

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R. KUMAR, AM

आयकर अपील सं./ ITA NO. 1300/Chd/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Sh. Gurinder Singh Toor #644, Sector-11, Chandigarh New Address: Sh. Gurinder Singh Toor M/s A.N. Diesel Pvt. Ltd. Chandigarh Road, Nawashahr	बनाम	The ITO Ward-1(4), Chandigarh
स्थायी लेखा सं./PAN NO: AEQPT0072H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri. Sudhir Sehgal

राजस्व की ओर से/ Revenue by : Smt. Chandrakanta

सुनवाई की तारीख/Date of Hearing : 26/09/2018

उदघोषणा की तारीख/Date of Pronouncement : 16/11/2018

आदेश/Order

PER DR. B.R.R. KUMAR, A.M:

The present appeal has been filed by the Assessee against the order of the Ld. CIT(A)-1, Chandigarh dt. 23/09/2016.

2. In the present appeal Assessee has raised following amended grounds:

1. *That the Worthy ommissioner of Income Tax (Appeals) has erred in dismissing then appeal filed by the appellant.*

2. *That the Worthy CIT(A) has erred in confirming the addition of Rs. 50,00,000/- (Fifty Lacs only), the amount which was received by the appellant as advance against sale of land and deposited the same in his account with AXIX Bank.*

3. *That the Worthy CIT (A) has erred in not considering the fact that during assessment proceedings, copy of the agreement against sale of land receiving sum of Rs. 50,00,000/- (Fifty lacs only) was filed before the Assessing Officer, but while passing the Assessment order, the Assessing Officer has not mentioned the true facts and neither made any inquiry on his behalf.*

4. *That the Worthy CIT (A) has erred in not considering the fact that the assessee had appeared before the Revenue Officer and filed an affidavit and got registered the agreement to sell in revenue records on 29.07.2009. All these facts were disclosed to the Assessing Officer, but there was no mention of the same by the Assessing Officer, while passing the assessment order.*

5. *That the Worthy CIT (A) has erred in confirming the addition of Rs. 50,00,000/- in respect of advance received against the sale of land on the basis of remand report submitted by the Assessing Officer, without giving an opportunity to the assessee or his counsel to cross examine Sh. Gurnam Singh, which is against the legal position.*

6.a) That the Worthy CIT(A) has erred in holding addition of Rs. 3,50,000/- made by the Assessing Officer by holding that the said amount cannot be included in the cash flow statement of the appellant.

b). That the Worthy CIT (A) has erred in considering that the Assessing Officer has made addition of said sum of Rs. 3,50,000/- as according to him, the said amount was withdrawn from HDFC Account in two figures viz. Rs. 3,00,000/- and Rs. 50,000/- by cheque, but in fact, the said amounts were withdrawn by cash as per certificate from the bank, enclosed in our written submission filed before him.

7. That the Worthy CIT (A) has erred in holding the addition of Rs. 4,00,000/- (Four Lacs only) erroneously by holding that the said amount cannot be included in the cash flow statement of the appellant as amount was withdrawn by Sh. Jasbir Singh and not by the appellant, which, infact, is self withdrawal as per certificate enclosed with the written submission filed before him.

8. That the addition as above has been made against the facts and circumstances of the case and submission filed during the course of hearing has not been considered properly.

3. Brief facts of the case are that the assessee has filed its return of income for A.Y. 2010-11 on 31.03.2011 at an income of Rs. 3,01,910/- and agriculture, income of Rs. 2,29,000/-. The case was selected for scrutiny and addition of Rs. 58,00,000/- was made to the assessee's income. During the year under assessment the Assessing Officer received information that the assessee has made cash deposits of Rs. 1,02,88,000/- in his Axis bank account. The Assessing Officer asked the assessee to explain the source of these cash deposits. The assessee filed a cash flow statement wherein he explained the cash deposits on the basis of cash flow. Out of Rs. 1,02,88,000/-, the assessee was not able to satisfy the Assessing Officer with respect to cash deposits amounting to Rs. 58,00,000/.

4. Ground no 2 to 5 : An addition of Rs. 50,00,000/- was made to the income of the assessee on account of deposits in its Axis Bank account on various dates. In the order, the Assessing Officer has made the following observations:

"The assessee has taken credit of Rs. 25 Lacs as advance against land, Rs. 15 Lacs on 05.08.2009 as advance against land, Rs. 10 Lacs on 13.11.2009 as advance against land. The total credit taken by the assessee as advance against land is Rs. 50 Lacs whereas the assessee has filed photocopies of two registration deeds which indicates that assessee has sold his agricultural land on 11.08.2010 for a sum of Rs. 39,60,000/. The assessee has not furnished any evidence regarding the advance taken by him against sale of land."

6. Before the Assessing Officer, the assessee has explained that the money was received as advance in pursuance of an agreement to sell his agriculture land but the agreement could not mature, so the entire amount was forfeited as the purchaser could not made the balance payment, so it should be treated as a capital receipt. And he further explained that since the land was an agricultural land therefore any sum received on its sale/ transaction would not invite any taxation.

7. The written submission of the assessee filed before revenue is as under:

"1. During assessment proceedings, the appellant a cash flow statement explaining the sources of cash deposit in his bank accounts.

2. The cash flow statement filed by the assessee also included an inflow transaction of Rs. 50 lacs on account of agreement to sell entered into in respect of appellant's agricultural land. In the assessment order, the benefit of this transaction was not allowed by the Ld. AO and he made the impugned addition of Rs. 50 lacs.

3. In regard to the agreement to sell in respect of above agricultural land, we are enclosing herewith following documents:

a) Agreement to sell entered into between the appellant and the proposed purchaser alongwith true translation from Punjabi to English.

b) Copy of affidavit filed before Ld. Revenue Officer alongwith true translation from Punjabi to English. The agreement to sell was entered into 29.07.2009. The last date fixed for deal was 28.08.2010. 28.08.2010 and 29.08.2010 were holidays. The proposed purchaser did not appear for making the balance payment and therefore the appellant appeared before the revenue officer on 30.08.2010 to demonstrate his bonafides and to confirm that he is ready to complete the deal.

4. All the above facts were explained to the Ld. AO during the assessment proceedings. Copy of the relevant written submission filed before the Ld. AO during the assessment proceedings is enclosed. The Ld. AO did not appreciate the submission and even did not record the correct facts in the assessment order.

5. The acceptance of Rs. 50 lacs in cash from the proposed purchaser of agricultural land and its cash deposit in the bank account was a correct and genuine fact. Complete details of purchaser were provided to the Ld. AO but he did not make any enquiry in this regard and without any enquiry went on to make the impugned addition in the hand of the appellant. Further, the appearance of the appellant before the Ld. Revenue Officer could not have been an after-thought. Furthermore, the land for which the advance was received is not a capital asset u/s 2(14) of the Income Tax Act, as the same is located beyond the 8 kms of the nearest municipal limits of Nawashahar. Copy of the relevant certificate evidencing the location of land beyond 8 kms of local limit issued by Tehsildar is enclosed. Therefore, even the receipt of advance towards the sale of such land could not have been held to be taxable receipts in the hand of the appellant. Appropriate relief is prayed.

In the light of the above facts, circumstances, legal position and submission, it is prayed that the ground of the appellant may please be allowed."

6. During the course of appellate proceedings, a letter was issued to ITO, Ward-1(4), wherein the Assessing Officer was directed to verify the claim of the assessee that he had received Rs. 50,00,000/- from Sh. Sarabjit Singh, Sh. Bahadar Singh, Sh. Gurmail Singh & Sh. Gurnam Singh and also demonstrate the bonafide of the assessee with respect to his appearance before the Revenue Officer as claimed by him. The Assessing Officer was also asked to summon the stated purchasers and confront them with respect to the cash payments made by them. The Assessing Officer submitted a remand report, the relevant portions are quoted below:

"Kindly refer to your office letter F.No. CIT(A)/CHD/2014-15/188 dated 16.03.2015 on the subject cited above.

In this connection, it is submitted that as per your worthy directions, summons were issued to Sh. Sarabjit Singh, Sh. Bahadar Singh, Sh. Gurnam Singh and Sh. Gurmail Singh to attend this office and submit their replies w.r.t. the amount of Rs. 50 lakh that the appellant, Sh. Gurinder Singh Toor has claimed was received from these persons. However, out of four persons, only Sh. Gurnam Singh appeared before the undersigned and gave his statement. In his statement, Sh. Gurnam Singh has denied giving any amount to Sh. Gurinder Singh Toor or having any transaction of sale-purchase of any property with Sh. Gurinder Singh Toor. Sh. Gurnam Singh also denied giving any kind of advance or money to the appellant during the year under consideration. However, Sh. Gurnam Singh admitted to knowing the appellant as appellant's son is a friend of his.

It is also submitted that during the course of assessment proceedings, the assessee vide his letter dated 18.02.2013 submitted that the aforesaid amount was received as advance against sale of agriculture land and also submitted sale deeds against which the advance was received. But the sale deeds attached with the assessee's reply amounted only to Rs. 39,60,000/-. The assessee also did not furnish any documentary evidence in support of his claim regarding advance of Rs. 50 lakh during the course of assessment proceedings."

7. Ld. CIT(A) considered the arguments of the assessee and held that the cash deposits in the bank of the assessee cannot be considered to have been explained. The fact of payment is not supported by the payers of the amount. The assessee could not produce the purchasers of land (payer of the amount) before the Assessing Officer. The Ld. CIT(A) held that the Assessing Officer issued summons to all the four persons who acted as (were) purchasers as claimed by the assessee, but three of them did not appear before the Assessing Officer. The fourth one Sh. Gurnam Singh appeared before the Assessing Officer and his statement was recorded under oath. He has denied having made any payment to the assessee. Holding thus the addition of Rs. 50,00,000/- made on account of unexplained cash deposits was upheld.

8. Before us, the Ld. AR argued on different points. He argued that as per the "Agreement to sell" an advance of Rs. 100 Lacs was to be received by the assessee over three installments and the balance of Rs. 149 Lacs was to be paid before the due date of the registry. Since the complete amounts were not paid the deal could not take place. His main written arguments are as under:

i. No enquiry was made by the Assessing Officer regarding the other three buyers, who had signed the impugned agreement and whose details were provided to the assessing officer by the assessee.

ii. The AO relied upon the statement of only one buyer who was not even confronted for the said agreement to sell, which was duly placed on record during the assessment proceedings.

iii. Moreover, the said buyer was not even confronted for his signatures on the agreement, which are apparently the same signatures as put by him on the statement taken by the assessing officer.

iv. Also, even though Gurnam Singh admitted having known the assessee in the statement, as his son was a friend of the assessee's son, even then he was not confronted by the assessee, which clearly shows the incompetence of the authorities.

9. He also referred to the judgments in the case of Andaman Timber Industries Vs Commissioner of Central Excise (2015) 127 DTR 0241 (SC), ACIT Vs. M/s Great India Steel Fabricators in ITA No.746/Chd/2014 and of Krishan Chand Chela Ram 125 ITR 713 (SC) in his support.

10. Having gone through the record and hearing both the parties, we are of the view that interest of the justice would be well served if the matter is remanded back to the file of the Assessing Officer to afford due opportunity to the assessee in producing the parties who have paid the amounts as advance. The Assessing Officer would also invoke the powers vested under the Income Tax Act, 1961 instead of remaining passive, to make necessary full-fledged enquiries before bringing the amount to taxation.

11. Ground No. 6 relates to addition of Rs. 3,50,000/- on account of cash deposits. The relevant para of the assessment order is as under

"The assessee has taken credit of a sum of Rs. 3,00,000/- on 13.04.2009 from its HDFC Bank, it has been mentioned by the assessee that the cash has been withdrawn whereas actually no cash was withdrawn and the amount of Rs. 3,00,000/- was withdrawn by cheques. Similarly, assessee has taken credit of Rs. 50,000/- from-HDFC Bank account on 29.07.2009. The amount of Rs. 50,000/- was withdrawn through cheques and it was not withdrawn in cash"

12. In the appellate proceedings, the assessee has submitted the arguments as under:-

"1. The sole reason for addition in assessment proceedings is various cash deposit in the bank account of the appellant. To explain the various cash deposits in the bank account of the appellant, the appellant filed a cash flow statement before the Ld. AO. In this cash-flow statement, he considered an item of Rs. 3,50,000/- as cash inflow on account of cash withdrawal from appellant's saving bank account No. 02661000101808 maintained with HDFC Bank.

2. On conclusion of assessment proceedings, Ld. AO held that the above amount of withdrawal of Rs. 3,50,000/- from the relevant bank account is actually not a cash withdrawal. He therefore, found shortage in cash-flow statement filed by the appellant and therefore made the impugned addition of Rs. 3,50,000/-.

3. The above contention of the Ld. AO is erroneous. Certificate from the bank certifying the fact that the withdrawal of Rs. 3,50,000/- (Rs. 3,00,000/- on 13.04.2009 & Rs. 50,000/- on 29.07.2009) was a cash withdrawal is enclosed.

13. The CIT(A) held that the assessee has filed copies of bank certificates to prove the facts that cash was available in his cash flow. He has not submitted any reason as to why these could not be produced before the Assessing Officer.

The evidence submitted by the assessee is not admissible u/s 46A of the Income Tax Rules, 1962 and therefore is not being considered.

14. Having heard and examined the records, we are of the opinion that aside technicalities, the Revenue ought to have considered the bank certificate proving the cash withdrawals. Hence, we hereby direct the Assessing Officer to allow the benefit of cash withdrawals entered by the assessee by the way of presenting a cheque to the bank and give credit for such cash withdrawals in determining the cash deposits in the account of the assessee. The matter is referred back to the Assessing Officer for the limited purpose of examining the bank certificate and give due credit to the withdrawals. As a result the appeal of the assessee on this ground is allowed for statistical purposes.

15. Ground No. 7 relates to addition of Rs. 4 lacs

16. The relevant portion of the assessment order is reproduced as under:

"The assessee has also taken credit of Rs. 4 lacs on 22.09.2009 as cash received. On going through the Axis Bank account, it is noticed that the amount was withdrawn by Sh. Jasbir Singh and not by the assessee nor by his wife and son. The assessee has also taken credit of Rs. 50,000/- on 17.11.2009 as withdrawals made by him from G.S. & Sons. No copy of account of G.S. & Sons has been furnished by him, although the assessee was specifically requested to do so. In the absence of any copy of account, the credit of Rs. 50,000/- cannot be allowed."

17. Before the Ld. CIT(A) the assessee has submitted as under:

"1. The facts and submission in regard to this ground are identically same as disclosed in ground No. 3 above except that the amount involved in this ground is Rs. 4 lacs and date of withdrawal is 22.09.2009. Certificate from the bank certifying the fact that the withdrawal of Rs. 4,00,000/- on 22.09.2009 was a cash withdrawal is enclosed.

2. As regards the issue that the amount was withdrawn by Sh. Jasbir Singh and not by the appellant, it is submitted that Sh. Jasbir Singh is a close friend of the appellant and on instruction of the appellant, he withdrew this amount of Rs. 4 lacs from the bank and handed over the same to the appellant. Appropriate relief is prayed.

In the light of the above fact, circumstances, legal position and submission, it is prayed that the ground of the appellant may please be allowed."

18. The Ld. CIT(A) has confirmed the addition relying on the Assessment Order.

19. We have heard the argument of both the parties and we find that as per the observation of the Assessing Officer, the amount of Rs. 4,00,000/- has been withdrawn by the one Sh. Jasbir Singh. This fact is not disputed by the assessee but he has stated that Sh. Jasbir Singh handed over the money after withdrawal

to the assessee. The Assessing Officer held that the monies were not withdrawn by the assessee or by his wife or son. Such derivation that monies withdrawn by family members can only be given credit for the cash deposits but not the monies withdrawn by third person who acted at the instructions of the assessee cannot be accepted in the absence of any enquiry by the Assessing Officer that the cheque was issued to Shri Jasvir Singh for any other purpose and that money withdrawn by Shri Jasvir Singh has been utilized otherwise for any other purpose. The Assessing Officer has not even enquired whether the cheque issued is a bearer cheque or account payee in order to cross examine the claim of the assessee. Hence we hereby direct that the addition made be deleted.

20. This ground of appeal is hereby allowed.

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

Order pronounced in the open Court.

Sd/-

दिवा सिंह
(DIVA SINGH)

न्यायिक सदस्य/ Judicial Member

AG

Date: 16/11/2018

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

Sd/-

डा. बी.आर.आर. कुमार,
(Dr. B.R.R. KUMAR)

लेखा सदस्य/ Accountant Member