

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. 1486/CHD/2019
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Taranjit Singh, S/o Shri Daljit Singh, House No. 63, VPO – Dakha, Tehsil-Mullanpur, Distt. Ludhiana.	The ACIT, Circle– II, Ludhiana.
स्थायी लेखा सं./PAN No: DWXPS7216E	
अपीलार्थी/Appellant	प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 25.03.2021
उद्घोषणा की तारीख/Date of Pronouncement : 05.04.2021

Hearing conducted via Webex

आदेश/ORDER

The present appeal has been filed by the assessee wherein the correctness of the order dated 06.09.2019 of CIT(A)-1, Ludhiana pertaining to 2011-12 assessment year is assailed on the following grounds :

- 1. That the Ld. CIT(A) has erred in confirming the action of the Assessing Officer with regard to reopening of the case u/s 148 and also there were no reasons to believe that the income of the assessee had escaped assessment.*
- 2. That there were no 'reasons to believe' for reopening the case of the assessee and thus Id. CIT(A), has erred in upholding the assumption of jurisdiction for reassessment. The re-assessment proceedings in this case were only based on presumption/suspicion and were thus not validly initiated.*
- 3. Notwithstanding the above facts, the Ld. CIT (A) has erred in confirming the addition Rs. 45,14,200/- on account of cash deposits made in the bank account of the assessee and ignoring the submissions alongwith evidences of the assessee.*

4. *That the Id. CIT(A), has erred in not fully allowing the benefit of cash in hand being available with the assessee out of the withdrawals made from bank for making subsequent deposit in bank.*
5. *That the CIT(A) has erred in not considering the documentary evidences submitted during appellate proceedings.*
6. *That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

2. The Id. AR addressing the respective orders submitted that in the facts of the present case the assessee is an illiterate agriculturist and various documents of 'Ferd' and 'Jamabandi' were relied upon to explain the deposits questioned by the department in his bank account. It was submitted that the assessee had received an advance of Rs. 40 lacs on the basis of Agreement to Sell for his agricultural land. Since the transaction did not ultimately fructify, the amount deposited in the bank was withdrawn and returned back to the said party. It was submitted that the copy of the Agreement to Sell was filed as additional evidence before the CIT(A) invoking Rule 46A of the ITAT Rules. The CIT(A), it was submitted, called forth for a Remand Report from the AO. The relevant extract of the Remand Report considered by the CIT(A) recorded in page 5 of the impugned order was referred to for consideration. For ready reference and for the sake of brevity, same is reproduced hereunder:

"Additional Evidence - (i) Copy of Agreement for sale of property: The assessee has submitted copy of Sale agreement in which agreement for selling property for Rs.40,00,000/-is shown.

Earlier during the Assessment proceedings, the assessee has declared the cash receipts from the business of Dairy farming and agriculture income but now the assessee has taken a different plea of receiving the amount from the sale agreement of land. The assessee was asked to furnish document in support of his plea which he failed to do. From this it appears that when assessee failed to prove the cash deposit from dairy farming, he is trying to justify the same through concocted story of cancellation of sale agreement, which is nowhere in any way related to his earlier

stated. It seems when he failed to collect any document in relation to his earlier stand of dairy farming, he now produced a very different and new story of sale agreement.

The facts and circumstances of the case laws relied upon by the assessee in support of his claim differentiable from the case under consideration. Thus, the case of the assessee may be decided on merit."

3. In the context of the above, it was his limited submission that the assessee remained ignorant about the fact that he was required to appear before the AO in the Remand proceedings in support of the document filed. It was further clarified that the assessee had enquired from his counsel who had assured the assessee that he need not worry, the counsel will follow up with the ITO and if need be appear. However, the counsel failed to appear before the AO. In the absence of any representation, the documents relied upon were discarded by the AO and in these circumstances, it was his limited prayer that the issue may be remanded back to the AO so as to give the assessee an opportunity to address the shortcoming, if any in the documents relied upon and appear before the AO.

4. Considering the facts and the circumstances of the case, the ld. DR did not oppose the aforesaid request.

5. I have heard the submissions and perused the material on record. In the facts of the present case as recorded in the impugned order itself, the assessee is shown to be an illiterate agriculturist and the plea that on account of ignorance or lack of proper communication, the assessee remained unrepresented before the AO in the remand proceedings. Since the documents and

evidences relied upon are relevant and crucial for determining the issue and the assessee on account of his own ignorance/mis-communication by his earlier counsel remained deprived of the opportunity to address these. In view of these facts as pleaded and argued, the impugned order is set aside in the interest of justice and the issue is restored back to the file of the AO with the direction to pass a speaking order in accordance with law. The assessee, in its own interests is advised to ensure full and proper participation before the said authority. Said order was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

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

Order pronounced on 05.04.2021.

Sd/-

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

“पूनम”

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