

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. 1536/Chd/2019

निर्धारण वर्ष / Assessment Years : 2011-12

Shri Sanjeev Kumar S/o Sh. Brij Lal, Dogar Basti Street No. 11, Faridkot	बनाम	The Dy. CIT Central Circl-2, Ludhiana
स्थायी लेखा सं./PAN NO: AJOPS9346N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Shri Sandeep Dahiya, CIT

सुनवाई की तारीख/Date of Hearing : 28/06/2021

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

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the assessee against the order dt. 27/09/2019 of Ld. CIT(A), Bathinda.

2. Following grounds have been raised in this appeal :

1. That the Ld. CIT(A) has erred in giving part relief out of the addition of Rs. 17 lacs as made by the Assessing Officer.

2. That the Ld. CIT(A) has failed to appreciate the fact that all the documentary evidences regarding the source of Rs. 17 Lacs were given and part explanation which has not been accepted is on surmises and conjectures.

3. That the Ld. CIT(A) has failed to appreciate that the source of source cannot be questioned as per binding judgment of Hon'ble Supreme Court in the case of Shri Chuni Lal as reported in 211 ITR 11 (Statute)

4. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

The only grievance of the assessee in this appeal relates to the sustenance of addition of Rs. 17,00,000/-.

3. The facts related to this issue in brief are that a search and seizure operation under section 132 of the Income Tax Act, 1961 (hereinafter referred to as 'Act') was carried out at the residential premises of the assessee on 21/10/2010, simultaneously search operation under section 132 of the Act & survey operation under section 133A of the Act were also conducted at several residential, business and office premises of the assessee, his close relatives and business associates. Before the A.O, the Assessee filed a copy of the return of income furnished on 31/03/2012 declaring an income of Rs. 2,57,620/-.

3.1 The A.O. during the course of assessment proceedings observed that during the course of search operation at the residential premises of uncle of the assessee, photocopies of the following bank drafts belonging to the assessee family were found:

S.No.	Name(Sh./Ms)	A/c No./Bank	Amount(Rs.)	Date of purchase
1.	Sanjeev Kumar S/o Brij Lal	14142560000598/HDFC – Faridkot	5,00,000/-	22.07.2010
2.	-DO-	-DO-	5,00,000/-	23.07.2010
3.	Arpana W/o Sanjeev Kumar	14142560000623/- HDFC – Faridkot	5,00,000/-	24.07.2010
4	-DO	-DO-	2,00,000/-	28.07.2010
	Total		17,00,000/-	

3.2 The A.O. asked the assessee to explain the source of Rs. 17,00,000/-as invested towards purchase of above drafts. The A.O. made the addition of the aforesaid amount by observing that the assessee failed to offer any plausible explanation as to the source of investment towards the purchase of draft.

4. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted that the aforesaid drafts were purchased from his account with HDFC Bank Limited as well as from the account of Smt. Arpana Garg w/o the assessee.

4.1 It was further stated that these drafts were deposited with the concerned department of Government of Punjab for participating in the auction of sand mines

and as the assessee could not succeed in the auction bids the drafts were cancelled and the amount was credited in the bank account. Therefore the investment in purchase of drafts stood explained. The assessee furnished the copy of bank statement from where the drafts were purchased and the cash account for the F.Y. 2010-11. The assessee also furnished cash account for relevant transactions and copy of accounts with M/s Rajinder Kumar & Co. in which Smt. Arpana was the partner and had withdrawn the money. The assessee also furnished the balance sheet as on 31/03/2010 for confirmation of the opening balance of Rs. 6,88,226/- as on 01/04/2010.

4.2 The Ld. CIT(A) forwarded the documents to the A.O. for his comments. In response the A.O. reported that the assessee had not submitted copy of cash book for the F.Y. 2010-11 which could show that all the amount was used for making the draft of Rs. 10,00,000/- and that the assessee had also not given the copy of the bank account through which drafts were made. The A.O. also observed that the assessee only furnished the copy of trial balance as on 31/03/2010 of M/s Rajinder Kumar & Co. through which withdrawal were made by Smt. Arpana. The remand report obtained from the A.O. was forwarded to the assessee through email. According to the Ld. CIT(A), till date, no rejoinder has been received there from. The Ld. CIT(A) sustained the addition made by the A.O.

5. Now the assessee is in appeal.

6. Ld. Counsel for the assessee submitted that neither the A.O. nor the Ld. CIT(A) appreciated the documentary evidence furnished by the assessee regarding the source of Rs. 17,00,000/- in right perspective and even proper time was not given to rebut the contents of the remand report of the A.O. It was requested that the matter may be set aside to the A.O. to give proper opportunity to explain the case relating to the making of drafts amounting to Rs. 17,00,000/-.

7. In his rival submissions the Ld. CIT DR strongly supported the orders of the authorities below and further submitted that the assessee failed to explain his case even when the ample opportunities were given by the A.O. and that no rejoinder had been furnished by the assessee on the remand report of the A.O. therefore the Ld.CIT(A) rightly sustained the addition made by the A.O.

8. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case the Ld. CIT(A) himself admitted at page no. 6 of the impugned order that the remand report was forwarded to the assessee through email account of the assessee but no rejoinder was received. However it is not clear as to when the remand report was forwarded to the assessee or as to whether the same was received by the assessee. It is also not clear when the said remand report was forwarded and as to whether the sufficient time was given to furnish the explanation. 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 opportunity of being heard to the assessee.

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