

आयकर अपीलिय अ धकरण, अमृतसर न्यायपीठ, अमृतसर
IN THE INCOME TAX APPELLATE TRIBUNAL AMRITSAR BENCH AMRITSAR
BEFORE SHRI L.P. SAHU, AM & SHRI RAVISH SOOD, JM

आयकर अपील सं./ITA No.167/ASR/2017
(निर्धारण वर्ष / Assessment Year :2010-2011)

Sh. Kirpal Singh, S/o Ravel Singh, H.No.644, Guru Nanak Nagar, Kapurthala	Vs.	ITO, Kapurthala-1, Kapurthala
स्थायी लेखा सं./PANNo. : BSYPS 8252 D		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri Sandeep Vijh, CA
राजस्व की ओर से /Revenue by	:	Shri Charan Dass, DR

सुनवाई की तारीख / Date of Hearing	:	04/02/2020
घोषणा की तारीख/ Date of Pronouncement	:	05/02/2020

आदेश / ORDER

Per L.P.Sahu, AM:

The assessee has filed this appeal against the order of CIT(A), Jalandhar, dated 06.02.2017 for assessment year 2010-2011, on the following grounds :-

1. *The Learned Commissioner of Income Tax (Appeals), has erred in upholding addition u/s 69A to the extent of Rs. 6,25,000/- in respect of the deposits in bank account. The detailed submissions on the issue have not been properly appreciated.*
 2. *The Learned Commissioner of Income Tax (Appeals) has erred in upholding the addition made u/s 69A at Rs.94,000/- in respect of cash deposits in bank account. The detailed submissions on the issue have not been properly appreciated.*
2. Facts in brief are that the assessee is an individual, deriving income from salary has filed his return of income on 30.07.2010 declaring total income at Rs.3,54,780/-, which was processed

u/s.143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny and statutory notices were issued to the assessee. The assessee during the relevant assessment year was sales Manager of ICICI Prudential Life Insurance Company Limited. The assessee submitted that the bank account of the assessee was used for the business purpose of the company and the cash was collected from the agents which was deposited into his bank account. Thereafter the premium of the policy holders/prospective policy holders was paid through his bank account. Thereafter the AO asked the assessee to substantiate the cash deposits in his bank account. During the course of assessment proceedings, the AO found that the assessee has deposited cash of Rs.7,25,000/- in his bank account out of which Rs.75,000/- was accepted by the AO and remaining Rs.6,75,000/- was treated by the AO as unexplained deposit in his bank account.

3. Feeling aggrieved from the assessment order, the assessee appealed before the CIT(A) and the CIT(A) partly allowed the appeal of the assessee.

4. Against the order of the CIT(A), the assessee is in further appeal before the Income Tax Appellate Tribunal.

5. Ld. AR before us filed written submission which read as under :-

1. *The first ground of appeal is that the ld. CIT(A) has erred in upholding addition u/ s 69A to the extent of Rs. 6,25,000 in respect of the deposits in the bank account. The detailed submissions on the issue have not been appreciated. The facts of the case as also brought to the notice of the ld. CIT(A) are that the assessee during*

the year was a sales manager with ICICI Prudential Insurance Co. Ltd. The assessee had deposited Rs. 7,25,000 in cash in his bank accounts with ICICI Bank and HDFC Bank. The deposits in the bank account were explained in the reply dated 30/11/2012 through a cash flow statement wherein benefit of amounts withdrawn in the earlier year was also considered. The deposit of Rs. 300,000 was explained in point no. 1 and the deposit of Rs. 425,000 was explained at point no. 5. Copy of the covering reply is enclosed at page no. 8 & 9. Regarding the deposit of Rs. 425,000, a sum of Rs. 50,000 was accepted as loan from Sh. Pishor Singh and the balance amount of Rs. 375,000 was treated as unexplained and assessed to tax u/s 69A of the Income Tax Act along with the figure of Rs. 3,00,000.

Since funds were available with the assessee on the date of deposit out of the earlier withdrawals, benefit of the same had to be allowed in the absence of any material being placed on record to prove that funds have been used elsewhere. The fact that assessee has made withdrawals even though he had cash in hand is not detrimental to the contention of the assessee. Accumulation of cash out of the withdrawals made should not have been disbelieved. Statement explaining the cash deposits in both the bank accounts as filed with the assessing officer are enclosed at page no.10 & 11.

While dealing with the specifics, the assessing officer was of the view that opening balance of cash in hand has been taken at Rs. 50,000 as on 1/4/2008 without any evidence. In this regard it is submitted that every person does have some cash balance maintained to meet any urgent situation. It is never a situation that the cash in hand with a person does down to nil at the end of each month. The assessee during the year was a sales Manager of Prudential Life Insurance Co. Ltd and cash balance of Rs. 50,000 in the hands of the assessee was most reasonable. Moreover for a small level of cash balance maintained at home, no evidence can be adduced. The assessee had also filed the cash flow statement for the preceding assessment year i.e. Assessment Year 2009-10 to explain the cash in hand available for the year under consideration. Copy of the cash flow statement for the preceding year as filed with the assessing officer are enclosed at page no. 12 to 16. Being the son of a Head Constable in Punjab Police - Sh. Ravel Singh who had passed away in 1986, the assessee was staying with his widow mother and real brother in the police quarter. This fact stand mentioned at point no. 2 of the submission dated 30/11/2012 filed at page no. 8 & 9 above. The household contribution of the assessee was about Rs. 1.70 lakhs as the pension received by his mother was also available. Copy of the pension account as filed with the assessing officer is enclosed at page no. 17 to 19. The real brother of the assessee i.e. Sh. Sukhraj Singh was a head constable in Punjab Police and was running/maintaining the house. Withdrawals made by the

assessee through ATM card cannot also be viewed against the assessee. A person may have cash available at home but if he needs money while he is out of home, he can withdraw through ATM also. The assessing officer was also wrong in stating that no cash was available on the date of deposit in the bank account. If the cash balance as on 31/3/2009 is extended further up to the date of specific deposit which have been doubted by the assessing officer, adequate cash in hand would be available with the assessee. Cash flow of own funds is enclosed at' page no. 20 & 21. As per the cash flow statement, even after making deposits in bank, sufficient cash balance was available.

Regarding the deposit of Rs. 4,25,000 it is submitted that for this deposit, the amount received from his Chachaji - Sh. Pishor Singh at Rs. 200,000 was also available besides the amount received from mother at Rs. 100,000 and the amount contributed from Sh. Sukhraj Singh at Rs. 100,000 [please see page no. 21]. Copy of the affidavit from real brother Sh. Sukhraj Singh and mother Smt. Harjinder Kaur stand enclosed at page no. 22 & 23. In fact Sh. Sukhraj Singh is also the co-owner of the property whose payment was made through the account of the assessee. Copy of the registration deed of the property which clearly shows that the brother of the assessee Sh. Sukhraj Singh was equal co-owner is enclosed at page no.14 & 15. The funds thus given to his brother for deposit in bank account for making payment for joint property should not have been doubted. Also, the statement of Sh. Pishor Singh was recorded and in response to question no. 9 he clearly confirmed that the withdrawals of Rs. 65,000 made on 18/8/2009 and Rs. 50,000 made on 9/2/2010 was given to nephew along with some money that he had received as advance for wheat crop. With this positive affirmation by the person who had given money, the assessing officer was not justified in reducing the amount received from Rs. 200,000 to Rs. 50,000 only. Copy of the statement of Sh. Pishor Singh is enclosed at page no. 6 to ~. Attention is drawn to the decision of the Punjab & Haryana High Court in the case of CIT vs. Amar Chand & Sons. Copy of the decision is enclosed at page no. 30 to 32 (please see page no. 32).

We would also like to draw your attention to the decision of the Supreme Court in the case of CIT vs. Daulat Ram Rawatmull reported at 87 ITR 347 wherein it was held that merely because the explanation about the source of money furnished by the person in whose name the money was lying deposited was found to be false, it would be remote and farfetched conclusion to hold that the money belonged to the person with whom it was lying deposited. It has also been held by the Supreme Court in the case of CIT vs. Umacharan Shaw reported at 37 ITR 271 that suspicion however strong cannot take place of proof.

When the assessee had given reply for specific withdrawals, there was no reason to disbelieve the same. It was not justified on the

part of the assessing officer to believe part of the statement and disbelieve part of the statement. The reduction of the amount received from Sh. Pishor Singh to Rs. 50,000 was thus not justified. Mother of the assessee - Smt. Harjinder Kaur had funds available with her which were given to her son. As submitted above, the assessee's father was in police and had expired and in his place, his elder son Sh. Sukhraj Singh was given job in Punjab Police. The level of funds in question are not unreasonable to expect from a normal person. In fact after demonetization, the prime minister had himself announced that a deposit of up to Rs. 250,000 in the bank account out of old saving would be considered as reasonable.

The brother of the assessee - Sh. Sukhraj Singh had joined the police in the year 1986. His contribution of Rs. 100,000 is supported by his affidavit enclosed above. Being in police since the death of his father in the year 1986 it is not unreasonable to expect the person to have saved Rs. 100,000 particularly when he was to be the co-owner of the property for which the advance was being given.

Even if the entire source of funds is not believed, adequate cash in hand was available as on the date of deposits and no addition was called for. The cash flow statement filed above may please be considered (please see page no. 20 & 21).

It is further submitted that the assessing officer has given comments just for the purpose of making justifying the addition. We would like to draw your attention to the decision of the Delhi High Court in the case of CIT vs. Kulwant Rai at 291 ITR 36 wherein it was held that in the absence of any material that the cash was spent by the assessee, the Tribunal was justified in holding that the addition was not sustainable. The Rajasthan High Court has in the case of CIT vs. Nanalal Teli reported at 220 CTR 186 held that in the absence of any material that the said amount was spent, the investment could not be treated as out of unexplained sources. The Rajasthan High Court had in the case of CIT vs. Tyaryamal Bal Chand reported at 165 ITR 453 held that benefit for the assessee could claim benefit for intangible additions made in several earlier years. Similar view has been expressed by the Jurisdictional High Court in the case of CIT vs. Prem Chand Jain reported at 189 ITR 320. The Court has in fact held that the benefit of the past intangible additions in the case of the firm would be available in the hands of the partner for household expenses. The jurisdictional High Court has in the case of Shivcharan Dass vs. CIT reported at 126 ITR 263 held that where the amount was disclosed under VDIS and thereafter the amount was lying in the assessee's house, in the absence of any evidence to the effect that the said amount was used elsewhere, the department was not justified in rejecting the explanation. This view was expressed even where there was a gap of many years. Similar view has been expressed by the jurisdictional IT AT in the

case of Smt. Ravinder Kaur vs. ITO. Copy of the decision is enclosed at page no. 33 to 36.

It may also be submitted that the section 69A does not deal with the addition the nature of which has been made by the assessing officer.

The above submissions as well as the rejoinder were before the Id. CIT(A) who has incorporated these at page no. 4 to 9 of the impugned order. The findings of the assessing officer are contained in para no. 4.8 to 4.11 at page no. 10 and 11 of the impugned order. It was observed by the Id. CIT(A) that as far as customers / agents cash was concerned, no customer would leave cash to this extent with the agent (cash flow statement of earlier year at page no. 15 & 16) whereas cash balance of Rs. 50,000 in self cash statement was accepted for which equivalent relief was allowed and the addition of Rs. 675,000 reduced to Rs. 6,25,000. The affidavit for the gift given by mother and real brother as being out of their savings has not been accepted for being "self serving in nature". It was further stated that the assessee should have supported this with evidence in the shape of assessment particulars, source of income, bank statements etc. '

With regard to the above, it is submitted that for gifts received from family members out of their savings, no further evidence could have been provided. The mother - Smt. Surinder Kaur who was the wife of a police official who had passed away could definitely have a sum of Rs.1 lakh as savings (affidavit at page no. 23). Similarly the brother of the assessee - Sh. Sukhraj Singh who was had joined Punjab Police since 192.£ and was a head constable (affidavit at page no. 22) could definitely have savings of Rs. 1 lakh. The opening cash balance as on 1/4/2009 (page no. 20) in the cash flow statement which was supported by the cash flow statements of the earlier year should not have been doubted unless it had been proved that the money available had been spent elsewhere. The Id. CIT(A) was thus not justified in sustaining the addition of Rs. 6,25,000 by allowing relief of Rs. 50,000 only as explained above. The withdrawals from ATM have been considered in the previous year as being available for subsequent cash deposit. This was done for simplification of calculation of cash in hand since household expenses were basically met by the brother of the assessee [3rd to 7th line at page no. 3 of the paper books] and some withdrawals were made by mother from pension account [please see page no. '18 & 19]. Even if some of the ATM withdrawals are treated as having been spent, sufficient cash balance was still available and no addition for deposits in bank account was justified. Benefit of clients money which is normally available for payment of insurance premium has not been claimed while preparing the cash flow statement for the year under consideration [please see page no. 14, 16 and 20]. It is quite normal for clients to give money to their agent for further deposit.

This logic has been partly accepted by the assessing officer as would be evident from para no. 5 of the assessment order. In view of the above, the balance addition of Rs. 625,000 thus deserves to be deleted at your hands. Necessary relief may please be allowed.

The second ground of appeal is that the learned CIT(A) has erred in sustaining the addition of Rs.94,000 to the returned income. The deposit of Rs. 194,000 in the account with HDFC on 30/7/2009. The assessing officer has stated that the assessee had explained the deposit out of cash available out of the amount received from clients at Rs. 145,500 [para no. 5 at page no. 4 of the assessment order]. The balance amount of Rs. 48,500 has been treated as unexplained along with the sum of Rs. 45,500 in respect of which policy of customer was not produced and addition of Rs. 94,000 [48,500 + 45,500] was made. This contention of the assessing officer is not justified. The cash flow statement of own cash itself shows adequate cash being available with the assessee. The cash flow statement enclosed above at page no. 20 & 21 accounts for this balance amount of Rs. 48,500 [Rs. 194,000 - Rs. 145,500]. Out of the sum of Rs.194,000 a sum of Rs. 100,000 pertained to the policy whose details were given and benefit for the same has been allowed. The balance amount of Rs. 45,500 was wrongly added as adequate cash is in any case available as per the cash flow statement filed at page no. 20 & 21. The addition of Rs. 94,000 [48,500 + 45,500] deserved to be deleted. The above submissions were before the Id. CIT(A) [point no.2 at page no.6&7 of paper book. Finding of CIT(A) is in para no.5.7 of the impugned order wherein position as per cash flow statement has not been considered.

Without prejudice to the above submissions, even if the source of funds is not believed, adequate cash in hand was available as on the date of deposit and no addition was called for. The cash flow statement referred to above at page no. 20 & 21 above may please be considered along with the explanation given for ground no. 1 and the addition of Rs. 94,000 deleted.

6. On the other hand, Id. DR relied on the orders of authorities below and vehemently submitted that the assessee could not substantiate his claim of cash deposit before the authorities below. Both the authorities have taken due consideration on the documents submitted by the assessee. Therefore, the Id.DR submitted that the appeal of the assessee deserves to be dismissed.

7. After considering the rival submissions of both the sides, perusing the entire material available on the record and orders of both the authorities below along with the case laws and paper book placed before us, we find that during the course of assessment proceedings, as the assessee could not substantiate the cash deposits into his bank account, the AO treated the same as unexplained deposits and added the same into the total income of the assessee. The CIT(A) observed that the affidavits filed by the assessee are self serving in nature and do not have any evidentiary value in the absence of any supporting evidence with regard to the donors of gifts. It was also observed by the CIT(A) that the assessee failed to substantiate their identity, assessment particulars, sources of income, bank statements etc. Accordingly, the CIT(A) confirmed the addition of Rs.6,25,000/- out of total addition of Rs.6,75,000/-. Ld. AR during the course of hearing drawing our attention to the details and documents filed in the paper book, submitted that the assessee has filed all the required documents during the course of assessment proceedings as well as before the CIT(A). However, both the authorities below have neither considered the documents filed by the assessee nor has taken into consideration the submissions of the assessee properly. The CIT(A) has himself in para 4.7 has mentioned that in the course of present proceedings the assessee filed certain additional evidence with regard to the sources of

cash in hand, opening balance of cash, gifts received in cash of Rs. 1. lac from Smt. Harjinder Kaur, mother of the assessee and also a gift of Rs. 1 lac in cash from Sh. Sukhraj Singh, brother of the assessee. We have also carefully perused the findings of the AO as well as the observations made by the CIT(A) and found that the documents filed by the assessee are necessary for examination of the sources of deposits made in cash and forwarded to the AO for remand report, then it is the duty of the AO to examine the documents and give report properly. As per the ld. AR the affidavit for the gift given by mother and real brother as being out of their savings and the gifts received from family members out of their savings. Ld. AR of the assessee also tried to justify the cash deposit into his bank account as quoted supra by way of his written submission. Considering the totality of the facts and circumstances of the case and the submissions of the assessee, we are of the opinion that the issue of cash deposits of Rs.6,25,000/- as confirmed by the CIT(A) needs verification and examination on the part of the AO after considering the submissions of the assessee and the documents to be furnished by the assessee. Needless to say, the assessee shall be given reasonable opportunity of being heard. The assessee is also directed to cooperate with the AO for early disposal of the case and substantiate his claim properly. As we have set aside this issue to the file of AO to consider the claim of the assessee, as per our above observations,

therefore, ground No.2 raised by the assessee with regard to sustenance of addition of Rs.94,000/- is also restored to the file of AO to consider the claim of the assessee as per the documents/details to be produced by the assessee after providing reasonable opportunity of being heard. Accordingly, both the grounds of assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 05/02/2020.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

अमृतसर/ Amritsar; दिनांक Dated 05/02/2020

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रति ल प अग्रे षत/Copy of the Order forwarded to :

1. Appellant :-
Sh. Kirpal Singh,
S/o Ravel Singh,
H.No.644, Guru Nanak Nagar,
Kapurthala
2. प्रत्यर्थी / The Respondent-
ITO, Kapurthala-1, Kapurthala
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. वभागीय प्रतिनिध, आयकर अपीलीय अ धकरण, अमृतसर/DR, ITAT, Amritsar
6. गार्ड फाईल / Guard file.

सत्या पत प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
ITAT Amritsar Bench, Amritsar