

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एकल सदस्यीय", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'SMC' CHANDIGARH**

**श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM**

आयकर अपील सं./ITA No. 883/CHD/2018
निर्धारण वर्ष / Assessment Year : 2009-10

M/s Balbir Kumar Tarun Kumar Traders Ltd., 671, Industrial Area-B, Ludhiana.	बनाम VS	The ITO, Ward 5(1), Ludhiana.
स्थायी लेखा सं./PAN No: AAACL2582R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal

राजस्व की ओर से/Revenue by : Smt. Zenia Handa, Sr.DR

सुनवाई की तारीख/Date of Hearing : 20.11.2018

उद्घोषणा की तारीख/Date of Pronouncement : 28.11..2018

आदेश/ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 01.05.2018 of CIT(A)-2, Ludhiana pertaining to 2009-10 assessment year on the following grounds :

1. a). That the Ld. Assessing Officer has erred in taking recourse in issuing notice u/s 148 for the year under consideration and, which is against the facts and circumstances of the case.
- b). That there was no reason to believe with the Assessing Officer nor there is application of mind by the Assessing Officer, leading to reopening of the case u/s 148.
- c). That the Ld. Assessing Officer has neither applied his independent mind and it is only the case of borrowed satisfaction on the basis of certain information, which is not permitted for the purposes of taking recourse to section 148.
- d). That the reasons as recorded by the Assessing Officer, are, thus incorrect and vague in, as much as, the share application money had been received from "At All Times Yours Securities (P) Ltd.", in the Assessment year under consideration and not from "M/s Euphoria Capital Private Limited", which has been mentioned in the reasons and, thus, the very basis of reopening is bad in law.
2. Notwithstanding the above said grounds, the Ld. CIT(A) has erred in confirming the action of Assessing Officer in upholding the addition of Rs. 15 lacs and treating the same as accommodation entries as per finding given by the CIT(A) in para 5.2 of his order.
3. That the Ld. CIT(A) has also erred in confirming the addition of Rs. 30,000/-- as alleged payment of commission for arranging the so called accommodation entries.
4. That the Ld. CIT (A) has ignored the documentary evidences furnished during the course of assessment proceedings in the shape of confirmations, copy of the bank account of the Investing Company and other details, which have been ignored summarily.

5. That the Ld. CIT(A) has failed to allow the opportunity to the assessee for cross examination and no such opportunity of cross examination have been granted, the whole basis of addition is, therefore, totally devoid of any valid reasoning in view of the Judgement of Hon'ble Supreme Court in the case of Kishin Chand Chella Ram as reported in 125 ITR 713.

2. The Id. AR addressing the grounds submitted that in the facts of the present case, the material utilized by the tax authorities has not been confronted to the assessee. On query, it was conceded though reasons had been recorded and copy of the same is available at paged 39 of the Paper Book, however, it was his submission that the assessee in the course of the assessment proceedings required the AO to confront the assessee with the material relied upon which has been utilized against him but till date, it has not been confronted to the assessee. To support the submissions, attention was invited to page 5 of the 81 paged assessment order wherein the written submissions of the assessee have been extracted by the AO. Attention was also invited to page 11 of the 81 paged assessment order wherein assessee again reiterates the said request. For ready reference, relevant extracts of the written submissions extracted from pages 5 and 11 of the assessment order are reproduced hereunder :

Page 5 of A.O.

2.1 Madam, version, vision, information and notions used in 'reasons recorded' are beyond understanding, knowledge and belief of assessee herein, as it communicates name of a person (Pradeep Kumar Jindal), who has never been a director of company named and stated to have provided alleged entry of Rs. 15,00,000/- in the assessee company. The reasons recorded are bare part of superfluous action proposed as verdict from your good self, without necessary exploration and application of human probabilities thereon, **without providing us copies, and documents relied upon by the department, tantamount as unilateral action not confirming canons of natural justice and fair play.**

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Page 11 of A.O.

7. It has therefore, being requested that before proceeding any further in this case, **a copy of documents relied upon may please be provided to meet canon of natural justice and so to enable the assessee company to defend its case without prejudice to the right to give presentation in person and/or in writing to rebut or defend its case! After the documents being provided a reasonable opportunity is also required to be afforded for representation thereof as rejoinder and thereafter, Your Honour may finally dispose of the above objections and/or rejoinder thereof, by passing a speaking order, before proceeding with the assessment proceedings, as per the mandate of Hon'ble Supreme court in its decision in the case of GKN Driveshafts (India) Ltd. v/s D.C.I.T. (2003) 259 ITR19 (SC), wherein Hon'ble Apex Court has held as under;- "The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order..'**

.....
(emphasis supplied)

3. It was his submission that the assessee even before the CIT(A) agitated this issue. This statement, it was submitted, was evidenced from page 6 of the 26 paged order wherein the issues, submissions are recorded. Relevant extract is also reproduced hereunder :

"Without bringing on record any specific evidences in support of the A.O's contentions and without even providing such and so called findings and the so called evidence to the

assessee for rebuttal and for cross examination, if so required, that the assessee company has paid cash in lieu of the cheques received from the said companies so as to substantiate the claim of A.O. of providing accommodation entry but instead the Id. A. () had made the alleged addition which in the respectful submissions is no/ only and totally illegal but against the principles of natural justice also besides well settled laws of the land”

(emphasis supplied)

4. The said request, it was submitted, is again repeated at page 21 of the 26 paged order. For ready reference, the same is also reproduced :

“1.4.1 That the Id. Ld. A.O. has merely relied upon the information passed upon by Investigation Wing, Delhi. That the A.O. has failed to cross verify the particulars and credentials of the statements on which, it had relied upon. Further assessee has not been granted an opportunity of cross-examination of the credentials of the statements by virtue of which actual position can be transpired”.

(emphasis supplied)

5. The Id. Sr.DR was unable to support the orders as admittedly in the finding arrived at by the CIT(A), there is no reference to the information being made available to the assessee.

6. I have heard the rival submissions and perused the material on record. I find that though the CIT(A) repeatedly says that there is information available with the tax authorities that the assessee has availed of accommodation entries through paper company, however in the face of the repeated request of the assessee, right from the assessment stage which continues even before the CIT(A), he fails to address the requests. On a consideration of the material available on record, I am unable to agree with the conclusions drawn. Considering the judicial precedent wherein the law is well settled that in case any adverse information is relied upon by an administrative authority, then it is improper for the said authority not to confront the same to the assessee otherwise, I hold that the order passed is open to the challenge of being arbitrary and whimsical. The said action, accordingly, cannot be upheld. In view thereof, the impugned order is set aside and the issues are restored back to the file of the AO with a direction to confront the assessee with the material relied upon etc. and thereafter to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. Said order was pronounced in the Open Court at the time of hearing itself.

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

Order pronounced in the Open Court on 28.11. 2018.

Sd/-

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

“पूनम”

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

1. अपीलार्थी/ The Appellant – 2.प्रत्यर्थी/ The Respondent -3.आयकर आयुक्त/ CIT4.आयकर आयुक्त (अपील)/ The CIT(A) 5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH 6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar