

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. 253/CHD/2020

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Mewa Singh, House No. 254, VPO – Rasina, Kaithal.	बनाम VS	The ITO, Ward-1, Kaithal.
स्थायी लेखा सं./PAN No: GDCPS3552L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 03.03.2021

उद्घोषणा की तारीख/Date of Pronouncement : 19.03.2021

Hearing conducted via Webex

आदेश/ORDER

The present appeal has been filed by the assessee wherein the correctness of the order dated 30.01.2020 of CIT(A) Karnal pertaining to 2011-12 assessment year is assailed on the following grounds :

- 1. That on the facts, circumstances and legal position of the case, the Worthy CIT(A) in Appeal No. IT/422/E/KTL/2018-19 has erred in passing that order in contravention of the provisions of S. 250(6) of the Income Tax Act, 1961.*
- 2. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO of making addition of Rs. 7,00,000/- on account of alleged undisclosed cash deposits the bank account of the appellant even when the said deposit was from disclosed and known sources.*

3. *That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.*

2. At the time of hearing, an adjournment was moved on behalf of the assessee stating that certain documents are in the process of being obtained. However, considering the record, it was deemed appropriate to reject the adjournment application and proceed to hear the appeal ex-parte qua the assessee appellant on merits after hearing the ld. Sr.DR.

3. In the facts of the present case, the assessee was subjected to an addition of Rs. 7 lacs. The assessee carried the issue in appeal before the CIT(A). As per para 3.1 of the impugned order, following explanation was advanced :

1. *Income tax Return has been filed.*
2. *Source of income:-*

1	Sale of Agricultural land	3319000.00
2	Income as per Return-	158000.00
3	Agriculture income-	794000.00
		<i>(J form Encl.)</i>
3. ***Sold immovable property during the F.Y. year 2010- 11 (Copy of Registry Enc.)***
4. *As per last order given by ITO Sh. S.C. Kumar Ward-1 Kaithal, u/s 143(3)/147 of the IT Act, 1961 in this order ITO addition in my income Rs 7,00,000. That amount was borrowed by me from my friend for **Purchase of Agriculture Land. (Registry Encl.)***
5. *Krishan Kumar S/o Pirthi Ram R/o Barsana Distt. Kaithal: 4.5 Lakh*
6. *Dharam Singh S/o Bhulla Ram R/o Barsana Distt. Kaithal: 3.5 lakh.
All the information given by me is true and correct. I shall be thankful*

(emphasis supplied)

4. However, said explanation was not accepted by the CIT(A) who relied upon the remand report of the AO in whose opinion as per record, already more than sufficient opportunity had already been given to the assessee. It was also objected that the assessee had come up with different explanations. Moreover,

according to the AO, the deposits could not be explained from the agricultural income as there was no nexus between the date of issue of "Form-J" and the dates of cash deposits etc.

5. The assessee in his reply to the objections of the AO before the CIT(A) as per record had submitted that the amount was sourced from agricultural land purchased by his friends, Registry of Sale Deeds etc. demonstrating this fact was stated to be included. The friends were named as Shri Krishan Kumar, from whom Rs. 4.5 lacs had been obtained and Shri Dharam Singh, from whom Rs. 3.5 lacs had been obtained. It is seen that the assessee also claimed that having remained busy in the marriage of his daughter, wherein as a result of the death of his wife, all family responsibilities fell upon him in the absence of his son who was abroad, thus proper explanations etc. could not be given.

6. It is seen that the said explanation was discarded by the CIT(A) holding as under :

*"3.4The assessee sought to file additional evidences under Rule 46A of the come Tax Rules which was admitted. However, it is seen that at the remand stage, the appellant changed his stance and said that it was borrowed from friends; which fact is **again not backed by any evidence**. Hence, the addition was justified and I confirm the same."*

7. The above finding of the CIT(A) in para 3.4 of the CIT(A) in para 3.4 runs counters to submissions extracted in para 3.1 reproduced in the earlier part of this order. The ld. Sr.DR was required to address as to how where the assessee is stated to

have included the Registry of the property etc. demonstrating availability of funds how it could be stated to be a case of lack of evidence unless copies of the stated Registries were not filed. No such categoric finding has been recorded in the order noting that the documents stated to be made available were not filed. Similarly, in the remand report of the AO relied upon by the Id. CIT(A), it is seen that the predominant argument has been opportunity already provided. The assessee's explanation that he could not participate fully having remained pre-occupied in marriage etc. responsibility of a child remains unrebutted. The explanation in the circumstances is plausible. Thus, the exercise of relying on the non-speaking remand report becomes meaningless and cannot be said to be a fair and impartial exercise of power. In order to discard the explanation from agricultural sources specific dates need be recorded to show that the bank deposits being prior to availability of funds as per Form-J etc. No such finding is recorded.

8. In the above facts and circumstances, considering the fact that the assessee is also attempting to obtain further documentary evidences to satisfactorily support its case, it is deemed appropriate and in the interests of substantial justice to set aside the impugned order back to the file of the CIT(A) requiring the said authority to specifically address the evidences relied upon and in the eventuality, these are found to be

insufficient and incomplete, the said fact be confronted to the assessee and opportunity to make good deficiencies noticed, if any, be provided. The First Appellate Authority thereafter to pass a speaking order in accordance with law after providing the assessee an effective opportunity of being heard. Said order was pronounced at the time of virtual hearing itself in the presence of the party present via Webex.

9. Before closing, it is made clear that since the order has been passed ex-parte qua the assessee appellant overturning the adjournment application moved, hence, it is made clear that in the eventuality of any prejudice faced by the assessee on account of non-representation in the hearing via Webex, remedy of recall etc. provided under the ITAT Rules, if so deemed necessary may be invoked as per law.

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

Order pronounced on 19th March,2021.

Sd/-

(दिवा सिंह)

DIVA SINGH)

न्यायिक सदस्य/Judicial Member

“पूनाम”

आदेश की प्रतिलिपि अग्रेपित/ 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 अधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH 6.गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar