filing returns of income. The Id. CIT(A) dealt the statements of each of them and sustained the addition of Rs.21,90,000/- by observing as under:

“1. Har Lal Gujar :- Admitted to have given Rs.50,000/-. Not assessed to tax, however owned land 04.9 hectare.

My Finding:- Has worth to give Rs.50000/-, treated as explained

2. Nand Kishore Sharma:- Admitted to have given Rs.66,000/-. Owns 6 Bigha land and earns income from 'Purohitai' also.

My Finding:- has worth to give loan of Rs.66,000/- treated as explained.

3. Ramavatar Sharma :- Admitted to have given Rs.2,50,000/- in cash. Owned 13 Bigha of land source of income-Agriculture and pension.

Sh. Sharma claimed that the amount was paid from sale of 'Sarsaon' (Musturd) on 15/11/2009. He has annual income of Rs.3,75,000/- [Rs.210000-Agriculture and Rs.1,25,000 pension]. Considering the above the loan of Rs.2,50,000/- is considered explained.

As no other person was produced before Assessing Officer, and as all the loans were stated to be in cash the genuineness and creditworthiness of other creditors remained unproved. As no evidence for savings by self and husband was furnished. The same also remained un-proved. Therefore, I confirm the addition of Rs.21,90,000/- (Rs.25,50,000/- - 50000-60000-2,50,000). The Assessing Officer is directed to deleted balance addition of Rs.3,60,000/-.”

7. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that the AO passed the assessment order *ex-parte* and made the arbitrary additions and that the Id. CIT(A) also without appreciating the facts in right perspective

sustained the additions. It was further submitted that the assessee furnished the confirmations of the parties from whom the loans were taken and also filed affidavits of those parties which were not appreciated by the Id. CIT(A) in right perspective. It was also submitted that the assessee was posted at Jalandhar, Punjab when the assessment proceedings were going on, therefore, could not attend the assessment proceedings. It was stated that in the remand proceedings, the summons were issued u/s 131 of the Act only two lenders and they had confirmed the fact of giving loan. However, the summons to other three persons were not given, therefore, the additions made by the AO and sustained by the Id. CIT(A) were not justified. He requested to remand the matter back for fresh adjudication. As regards to the issue related to the deduction u/s 24 of the Act, it was submitted that the same has been disallowed without considering the relevant documents and facts brought on the record by the assessee.

8. In his rival submissions, Id. Sr. DR strongly supported the orders of the authorities below and reiterated the observation made in their respective orders.

9. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it appears that the AO framed the assessment *ex-parte* and in the remand proceedings issued the summons u/s 131 of the Act only to two lenders. However, the loans taken from other persons were also added to the income of the assessee u/s 68 of the Act, even when, the assessee furnished confirmations and the affidavits given by them. It also appears that the deduction claimed by the assessee u/s 24 of the Act was denied in the absence of the relevant documents. On the contrary, the claim of the Id. Counsel for the assessee is that the documents were furnished which were not appreciated in right perspective. We, therefore, deem it appropriate to set aside the issues under consideration back to the file of the AO to be adjudicated afresh in accordance

with law after providing due and reasonable opportunity of being heard to the assessee.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 02/07/2018)

Sd/-
(Kuldip Singh)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 02/07/2018

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR