

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

**Before Sh. N. S. Saini, Accountant Member
And**

Sh. N. K. Choudhry, Judicial Member

ITA No. 656/Asr./2016 : Asstt. Year : 2010-11

Shri. Lakhwinder Singh, C.A. Ashwani Kalia, 237, Basant Avenue, Maqbool Road, Amritsar	Vs	Income Tax Officer, Ward-3(2), Amritsar
(APPELLANT)		(RESPONDENT)
PAN No. CEOPS9859D		

**Assessee by : Shri. Aswani Kalia, CA
Revenue by : Sh. Charan Dass, DR**

Date of Hearing :15.05.2019	Date of Pronouncement : 14.06.2019
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ORDER

Per N. S. Saini, Accountant Member:

This is an appeal filed by the assessee against the order of Commissioner of Income Tax(Appeals)-1, Amritsar dated 08.09.2016.

2. In ground No. 3 of the appeal, the grievance of the assessee is that the Commissioner of Income Tax(Appeals) erred in confirming addition of Rs.47,48,000/- as unexplained income from purchase of land.

3. The Assessing Officer observed that during the year under consideration, the assessee has purchased 7 acres of land in Chatiwind Village at Rs.24/- lakh per acre. The share of the assessee was 2.475 acre and accordingly, the assessee made investment in purchase of agricultural land of Rs.59,48,000/-

and expenditure Rs.1,28,000/- was incurred on stamp duty and in this way the total unexplained investment was Rs.60,68,000/-. The assessee has shown investment of Rs.13,20,000/-. The balance amount of Rs.47,48,000/- was added as unexplained investment u/s 69 of the Act, because the assessee failed to produce the books of account in connection with business of property dealer.

4. On appeal, the Commissioner of Income Tax(Appeals) observed that primary contention of the assessee is that the basis of addition has not been confronted to the assessee. The Commissioner of Income Tax(Appeals) observed that the assessee replied to the basis of addition on 26.03.2013 (para 16 of the assessment order). The objection of the assessee that opportunity of cross examination was not given has no validity, since the assessee was in jail and admitted to have purchased the land at Rs.24,00,000/- per acre before police. Hence, the addition has rightly been made by the Assessing Officer.

5. We have heard the rival submissions and perused the orders of the lower authorities and materials available on record. In the instant case, addition of Rs.47,48,000/- was made by the Assessing Officer on account of alleged undisclosed investment for purchase of land. According to the Assessing Officer in a statement given by the assessee in suit No. 22 dated 29.08.2011, the assessee has admitted of having purchase of land @ Rs.24 lakh per acre. The assessee during the year under consideration purchased 7 acres of land. The assessee had shown Rs.13,20,000/- as investment in the said

land. Therefore, the Assessing Officer added Rs.47,48,000/- to the income of the assessee which was confirmed by the Commissioner of Income Tax(Appeals).

6. We find that it is not in dispute that the said statement was not made for income tax assessment. The Hon'ble Madras High Court in the case of CIT Vs N. Swamy (2000) 241 ITR 363 (Mad.) has held as under:

"The assessee's income is to be assessed by the Income Tax Officer on the basis of the material which is required to be considered for the purpose of assessment and ordinarily not on the basis of the statement which the assessee may have given to a third party unless there is material to corroborate that statement of the assessee given to a third party, even if it be a bank. The mere fact that the assessee had made such statement by itself cannot be treated as having resulted in an irrebuttable presumption against the assessee. The burden of showing that the assessee had undisclosed income is on the Revenue. That burden cannot be said to be discharged by merely referring to the statement given by the assessee to a third party in connection with a transaction which was not directly related to the assessment and making that the sole foundation for a finding that the assessee had deliberately suppressed his income."

7. Before us, the assessee could not explain the circumstances in which the said statement was given by him.

8. Further, it is also observed that no material has been brought on record by the Revenue by making independent inquiry to corroborate the said statement. In these circumstances, in our considered view, it shall be in the interest of justice to restore the issue back to the file of the

Assessing Officer for adjudication afresh after proper verification and after allowing reasonable opportunity of hearing to the assessee. We order accordingly. Thus, this ground of appeal is allowed for statistical purposes.

9. In ground No. 1 of the appeal, the grievance of the assessee is that the Commissioner of Income Tax(Appeals) erred in confirming addition of Rs.7,09,000/- made by the Assessing Officer as unexplained deposit in bank account.

10. The brief facts of the case are that the Assessing Officer observed that the assessee has bank account namely, Yes Bank a/c No. 0519110000800. The Assessing Officer observed that the assessee made cash deposits in the bank account as under:

26.10.2009	<i>Initial funds</i>	<i>Rs.5000.00</i>
18.11.2009	<i>Cash Deposits, Amritsar</i>	<i>Rs.1,00,000.00</i>
03.12.2009	<i>Cash Deposits</i>	<i>Rs.99,000.0</i>
11.12.2009	<i>Cash Deposits, Amritsar</i>	<i>Rs.6,00,000.00</i>
17.12.2009	<i>Cash Deposits, Amritsar</i>	<i>Rs.5,000.00</i>
31.03.2010	<i>Cash Deposits, Amritsar</i>	<i>Rs.1,00,000.00</i>
Total deposits credits		Rs.9,09,000/-

11. The assessee submitted that he was an old assessee and filing Income Tax Return regularly. He filed balance sheet along with capital account for the financial year 2008-09 relevant to the assessment year 2009-10 showing cash balance of Rs.6,41,820/-.

12. The Assessing Officer did not find the explanation of the assessee satisfactory and therefore, treated the cash deposit in bank account and added to the income of the assessee.

13. On appeal, the Commissioner of Income Tax(Appeals) held that the opening cash in hand is quite huge when compared to the assessee income shown for the various assessment years. No basis for the opening cash in hand and no evidence has been brought on record to support the same inspite of several opportunity provided. He observed that however the benefit of withdrawal of loan which is withdrawn from bank. Hence, he sustained addition of Rs.7,09,000/- and partly allowed the appeal of the assessee.

14. In ground No. 2 of the appeal, the grievance of the assessee is that the Commissioner of Income Tax(Appeals) erred in confirming the addition of Rs.12,20,500/- made by the Assessing Officer by treating the amount of unsecured loans as accommodation entries.

15. The Assessing Officer observed that the assessee has made source of investment in immovable property of Rs.12,20,000/-. The assessee explained the source for the same as unsecured loan taken by the assessee from the following persons:

<i>i) Harwinder Singh</i>	<i>Rs.200000</i>
<i>ii) Anoop Aggarwal HUF</i>	<i>Rs.220000</i>
<i>iii) Smt. Sushma Sharma</i>	<i>Rs.300000</i>
<i>iv) Dr. K.S. Sharma</i>	<i>Rs.200000</i>
<i>v) Shri. Vishal Sharma</i>	<i>Rs.300000"</i>

16. The Assessing Officer on examining the bank account of loan creditor observed that cash deposits of the same amount on or a day before the issue of cheque was made by the loan creditors. The Assessing Officer observed that the assessee did not produce loan creditors nor the loan creditors have adhere to the summons issued. Therefore, he opined that it seems that Rs.12,20,500/- are accommodation entries. Hence, he made addition of the same u/s 68 of the Act to the income of the assessee.

17. On appeal, the Commissioner of Income Tax(Appeals) observed that the loans taken by the assessee are devoid on genuineness as the assessee failed to show why unsecured loans were given and credibility of the borrowers had not been proved. Therefore, the loans are nothing but accommodation entries wherein in most cases cash has been deposited few days before the issue of cheque or DD from the bank account. Therefore, he confirmed the order of the Assessing Officer.

18. For ground Nos. 1 & 2 of the appeal, it was submitted by the Authorized Representative of the assessee that as the assessee was in jail compliance could not be made by the assessee and prayed for allowing of one more opportunity to the assessee.

19. As we have already restore the issue in ground no. 3 of the appeal to the file of the Assessing Officer, it shall be in the interest of justice to also restore the issues involved in ground nos. 1 & 2 of the assessee to the file of the Assessing Officer to allow one more opportunity to the assessee and thereafter

adjudicate the issue afresh as per law. Thus, these grounds of appeal of the assessee are allowed for statistical purposes.

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

(Order Pronounced in the Court on 14th day of June 2019 at Amritsar)

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

Sd/-
(N. S. Saini)
Accountant Member

Dated: 14/06/2019

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR