

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. 217/CHD/2020  
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Teja Singh S/o Shri Punjab Singh, H.No. 539, Guru Teg Bahadur Mohalla, Patran, Distt. Patiala.	बनाम VS	The ITO, Ward – Samana at Patiala, Patiala.
स्थायी लेखा सं./PAN No: BEPPS5868J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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

सुनवाई की तारीख/Date of Hearing : 28.12.2021  
उद्घोषणा की तारीख/Date of Pronouncement : 28.12.2021

**Hearing conducted via Webex**

**आदेश/ORDER**

The present appeal has been filed by the assessee wherein the correctness of the order dated 26.12.2019 of CIT(A), Patiala pertaining to 2011-12 assessment year is assailed on various grounds. However, before addressing the grievance of the assessee, it is necessary to mention that an adjournment application had been moved by the counsel seeking time on account of inability to argue during the last date of filing of

returns etc. However, the counsel was present and sought permission to withdraw the application filed and argued the appeal. The arguments advanced would be addressed in the following paras while addressing the issues.

2. The ld. Sr.DR relied upon the impugned order.

3. I have heard the submissions and perused the material on record. In the facts of the present case as per assessment order para 2, it is seen that in the order passed u/s 143(3)/147, it was noticed that the assessee was required to explain the deposit of Rs. 24 lacs in his bank account. A perusal of para 2 of the assessment order further shows that infact the deposit was found to be only of Rs. 8 lacs on 02.12.2010. The assessee in his explanation is found to have submitted as per recordings in the aforesaid para 2 of the order that the deposit was out of sale consideration of plot owned by him at Patran. Copy of Power of Attorney in favour of Shri Narinder Kumar demonstrating this claim was apparently relied upon. Considering the evidences, the AO noticed that the plot was sold for an amount of Rs. 8 lacs and Power of Attorney referred to made a mention of Rs. 10 lacs, hence concluded that since the Registered Sale Deed did not mention Narender Kumar's name,

proceeded to made the addition. The deposit of Rs. 8 lacs was considered to be unexplained.

4. In appeal before the First Appellate Authority, it is seen that the assessee challenged the order passed on the jurisdiction assumed etc. Various case laws to challenge the assumption of jurisdiction were relied upon unsuccessfully. The CIT(A) rejected the grounds challenging the legality of the order passed and also on merits the additions made by the AO stood confirmed.

5. In the appeal before the ITAT, assessee has raised the following grounds on jurisdiction :

1. *That the order of the Ld. Commissioner of Income Tax Appeal (s) Patiala is bad in law and against facts of the case.*

2. *That the Ld. Commissioner of Income Tax Appeal (s) Patiala is not justified in imitation of assessment proceedings under section 143(3) r.w.s. 147.*

*a.) The assessing officer had also erred in initiation of assessment proceeding under section 143(3) r.w.s. 147. The notice u/s 148 not served on time.*

*b.) Whether the obey the income tax rule and attend the assessment proceeding where the notice not served on time amount to authentication as valid proceeding instated on invalid proceedings.*

*c.) That the Assessing officer made addition without issuing proper Show causes notice while make adverse view of the reply of the assesee.*

3. *That the Ld. CIT (A) in erred in upheld the assessment order where the AO made addition under wrong section 68 of IT act and considering the passbook of assesee as books of account.*

5.1 On the merits of the addition, ground No.4 has been raised.

The same reads as under :

*4. That the Ld. CIT(A) and AO in erred not considering the reply of the assessee where the assessee show the source of the Cash deposited with documentary evidence provided by the assessee.*

6. In the facts of the case appended alongwith the grounds, the assessee is also found to have advanced the following arguments:

**Sh. Teja Singh S/o Sh. Punjab Singh  
C/o Kuldeep Dhiman Advovate,  
SCO – 43, 51, New Budha Dal  
Complex, Lower Mall, Patiala**

**Facts of the case**

The appellant is senior citizen and have no source of income except nominal interest income which is much below taxable limit. Hence no return has been filed by the assessee. As per details discussed in the assessment order the case was re opened by issuing notice under section 148 of IT act on 27-03-2017, and same as return back by the postal authority. However no such notice was served up on the assessee and within time prescribed by Income Tax Act. 1961. A show cause notice dated 16-11-2018 for 22-11-2018 was sent which was adjourned to 30-11-2018. The AO without considering the facts that were fully explained and all relevant material available on record, made the assessment by adding Rs. 8,00,000.00 deposited by the assessee in his bank account under section 68 of Income Tax Act. 1961 without considering the facts of the case. The AO has failed to observe the principles of natural justice.

Aggrieved from the order of the assesseeing officer assessee filed appeal before the Ld CIT (A). The Ld CIT appeal upheld the order of the assessing officer. Aggrieved from the order of Ld CIT (A) the assessee file appeal for your good self for natual justice.

**Hence This Appeal**

  
(Appellant)

6.1. Considering the above alongwith the facts on record and the arguments on behalf of the parties wherein the ld. AR ultimately argued the appeal on merits. I find that the relevant

facts for adjudicating the issues have remained unaddressed. The legal grounds, accordingly, ground Nos. 1 to 3 are dismissed as not pressed. On the merits of the addition, it is seen that the senior citizen deriving income only from agricultural activity and having no source of income apart from the nominal interest received from the Fixed Deposit of Rs. 8 lacs has successfully made out a case for deletion of the addition made.. In the facts of the present case, it is not in dispute that the assessee was the owner of a plot at Patran. The said plot was sold. The deposit of Rs. 8 lacs is from this sale. None of these facts are shown to be incorrect. The mere fact that the assessee has referred to Power of Attorney executed in favour of presumably the person entrusted to make the sale has resulted in misdirection of the issues. Considering the peculiar facts and circumstances of the case after hearing the parties and considering the consistent explanation and the unrebutted facts on record, I find that the explanation offered deserves to be accepted. The mere fact that the assessee has not been a taxpayer either before or thereafter is also not disputed. Considering the factual background of the present case, the deposit of the money from the sale proceeds from the stated plot of land owned by the assessee deserves to be accepted. The addition is directed to be deleted. Said order

was pronounced at the time of hearing via Webex in the presence of the parties.

7. Accordingly, ground Nos. 1, 2 and 3 are dismissed as not pressed and ground No. 4 is allowed. Ground No. 5 is consequential and ground No. 6 is residuary.

8. In the result, the appeal of the assessee is allowed.

Order pronounced on 27<sup>th</sup> December, 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