

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री राजपाल यादव, उपाध्यक्ष
BEFORE: SHRI. N.K.SAINI, VP & SHRI , RAJPAL YADAV, VP

आयकर अपील सं./ ITA NO. 1085 & 1086/Chd/2019
निर्धारण वर्ष / Assessment Year : 2008-09 & 2009-10

Shri Lal Singh Sandhu 52, Sector-12A Panchkula	बनाम	The DCIT CC-II Chandigarh
स्थायी लेखा सं./PAN NO: ANGPS6161D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri N.K. Saini, I.T.C
राजस्व की ओर से/ Revenue by : Smt. C. Chandrakanta, CIT
सुनवाई की तारीख/Date of Hearing : 16/03/2021
उद्घोषणा की तारीख/Date of Pronouncement : 16/03/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

These appeal filed by the Assessee are directed against the separate orders of the Ld. CIT(A)-3, Gurgaon dt. 31/05/2019 for the A.Y's 2008-09 & 2009-10 respectively.

2. Since the issues involved are common in both these appeals and were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance we will deal with the appeal in ITA No. 1085/Chd/2019 for the A.Y. 2008-09.

4. Following grounds have been raised in this appeal:

1. *The learned CIT(A) has erred in confirming an addition of Rs. 962280/- out of addition made of Rs. 1303280/- made by the assessing officer.*
2. *The appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before disposal of appeal.*

5. The only grievance of the assessee in this appeal relates to the sustenance of addition of Rs. 9,62,280/-.

6. Facts of the case in brief are that a search and seizure operation under section 132(1) of the Income Tax Act, 1961 (for short the 'Act') was conducted on 28/03/2011 in PPP Group of cases including the residence of the assessee at C-63, GHS-94, Sector-20, Panchkula. The assessee vide his petition dt. 07/01/2013 requested for the copies of the seized material which were asked to be collected on 08/01/2013 but the same were not collected by the assessee and no return under section 139 of the Act was filed. Thereafter, the A.O. issued notice dt. 13/09/2012 under section 153A(1) of the Act calling for the return of income for six assessment years immediately preceding the assessment year relevant to the previous year in which search took place. However no return was filed by the assessee in response to the notice under section 153A of the Act, therefore the A.O. completed the assessment under section 144 of the Act and made the addition of Rs. 13,03,280/- which was the amount deposited in the bank accounts of the assessee maintained with the Axis Bank Ltd., Panchkula.

7. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who sustained the addition of Rs. 9,62,280/- out of the addition made by the A.O. under section 68 of the Act by observing as under:

" Following observation are made in the case on the basis of assessment order and submissions of the appellant.

(i) No return u/s 139 was filed in this case for the year under consideration. Further, no return in response to notice u/s 153A was filed by the appellant.

(ii) The appellant has attributed these deposits in this saving bank accounts to-

(i) Out of cash received for sale of Flat No. 302.

(ii) Transferred from Satpal Kaur account.

(iii) Out of available cash (business funds) as per cash flow.

(iv) Rental income from Sarakpur Industrial Shed.

(v) Transfer from appellant's Bank account.

(iii) The appellant's contention that funds may be treated as business deposits as the appellant has been declaring his income from presumptive tax cannot be

accepted as no income tax return u/s 139(1) nor u/s 153A was filed during the year under consideration.

(iv) The amount received from purchaser of flat cannot be accepted as no property was sold by appellant.

(v) With regard to outstation cheque of Rs. 33,000/- treated as 3,30,000/- the same cannot be considered as no document from bank has been received nor any income declared by the appellant during the year under consideration.

(vi) However, amount of Rs. 3,41,000/- has been received from appellant's own bank account or from the account of his wife Mrs. Satpal Kaur and the appellant is being given credit for the same.

In view of the above discussion, the appellant gets a relief of Rs. 3,41,000/- and the balance addition of Rs. 9,62,280/- u/s 68 of the Act is confirmed. "

8. Now the assessee is in appeal.

9. The Ld. Counsel for the Assessee submitted that all the documents which were found during the course of search were available to the A.O. but he has not considered the same while making the impugned addition. It was further submitted that the A.O. wrongly considered the amount of Rs. 33,000 mentioned in the outstation cheque as Rs. 3,30,000/- and the Ld. CIT(A) was not justified in upholding the action of the A.O. by observing that the same could not be considered as no document from bank had been received nor any income was declared by the assessee, on the contrary, those documents in the form of bank statements were available on the record. It was further submitted that the explanation of the assessee was not considered by the Ld. CIT(A) in right perspective therefore the addition sustained was not justified.

10. In her rival submissions the Ld. CIT DR strongly supported the impugned order passed by the Ld. CIT(A) and further submitted that the assessee neither filed the return of income nor explained the source of deposits, therefore, there was no alternative except to make the addition.

11. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case it is an admitted fact that the A.O. framed the assessment, *exparte*, under section 144 of the Act and the Ld.

CIT(A) although mentioned that the observation were made on the basis of assessment order and submissions of the assessee, however, he simply reproduced the assessment order at para 3 of the order but the submissions of the assessee were not mentioned in the impugned order. Therefore it is not clear as to what was the explanation given by the assessee before the CIT(A). We, therefore, in the absence of clear facts on record and considering this fact that the A.O. made the assessment exparte, deem it appropriate to set aside this case back to the file of the A.O. to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee. We also direct the assessee to cooperate and not to seek undue or unwarranted adjournment.

12. In ITA No. 1086/Chd/2019 for the A.Y2009-10 similar issues are involved the only difference is in the amount involved and the nature of investment. Therefore the case for the A.Y. 2009-10 is also restored back to the file of the A.O. to be adjudicated afresh as indicated in the former part of this order

13. In the result, appeals of the Assessee are allowed for statistical purposes.

(Order pronounced in the open Court on 16/03/2021)

Sd/-

**राजपाल यादव
(RAJPAL YADAV)**

उपाध्यक्ष / VICE PRESIDENT

AG

Date: 16/03/2021

Sd/-

**एन.के.सैनी
(N.K. SAINI)**

उपाध्यक्ष / VICE PRESIDENT

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