

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.5134/Del/2018
Assessment Year: 2011-12

Padam Lal Dua H. No.573, Sector-49, Faridabad PAN No.ADJPD2281J (APPELLANT)	Vs	Income Tax Officer Ward- 2 (1) Faridabad (RESPONDENT)
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Appellant by	Sh. D. C. Garg, CA
Respondent by	Shri S. L. Anuragi, Sr. DR

Date of hearing:	30/07/2019
Date of Pronouncement:	26/09/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 16.11.2017 of the CIT(A), Faridabad relating to A. Y. 2011-12.

2. This is the second round of litigation before the Tribunal. Earlier the Tribunal vide ITA No.2007/Del/2016 order dated 23.12.2016 had restored the issue to the file of the CIT(A) with certain directions. The Ld. CIT(A) has passed the order again sustaining the addition so made by the Assessing Officer for which the assessee is in appeal before the Tribunal.

3. Facts of the case, in brief, are that the assessee is an individual and had filed his return of income on 31.03.2012 declaring total income of Rs.1,27,980/-. The said return was processed as such u/s. 143 (1) on 22.09.2012. Subsequently the case was selected for scrutiny under CASS and notice u/s.143 (2) of the IT Act was issued to the assessee on 08.09.2012 fixing the case for hearing on 17.09.2012. Since none attended on that date another notice u/s. 143 (2) was again issued on 25.09.2012. Although this notice was duly served at the residence of the assessee, however, there was no compliance. Subsequent notices issued by the Assessing Officer u/s. 143(2) also remained uncomplied with. The Assessing Officer thereafter proceeded to complete the assessment u/s. 144 of the IT Act.

4. The Assessing Officer noted that the assessee in his return of income has declared total income of Rs.1,58,400/- under the head "salary" and Rs.31,800/- under head "income from other sources". However, as per the information received as per AIR the assessee has made cash deposits totaling to Rs.26,50,000/- in his bank account maintained with ING Vaisya Bank Ltd. on different dates. The Assessing Officer issued a questionnaire u/s. 133 (6) to ING Vaisya Bank Limited calling for the statement of account of the assessee. From the bank statement so obtained he noted that out of the cash deposit so made the assessee has either purchased Demand drafts or issued cheques to his daughter Ms. Richa Dua and Ms. Bhawna and no cash withdrawals has been made against the above cash

deposits. Further as against the opening cash balance at Rs.5,639/- on 01.04.2010, the closing balance as on 31.03.2011 was Rs.7,905/-. Since the source of such deposits remained unexplained, the Assessing Officer made addition of Rs.26,65,000/- to the total income of the assessee on account of unexplained cash deposits.

5. The assessee filed appeal before the CIT(A) and the Ld. CIT(A) vide order dated 20.01.2016 sustained the addition so made by the Assessing Officer. The assessee approached the Tribunal and the Tribunal restored the issue to the file of the CIT(A) for fresh adjudication of the issue.

6. During such set aside proceedings the assessee filed certain additional evidences before the CIT(A) with application under Rule 46A of the IT Rules. The Ld. CIT(A) forwarded those additional evidences to the Assessing Officer to submit his comments and report thereon. The Assessing Officer objected to the admission of such additional evidences on the ground that despite repeated opportunities the assessee did not appear before the Assessing Officer. However, the Assessing Officer also submitted his report on merits with respect to each addition made. The Ld. CIT(A) forwarded the copy of the remand to the assessee and asked for his comments. After considering the submission of the assessee, contents of the remand report of the Assessing Officer and the rejoinder to such remand report by the assessee, the Ld. CIT(A) deleted an amount of Rs.6,80,000/- and sustained the amount of Rs.19,85,000/- by observing as under :-

9. Ground No.3 and 4 deals with fact that the AO made an addition of Rs.26,65,000/- on account of cash deposited in bank account from undisclosed sources.

10. I have carefully considered the facts of the case and gone through the submissions filed by the counsel of the appellant during appellate proceedings together with Remand Report of the AO. The basic crux of the case is that there was a cash deposit of Rs.26.65 Lacs in the bank account of the appellant. During the course of assessment proceedings, the appellant could not furnish any explanation for the same and hence addition of the entire amount was made by the AO. During the course of appellate proceedings and remand proceedings, the appellant furnished explanations for the cash deposit amounting to Rs.26.65 Lacs in the form of confirmations / affidavits from various persons, stating that the cash deposited by the appellant in his bank account have been given to the appellant by these people. The evidence so furnished by the appellant have been examined by the AO during the remand proceedings and the remand report so submitted has been reproduced earlier. Considering the remand report on the various evidences filed by the appellant my findings are as below:

(i) Anil Sachdeva : The relevant part of the remand report on this amount of Rs.3,00,000/- is as below:

"Sh. Anil Sachdeva has stated that he had never signed the affidavit. His telephone number mentioned in the affidavit is correct but his PAN is not correct. The other facts regarding giving of Rs.3,00,000/- for

getting Demand Draft in favour of Mis Hundai Motors ltd are not correct. He had not given any amount of Rs.3,00,000/- to Sh. Padam Lal Dua in cash in the F.Y. 2010-11 and also had not purchased any vehicle in the F. Y. 2010-11."

As evident from above the appellant's contention that this money had been given by Sh. Anil Sachdeva to the appellant fails on all counts. Hence, I see no reason to provide any relief to the appellant for this amount.

(ii) Sanjay Khattar The relevant part of the remand report on this amount of Rs.2,50,000/- is as below:

"Sh. Sanjay Khatter has stated that he had never signed the affidavit. His telephone number & PAN mentioned in the affidavit is correct. The other facts regarding giving of Rs.2,50,000/- for getting Demand Draft in favour of Sh. Suresh and Chakresh are not correct. He had never given any amount of Rs.2,50,000/- to Sh. Padam Lal Dua in cash. He did not know any Suresh or Chakresh."

As evident from above the appellant's contention that this money had been given by Sh. Sanjay Khattar to the appellant fails on all counts. Hence I see no reason to provide any relief to the appellant for this amount.

(iii) Bhawna Narula : The relevant part of the remand report on this amount of Rs.13,60,000/- is as below:

"Summon to Ms Bhawna Narula received back unserved with the postal comments" BaarBaar lene wala bandmiltai hai". Sh. Padam Lal Dua, assessee was intimated telephonically about this fact and was requested to produce Ms Bhawna Narula for recording of her statement. But all in vain."

As evident from above the appellant's contention that this money had been given by Ms. Bhawna Narula to the appellant fails on all counts. Hence I see no reason to provide any relief to the appellant for this amount.

(iv) Prakash Sachdeva : Therelevant part of the remand report on this amount of Rs.6,80,000/- is as below:

"Sh. Parkash Sachdeva has accepted in his statement that he had given a sum of Rs.6,90,000/- to Sh. Padam lal Dua for purchase of a Demand Draft in favour of Smt. Vijay laxmi Gupta from his wife Smt. Rekha Sachdeva with other three persons had purchased residential house. He has also explained the source of cash amount of Rs.6,90,000/- given to Sh. Padam lal Dua for Demand Draft."

As evident from above the appellant's contention, that this money had been given by Sh. Prakash Sachdeva to the appellant has been accepted by Sh. Prakash Sachdeva, during the course of his statement recorded before the AO on 05.06.2017. In view of these facts, the appellant is entitled to relief to the extent of Rs.6,80,000/-.

*11. To sum up on the basis of the enquiries conducted by the AO the appellant has been able to satisfactorily explain the source of Rs.6,80,000/- and thus the addition to this extent made by the AO is deleted. Thus, **these grounds of the appellant are partly allowed.** The AO is directed to share the statements of all the four persons recorded by the AO namely Sh. Anil Sachdeva, Sh. Sanjay Khattar, Sh. Parkash Sachdeva and Ms. Bhawna Narula with the respective AOs of these assesseees, for taking suitable action not only under the under Income Tax Act but also under other statutory provisions.*

taking suitable action not only under the under Income Tax Act but also under other statutory provisions."

7. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :-

1. *That the Learned Commissioner of Income Tax (Appeals), Faridabad, has erred in law as well as on facts and in circumstances of the case in upholding the addition of Rs.19,85,000/- out of total addition of Rs.26,65,000/- made by the AO on account of cash deposit.*
2. *That the Learned Commissioner of Income Tax (Appeals), Faridabad, has erred in law as well as on facts and in circumstances of the case in upholding addition without appreciating duly sworn affidavit submitted by the assessee.*
3. *That the Learned Commissioner of Income Tax (Appeals), Faridabad, has erred in law as well as on facts and in circumstances of the case in upholding addition merely on the basis of statement of depositors given in the remand proceedings in deviation with the affidavits originally submitted by them.*
4. *That the Learned Commissioner of Income Tax (Appeals), Faridabad, has erred in law as well as on facts and in circumstances of the case in upholding addition merely on the basis of remand report prepared by the AO without providing opportunity to cross examine the persons who have “deviated from their original affidavits, hence the AO as well as CIT(A) have grossly violated principals of natural justice.*
5. *That the Learned Commissioner of Income Tax (Appeals), Faridabad, has erred in law as well as on facts and in circumstances of the case in upholding addition without considering the Rejoinder filed on behalf of the assessee against the remand report submitted by the AO.*
6. *That the Learned Commissioner of Income Tax (Appeals), Faridabad, as well as the AO both have erred in law as well as on facts and in circumstances of the case in not taking any action against those persons who during the course of remand proceedings have deviated from their earlier duly sworn affidavits.*
7. *The appellant craves leave to add, amend or vary from the aforesaid grounds of appeal at or before the time of hearing.*

8. The Ld. Counsel for the assessee submitted that during the second round of litigation the assessee furnished the names, addresses, contact numbers and affidavits of the persons whose cash was deposited and demand draft was issued in lieu of such cash deposit through an application for admission of additional evidences under Rule 46 A of the Income Tax Rules 1962. He submitted that as per the direction of the Tribunal the Ld. CIT(A) forwarded these additional evidences to the Assessing Officer for his remand report. During the remand proceedings the assessee submitted that the necessary information as required by the Assessing Officer including copies of duly sworn affidavits signed by Mr. Anil Sachdeva, Sh. Sanjay Khattar, Sh. Prakash Sachdeva and Ms. Bhawna Narula, the beneficiaries who have purchased drafts against cash was furnished. The assessee had also furnished complete details of the beneficiaries Ms. Bhawna Narula. He submitted that the Assessing Officer had also recorded the statement of the assessee on oath wherein the assessee had stated all the facts correctly. However, neither the Assessing Officer nor the CIT(A) has considered this important document of vital importance. He submitted that the Ld. CIT(A) on the basis of statement of Mr. Prakash Sachdeva confirmed the addition pertaining to Mr. Anil Rs.3,00,000/- Mr. Sanjay Khattar Rs.2,50,000/- and Ms. Bhawna Narula Rs.13,60,000/-. He submitted that the Ld. CIT(A) without appreciating the facts correctly and without providing opportunity to cross-examine the persons, who have deviated from their original affidavits, had sustained the addition merely

on the basis of remand report of the Assessing Officer. Further the rejoinder to the remand report has not been properly considered by the CIT(A). He accordingly submitted that the addition made by the CIT(A) should be deleted.

9. The Ld. DR on the other hand heavily relied on the order of the CIT(A). He submitted that to substantiate the source of the cash deposits in the bank account the assessee had produced the statements of certain parties before the Assessing Officer. However, when the Assessing Officer recorded the statements of those persons on oath they flatly denied to have made the cash deposits on behalf of the assessee in his bank account. Therefore, when the persons have denied to have made such cash deposits, the Ld. CIT(A) had correctly sustained the addition of Rs.19,85,000/- made to the total income of the assessee. Therefore, the order of the CIT(A) being in accordance with law and fact should be upheld.

10. I have considered the rival arguments made by both the sides, perused the orders of the AO and Ld.CIT(A) and the paper book filed on behalf of the assessee. I find the Assessing Officer in the instant case had made addition of Rs.26,65,000/- being the unexplained cash deposit in the bank account of the assessee. I find the addition was sustained by the CIT(A) in the first round and the matter came before the Tribunal. I find the Tribunal vide order dated 23.12.2016 restored the issue to the file of the CIT(A) with certain directions. I find the Ld. CIT(A) in the set aside proceedings admitted the additional evidences so filed before him and forwarded the same to the Assessing Officer

for his comments and a remand report. I find after considering the remand report of the Assessing Officer the Ld. CIT(A) deleted an amount of Rs.6,80,000/- being the amount given by Sh. Prakash. However, he sustained the balance addition, the reason of which has already been reproduced in the preceding paragraphs. A perusal of the order of the CIT(A) shows that Sh. Anil Sachdeva in his statement had clearly stated that he had never signed the affidavit nor has given Rs.3 lacs for getting the demand draft in favour of M/s. Hundai Motors Ltd. Further PAN number given by the assessee is also incorrect. Similarly Sh. Sanjay Khattar had also stated that neither he has signed the affidavit nor has given Rs.2,50,000/- for getting demand draft in favour of the assessee Sh. Suresh and Chakresh. He had never given any amount of Rs.2,50,000/- to Sh. Padam Lal Dua i.e. assessee. Similarly summon issued to Ms. Bhawna Narula was returned back unserved and the assessee, despite being asked by the Assessing Officer to produce the said party, never produced Ms. Bhawna Narula who has given an amount of Rs.13,60,000/- to the assessee as claimed by him. A perusal of the order of the CIT(A) shows that assessee has forged the affidavit of Sh. Anil Sachdeva and Sh. Sanjay Khattar and failed to produce Ms. Bhawna Narula before the Assessing Officer despite being given opportunity by the Assessing Officer during remand proceedings. The arguments of the Ld. Counsel for the assessee that opportunity to cross-examination was not given falls flat especially when the two persons have stated before the Assessing Officer on oath that neither they have signed the

affidavit nor have given any such amount to the assessee. Similarly Ms. Bhawna Narula was never produced before the Assessing Officer for recording her statement despite being asked by the Assessing Officer to do so since the summon issued to her was returned unserved. The Ld. Counsel for the assessee also failed to justify the source of the balance amount of Rs.75000/- i.e. (1985000 -19,10,000 i.e. (3,00,000+250000+13,60,000). Under these circumstances and in view of the detailed order passed by the CIT(A) on this issue I find that no infirmity in the same. Accordingly the same is upheld and the grounds raised by the assessee are dismissed.

11. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 26.09.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 26.09.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	27.08.2019
Date on which the typed draft is placed before the dictating Member	28.08.2019
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	26.09.2019
Date on which the final order is uploaded on the website of ITAT	27.09.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	