

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 476/Asr/2018
Assessment Year: 2010-11

Sh. Niranjana Dass S/o Vs. Income Tax Officer, Munshi Ram, Ward No.2, Ward-1(2), Bhatinda Gali No.17, Raman Mandi Bhatinda. [PAN: AVWPD5878N] (Appellant)	(Respondent)
---	---------------------

Appellant by : Sh. P.N. Arora, Adv.
Respondent by: Sh. Anupam K. Garg, (DR)

Date of Hearing: 28.02.2022
Date of Pronouncement: 02.03.2022

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the Assessee against the impugned order dated 20.07/2018 passed by Ld. Commissioner of Income Tax (Appeals), Bhatinda, in respect of the Assessment Year 2010-11.

2. The present case, has been adjourned to 28.02.2022, at the request of the learned AR. However, he has filed an adjournment application

seeking adjournment on account of professional work. When it was brought to his notice that in one of the grounds of appeal i.e. ground no. 5, the assessee had grievance that the landed CIT appeal erred on facts and in law in confirming the addition of ₹ 1,168,000 made by the AO without affording an opportunity to the assessee to cross-examine Shri Kishan Lal President of M/s Dharam Dharahshala Society, Raman Mandi, District- Bhatinda whose statement was recorded by the AO during the course of remand proceedings, He presented the case of the assessee and humbly requested that the issue may be restored back either to the CIT appeal or to the assessing officer to pass an order after granting adequate opportunity of being heard to the appellant assessee and an opportunity to cross examine Shri Kishan Lal President of M/s Dharam Dharahshala Society, Raman Mandi, District- Bhatinda whose statement was recorded by the AO during the course of remand proceedings. The Ld. CIT (DR) has no objection to the request of the Ld. AR.

3. Heard. The disputed addition of ₹ 1,168,000/- under section 69 of the income tax act 1961 is made by the AO, on account of alleged unexplained donation paid by receipt number 246 dated 04.01.2010 by the assessee to M/s Dharam Dharahshala Society, Raman Mandi, District- Bhatinda.

4. The Ld. CIT appeal had discussed that the appellant was old tenant of the society occupying soap number nine in the premises of the society. As a part of arrangement, these soaps was sold to the respective talents and 99 years leads basis and the necessary documents are exhorted between the parties, on payment of lump-sum amount to the society. The contention of the appellant that the title of this document is condition for tenancy and it was not transfer of title was rejected by the CIT(A) appeal by holding that the relevant question before the AO was that whether or not the assessee has paid the aforesaid disputed amount of ₹ 1,168,000/-to the society. The CIT appeal has discussed that the society has issued two sleeps bearing number 245 and 2464 and amount of ₹ 18,760/- and ₹ 1,160,000/-respectively in favour of the appellant. He further mentioned that in audition on the second slip was that an amount of ₹ 1,168,000/- received from the appellant “donation for shop number 9”. Accordingly lease agreement for 99 years was executed in favour of the appellant by the society. Considering the circumstantial evidences, the CIT appeal was satisfied that the appellant has paid a consideration of the society for procuring a long-term lease respect of the shop which was already in his possession. It makes no difference whether not such document would confirm ownership right or not but the fact remains that there was a reason

for passing on consideration by the appellant to the society and the amount has been shown as donation and not the sale consideration has been successfully explained by the president stating that the society cannot make sale of the shops.

5. The AR contended that neither the statement of Krishan Lal was confronted to the assessee or his counsel during the course of remand proceedings nor the opportunity was allowed to the assessee to cross-examine the President of the society. It is settled principle of law as laid down by Supreme Court in the case of Andman Timber Industries as reported in 281CTR 241 that by not allowing the right of cross examination is a serious flaw which makes the order nullity.

6. From above, it is evident that the assessee was not granted an opportunity to cross-examine Shri Kishan Lal, President of M/s Dharam Dharahshala Society, Raman Mandi, District- Bhatinda whose statement was recorded by the AO during the course of remand proceedings, the evidence forming the basis of the disputed unexplained investment u/s 69 of the act. In our view, the authorities below ought to have granted proper opportunity, in rebuttal to cross-examine Shri Kishan Lal, President of M/s Dharam Dharahshala Society, in view of the principles of natural Justice. It is, therefore, considered deem fit that the issue is restored back to the Ld.

CIT(A) to adjudicate the it afresh by way of speaking order by allowing the assessee an opportunity to cross-examine Shri Kishan Lal, President of M/s Dharam Dharahshala Society, whose statement was recorded by the AO during the course of remand proceedings. No doubt, the assessee shall cooperate in the fresh proceedings before the CIT(A).

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

Order pronounced in the open court on 02 .03.2022

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

Date: 02.03.2022

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True Copy
By Order