

**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. 730/Asr/2017
Assessment Year: 2009-10

Sh. Kashmir Singh,
Vill. & Post- Ughar Aulakh,A
Tahsil- Ajnala, Amritsar

[PAN: ANKPS3959B]

(Appellant)

V
:

Income Tax Officer,
Ward 5(3), Amritsar

(Respondent)

Appellant by : Sh. PN Arora, Advocate

Respondent by: Shri Manpreet Singh Duggal, Addl.CIT, DR

Date of Hearing: 09.05.2022

Date of Pronouncement: 13.06.2022

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the impugned order dated 04.09.2017 passed by the Commissioner of Income Tax,(Appeals-2), Amritsar (hereinafter referred to as "the CIT, Appeal") in respect of the Assessment Year 2009-10, wherein the assessee has challenged the order passed on legal issue and non-appreciation of the fact of the case.

2. At the time of hearing, the Id. counsel for the assessee submitted that the Id. CIT Appeal erred in confirming the finding of the AO *ex parte* qua the assessee u/s 144 of the Act, by not appreciating the facts of the case that alleged HDFC Saving account does not belong to the assessee and without granting adequate opportunity of being heard to the assessee, in rebuttal. He requested that the matter may be remanded to the file of the CIT(A), to be adjudicated on merits afresh after considering the paper book and documentary evidenced filed on the record and would be filed in the course of afresh proceedings before the CIT Appeal.

3. Per contra, the learned additional CIT, DR stands by the impugned order. However, he has raised no objection to the request of the assessee on principles of natural justice.

4. Heard. In the present case, it is noted that the AO has passed *ex parte* order in the section 144 of the act. During the course of appellate proceedings, the CIT appeals had stated that as per AIR information, given the information to the Department shows that the Kashmir Singh had maintained the bank account wherein cash deposit of Rs. 33,02,000/- was made by the assessee in the account number 120301000007290. However, the appellant assessee has denied the ownership of the said saving bank account in HDFC bank and the alleged bank statement thereof with support of the affidavit which has not been addressed, by either of the authorities below. The CIT appeals mere alleged that assessee has failed to comply the notices issued vide letter dated 12.06.2017 and dated 18.09.2017 on the appointed date of hearing. Accordingly, the CIT appeal has concluded that

the assessee has failed to explain the cash deposits in the bank account and confirmed the addition under section 69 of the act.

5. It is evident from the impugned order that the CIT appeals has mentioned the facts of the issue of the notices but he has not mentioned the facts regarding the service of the said notices on the assessee. Thus, the assessee has been denied sufficient opportunity of being heard to present its case in compliance to the aforesaid notices dated which were never served upon the appellant assessee. From the above, it is noted that the CIT appeals has picked up the figures from the statement of accounts as stated by the assessing officer in the order passed under section 144 of the act. The learned CIT appeal has merely confirmed the finding of the AO without bringing cogent material evidence on record or the reply of the assessee in compliance to notices, and rebuttal. In our view, such observation of the CIT appeals without support of corroborative documentary evidences and rebuttal of the assessee on record are considered to be in gross violation of the principles of natural justice. Accordingly, we consider that it is a fit case, required to be send back to the Id. CIT appeals to examine the matter afresh, after considering the submissions of the assessee to be filed in the fresh proceedings. The CIT appeals shall afford adequate opportunity of being heard to the assessee. The assessee is directed to cooperate in the fresh proceedings before the CIT appeals. Thus, the matter is remanded back to the file of the CIT appeals to decide the issue afresh by passing a speaking order by addressing the objections and grievances of the assessee.

*I.T.A. No. 730/Asr/2019
Assessment Year: 2009-10*

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 13.06.2022.

**Sd/-
(Anikesh Banerjee)
Judicial Member**

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

Date: 13.06.2022

GP/Sr.PS

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