

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘A’, CHANDIGARH

श्रीमती दिवा सिंह, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SMT.DIVA SINGH, JUDICIAL MEMBER
AND SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.163/Chd/2019

निर्धारण वर्ष / Assessment Year : 2010-11

Sh.Chamkaur Singh S/o Sh.Jaswant Singh (Deceased), the Legal Heir Sh.Harvinder Singh S/o Sh.Chamkaur Singh, H.No.31, VPO Bharawal Kalan, Tehsil Jagraon, District Ludhiana.	बनाम	The Income Tax Officer, Ward-1, Jagraon.
स्थायी लेखा सं./PAN NO: CLXPS2366B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: None

राजस्व की ओर से/ Revenue by : Smt.Chanderkanta, Sr.DR

सुनवाई की तारीख/Date of Hearing : 03.07.2019

उद्घोषणा की तारीख/Date of Pronouncement: 09.07.2019

आदेश/ORDER

Per Annapurna Gupta, Accountant Member:

This appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-3, Ludhiana [(in short ‘CIT(A)’] dated 5.11.2018, passed u/s

250(6) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), relating to assessment year 2010-11.

2. None appeared on behalf of the assessee. Due notice of hearing was issued on 29.5.2019 and served on the assessee. No application seeking adjournment was filed. It appears that the assessee is not interested in prosecuting the appeal. Therefore, the appeal was proceeded to be heard with and adjudicated ex-parte on merits.

3. From the orders of the authorities below, the facts emanating are that proceedings u/s 147 of the Act were initiated on the assessee on the information received from DDIT(Investigation)-3, Ludhiana that the assessee had deposited cash of Rs.40.70 lacs in his bank account maintained with Oriental Bank of Commerce, Jagraon and Rs.29,45,500/- in the Bank of India, Ludhiana. The assessee was asked to explain the source of the same. But the proceedings remained unattended. Therefore, in the absence of any explanation with respect to the cash deposits, the entire deposits in the two bank accounts amounting to Rs.64,15,500/- were treated as undisclosed income of

the assessee and added back to the returned income as unexplained cash deposits u/s 68 of the Act.

4. The assessee went in appeal before the Ld.CIT(A) and filed evidences before him alongwith application seeking admission of the same stating that in view of the sudden demise of his father during assessment proceedings, the assessee could not concentrate and furnish reply and, therefore, additional evidences be admitted at the appellate stage. The Ld.CIT(A) on considering facts and circumstances of the case found merit in the application filed by the assessee and admitted the additional evidence filed. Thereafter on considering the additional evidences, the Ld.CIT(A) found that the deposits with the bank to the extent of Rs.43,40,000/- stood explained by the assessee as having been made out of consideration received from sale of four properties owned by him. The Ld.CIT(A) found that the assessee had substantiated the explanation also by filing sale deed pertaining to the four properties. He, therefore, deleted the addition made to the extent of Rs.43,40,000/-. The addition made on account of remaining cash deposits were

upheld by him as unexplained in the absence of relevant evidence.

5. Aggrieved by this order of the CIT(A), the assessee has come up in appeal before us, raising the following grounds:

- “1. *That the Ld. Commissioner of Income Tax (Appeals) has erred both on facts and law while passing this order.*
2. *That the Ld. Commissioner of Income Tax (Appeals), Ludhiana has erred in law and facts in sustaining the addition made by the learned assessing officer without any basis and on the basis of conjectures and surmises.*
3. *That there was no reason to believe or any tangible material with regard to reopening of the case under section 148 and therefore the whole proceedings are void ab initio.*
4. *That the Ld. Commissioner of Income Tax (Appeals) was not justified in invoking the provisions of section 68 of the Income Tax Act, 1961 and thereby making addition of Rs.19,90,000/- in respect of cash deposit in bank account.*
5. *That the authorities below did not appreciate that the provisions of section 68 are not at all applicable in this case, as the assessee admittedly is not maintaining any books of accounts. As such, the provisions of section 68 are not at all applicable and the very basis on which the addition was made is liable to be deleted.*
6. *That the Ld. Commissioner of Income Tax. (Appeals) has concluded the assessment without following the principle of natural justice*

is bad in law and the addition in respect of cash deposit in bank account is not giving the credit of peak theory. The basic idea behind the peak credit theory is to avoid double addition and to bring only the actual income of the assessee to suffer tax.

7. *That the Ld. AO has failed to consider that the appellant deposited the cash in the bank against the self-withdrawal from the bank account and sale of Agriculture land. Bank Statement of the assessee shows that the cash was deposited against the corresponding withdrawals of the amount.*
8. *The Ld. Commissioner of Income Tax (Appeals) made the addition merely on estimate basis and the Ld. Assessing officer without bringing on record any material to show that the assessee has earned any income in excess of the amount disclosed in the return.*
9. *That the appellant craves to allow to add or to amend any ground of appeal before or at the time of hearing of appeal.*
10. *That it is prayed that the addition may kindly be deleted.”*

6. On going through the grounds above, we find that the assessee has raised a legal ground in ground No.3 challenging the validity of the assessment framed u/s 148 of the Act. Before the Ld.CIT(A), we find that no such ground had been raised by the assessee and, therefore, the Ld.CIT(A) had no occasion to adjudicate the same. Since it is a legal ground challenging the validity of the assessment framed itself, the same

needs to be adjudicated first before dealing with the merits of the case. Further since the assessee is unrepresented before us, we consider it fit to restore the issue to the Ld.CIT(A), to adjudicate the same after considering the specific submissions of the assessee ,giving him due opportunity of hearing.

7. Further on merits, we have noted from the order of the CIT(A) that he has sustained the balance addition on account of unexplained cash deposit in bank of Rs.19,90,000/-,by stating that though the assessee had explained the source of the same as from withdrawals from other accounts or from the same bank account, but in the absence of relevant evidence, benefit cannot be given to the assessee.

8. We are of the view that these findings of the CIT(A) are neither here nor there. Where the assessee has admittedly explained the source of the cash deposits as being from withdrawals, the CIT(A) is required to give a specific finding as to how the same remained unexplained and unsubstantiated.

9. For the said reason also, the appeal needs to be adjudicated afresh by the Ld.CIT(A). We, therefore, restore the entire appeal back to the Ld.CIT(A) to decide both the legal issue and the issue raised on merits afresh after given due opportunity of hearing to the assessee. We direct the Ld.CIT(A) to pass a speaking order deciding the issues in accordance with law.

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

Order pronounced in the Open Court.

Sd/-

दिवा सिंह

(DIVA SINGH)

न्यायकि सदस्य/Judicial Member

दिनांक /Dated: 09th July, 2019

रती

Sd/

अन्नपूर्णा गुप्ता

(ANNAPURNA GUPTA)

लेखा सदस्य/Accountant Member

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