

**IN THE INCOME TAX APPELLATE TRIBUNAL
CAMP BENCH AT JALANDHAR**

**Before Sh. N. K. Saini, Hon'ble Vice President
and
Sh. Ravish Sood, Judicial Member**

ITA No.38/Asr./2018 : Asstt. Year : 2009-10

Sh. Santokh Singh, C/o Sh. Dinesh Sarna, Adv., B- 18, Vakil Building, Model Town Road, Jalandhar	Vs	Income Tax Officer, Ward-2, Kapurthala
(APPELLANT)		(RESPONDENT)
PAN No. DBXPS4379R		

**Assessee by : Sh. Ashray Sarna, CA
Revenue by : Sh. Lalit Mohan Jindal, DR**

Date of Hearing : 16.01.2019	Date of Pronouncement : 17.01.2019
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ORDER

Per N. K. Saini, Vice President:

This is an appeal by the assessee against the order dated 14.11.2017 of
ld. CIT(A)-2, Jalandhar.

2. Following grounds have been raised in this appeal:

"1. That the order passed by the Hon'ble CIT(A) dated 14.11.2017 is against the law and facts of the case.

2. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order u/s 147 r.w.s. 144 of the Act by recording incorrect facts and that too without complying with the mandatory conditions u/s 147/148 as envisaged under the Income Tax Act, 1961.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition to the extent of Rs. 9,23,000/- on account of cash deposit in bank account, ignoring the fact that assessee had sufficient cash accumulated of cash withdrawal, agricultural proceeds and sale of rural agricultural land.

4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 9,23,000/- without considering the submissions of the assessee and without observing the principles of natural justice, is bad in law and against the facts and circumstances of the case.

5. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

3. From the above grounds, it is gathered that the main grievance of the assessee relates to the confirmation of addition of Rs.9,23,000/- made by the AO on account of cash deposited in bank account.

4. Facts of the case in brief are that the AO received an information from The Kapurthala Central Co-operative Bank Ltd., Kapurthala that the assessee deposited Rs.25,30,000/- in his saving Bank Account. He issued a query letter to the assessee to verify the sources of those deposits. However, the assessee did not file any reply. The AO framed the best judgment u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as the Act) and made the addition of Rs.21,23,000/- which was the peak amount of deposits. He also added interest accrued on the saving bank account amounting to Rs.21,271/-.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and furnished the written submission which has been reproduced by the Id. CIT(A) in para 4.2 of the impugned order, on the submission of the assessee, the Id. CIT(A) asked the remand report of the AO and the said report has been reproduced in para 4.3 of the impugned order, for the cost of repetition, the same are not reproduced herein. The Id. CIT(A) asked the comment of the assessee on the remand report of the AO and the assessee stated that the AO was not justified in rejecting the sources of cash on account of sale of land on the ground that the sale deed had not been registered.

6. The Id. CIT(A) after considering the submissions of the assessee and the remand report of the AO observed that the reassessment proceedings were initiated by the AO on the information received from ITD database and that the cash deposits of Rs.25,30,000/- had been made in the saving bank account of the assessee. He further observed that the AO after examining the additional evidences of the assessee reiterated the submissions and reasons given in the assessment order. The Id. CIT(A) observed that an amount of Rs.12,00,000/- had been credited in the bank account of the assessee on 15.10.2008 vide DD No. 004619. He allowed the relief for the said amount and sustained the addition of Rs.9,23,000/-.

7. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that all the evidences relating to the cash deposits were furnished before the Id.

CIT(A) who asked the remand report from the AO but did not appreciate the explanation given by the assessee. It was submitted that the Id. CIT(A) only accepted Rs.12,00,000/- which was received through draft but did not consider the other submission of the assessee in right perspective. It was also submitted that the AO wrongly calculated the cash deposits of Rs.25,33,000/- while the actual deposits were of only Rs.13,33,000/-. He drew our attention towards page nos. 27 to 29 of the assessee's paper book which is the copy of the bank account. It was further submitted that the assessee sold agricultural land measuring 20 kanal 18 Marla situated at Village Dyalpur, Tehsil Dhilwan, District Kapurthala for a consideration of Rs.20,00,000/- and in support of the said contention, the assessee furnished copy of the agreement alongwith the old fard jamabandi as an additional evidence under Rule 46A(1)(b) of the Income Tax Rules, 1962, but neither the AO nor the Id. CIT(A) appreciated the facts in right perspective and the Id. CIT(A) sustained the addition in arbitrary manner.

8. In his rival submissions, the Id. DR strongly supported the orders of the authorities below and reiterated the observations made therein.

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 additional evidences furnished by the assessee under Rule 46A of the Income Tax Rules, 1962 had not been appreciated by the authorities below in right perspective. The Id. CIT(A) only considered the deposits of Rs.12,00,000/- received by the assessee through demand draft as genuine but did not appreciate this fact that the peak was wrongly calculated by the AO. We, therefore, by considering the totality of the facts, deem it appropriate to set aside this limited issue relating to the addition of Rs.9,23,000/- to the file of the Id. CIT(A) to be adjudicated afresh in accordance with law and if it is found

that the assessee was having a source of Rs.20,00,000/- on account of sale agreement of the sale of land and the peak was wrongly calculated by the AO. He should decide this limited issue after considering the additional evidence already on record furnished by the assessee, 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 17/01/2019)

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
VICE PRESIDENT

Dated: 17/01/2019

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR