

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR (SMC)**

BEFORE SH. KUL BHARAT, JUDICIAL MEMBER

I.T.A. No. 454/Asr/2018
Assessment Year: 2009-10

Sh. Avtar Singh,
S/o Sh. Bachittar Singh,
Vill. Bhour PO Fauji Colony,
Kapurthala

[PAN: ABVPN 7498R]

(Appellant)

Vs. Income Tax Officer
Ward- 1, Kapurthala

(Respondent)

Appellant by : Sh. J. S. Bhasin, Adv.

Respondent by: Sh. Manpreet Singh Duggal, Sr, DR

Date of Hearing: 14.06.2022

Date of Pronouncement: 16.06.2022

ORDER

Per Kul Bharat, JM:

The appeal by the assessee is directed against the order dated 07.06.2017, passed by the Ld. Commissioner of Income Tax (Appeals)-2, Jalandhar, pertaining to the Assessment Year 2009-10.

2. The assessee has raised the following grounds of appeal:

- “1. That the ld. CIT(A), grossly erred in facts and on law, in arbitrarily upholding the assumption of jurisdiction u/s 147/148 of the Act by the ld. ITO. As such the consequential order is not sustainable in law.

2. *That the ld. CIT(A), was not justified in sustaining the addition of Rs.20,10,000/- out of total addition of Rs.27,36,810/- as made by the ld. ITO, by drawing following incorrect inferences in a most mechanical manner and without proper application of mind to facts and evidence brought on record:*
 - i) *That the assessee could not explain the receipt of Rs.10,20,000/- from Sh. Sarwan Singh as lease rent of his 17 acre agriculture land, as wrongly reported by the ITO in remand report.*
 - ii) *That withdrawal of Rs.9,90,000/- made from bank account could not be explained before the AO , when this item was not the subject matter of addition.*
 - iii) *That the assessee explained source of deposit of Rs.2,14,766/- on a/c of 1/3rd share out of sale of land of Rs.6,44,300/- on 2.7.2008, (whereas the amount of Rs. 6,44,3000/- in itself was 1/3rd of the total amount of Rs. 19.33 lacs, accepted by ld. ITO in remand report).*
3. *That the order under appeal, to the extent disputed herein is against law and facts of the case.”*

3. The facts giving rise to the present appeal are that in this case, the Assessing Officer reopened assessment u/s 147 of the Income Tax Act, 1961 ‘hereinafter referred to as the Act’ on the basis that the assessee had deposited cash in his bank a/c held with Punjab National Bank Bank, Kapurthala amounting to Rs. 27,34,000/-. A notice u/s 148 was issued to the assessee on 16.03.2016, the notice remained uncomplied thereafter, the Assessing Officer proceeded to frame assessment u/s 144 r.w.s. 147 of the Act treating the cash deposit in bank a/c of Rs.27,34,000/- as unexplained income and further interest thereon of Rs. 2,809/- was also treating as unexplained income of the assessee. Thus, the Assessing Officer assessed income at Rs.27,36,809/-.

4. Aggrieved, against this the assessee carried the matter in appeal before the Ld. CIT(A) who after considering the submission partly allowed the appeal thereby

the Ld. CIT(A) reduced the addition to the extent of Rs.7,14,766/- and remaining addition of Rs. 20,10,000/- made by the Assessing Officer was sustained.

5. Aggrieved, against this the assessee carried the matter in appeal before this Tribunal.

6. It is seen that the present appeal is barred by limitation further the Tribunal vide its order dated 21st December, 2021 had condoned the delay of 339 days, thereafter the hearing was adjourned.

Ground No. 1 of assessee's appeal is against the reopening of assessment u/s 147 of the Act. Ld. counsel for the assessee vehemently argued that the Assessing Officer (AO) grossly erred in reopening the assessment. He contended that the assessment was reopened on the basis of having some information regarding the cash deposit of Rs.27,36,810/- in the bank a/c of the assessee held with Punjab National Bank, Kapurthala. He submitted that merely having an information of cash deposits would not be sufficient to form the belief that the income had escaped assessment. He submitted there has to be some material suggesting that the cash deposited into the bank a/c was income of the assessee. In the absence of such material, there was no reason to form a belief by the AO that the income had escaped assessment. He submitted under the identical facts that the Tribunal had taken a view that reopening cannot be sustained merely on the basis that the cash were deposited in the bank a/c.

7. Per contra, Ld. Sr. DR opposed the submission and supported the assessment order. He contended that the Assessing Officer has recorded a finding that various letters were issued to the assessee for verification of cash deposit into the bank a/c but undisputedly such letters remained unanswered. He contended that in the

absence of any explanation offered by the assessee, the AO was having reason to believe that the income had escaped assessment, therefore, the assessment was validly reopened u/s 147 of the Act. The case law as relied by the Ld. counsel for the assessee are distinguishable on the facts are not applicable on the facts and circumstances of the present case.

8. I have heard the rival contention and perused the material available on record. The assessee has not rebutted the finding of the Assessing Officer that he had written various letters to the assessee seeking explanation regarding cash deposits in the impugned assessment order. The Assessing Officer has recorded that verification letters were issued to the assessee on 24.02.2012, 19.12.2014, 07.08.2015 and 09.09.2015 seeking explanation regarding the source of the cash deposit, however despite the letters were duly served on the assessee no explanation was given to him. Ld. counsel for the assessee could not point out that before the Assessing Authority, the assessee had offered explanation regarding cash deposits. This being the undisputed fact, I do not see any reason to interfere into the decision of the Assessing Officer for reopening of the assessment. Ground No. 1 of the assessee's appeal is dismissed.

Ground No. 2 of the assessee's appeal is against sustaining the addition of Rs.27,36,810/-. Ld. counsel for the assessee submitted that the assessee had furnished all evidences in support of his claim. He further submitted that the Assessing Officer in the remand report has accepted the fact that the assessee had received 1/3rd share out of the sale consideration of agriculture land. The Ld. CIT(A) has erroneously recorded the figure of Rs. 2,14,766/- against the figure of Rs.6,44,300/- further he contended that regarding receipt of lease rent of Rs.10,20,000/-, the assessee has furnished all evidences related to the ownership of

land, the affidavit of the lessee who had taken the land on lease. He submitted that the Ld. CIT(A) has brushed aside the evidences on flimsy grounds. He submitted that the entire additions deserves to be deleted. He further contended that bank withdrawals, were not subject matter of addition hence no explanation was offered.

9. On the contrary, the Ld. DR opposed the submissions and the supported the orders of the authorities below. He submitted that the assessee did not appear before Assessing Officer and the evidence filed before Ld. CIT(A) are vague and do not inspire confidence.

10. I have heard the rival submissions and perused the material available on record and gone through the evidence of the authorities below. There is no dispute with regard to the fact that there was no representation on behalf of the assessee before the Assessing Officer. Therefore, the Assessing Officer made addition of the entire cash deposits. Hence, the subject matter of the assessment was the cash deposit. In the remand report before the Ld. CIT(A), the Assessing Officer accepted the explanation of the source of the cash deposit to the extent of the gift received from his father of Rs. 5,00,000/- and 1/3rd share of Rs. 6,44,300/- found to be explained. Thus, out of addition of Rs.27,34,000/-, this amount of Rs.11,44,300/- ought to have been reduced. I hold accordingly. Now coming to the rest of the addition the source of deposit was stated to be the lease amount received from one Sh. Shravan Singh. The evidences regarding receipt of lease amount was not believed by the authorities below on the basis that the lease deed as furnished did not disclose the name and address of the witnesses. In my considered view this approach of the authorities below is erroneous in law and fact when the assessee has furnished certain evidences of ownership of land also the affidavits of person who had tilled the land. Further the Revenue has not brought any material to

suggest that the land remained uncultivated. In the absence of such evidence, the evidence filed by the assessee should have been enquired into and verified by the authorities below. Therefore, to sub-serve the principles of natural justice I hereby restore the issue related to the balance addition amounting to Rs.15,89,700/- to the Assessing Officer for decision afresh after verifying the evidence filed by the assessee. Needless to say that AO would afford adequate opportunity to the assessee. The grounds raised by the assessee are partly allowed.

11. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 16.06.2022

Sd/-
(Kul Bharat)
Judicial Member

Date: 16.06.2022

GP/Sr. PS

Copy of the order forwarded to:

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

True Copy

By Order