

**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. 869/CHD/2018

निर्धारण वर्ष / Assessment Year : 2006-07

M/s Best Buy Commodities P.Ltd., 70-New Lajpat Nagar, Ludhiana.	बनाम VS	The ITO, Ward – VI(1), Ludhiana.
स्थायी लेखा सं./PAN No: AACCB7846C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Tej Mohan Singh, Proxy Counsel
राजस्व की ओर से/ Revenue by : Shri Harjinder Singh, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 23.05.2019

उद्घोषणा की तारीख/Date of Pronouncement : 04.06.2019

आदेश/ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 16.07.2018 of CIT(A)-3, Ludhiana pertaining to 2006-07 assessment year wherein the assessee raises jurisdictional issue vide ground No. 1 and agitates against the addition sustained vide ground No. 2.

2. However, before proceeding to the grounds, it is appropriate to refer to one day's delay pointed out by the Registry. A perusal of the explanation available on record shows that the assessee has pleaded that his counsel Shri Ajay Chaudhry expired on 16.03.2018 i.e. on the date of the CIT(A)'s order and on account of the peculiar circumstances pleading a human error, one day's delay is explained as inadvertent mistake. The explanation offered is not opposed by the ld. Sr.DR. Accordingly, considering the same, delay of one day is condoned.

3. The ld. AR has filed an application seeking time. However, considering the material available on record, it was deemed appropriate to reject the application. Mr. T.M.Singh, Advocate appearing as Proxy Counsel for the ld. AR was present in the Court.

3. The department was represented by Mr. H.Singh who relied upon the orders.

4. I have heard the submissions and perused the material available on record. A perusal of the record shows that in the facts of the present case the assessee is stated to be trading in commodities. The AO re-opened the assessment relying upon Section 147(b) of the Income Tax Act,1961. The assessee was required to support its computerized ledger cash book etc. Since supporting Client Register, Sauda Book, Day Book was not produced by the assessee in the re-assessment proceedings, the assessee's deposits in the bank accounts were questioned. The Director of the assessee company was called for by the Assessing Officer. The Director stated that the cash deposits in the bank account represented the cash receipts from his clients on whose behalf the company traded in the commodities. Statement was recorded during the course of assessment proceedings on 20.12.2011. The AO, however considering the evidences made available held it to be not sufficient as the details of the clients as per ledger account were in single names like Arun, Baggu, Kavita etc. Accordingly, in view thereof after affording a reasonable opportunity, addition of Rs. 11,39,500/- was made in the hands of the assessee.

5. The assessee carried the issue in appeal before the CIT(A). Before him also some evidence was filed. The said evidence was confronted to the AO and considering his objection, the same was discarded and the addition was sustained.

6. The relevant evidence relied upon by the assessee rejected by the AO and confirmed by the CIT(A) is extracted hereunder for ready reference :

<i>S.No.</i>	<i>Cash Deposited</i>	<i>Date</i>	<i>Company</i>	<i>Comments</i>
1	Rs. 49,500	07.03.2006	-	No reply received
2	Rs. 15,000	10.03.2006	-	No reply received

3	Rs. 3,25,000	14.03.2006	Renny Steel Castings Pvt. Ltd.	No payment of Rs. 3,25,000/- made on 14.03.2006
4	Rs.5,00,000	18.03.2006	Fidelity Impex Pvt. Ltd.	The company has submitted its reply company has changed its name from Fidelity Impex Pvt. Ltd. to Fidelity commodity Traders Ltd. w.e.f. 05.10.2006 and the assessee concern is not in a position to comment on the transactions of the A. Y. 2005-06 which is very old and not present currently
5	Rs. 2,50,000	25.03.2006	F.M. Steel Alloys Pvt. Ltd.	The company has shown its inability to supply the desired the information as the period relates to a decade back and the records aren't available with the company.

7. A perusal of the record shows that the following explanation was offered on behalf of the assessee :

Keeping in view the ratio of above mentioned decisions of Hon'ble Apex Court it is to be submitted that though during assessment proceedings the case has been made out by the Assessing Officer that certain cash credits had not been explained by the assessee, the fact remains that the assessee was carrying out activities of giving accommodation entries and earning small percentage of commission income from the same. In these activities cash was being taken from various persons. The same cash was deposited by the assessee in his bank account and corresponding cheques were issued to the same persons as "profit from commodity trading". In these transactions what the assessee received was just a small j percentage of the amount involved which was his commission income from the same.

That the assessee has relied on the statement recorded before ADI (Investigation). However the additional evidence could not be produced. Another evidence to prove that the assessee was carrying out such activities is the fact that all the persons to whom such cheques have been issued had shown the amount so received in their respective accounts as profit from commodity trading.

In view of the above discussed legal positions that is the and the factual position on the basis of evidence /facts particularly the statement of the assessee recorded well before the completion of assessment proceedings, it is respectfully prayed that the assessee may be permitted to file this additional evidence under rule 46A of the Income Tax Rules, 1962.

A copy of the statement recorded during the course of survey on 31.10.2007 is enclosed herewith for this purpose.

Further a list of names of the persons alongwith their PAN numbers and addresses is also beings submitted. These are the person from whom assessee received cash and to whom cheques were issued on account of accommodation entries of commodity profit.

As this important evidence was not considered by the assessing officer in spite of the fact that the statement dated 31.10.2007 was very much lying in Assessing Officer's record, in the interest of principles of natural justice and fair play the above evidence may kindly be admitted under rule 46A of the Income Tax Rules 1962.

8. The following submissions extracted by the CIT(A) in the impugned order also discloses that apparently reasons recorded justifying the re-opening itself was not communicated to the assessee :

That assessment has been framed by making addition of Rs. 11,39,500/- in the returned income by treating the cash deposited in bank account relating^{to} trading as income of appellant under section 68 of the Income Tax Act, 1961 without considering the facts in proper perspective.

1. That case has been re-opened under section 147/148 of the Income Tax Act for assessment year 2006-07. That neither the Assessing Officer has communicated reasons nor he has mentined the same in the order itself as basis of reopening and as such the order is against principal of natural justice as the assessee could not object to the reasons(in the absence of reasons communicated to the assessee/appellant as stated baov.e Rather the Learned Assessing officer is put to strict proof to prove whether any reasons have been recorded and necessary acpproval has been taken from superior authorities before reopening the: case.

As such the order is bad in law.

9. Apart from that, it is seen that the following explanation on facts was also offered which though extracted in para 3.6 at page 8 of the impugned order has remained unaddressed:

That out of four notices served none of the assessee has appeared personally to record the statement. The two persons that is M/s Fidelitympex Private Limited and M/s F.M. Steel Alloys Private Limited has shown their inability to submit any data. M/s Penny Steel Castings Private Limited has denied the transaction while as per order sheet M/s Roopam Arcade Private Limited as per order sheet is alleged to have denied deposit of cash through counsel.

10. Accordingly, on a consideration of the factual matrix as highlighted herein above I find that the finding on the jurisdictional issue cannot be said to be in terms of the settled legal principle as the assessee having posed the objection and patently has doubted about the reasons recorded which were never made available to him, in these circumstances, it was incumbent upon the CIT(A) to address the jurisdictional issue and thereafter to proceed to decide the issue on merits if need be. It is also necessary to highlight that for a proper adjudication on the issue on merits, it is necessary also to address the past history of the assessee may also be relevant. It needs to be kept in mind that the AO by his order dated 26.11.2011 is questioning a taxpayer who is returning income of Rs. 11,000/- odd to explain the transactions of 2005. The fresh evidences show that the some companies have changed their names etc. and neither deny nor are in a position to confirm the transaction.

Accordingly, in these peculiar facts it becomes incumbent upon the tax authorities to consider the nature of the activities of the assessee over the years. Accordingly, with these observations, the impugned order is set aside back to the file of the CIT(A) with the direction to first address the jurisdictional challenge posed by the assessee in accordance with law and thereafter proceed to decide the appeal on merits, if need be. Said order was pronounced in the Open Court at the time of hearing itself.

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

Order pronounced in the Open Court on 4th June,2019.

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/ CIT
4. 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