

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

BEFORE SHRI N.K. SAINI, VICE PRESIDENT

ITA No.733/Chd/2018
Assessment Year: 2013-14

Daryodhan Singh
V&PO: Sahnewal Khurd
Ludhiana

Vs.

The ITO
Ward 3(2)
Ludhiana

PAN No. CRRPS0419R

(Appellant)

(Respondent)

Assessee By : Sh. Subhash Jain, CA
Revenue By : Sh. Y.K. Mittal, Sr. DR

Date of hearing : 25/03/2019
Date of Pronouncement : 29/03/2019

ORDER

This is an appeal by the assessee against the order dt. 19/03/2018 of Ld. CIT(A)-1, Ludhiana.

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

1. That the order passed by the Ld. Commissioner of Income Tax (Appeals)-I, Ludhiana is against law and facts on the file in as much as the Ld. CIT(A) has erred in rejecting the factual submission made with respect to the source of investment of Rs. 11,42,744/- made in purchase of car and was not justified to uphold the addition made on this count.

2. Without prejudice to ground no. 1, the Ld. Commissioner of Income Tax (Appeals)-I, Ludhiana erred in not appreciating that the only source of income of the assessee was interest from bank and agricultural income and was not justified to arbitrarily uphold the addition made on account of investment in purchase of car without pointing out any other source of income.

3. That on the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals)-I, Ludhiana was not justified to arbitrarily uphold the addition of Rs. 4,85,382/- on account of deduction of interest claimed in the return of income.

4. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.

3. Vide ground No. 1 & 2 the grievance of the assessee relates to the sustenance of addition of Rs. 11,42,744/- made by the Assessing Officer on account of purchase of car.

4. The facts related to this issue in brief are that the assessee filed return of income on 13/08/2013 declaring an income of Rs. 3,39,760/- which was

processed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). Later on the case was selected for scrutiny.

5. The Assessing Officer during the course of assessment proceedings noticed that the assessee owned one Toyota Care with registration no. PB10DQ6035 purchased in May 2012 out of bank withdrawals and cash in hand. The Assessing Officer asked the assessee to file a detail response and to reconcile the source of funds for purchase of motor vehicle. In response the assessee submitted as under:

" As regards the source of funds for purchase of motor vehicle the said vehicle was purchased and paid in cash from own pocket and after withdrawals from the bank accounts annexed with this reply. Rs. 85,000/- from BOI on 12/05/2012 and Rs. 8,00,000/- from OBC on 30/05/2012. The balance amount of Rs. 2,10,000/- was paid out of own cash in bank."

6. The Assessing Officer after considering the submissions of the assessee observed that the car was purchased on 08/05/2012 while the date of registration copy was 14/05/2012. He also observed that the payment in cash for purchase of new vehicle could not have been made after 22 days of purchase, he therefore made the addition of Rs. 11,42,744/-.

7. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted that the assessee had sufficient cash in hand for purchase of car on 08/05/2012 and that the cash of Rs. 8,00,000/- was withdrawn on 08/05/2012 from the bank account maintained with State Bank of Patiala (SBOP), Kupkalan which was used for the purchase of car and the balance amount was out of the opening cash in hand which was at Rs. 4,00,000/-. However the Ld. CIT(A) did not find merit in the submission of the assessee and sustained the addition by observing in para 12 & 13 of the impugned order as under:

12. The aforesaid submissions of the appellant have been carefully examined. It is evident that the appellant is anyhow trying to prove that he had sufficient cash in hand to make the impugned purchase of car on 08/05/2012. At the assessment stage, withdrawals of cash from the appellant's bank accounts maintained with BOI and OBC on 12th & 30th of May, 2012 respectively amounting to Rs.85,000/- & Rs.8 lakhs was stated to have been the source of availability of cash for the said purchase. However, when such explanation was discounted and discredited by the AO on the ground that cash payment for the luxury vehicle cannot be made after 22 days of purchase, the appellant has now come up with the explanation that he had the availability of cash of Rs.8 lakhs on 08/05/2012 on account of withdrawal of the like amount from Bank Account No. 65111367109 maintained with the said Bank of Patiala, Kup Kalan Branch. From the truncated copy of statement of bank account for the relevant period filed in support of the aforesaid submission of the appellant, it was noticed that prior to the withdrawal of cash of Rs.8 lakhs on 08/05/2012, there was a credit entry of the like amount on the said date, whose narration was seen to be "DEP TFR/ TRF Fr. 0065139992040". When the appellant was called upon to explain the aforesaid credit entry of Rs.8 lakhs, the appellant adduced a vague certificate from the Bank to the effect: "An amount of Rs.800000/- (Eight Lac Rs. only) credited to customer Daryodhan

Singh's Account No.- 65111367109 has been credited by debiting to the Demand loan Account No.- 65139992040 on dated 08 May 2012".

13. From this unintelligible certificate from the bank, it could only be gathered that some loan amount was transferred from one account to the other account. The appellant could not explain anything as to the purpose of such loan account. Besides, if the money was transferred out of some demand loan account, how could the same be used for purchase of car. Surely, the loan account was not meant for purchase of car. The appellant's explanation, thus, not only appears to be vague but absolutely obfuscatory. The explanation regarding the part funding of vehicle from the opening cash in hand also do not get proved so as to give the appellant benefit of the said amount. The appellant's repetitive contention that he has no income other than agriculture and bank interest cannot be allowed to manipulate the requirement of law which casts a burden on the appellant alone to explain the sources of investments. Quite evidently, the appellant has miserably failed in explaining the sources of investment in car. The decision of the AO to treat the said amount of investment as unexplained, thus, in the circumstances, cannot be interfered with. The ground of appeal pertaining to the aforesaid impugned addition [Sr. No. 5 & 6 Supra] is rejected. It is ordered accordingly.

8. Now the assessee is in appeal.

9. The Ld. Counsel for the assessee submitted that the assessee had withdrawn Rs. 8,00,000/- from SBOP on 08/05/2012, reference was made to page 11 of the assessee's paper book which is the copy of the aforesaid bank account wherein cash withdrawal of Rs. 8,00,000/- was shown on 08/05/2012. It was stated that the said amount was utilized for purchase of car and that the assessee was having agricultural income which was accepted by the Assessing Officer in the assessment order also a reference was made to para 7.1 and 7.2 of the assessment order wherein the Assessing Officer accepted that the amount of Rs. 6,40,000/- on account of agricultural income was added to the total income of the assessee for rate purposes. It was further submitted that the Assessing Officer also made the addition of Rs. 6,00,000/- on account of house hold expenses and the Ld. CIT(A) deleted the said addition for the reasons that the assessee was having agricultural income of Rs. 6,40,000/-. It was stated that even if the house hold expenses were considered out of the agricultural income still Rs. 40,000/- was available with the assessee for purchase of car and remaining amount was withdrawn out of the opening cash balance which generated in the earlier years from the agricultural income. It was accordingly submitted that the addition made by the Assessing Officer and sustained by the Ld.CIT(A) was not justified.

10. In his rival submissions the Ld. Sr. DR strongly supported the order of the authorities below and reiterated the observations made therein.

11. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is noticed that the assessee had withdrawn Rs. 8,00,000/- on 08/05/2012 which is evident from page no. 11 of the assessee's compilation which is copy of the bank account maintained with SBOP. The claim of the assessee is that the said amount was utilized for purchase of vehicle while the observation of the Ld. CIT(A) was that on the same date the amount of Rs. 8,00,000/- was transferred for demand loan account and the certificate adduced by the assessee was vague. In our opinion the Ld. CIT(A) was not justified in sustaining the addition of Rs. 8,00,000/- particularly when he accepted that the cash of Rs. 8,00,000/- was withdrawn on 08/05/2012 and even if there was credit entry on the same date from the demand loan account that cannot be a reason to deny the benefit to the assessee particularly when it is not brought on record that the said amount of Rs. 8,00,000/- withdrawn by the assessee from the Bank Account was utilized elsewhere. We therefore direct the Assessing Officer to consider the amount of Rs. 8,00,000/- withdrawn by the assessee on 08/05/2012, used for purchase of the vehicle on 08/05/2012. As regards to the remaining addition of Rs. 3,42,744/- (Rs. 11,42,744/- (-) Rs. 8,00,000/-) is concerned it is noticed that the Ld. CIT(A) as well as Assessing Officer accepted the agricultural income of Rs. 6,40,000/- out of which Rs. 6,00,000/- was considered by the Ld. CIT(A) as a utilization for house hold expenses therefore the remaining amount of Rs. 40,000/- is to be considered as source for purchase of vehicle. As regards to the balance amount of Rs. 3,42,744/- the claim of the assessee was that it was out of the opening cash in hand generated in earlier years from the agricultural income but no detail of the said cash generation is available on the record. It is also not clear that how much agricultural income was shown by the assessee in the earlier years which was available as opening cash in hand therefore this limited issue relating to Rs. 3,42,744/- is restored to the file of the Assessing Officer to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

12. Vide ground no. 3 the grievance of the assessee relates to the sustenance of addition of Rs. 4,85,382/- made by the Assessing Officer on account of deduction of interest claim by the assessee in the return of income.

13. The facts related to this issue in brief are that the Assessing Officer during the course of assessment proceedings noticed that the assessee's bank account was credited with an aggregating interest of Rs. 7,98,566/- accrued on

FDR's while the assessee had shown the amount of Rs. 3,13,184/- which was brought to tax under the head "income from other sources". The Assessing Officer mentioned that the submissions of the assessee was that this amount was deducted from computation of income, since it was paid to Shri Mahinder Singh for the outstanding loan taken by him in the earlier years. The Assessing Officer made the addition for difference amount of Rs. 4,85,382/-. The Assessing Officer had not accepted this explanation of the assessee that the interest income of Rs. 4,85,382/- pertained to Shri. Mahinder Singh which was received in the joint account of the assessee.

14. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted that family partition took place on 01/09/2011 whereby the some of the fixed deposits which were held in the joint names of the assessee alongwith his father Sh. Mahinder Singh were to be transferred to the respective individuals accounts and that since the maturity date of the FDR's, jointly held by the assessee alongwith his father had not come to its completion, the said FDR's were not redeemed and remained with the assessee, with the result that the interest accruing on such FDRs was credited into account of the assessee which should have ideally gone to the assessee's father Shri Mahinder Singh based on the purported private settlement between the members of the larger HUF. It was also stated that Shri Mahinder Singh had included the interest income of Rs. 4,85,382/- in his return of income.

15. Ld. CIT(A) after considering the submission of the assessee observed that the assessee had brought on record the general and anonymous declaration of family settlement on a plain paper which could not be imparted any evidentiary value. The Ld. CIT(A) sustained the addition made by the Assessing Officer by observing in para 7 of the impugned order as under:

Even if the aforestated family partition is considered to be sacrosanct, the stipulation therein to the effect that "money standing into the credit of bank account of any member shall exclusively belong to the member in whose bank account it is being maintained and other member(s) shall have no concern with the same", does not come to the aid of the argument advanced by the appellant. Besides, there is a hotchpotch of FDRs standing to the credit of the appellant in as much as the maturity amount of one FDR stands reinvested in a new FDR. The appellant also could not categorically state as to which FDR was held in the joint name of the appellant and his father, necessitating the bifurcation of interest. Besides, the joint ownership of the FDR does not necessarily mean that the amount of money was jointly contributed in equal percentage and income/interest accruing thereon was required to be bifurcated equally or in the proportion of the amount of money contributed. The appellant has also not been able to demonstrate that the interest income purportedly belonging to his father was transferred back to him for his utilisation or accretion of his wealth. Neither could the appellant show that the purported share of his father in the interest income was withdrawn from the bank and given back to him. No

reconciliation account was also filed either at the assessment stage or during the appellate proceedings. In the circumstances, it is held that the appellant's claim of deduction of Rs.4,85,382/- from the interest income earned by him is merely an artifice to evade payment of tax on the said income at a higher slab rate. The conclusion reached by the AO in this regard is held to be justified. The grounds of appeal [Sl. Nos. 2 & 3 Supra] pertaining to the aforesaid impugned addition, thus, stand rejected as bereft of any merit.

16. Now the assessee is in appeal.

17. Ld. Counsel for the assessee reiterated the submissions made before the Ld. CIT(A) and further submitted that the assessee alongwith his another family members deposited the amount in FDRs and after the family settlement, whatever interest pertained to his father Shri Mahinder Singh was reduced from the total interest credited in the account of the assessee and the said amount of interest was shown by Shri Mahinder Singh in his return of income which had been accepted by the department, therefore the same income cannot be taxed twice i.e; in the hands of the assessee as well as his father. In his rival submissions the Ld. Sr. DR strongly supported the orders of the authorities below and reiterated the observations made in their respective orders.

18. We have considered the submissions of both the parties and perused the material available on the record. In the present case the claim of the assessee was that the FDRs credited in his bank account pertained to all the family members and after family settlement the interest pertaining to his father Shri Mahinder Singh, was reduced from the interest earned in the bank account of the assessee and that the said interest income reduced from the total interest was shown by Shri Mahinder Singh in his individual hands which had been accepted by the department. This fact requires the verification at the level of the Assessing Officer, we therefore, deem it appropriate to remand this issue back to the file of the Assessing Officer to be adjudicated afresh in accordance with law after proper verification and providing due and reasonable opportunity of being heard to the assessee.

19. In the result appeal of the Assessee is partly allowed for statistical purposes.

(Order pronounced in the open Court on 29/03/2019).

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

Place: Chandigarh

Dated : 29/03/2019

AG

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