

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER  
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

**I. T. A. No. 194/Asr/2016**

Assessment Year: 2011-12

Income Tax Officer,  
Ward-2(3),  
Aaykar Bhawan,  
Panama Chowk, Jammu

vs. Sudershan Kumar Sharma  
Vikas Lane, Talab Tillo,  
Jammu  
[PAN: AHCPS 0059E]

**(Appellant)**

**(Respondent)**

Appellant by : Sh. Charan Dass (Sr. D.R.)  
Respondent by: Sh. Parveen Jain (Adv.)

Date of Hearing: 16.04.2019

Date of Pronouncement: 30.05.2019

**ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Revenue directed against the Order by the Commissioner of Income Tax (Appeals), Jammu ('CIT(A)' for short) dated 23.12.2015, allowing the assessee's appeal contesting his assessment u/s. 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 27.03.2014 for Assessment Year (AY) 2011-12.

2. The facts of the case, in brief, are that the assessee-individual, a transporter, filed his return of income for the year on 06.6.2011 declaring an income of Rs.5,03,420/-, i.e., prior to the claim of deduction under Chapter VI-A at Rs.78,900/-. In the course of the assessment proceedings, the assessee was questioned in respect of his savings bank account with Jammu & Kashmir Bank

Ltd. (New University Campus, Jammu Branch) (hereinafter 'Account #1'), not disclosed in his regular accounts, and in which there were cash deposits of Rs.10,54,150/- (including Rs.96000/-, stated to be on account of two excess loan installment – whatever that may mean) during the year. The assessee could not furnish any satisfactory answer, and neither could he explain the cash deposits in his disclosed bank account with J&K Bank (Shalimar Road, Jammu Branch) (Account #2) at Rs.92,63,133/- for the year; the gross receipt per his final accounts being only at Rs.28,49,360/-. The Assessing Officer (AO), accordingly, brought these differences to tax as unexplained credits, and the assessed the income at Rs.77,96,440 income, as under:

(a) Income returned	: Rs. 4,24,520/- (5,03,420 – 78,900)
(b) Unexplained Cash Credits in A/c 1 (Rs.10,54,150 – Rs.96,000)	: Rs. 9,58,150/-
(c) Unexplained cash credit in A/c 2 (Rs.92,63,133 – Rs.28,49,360)	: Rs.64,13,773/-

In appeal, the Id. CIT(A) was of the view that the assessee having no other source of income, the undisclosed receipts ought to be regarded, as contended, as the business receipts of his transport business, and which may be assessed at, again, as contended, eight per cent. (8%) thereof, even as held by the Tribunal in *Sarwan Kumar Sharma v. ITO* (in ITA No. 2302/Ahd/2011).

3. Before us, it was argued by the Id. counsel for the assessee, Sh. Jain, relying *CIT v. President Industries* [2002] 258 ITR 654 (Guj) and *CIT v. Balchand Ajit Kumar* [2003] 263 ITR 610 (MP) that the entire receipt could not be regarded as undisclosed income, and that it is only the profit embedded in the sale receipt which could be regarded as income and subject to tax, and toward which the first

appellate authority had made a reasonable estimate at 8%. The ld. senior Departmental Representative (Sr. DR) would, on the other hand, place reliance on the decision in *Pr. CIT v. Khushiram & Sons Foods Pvt. Ltd.* [2016]-TIOL-1594-SC-P&H-IT to advance the proposition that merely because the assessee carries on some business, it does not follow that the income offered (to tax) is his business income. Income cannot be assessed under a particular head unless the assessee furnishes evidence in its respect.

Sh. Jain, on being questioned by the Bench as to if he could explain the debits and the credits in the two bank accounts, would answer in the affirmative, furnishing a copy of the two bank accounts (at PB pgs. 6-23) as well as the calculation chart working the additional income (i.e., apart from that returned) at Rs.7.10 lacs, i.e., as against Rs.5.90 lacs (at the rate of 8% of Rs.73.72 lacs) in terms of the impugned order (PB pg. 24). The same, he would urge, correctly works out the income assessable at the stated rate of 8%.

4. We have heard the parties, and perused the material on record.

The principal issue that arises in the instant case, as apparent, is the correct head of income under which the assessee's receipt – by way of cash or bank transfer, in his two bank accounts, to the extent unaccounted (in his regular accounts), ought to be assessed. The secondary question is as regards the quantum of income assessable, i.e., *qua* the said receipt.

The first question that arises *qua* the first issue is as to whether the assessee has discharged the onus on it to satisfactorily explain the nature and source of the deposits in his two bank accounts, i.e., to the extent not forming part of his regular accounts. Clearly, the issue of the nature of the receipt and, thus, the correct head/s of income under which the same is assessable, are inextricably related thereto, i.e., assessee's explanation as well as the acceptability thereof. The facts of his case

being in his knowledge, the burden cannot be transferred to the AO, as does the Id. CIT(A). The Apex Court has per its' decisions, as in *CIT v. Devi Prasad Vishvanath Prasad* [1969] 72 ITR 194 (SC) and *Roshan Di Hatti v. CIT* [1977] 107 ITR 938 (SC) abundantly clarified that where there is an unexplained credit, it is open to the Income-Tax Officer to hold that it is the income of the assessee, and no further burden lies on him to show that the income is from any particular source. It is for the assessee to prove that, even if the cash credit represents income, it is from the source which has already been taxed. The decision by the Hon'ble jurisdictional High Court in *Khushiram & Sons Foods Pvt. Ltd.* (supra) is in tandem with the said decisions, supporting the Revenue's case. The decisions relied upon by the assessee do not detract therefrom or support the assessee's case in-as-much as they are premised on the fact that the sales cannot be regarded as income, and which is only axiomatic. Whether, however, the same, in fact, represent sales, is the question – a matter of fact, the onus to show which is on the assessee.

Coming to the assessee's explanation; the matter being principally factual, there is no definite explanation. Vide letter dated 10.3.2014 (refer para 5 of the assessment order), he agrees to being assessed at the peak amount (in the bank account), which is not accepted by the AO as there was nothing to exhibit the rotation of the funds; the assessee not dealing in any goods, which could be regarded as being bought and sold, but in plying vehicles, receiving hire charges. In answer to Question (Q.) 13 (of the statement u/s. 131(1)(d) dated 18.3.2014), the assessee states the receipts to be a part of his transport business. However, in answer Q. 14, when asked to explain the difference in the disclosed gross receipt (amounting to Rs.86,86,650), and, again, at Q.19, he expresses his inability to explain the said differences.

Be that as it may, the assessee has stated the unaccounted credits to be the receipts of his transport business, with the withdrawals there-from being toward various outgoings – on capital (viz. payment of margin money or loan installment) or revenue account, besides personal investment, withdrawals, etc. As it appears, in answers to Qs. 14 and 19, the assessee has expressed his inability to reconcile these differences, being admittedly not accounted for. The assessee admittedly has a fleet of buses, with route permits, asked for by the AO, and which were to be produced on 19/3/2014 (in answer of Q. 17). As such, in our clear view, in the absence of anything to the contrary, there is no reason that the assessee's explanation be not accepted and the receipts regarded as of his business. We are, thus, in principle, in agreement with the impugned order in this regard.

There is, however, no basis for the estimation of the income at 8%, contradicted in fact by the assessee's own operating statement (PB pg. 4) which discloses a profit of Rs.2.40 lacs against the receipt 28.49 lacs even as the same provides for depreciation on all the vehicles, even as, admittedly, represents only a fraction of the gross revenue receipt of the (transport) business. Why, the calculation sheet by the assessee itself works to a higher amount (PB pg. 24). Here it needs to be clarified that the assessee admittedly having and running only one business, could not possibly be assessed at two different profit rates in its' respect, i.e., one for the disclosed, and the other for the undisclosed, receipts, both being of, and forming part of, the same, integral, one business. Not appreciating and factoring this while quantifying the income is the principal flaw in the impugned order, with which we are otherwise in agreement. The very fact that the assessee has claimed some expenditure, viz. depreciation, bank interest, insurance, etc., in respect of all the assets, while disclosing only a fraction of the total receipt of his business, exhibits, if one was necessary, that the disclosed profit does not reflect the income of his business correctly, in which case the disclosed profit rate could

be applied to the total receipt. Needless to add, the business income has to be assessed at a single sum for the said business, and toward which estimation, the assessee – only who is in the know of his affairs, shall extend full cooperation to the AO.

The matter, accordingly, toward this aspect, i.e., quantification of the income *qua* the undisclosed receipt in the two bank accounts, forming part of the assessee's cash flow for the relevant year, is restored to the file of the AO, who shall decide the same addressing the various differences borne out by the record, to some of which we may refer, and in terms of our following observations:

(a) the income from the partnership business would be in terms of his return and that assessed, of course subject to any changes in the income of the partnership as assessed;

(b) the entire receipt in the two bank accounts, numbered 1 & 2, stated to be at Rs.92,63,133 and Rs.22,72,877, i.e., irrespective of whether it is by way of cash or bank transfer, be categorized either as a capital or a revenue receipt;

(c) the withdrawals in these two accounts shall, similarly, be categorized as follows:

- revenue expenses (of the business);
- capital expenses (of the business);
- personal investments;
- personal withdrawals, as toward household, rent, etc.

(d) allowance of depreciation on fixed assets to be on all the vehicles, in accordance with law, i.e., subject to the assessee exhibiting the user (by way of permit) for that acquired during the year;

(e) assessment of income by way of commission, credited directly to the capital account, at the sum returned, which appears to be assessed as such, and under the head of income it is; the same having a direct bearing on the assessee's cash flow, and bank interest (credited in the bank accounts) as income from other sources. Of course, the deduction u/c. VI-A, if any, where exigible, is to be allowed.

Before parting, it may be added that the AO shall adopt a realistic approach in the matter, as it may be that the assessee does not have or has not retained the vouchers for all the expenses, notably diesel expenses, claimed at Rs.4.28 lacs on a receipt of Rs.28.49 lacs, in which case the assessee shall clarify a reasonable basis for the same.

We decide accordingly.

5. In the result, the Revenue's appeal is allowed for statistical purposes.

*Order pronounced in the open court on May 30, 2019*

Sd/-  
(N. K. Choudhry)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Date: 30.05.2019

*/GP/Sr/ Ps.*

Copy of the order forwarded to:

- (1) The Appellant: Income Tax Officer, Ward-2(3), Aaykar Bhawan,  
Panama Chowk, Jammu
- (2) The Respondent: Sudershan Kumar Sharma, Vikas Lane, Talab Tillo, Jammu
- (3) The CIT(Appeals), Jammu
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

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By Order