

**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. Nos. 228 & 53 /Asr/2016 & 2018
Assessment Year: 2010-11

Smt. Raj Sodhi W/o Sh. Vs.
Jatinder Singh Ward No. 1,
Near Vishavkarma Gurdwara
Sardulgarh Distt. Mansa

[PAN: AZXPS 4758D]

(Appellant)

The Income Tax Officer
Ward 1(5), Mansa

(Respondent)

Appellant by : None

Respondent by: Sh. S. M. Surendranath, Sr. DR

Date of Hearing: 19.05.2022

Date of Pronouncement: 07.07.2022

ORDER

Per Dr. M. L. Meena, AM:

Both the appeals have been filed by the assessee against the impugned order dated 17.02.2016 & 20.11.2017 passed by the Ld. Commissioner of Income Tax (Appeals), Bathinda in respect of the Assessment Year 2010-11.

2. The assessee has raised the following grounds of appeal in ITA No. 228/Asr/2016:

- “1. That the order of learned Commissioner of Income Tax (Appeals) is wrong, illegal and against facts.
2. That the Ld. CIT (A) has not appreciated the facts of the case, explanation offered and erroneously directed to make the addition in the returned income.
3. That the Ld. CIT (A) has not considered the peak of all consolidated accounts in a proper & a judicial manner.
4. That the order of the learned CIT (A) may kindly be quashed and declared income may kindly be accepted.
5. That the learned AO has not considered in a proper and judicial manner that appellant has collected cheques for Malwa Medical Educational & research Society (Regd.) which were deposited in her account.
6. That the appellant requests for leave to add or amend the grounds of appeal before the appeal is heard and disposed off.”

3. Grounds of appeal in ITA No. 53/Asr/2018

- “1. That the order of the Ld. Income Tax Officer imposing a penalty u/s 271(1)(c) is wrong illegal and against facts and likewise CIT(A) is not justified while confirming the same.
2. That Ld. AO while imposing the penalty has not considered the facts of the case and proceeded to imposed the penalty arbitrarily. The Ld. CIT(A) has further erred in law and on facts while confirming the same.
3. That no proper satisfaction for initiating the penalty proceedings have been recorded and such imposition of penalty is illegal.
4. That no penalty is impossible in view of the facts of the case.
5. That the requests for leave to add or amend the grounds of appeal before the appeal is heard and disposed off.”

4. The assessee has filed an adjournment application a day before the date of hearing mentioning that he was going to Mumbai to visit her sister who was unwell and admitted in ICU without supporting documentary evidences such as medical, prescription or admission of his sister in the Mumbai hospital for treatment. This is an old appeal of 2016 in respect of assessment year 2010-11 and the assessee has been granted many dates as per order sheet enumerated as under:

“12.04.2018, 24.07.2018, 24.08.2018 14.09.2018, 06.03.2019, 16.04.2018, 06.06.2019, 24.12.2021 and 19.05.2022.”

It is noted that the assessee has either remained absent or applied adjournment application to its AR.

5. Considering the fact that this is being an old appeal of 2016, we have reject its adjournment application and decided to proceed, with hearing the Ld. AR to decide the appeal on merits based on the material on record in the interest of justice. Accordingly, both the appeals are heard together and decided by this common order.

6. This is 2nd round of appeal before us. In the 1st round, in ITA No. 228/Asr/2016, the matter was restored to the Ld. CIT(A) by the ITAT Amritsar Bench vide its order dated 23rd September, 2015 by observing vide para 10 as under:

"10. In view of the above facts, I hold that the learned CIT (A) went wrong in refusing to exercise powers under Rule 46A(2) of the I.T. Rules, to admit the additional evidence filed, even though this evidence goes to the root of the matter and required to be admitted and taken into consideration, in the interest of substantial Justice. Accordingly, the learned CIT (A) is directed to admit this

additional evidence and to decide the merits of the assessee's case in the light of thereof. For this purpose, the matter is remitted to the file of the learned CIT(A). The learned CIT(A) shall provide adequate opportunity of being heard to the assessee. In the result, for statistical purposes, the appeal of the assessee is treated as allowed."

7. The Ld. CIT(A) in pursuant to the directions of the Hon'ble ITAT Amritsar Bench has admitted additional evidences and forwarded the same to the AO for the remand report. After taking rebuttal of the assessee on the remand report of the AO, the CIT (A) has observed as under:

"2. Pursuant to the aforesaid directions of the Hon'ble ITAT, Amritsar, the additional evidences on record was forwarded to the jurisdictional AO for his comments, which remand was returned vide letter dated 06.01.2016, duly forwarded by the JCIT through his letter dated 20.01.2016. In the said remand report, the AO conceded that the benefit of closing balance of bank at Rs.99,577/- as on 31.03.2009 (opening balance for the A.Y. 2010-11) as claimed by the appellant, is allowable. However, it was categorically stated that the basic question regarding purposes of withdrawals and source of cash deposits made in the appellant's bank account during the year under consideration stil, unanswered.

3. Rebutting the observations of the AO in the remand report, a copy of which was afforded to the appellant, it was averred that the AO had wrongly calculated the peak investment in the original assessment proceedings by taking the investments in each bank separately. Instead, the correct way, as averred by the appellant, was to calculate peak investment after consolidating entries in all the bank accounts during the year. By such calculation, the appellant came up with the peak investment of Rs. 10,52,224/- instead of Rs. 11,90,907/- as reckoned by the AO in the assessment proceedings. However, when the appellant was asked to consolidate only the cash entries routed through the appellant's bank accounts to arrive at the peak investment to be considered as unexplained income, the figure that came out as per the appellant's calculation was Rs. 11,53,000/-. The Assessing Officer is directed to substitute the figure of Rs. 11,53,000/- as undisclosed income instead of Rs.11,90,907/- and thereafter allow credit of Rs.6,78,960/- as has been done in the assessment order to arrive at the undisclosed income which is to be added to the returned income of Rs.

1,82,590/-. However, before giving effect to this order, the appellant's calculation may be rechecked for confirmation."

8. Being aggrieved with the order of the Ld. CIT(A), the appellant assessee filed an appeal before us. As per grounds of appeal the assessee has submitted that the Ld. CIT(A) has appreciated the facts of the case, explanation offered and thus erroneously directed the AO to make the addition in the return income; that he has not considered peak credits of all the considered accounts in a proper and judicial manner and accordingly she requested that the return income may accepted by quashing the impugned order.

9. Per contra, the Ld. DR stands by the impugned order and he has submitted that the Ld. CIT(A) was justified in confirming the additions of peak credits made by the AO as the assessee failed to explain the purpose of withdrawals and source of cash deposits in the bank accounts during the year under consideration.

10. We have heard the Ld. DR and perused the material on record and the orders of the lower authorities. We note that the Ld. CIT(A) has though admitted the additional evidence under rule 46A(2) of the IT Rules in compliance to the directions of the ITAT Amritsar Bench, however he has reiterated the findings/observations made in the original appellate order stating that the basic question regarding purposes of withdrawals and source of cash deposits made in the appellant's bank account during the year under consideration still remain unanswered. The entries of withdrawals and the cash deposits in the appellant's bank account are extracted from page no. 3 of the assessment order as follows:

"Date	Withdrawals	Deposits	Date	Withdrawals	Deposits
25.06.2009		70,000/-	09.01.2010		1,00,000/-
25.06.2009		2,00,000/-	20.01.2010		3,40,000/-
01.07.2009	2,00,000/-		22.01.2010		60,000/-
24.07.2009	75,238/-		17.02.2010		3,00,000/-
25.07.2009		1,00,000/-	23.02.2010	5,50,000/-	
10.08.2009		4,00,000/-	03.03.2010	1,40,000/-	
19.08.2009		2,40,000/-	11.03.2010		70,000/-
08.01.2010	6,00,000/-		12.03.2010		1,00,000/-."

11. From the perusal of the above bank statement, it is apparently clear that the assessee has made maximum cash deposits of Rs. 4 lacs dated 10.08.2019 at a time and others are circulatory deposits and withdrawals on corresponding dates thus the peak credit could be taken at Rs.4 lacs. The entries of withdrawals and deposits made by the assessee during the year under consideration by way of giving the credit of the agricultural income as declared at Rs. 4,86,000/-, salary income of Rs. 1,30,000/- and income from other sources at Rs.6,78,960/- has been accepted by the AO. In our view, the assessee has sufficient cash to deposit the amount of peak of Rs. 4 lacs. Accordingly, the alleged cash deposits and the peak cash deposits in the bank account of the appellant assessee stands explained. The addition made by the AO and confirming by the Ld. CIT(A) of Rs.6,78,960/- on account of peak cash deposit is hereby deleted. The ground of appeal is allowed.

12. In ITA No. 53/Asr/2018, since the addition in the quantum appeal in ITA No. 53/Asr/2018 AY 2010-11 in the assessee's case has been deleted

hereinabove and therefore, the consequential penalty levied u/s 271(1)(c) by the Assessing Officer of Rs.1,13,048/- is not maintainable and stands dismissed accordingly

13. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 07.07.2022.

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

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

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