

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

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , R.L. NEGI, JM

आयकर अपील सं./ ITA NO. 44/Chd/2020
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Greesh Chander S/o Shri Raj Kumar Chopra H.No. 3081, Sector 20-D, Chandigarh	बनाम	The ITO Ward 3(2) Room No. 322 Aayakar Bhawan Sector-17, Chandigarh-160017
स्थायी लेखा सं./PAN NO: ACOPC1012G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri B.K. Nohria, CA
राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 29/06/2021
उद्घोषणा की तारीख/Date of Pronouncement : 29/06/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal filed by the Assessee against the order dt. 16/10/2019 of Ld. CIT(A)-1 Chandigarh.

2. Assessee has raised the following grounds of appeal:

1. That on the facts and in the circumstances of the case the Learned CIT (A)-I Chandigarh has erred in law and facts in upholding the contention of learned AO the appellant has failed to provide nature and source of cash deposit which is against the principle of preponderance of probability.

2. That on the facts and in the circumstances of the case the Learned CIT (A)-I Chandigarh has erred in law and facts in upholding the contention of the learned A O by treating information received through AIR transaction as valid evidence and not verifying the same from the Bank before recording of the reasons and before completion of assessment.

3. *That on the facts and in the circumstances of the case the Learned CIT (A)-I Chandigarh has erred in law and facts in upholding that the learned A.O. has recorded valid reasons to believe inspite of the fact that they are based on invalid notices and treating cash deposit as income under section 2(24) of the Income Tax Act, 1961.*

4. *That the appellant reserves the right to add, amend or delete one or more of the grounds of appeal before the appeal is disposed off.*

3. Facts of the case in brief are that the A.O. on the basis of information that the assessee had deposited cash of Rs. 10,00,000/- or more in his saving bank account reopened the assessment by initiating the proceedings under section 147 r.w.s 148 of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). The A.O. mentioned in para 2.2 of the impugned order that the notice under section 142(1) was served upon the assessee through affixture on 15/11/2017 requiring him to show cause on or before 21/11/2017 as to why the assessment may not be completed under section 144 of the Act by making an addition of Rs. 13,50,000/- which was the cash deposited in the bank account. Since nobody appeared before the A.O. and no return was furnished in response to notice under section 148 of the Act, the A.O. made the addition of Rs. 13,50,500/- in the hands of the assessee.

4. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and furnished an application requesting for admission of the additional evidence under Rule 46A of the Act. The assessee submitted that the cash deposited in the assessee's bank account was out of the withdrawal of cash from the saving bank account of Shri R.K. Chopra, Father of the assessee. The Ld. CIT(A) forwarded the additional evidences to the A.O. and asked for his remand report on the same. The A.O. commented as under:

b) Comments of additional evidence u/s 46A(3)

The assessee's contention that he was prevented by sufficient cause from providing the information/ documents since he was out of India for the period w.e.f. 18.07.2017 to 05.12.2017 is not correct. As already discussed above, the

assessee had refused to accept the notice dated 31.03.2019 issued u/s 148 of the Act and had not filed any return of income in response to the notice u/s 148 of the Act. Notice u/s 142(1) of the Act along with questionnaire was issued to the assessee on 29.05.2017 and the case was fixed for hearing on 10.06.2017. The assessee neither attended the assessment proceeding nor file any reply. The assessee did not even sought any adjournment.

From these facts it is very clear that the notices were issued and duly served upon the assessee before his departure on 18.07.2017. But the assessee had neither responded to these notices nor had bothered to intimate the office about his departure from India. Thus the assessee was not prevented by any sufficient cause to furnish information but he had not cooperated in the assessment proceedings deliberately. "

4.1 The Ld. CIT(A) after considering the submissions of the assessee and the remand report of the A.O. admitted the additional evidences in the form of copy of bank account statement of Shri R.K. Chopra father of the assessee. The Ld. CIT(A) however sustained the addition made by the A.O. by observing in para 5.2 of the impugned order as under:

5.2 HELD: I have perused the order of the Assessing Officer and examined the reply of the assessee and assessment record. Additional evidence submitted during appellate proceedings stand admitted supra. Remand report was called for and the same was confronted to the appellant. AO during remand proceedings has issued letter to the appellant for furnishing documents in support of cash deposits and copies of ITR of his father Sh.R.K. Chopra alongwith his cash flow statement for AY 2009-10 & 2010-11 vide letter dated 30.07.2019. He further vide letter dated 07.08.2019 asked the appellant to furnish copies of ITRs alongwith computation chart of income, balance sheet, profit & loss account of Sh.R.K. Chopra for AY 2009-10 & 2010-11. AR submitted the same during remand proceedings. Hence, objection of lack of opportunity becomes infructuous. During appellate proceedings, appellant argued that cash was deposited in his bank account out of cash withdrawn by his father from his bank account. On perusal of Bank Statement of Sh. Greesh Chander-the appellant and his father Sh. R.K. Chopra, it is observed that cash deposit entries in the account of assessee totaling to the tune of Rs. 12,40,000/- were reflecting in various intervals starting from 02.04.2009 to 31.03.2010. However, the withdrawal entry to the tune of Rs.23,00,000/- reflecting in the account of Sh. R.K. Chopra (father of the assessee) was made through cheque in single transaction on 09.12.2009 which does not justify the cash deposits made in the account of the assessee. Moreover, the assessee has not brought any evidence on record to authenticate his claim that the cash deposit of Rs. 12,40,000/- & Rs. 1,10,000/- in his bank accounts was out of withdrawals/adjustment of cash from his father's bank account. The onus is, therefore, upon the assessee to prove the source of cash deposit which has not been proved by the assessee through any evidence or material on record during the assessment as well as appellate proceedings. Therefore, the addition made

by the Assessing Officer is accordingly upheld. Ground of appeal No. 2 is dismissed.

5. Now the assessee is in appeal.

6. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the A.O. had not given proper time to the assessee therefore the additional evidences were to be furnished before the Ld. CIT(A) under Rule 46A of the Income Tax Rules, 1962 which were although admitted by the Ld. CIT(A) but those were not appreciated in right perspective. Therefore, the Ld. CIT(A) was not justified in sustaining the addition made by the A.O.

7. In his rival submissions the Ld. Sr. DR strongly supported the impugned order passed by the Ld. CIT(A) and reiterated the observations made by the authorities below in their respective orders.

8. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is noticed that the A.O. framed the assessment *exparte* and made the addition of Rs. 13,50,500/- which was the amount deposited by the assessee in his saving bank account. Since the assessment order was passed by the A.O. *exparte*, the assessee furnished the additional evidences before the Ld. CIT(A) who admitted the same. However the Ld. CIT(A) sustained the addition by observing that the assessee had not brought any evidence on record to authenticate his claim that the cash deposited in his bank account was out of the withdrawal / adjustment of cash from his father's bank account. On the contrary the claim of the assessee was that the cash was deposited in his bank account out of cash withdrawn by his father from his bank account. In the present case, it is not brought on record as to what were the contents of the bank statement furnished by the assessee and it is not clear as to whether there were sufficient withdrawals to justify the

deposit in the bank account of the assessee. We therefore 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 opportunities of being heard to the assessee and considering the documents which were furnished by the assessee before the Ld. CIT(A) as an additional evidence.

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

(Order pronounced in the open Court on 29/06/2021)

Sd/-
आर.एल. नेगी
(R.L. NEGI)
न्यायिक सदस्य/ Judicial Member
AG
Date: 29/06/2021

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

आदेशानुसार/ By order,
 सहायक पंजीकार/ Assistant Registrar