

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES, 'SMC', CHANDIGARH**

BEFORE SHRI N.K. SAINI, VICE PRESIDENT

ITA No.641/Chd/2018
Assessment Year: 2010-11

Shri Didar Singh
Ward No. 16, Hamayunpur
Sirhind

Vs.

The ITO
Ward, Sirhind

PAN No. BEWPS3909G

(Appellant)

(Respondent)

Assessee By : Sh. Tej Mohan Singh, Advocate
Revenue By : Smt. Chandrakanta, Sr. DR

Date of hearing : 21/02/2019
Date of Pronouncement : 21/02/2019

ORDER

This is an appeal by the Assessee against the order dt. 22/03/2018 of Ld. CIT(A)-, Patiala.

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

1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law in enhancing the income without affording mandatory opportunity and notice and as such the enhancement made is illegal, arbitrary and unjustified.

2. Without prejudice to the above, the Ld. Commissioner of Income Tax(Appeals) has erred in law as well as on facts in upholding the addition of Rs. 19,65,000/- applying the provisions of Section 68 which are not attracted in the instant case which is arbitrary and unjustified.

3. That the Ld. Commissioner of Income Tax(Appeals) has without appreciating the facts as placed before him in the right perspective upheld the addition which is arbitrary and unjustified.

4. That the Ld. Commissioner of Income Tax(Appeals) has erred in law as well as on facts in disallowing the benefit of loss of Rs.9,95,425/- incurred by the assessee to be adjusted against the additions made though allowed by the Assessing Officer which is illegal, arbitrary and unjustified.

5. That the Ld. Commissioner of Income Tax(Appeals) has erred in law as well as on facts in applying the decision of M/s Kim Pharma which is not applicable in the instant case and as such the order is arbitrary and unjustified.

6. That the Ld. Commissioner of Income Tax(Appeals) has further erred in upholding the addition of Rs.2,11,000/- in utter disregard of the explanations rendered which is arbitrary and unjustified.

7. That the order of the Ld. Commissioner of Income Tax (Appeals) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.

3. Ground Nos. 1 & 7 are general in nature while Ground No. 6 was not pressed so these grounds do not require any adjudication on my part.

4. Ground No. 2 & 3 are correlated which relate to the sustenance of addition of Rs. 19,65,000/- under section 68 of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), and Ground Nos. 4 & 5 relate to the disallowance of benefit of loss not allowed by the Ld. CIT(A) which was allowed by the Assessing Officer.

5. Facts of the case in brief are that the assessee filed the return of income on 28/10/2010 declaring an income of Rs. 1,72,250/- after claiming deduction of Rs. 81,814/- under section 80C of the Act.

6. During the course of assessment proceedings the Assessing Officer noted that the assessee had received fresh advances of Rs. 19,65,000/- from two customers namely Sh. Baljinder Singh S/o Sh. Gurmail Singh Rs. 9,70,000/- and Sh. Avtar Singh S/o Sh. Sadhu Singh Rs. 9,95,000/-.

7. The Assessing Officer asked the assessee to show cause as to why those advances may not be treated as unexplained cash credit. In response, the assessee submitted that he had actually received advances for the land, the same may not be treated as unexplained income earned by him from undisclosed sources. The Assessing Officer however did not find merit in the submissions of the assessee and made the impugned addition.

8. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted that identity of the persons making the advances could not be doubted as they were produced before the Assessing Officer. It was further stated that these persons were agriculturists and answered all the questions raised by the Assessing Officer in their statement recorded and that they had shown receipts issued by the assessee before the Assessing Officer, therefore all the three ingredients i.e. identity, credit worthiness and genuineness of the transaction were proved.

9. The Ld. CIT(A) however did not find merit in the submissions of the assessee by observing in para 6.4 of the impugned order as under:

6.4 While the identity of the those making the advances/ payments cannot be doubted as they have been produced before the Ld. AO; their ability to pay or credit worthiness remains in doubt due to the reasonably pointed out by the Ld. AO as summarized below:

I. The parties claim that the advances are out of their agricultural income however, they were unable to produce any evidence of agricultural Income such as sale proceeds of agricultural produce out of which the advances have been made.

II. The proof of Land holding proof submitted by Sh. Baljinder Singh appears to be dubious and no such land proof or proof of having taken land on theka has been furnished by Sh. Avtar Singh.

III. Both have stated that they are not maintaining any bank account which seems unlikely given the size of the claimed agricultural income.

Further regarding genuineness of the transactions; in both the cases advance had been shown from April to June, 2009 but registry has not been made till the date of Assessment Order (11-02-2013) even though a period of about 4 years had elapsed. Their claim that this is because of lack of funds is untenable given the alternate claim to huge agricultural income.

Thus, in my considered view; the Appellant has miserably failed to discharge the burden of proving the credit worthiness of the creditors and the genuineness of the transaction. In view of the reason given infra, the addition of Rs. 19,65,000/- is confirmed as unexplained Credits under Section 68 of the Act because some books of accounts where these entries are credited are alluded to both in the Assessment Order and in the submissions of the appellant. The appeal on these grounds of appeal are treated as dismissed.

9.1 The Ld. CIT(A) also not allowed the loss claimed by the assessee by observing that the loss which was not claimed under the head Business and Profession or any other head could not be allowed to be set off under section 70 or 71 of the Act, against the deemed income.

10. Now the assessee is in appeal.

11. Ld. Counsel for the assessee furnished an application dt. 15/02/2019 moved by the assessee for admission of the additional evidences, in the form of bank statement of the creditors, jamabandi of land holding, copy of the J Forms which are placed at page no. 1 to 39 of the assessee's paper book. Ld. Counsel for the assessee submitted that during the course of assessment proceedings and the appellate proceedings those documents could not be procured but these are very relevant and go to the root of the matter, therefore the additional evidences may be admitted.

12. In her rival submission the Ld. Sr. DR opposed the admission of the additional evidences and further submitted that the assessee did not produce those documents either before the Assessing Officer or the Ld. CIT(A) therefore these should not be admitted.

13. I have considered the submissions of both the parties and perused the material available on record. In the present case it is noticed that the assessee could not produce the evidences in the form of jamabandi to prove the land holding of the creditors and the J Form to prove the source of the deposits,

during the course of assessment proceedings or the appellate proceedings for the reasons that depositors are very old persons and being agriculturists they had a little knowledge of the importance of these documents. In my opinion these documents are very relevant to resolve the present controversy and go to the root of the matter, therefore, these deserve to be admitted. However the authorities below were not having these documents, therefore I deem it appropriate to set aside this issue back to the file of the Assessing Officer to be decided afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

14. As regard to the other issue relating to the set off of losses. The contention of the Ld. Counsel for the assessee was that the Assessing Officer has allowed this claim but the Ld. CIT(A) disallowed without mentioning any reason, therefore this issue is also set aside to the file of the Assessing Officer to be decided afresh in accordance with law after proper verification and providing due and reasonable opportunity of being heard to the assessee.

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

(Order pronounced in the open Court on 21/02/2019.)

**Sd/-
(N.K. SAINI)
VICE PRESIDENT**

Place: Chandigarh

Dated : 21/02/2019

AG

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR