

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "SMC", CHANDIGARH

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 1330/CHD/2019

निर्धारण वर्ष / Assessment Year : 2015-16

Sh. Madan Gopal, 1414, Guru Nanak Nagar, Near Gurbax Colony, Patiala	बनाम	The ITO, Ward-2, Patiala
स्थायी लेखा सं./PAN NO: ABJPG7088G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing though video Conferencing

निर्धारिती की ओर से/Assessee by : Shri Rakesh Cajla, Advocate
राजस्व की ओर से/ Revenue by : Sh. Ashok Khanna, Addl. CIT
सुनवाई की तारीख/Date of Hearing : 25.11.2021
उदघोषणा की तारीख/Date of Pronouncement : 07.12.2021

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 01.07.2019 of the Commissioner of Income Tax (Appeals), Patiala [hereinafter referred to as 'CIT(A)'] .

2. The assessee in this appeal has taken following grounds of appeal:-

- 1. That the order of the Ld. CIT(A) Patiala is bad in law and against the facts of the case.*

2. *That the Ld. CIT (Appeal) Patiala is not justified in upholding the validity of notice for re-opening the assessment u/s 147 of I.T.Act. The reasons recorded for re-opening the assessment not exist at all.*
3. *The notice u/s 148 was issued on the vague reasons based on surmises and conjectures.*
4. *That on the facts & circumstances of the case the Worthy CIT is not justified in ignoring the judgment of the Judicial Magistrate 1st Class, Patiala, in which the date of advance made is clearly mentioned*
5. *The worthy CIT is erred in upholding the addition of Rs.1627000/- without considering the submissions made before the Ld. A.O. as well as before him.*
6. *The appellant craves leave to add, amend or delete any of ground (s) of appeal before it is finally heard.*

3. At the outset, the Ld. counsel for the assessee has invited our attention to the copy of the reasons recorded for reopening of the assessment, the contents of which are reproduced as under:-

“Brief reasons for reopening the case U/s 148 of the Income-tax Act,1961

As per the information on record, the assessee namely Sh. Madan Gopal has given advance to a person in the F.Y. 2014-15 relevant to A.Y. 2015-16 amounting to Rs. 10,00,000/-. The assessee have filed its return of income for the A. Y. 2016-17 with returned income of Rs. 2,00,110/-. The assessee have failed to explain the source of the amount given. I, have, therefore, reasons to believe that an income of Rs. 10,00,000/- has escaped assessment within the meaning of provision of explanation 2(b) of section 147 of the Income-tax Act, 1961.”

4. The Ld. counsel for the assessee has submitted that though the Assessing officer is concerned about the assessment of income relating to the F.Y. 2014-15 relevant to the assessment year 2015-16, whereas,

he has referred to the Income Tax Return for assessment year 2016-17. He has further submitted that the sole allegation levelled by the Assessing officer in the reasons recorded is that the assessee had advanced Rs. 10 lacs during the F.Y. 2014-15 whereas, in fact, the assessee did not advance the amount of Rs. 10 lacs to any person during the F.Y. 2014-15 relevant to assessment year 2015-16. He has further submitted that, in fact, the aforesaid amount of Rs. 10 lacs was advanced in F.Y. 2012-13 relating to the assessment year 2013-14. The Ld. Counsel in this respect has invited our attention to the copy of the objections filed to the Assessing officer in this respect, wherein, it has been pointed out that no advance of Rs. 10 lacs was given during the relevant year and that the aforesaid advance of Rs. 10 lacs pertained to the F.Y. 2012-13. The Ld. counsel has further invited our attention to the documents of litigation of the assessee with one Shri Bikramjit Singh, to whom the assessee allegedly had advanced a loan of Rs. 10 lacs. At page No. 20 of the paper book, there is a copy of the legal notice issued to Shri Bikramjit Singh, wherein, in para 2, the assessee has mentioned that the said Shri Bikramjit Singh had taken loan of Rs. 10 lacs in the 1st week of January 2013. Thereafter, at page No. 23, there is a copy of the complaint filed in the Court of Judicial Magistrate Ist Class (JMJC), where the assessee has mentioned in the complaint that Shri Bikramjit Singh had taken loan of Rs. 10 lacs in the first week of January 2013. At page No. 30, there is a copy of the order dated 10.7.2017 of the

Judicial Magistrate Ist Class, Patiala, wherein, in para 2 of the order, the facts have been mentioned that Shri Bikramjit Singh had borrowed Rs. 10 lacs in the first week of January 2013 and in the end, accused has been convicted for having committed an offence punishable u/s 138 of the Negotiable Instrument Act.

5. The aforesaid documents were provided by the assessee to the Assessing officer along with objections for the reopening of the assessment. The Ld. Counsel has further invited our attention to page 13 of the paper book to submit that the Assessing officer has totally ignored the aforesaid objections of the assessee and dismissed the objections of the assessee by way of a cryptic order by observing that the assessee had not proved the source of advance in the F.Y. 2012-13. The Ld. Counsel has further invited our attention to the copy of the approval granted by Addl. CIT to submit that even Addl. CIT has not applied his mind while giving approval for reopening of the assessment as the same has been granted in a mechanical manner.

6. The Ld. DR relied on the findings of the authorities below.

7. We find that the assessee had filed objections in this case against the reopening of the assessment along with ample evidence that the loan in question was advanced in F.Y. 2012-13 relevant to the assessment year 2013-14, whereas, the assessment year involved is assessment year 2015-16. There is no evidence that the assessee had advanced a loan of

Rs. 10 lacs during the assessment year under consideration. Assessing officer despite duly provided with the aforesaid information proceeded to reopen the assessment and framed the assessment knowingly on wrong facts.

In view of this, the reopening of the assessment in this case is bad in law and the same is hereby quashed.

The appeal of the assessee stands allowed.

Order pronounced on 07.12.2021.

Sd/-
(**एन. के. सैनी / N.K. SAINI**)
उपाध्यक्ष / Vice President

Sd/-
(**संजय गर्ग / SANJAY GARG**)
न्यायिकसदस्य/ Judicial Member

Dated : 07.12.2021
"आर.के."

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar