

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.1150/Del/2020
Assessment Year: 2011-12

Swaran Lata,
H.N.1243, Sector-14,
Hisar.

Vs. ITO,
Ward No.4,
Hisar.

PAN: ADNPL9247N

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Om Prakash, Sr. DR
Date of Hearing	:	02.05.2022
Date of Pronouncement	:	23.06.2022

ORDER

This appeal has been preferred by the assessee against the order of the Id.
CIT(A), Hisar, dated 10.09.2019 for Assessment Year 2011-12.

2. Grounds of appeal raised by the assessee read as under:-

“(i) On the facts and circumstances of the case the Ld. Commissioner of income Tax Appeals erred in the facts by directly ignoring the ground No. 1 on the written request of the earlier counsel to ignore the Ground No. 1 without finding the fact that whether the case was time barred or not ?

The Ground no. 1 submitted before the First Appellate Authorities is produced for your ready reference "On the facts and circumstances of the case the Ld. A.O. erred in Law in passing the assessment order beyond the time limits as per the provisions of Section 153 of the

Income Tax Act, 1961. The assessment was to be framed by 31st December, 2018. Since, the assessment order was dated 26.12.2018 and on the speed post cover in which the order was received by the brother of the assessee, there was a stamp of 3rd January, 2019 vide consignment no. RH35887460IIN which can be safely ascertained that the order was passed after the 31.12.2018, this is not legally valid."

(ii) On the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) has legally and factually erred in law in making the addition of entire deposit of Rs. 17,01,000/- by not properly considering the Remand Report of the Ld. A.O. All the cash deposits were explained before the Learned A.O. but even after that the order was passed that it was just an afterthought of the Assessee."

Ground No.1

3. It was submitted before the ld.CIT(A) that assessment order dated 26.12.2018 was received by the assessee on 03.01.2019, thus, it has to be presumed that the AO did not pass or make order on or before 31.12.2018, before expiry of limitation period prescribed u/s 153 of the Act. I am in agreement with the contention of the ld. AR. Ld. Sr. DR submitted that the requirement of provision of section 153 of the Act is only that the order should be made within the prescribed time limit. There is no requirement of serving copy of the order or receipt of order by the assessee within the prescribed time limit. Therefore, in view of the admission of the assessee in the grounds that the assessment order dated 26.12.2018 was received by the brother of the assessee on 31.01.2019, ground No.1 of the assessee being devoid of merit is dismissed.

Ground No.2

4. Apropos ground No.2, I observe that the main contention of the assessee is that the Id.CIT(A) is legally and factually erred in making the addition of the entire deposit of Rs.17,01,000/- by not properly considering the remand report of the AO. It is also contended that all the cash deposits were explained before the AO, but, even after that the order was passed that the explanation of the assessee is afterthought. From the statement of facts and other material on record along with assessment as well as first appellate order, it is amply clear that the assessee, during the appellate proceedings, submitted the following written submissions/reply:-

“.....
.....

2) Brief Fact of the case are that the assessee is an individual and is homemaker. The assessee did not file any return of income for the Assessment year under consideration. The assessing officer noted that the assessee has made cash deposit of Rs. 17,01,000/- in saving bank account. Accordingly the assessing officer issued notice u/s 148' of the Act on 22/03/2018. The assessee could not make compliance of notice issued a notice under section 142(1) of the Act. The assessee could not make the compliance because the notice in question was not served on the assessee. Consequently, the AO, is issued a notice under section 144 of the Act for Ex-parte and added the entire amount of cash deposit in the bank at rupees 17,01,000/- to the income as a addition of Rs. 11260/- were made on account of interest earned on saving bank account and deposit made with V.K. Traders private limited. It is relevant to mention here that the order under section 144 claimed to be passed on 26.12.2018 and as per speed post cover in which the order received to the assessee was booked for speed post on 03/01/2019 which creates the serious suspicion that the order might have been passed after the period of limitation provided under the Act.

3) As per section 153(2) of the Act, No order of assessment, reassessment or recompilation shall be made under section 147 after expiry of nine months from the end of the financial year in which the notice under section 148 was served and it's apparent that merely signing on back dated i.e. 26.12.2018 cannot be equated with passing of order as contemplated under section 153 of the Act. If the order was passed on dated 26.12.2018 then why

it was not booked for speed post on or before 31.12.2018? In the circumstanced, impugned order was passed beyond the time limit of passing the order, are clearly barred by limitation and as such may not be sustained.

4) The assessee was a home maker and lives in the family of agriculturists, assessee's family agriculture land is approximately 25 acres situated at village Gabipur, Barwala Hisar which is very fertile land, all the deposits is from the agriculture income of my family (Family here means my spouse and my 2 sons) and the amount debited from my bank account is transferred in the bank account of my nephew's company .

The compliance could not be made because the notice was served at: m. present's home and not serviced at my home, Non-compliance was unintentional” .

Later on the assessee vide his written submission dated 1.06.2019 requested that the ground No. 1 mentioned in the written submission filed earlier may kindly be ignored and it's sufficient for the assessee if a reasonable opportunity of being heard is given to the assessee.”

5. The copy of the above written submissions was forwarded to the AO by the Id.CIT(A) and, in his remand report dated 08.07.2019, the AO reported as under:-

“
.....

3.1 In response to the said letter, the assessee sought adjournment through her counsel again and again. On 01.07.2019, the son of the assessee Sh. Mohit attended the office along with Sh. Pawan girdhar, ITP counsel of the assessee and filed documents as required inter alia produced books of account of the Firm M/s. Shri Guru Nanak Traders, 52-A, Anaj Mandi, Uklana and stated that her family owns 26 acres of agricultural land which is fertile and having good agriculture income. Further, stated that lla the income derived from agriculture activities were kept in the firm's account M/s. Guru Nanak Traders where here husband is a partner. She claimed that the said cash was deposited after withdrawal of money kept with the firm by his family member i.e. her husband sh. Madan Lai Bhutani and her two sons namely S/sh. Mohit and Ankit. In support of the same, the assessee has filed copy of account of all the three members of the

assessee family from the books of the firm. The details of the same are re-produced below:-

.....

3.2 As per above table, the total withdrawal of the family during the year under consideration come to Rs. 15,23,950/- (591147+580370+352433) when asked regarding house hold expenses Sh. Mohit told that the said withdrawal is out of the earning of one corp. and family expenses are being borne out from agriculture income & income from the firm runs by his father sh. Madan Lai, further son of the assessee stated that the main reasons to deposit the funds in their mother's account is that her mother's nephew needs funds for business purposes.

4. In addition to the above, the assessee has also produced cash book of the assessee firm M/s. Shri Guru Nank Traders for examination and filed a copy of relevant pages to show the position of cash in hand by the assessee firm at the time of withdrawal by the family members (copy enclosed along with all documents and reply of the assessee).

As pr bank account of the assessee, the cash was deposited on the following dates:-

*20.07.2010 7,00,000/-
 21.07.2010 9,50,000/-*

In view of the above facts, it is submitted that the date of the cash deposit is after. the date of withdrawal The total cash withdrawal made by the assessee family is Rs. 15,23,950/- including cash of Rs. 70729(25347+30370+15012). In case the same is excluded being much before the deposit in assessee's account and the balance figure comes to Rs. 14,53,221/-. The total cash deposited in the assessee's account is Rs. 11,65,000/- and the assessee has not produced any evidence for the balance amount i.e. Rs. 1,96,779/-."

6. In response to the above remand report, the assessee filed written reply which reads as follows:-

“ Respectfully, it is submitted that the comments given by the learned AO through Joint Commissioner of income Tax, Hisar Range may be incorrect. I would like to draw your kind attention towards the total of cash withdrawn statement made by the learned AO.

s. no.	Name and relation of the assessee	Date	Amount withdrawn	Total
1.	Sh. Madan lal Bhutani (Spouse)	29.04.2010	25347	591147/-
		16.07.2010	300000	
		18.07.2010	200000	
		20.07.2010	65800	
2.	Mohit(son)	14.04.2010	30370	580370/-
		20.07.2010	200000	
		21.07.2010	350000	
3.	Ankit (son)	15.04.2010	15012	552433/- Actual) 3,52,433/- shown by AO
		18.07.2010	250000	
		20.07.2010	220000	
		21.07.2010	57241	
Actual Total				17,23,950/-

Hence mistake is apparent from the records, it's therefore requested that the appeal may kindly be allowed and oblige.

It's further submitted that the amount of Rs. 70,279/- was even withdrawal earlier deposited in my account, it is therefore, prayed that kindly do not disallow the same without any reasonable ground.”

7. The ld. Sr. DR, supporting the assessment as well as first appellate order, submitted that during the assessment proceedings, the assessee did not cooperate and appeared, therefore, the order was passed u/s 147 r.w.s. 144 of the Act ex parte qua the assessee. The ld. Sr. DR further submitted that before the ld.CIT(A) the assessee submitted an explanation which was not found to be plausible by the ld. First appellate authority before considering the remand report

as well as rejoinder to the remand report of the assessee. Therefore, the addition may kindly be sustained.

8. On careful consideration of rival submissions and on careful perusal of the assessment as well as first appellate order, I find that the assessee did not appear before the AO due to the reasons best known to her. However, before the Id.CIT(A) the assessee presented the case through her authorized representative and submitted detailed submissions and contentions which were not considered in right perspective. The precise explanation of the assessee is that the assessee was a home maker and lives in a joint family of agriculturists having approximately 25 acres of land situated at village Gabipur, Barwala, Hisar which is a very fertile land. It was also submitted that all the deposits are from agricultural income of his family which includes her husband and two sons, therefore, the amount deposited to the bank account cannot be treated as unexplained. It was also admitted that the entire amount deposited to the bank account of the assessee was transferred to the bank account of her nephew's company. From the remand report dated 08.07.2019 (supra), para 3.1, I observe that the AO did not find any defect or discrepancy in the submission of the assessee and stated that the said cash was deposited after withdrawal of money kept with the firm by her family members i.e., her husband, Shri Madan Lal Bhutani and her two sons, namely, S/Shri Mohit and Ankit. The AO also accepted that in spite of the said claim, the assessee has filed copy of account of all three members of the assessee's family from the books of account of the firm. In para 3.2, the AO also noted that there

was a withdrawal of Rs.50,23,950/- during the year under consideration. Regarding household expenses, it was also explained by the son of the assessee Shri Mohit that the said withdrawal is out of earning of one crop and the family expenses are being borne out from agricultural income and income from the firm run by his father Shri Madan Lal Bhutani. It was also submitted by the son of the assessee before the AO that the main reason to redeposit the funds in their mother's account was that her mother's nephew needed funds for business purposes. Copy of bank account was also submitted before the AO which revealed that the amount of Rs.7 lakh was deposited on 27.02.2010 and Rs.9,50,000/- was deposited on 21.07.2010. The AO also noted that the date of cash deposit is immediately after the date of withdrawal from the firm which comes to Rs.15,23,950/- including cash of Rs.70,729/- and the balance figure comes to Rs.14,53,221/-. The AO, after considering the entire facts and circumstances, documentary evidence and statement of assessee's son, concluded that the assessee has not produced any evidence that the total cash deposit in the assessee's account is Rs.11,65,000/- and the assessee could not produce any evidence for the balance amount of Rs.1,96,779/-. Furthermore, from the rejoinder of the assessee, I also observe that the assessee submitted a table/chart showing withdrawals made by her husband Shri Madan Lal Bhutani amounting to Rs.5,91,147/- by her son Shri Mohit Rs.5,80,370/- and by second son Shri Ankit Rs.5,52,443/- which were shown by the AO as Rs.3,52,433/- due to inadvertent mistake in the figures.

9. After careful analysis of assessee's submissions, remand report of the AO and rejoinder of the assessee, when I proceeded to consider the conclusion drawn by the ld. CIT(A), then, I clearly noted that the ld.CIT(A) has accepted that the family of the assessee owned 25 acre of land and the amount of deposit on 21.07.2010, the amounts being Rs.7 lakh and Rs.9,50,000/- was deposited and the same amount was transferred to the bank account of her nephew's company by cheque. The ld. CIT(A) has not given any consideration and attention towards the submissions of the assessee, remand report of the AO and rejoinder of the assessee and directly jumped to the conclusion that the submissions made by the appellant are afterthought. The ld. CIT(A) drew a conclusion that the story of cash deposit is not convincing at all. The documentary evidence is self serving and consequently he confirmed the addition. In my humble understanding, the ld.CIT(A) was very well entitled to raise objections in the submissions and rejoinder of the assessee, but, the remand report of the AO cannot be dismissed at the threshold which partly supports the explanation of the assessee regarding cash amount deposited to the bank account of the assessee. The ld. AO, after considering the entire facts and circumstances, relevant documentary evidence in the form of bank statements, accounts of family members in the ledger of the firm, concluded that the assessee could not produce any evidence for the balance amount of Rs.1,96,779/-. The ld. CIT(A) was duty-bound to consider the remand report of the AO wherein the AO has not raised any objection regarding the cash

deposits to the bank account of the assessee after examination and verification of the relevant documentary evidence and statement of assessee's son Shri Mohit except alleging that the assessee has not produced any evidence on balance amount of Rs.96,000/-.

10. In view of the above, I am of the considered opinion that the Id.CIT(A) has given a sustainable finding for confirming the entire cash deposit to the bank account of the assessee. It cannot be ignored that the assessee and her family members jointly own 25 acres of fertile land in the State of Haryana and her husband also runs an enterprise related to the agricultural activities. The statement of the son of the assessee Shri Mohit clearly reveals that the amount of more than Rs.15 lakh was received out of sale of one crop and household expenses were met from the other agricultural income and income from the firm. In view of the foregoing discussion, I reach to a logical conclusion that the Id.CIT(A) has gone wrong in dismissing the explanation of the assessee as well as remand report of the AO at the threshold by merely alleging the same as afterthought and self serving. Therefore, impugned first appellate order is set aside.

11. However, I make it clear that before the AO, during remand proceedings, the assessee could not produce any sustainable evidence regarding part amount of Rs.1,96,779/-. Except this, the AO found the explanation of the assessee and all relevant evidences in order and, therefore, I safely presume that the assessee

could not produce any evidence and sustainable explanation regarding cash deposit of Rs.1,96,779/-. Therefore, the addition to this extent is sustainable and I restrict the addition to Rs.1,96,779/-. The AO is directed to delete remaining amount of addition.

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

The decision was pronounced in the open court on 23.06.2022.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 23rd June, 2022.

dk

Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi