

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी" , चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH**

**श्री सुधांशु श्रीवास्तव, न्यायिक सदस्य**  
**BEFORE: SHRI. SUDHANSHU SRIVASTAVA, JM**

आयकर अपील सं./ ITA No. 764 /Chd/2019

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Ram Chand House No. 3268/2, Sector 40D, Chandigarh	बनाम	The ITO, Ward 5(1), Chandigarh
स्थायी लेखा सं./PAN NO: ACVPC3489Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri B.M. Monga, Advocate  
Shri Rohit Kaura, Advocate  
राजस्व की ओर से/ Revenue by : Shri Akashdeep, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 24/08/2022  
उद्घोषणा की तारीख/Date of Pronouncement : 26/08/2022

**आदेश/Order**

**PER SUDHANSHU SRIVASTAVA, JM**

This is an appeal filed by the assessee against the order of the Ld. CIT(A)-2, Chandigarh vide order dated 07/02/2019 pertains to Assessment Year (AY) 2010-11.

2.0 The brief facts of the case are that as per the information received by the Income Tax Department, the assessee had deposited Rs. 15,02,000/- in his bank account maintained with Union Bank of India during the relevant assessment year. Accordingly, the assessee was required to explain the source of the said cash deposit. The assessee had not filed any return of income earlier and it was only in response to the notice under section 148 of the Income Tax Act, 1961 (hereinafter called 'the Act') that he filed return of income declaring income of Rs. 206/- only. Further, the assessee failed to explain the source of the above said cash deposit and, therefore, the AO invoked the provisions of section 68 of the Act and added the same to the income of the assessee as income from unexplained sources.

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority challenging the addition and it was submitted before the Ld. CIT(A) that assessee was a road side tea and 'pakoda' seller and he was living in a rented accommodation with his wife, two daughters and a son. It was further submitted that the transaction of Rs. 15,00,000/- was carried out in a span of two days only and this amount had been received by the assessee from one Mr. Diwakar Chaudhary, a family friend, who had deposited the amount in the bank account of the assessee for the purpose of making a bid in an auction being carried out by HDFC Limited. It was further submitted that this amount was to be used margin money for the auction but since the auction got cancelled the amount was taken back by the depositor through cash withdrawal. It was submitted before the Ld. CIT(A), that these submissions of the assessee were also before the AO but the same did not find any favour with the AO and the amount was added to the income of the assessee.

2.2 However, the Ld. CIT(A) also upheld the addition by holding that since the assessee had not brought forth any evidence in shape of confirmation from Mr. Diwakar Chaudhary either at the time of assessment proceedings or, subsequently, during the course of First Appellate Proceedings, and further since no documentary evidence with reference to actual auction etc. was placed on record, the addition had rightly been made.

2.3 Aggrieved, the assessee has now approached this Tribunal challenging the order of the Ld. CIT(A) by raising the following grounds of appeal:

1. *That the order of Learned CIT(A), is against the law and facts of the case.*
2. *That the Ld. CIT(A) has grossly erred in upholding the action of AO in reopening u/s 147/148, which reopening/reassessment/Notice is itself based on presumptions, incorrect facts and without jurisdiction.*
3. *That the Ld. CIT(A) has grossly erred in upholding the orders of AO only on the flimsy grounds without appreciating the fact that the amount credited in pass book of the*

*assessee was immediately withdrawn i.e. within five days by the depositor, clearly proving that amount deposited does not belong to the assessee.*

4. *That the Ld. CIT(A) has grossly erred while ignoring well settled law that section 68 of the Act does not recognize bank passbook as books of accounts maintained of the assessee.*

5. *That the appellant craves, leave to add or amend any grounds of appeal.*

3.0 At the outset, the Ld. AR submitted that the assessee was challenging the reopening in the case. He drew my attention to the assessment order and submitted that the only reason for reopening in the present case was the information available with the Department that during the year under consideration the assessee had made cash deposits in his bank account. It was submitted that it has been constantly held by numerous Benches of the Tribunal that any reopening of the case cannot be done only on the sole basis that the assessee had made cash deposit in his bank account. It was further submitted that in the assessment order the AO has also noted that since there was non-compliance by the assessee with respect to the various notices issued by the Department, it was apparent that the assessee's income had escaped assessment. It was submitted that this observation of the AO was factually wrong as the assessee had duly replied to the AO-Ward 5(5), Chandigarh and therefore, the AO had proceeded on a wrong presumption of facts.

3.1 In the alternate, the Ld. AR further submitted that the action of the AO in making the addition under section 68 of the Act was also bad in law for the simple reason that bank passbooks are not recognized as books of account. The Ld. AR placed reliance on numerous case laws in support of this contention and prayed that the appeal of the assessee be allowed.

4.0 Per contra the Ld. Sr. DR vehemently supported the orders of the lower authorities and argued that it was a fact on record that the assessee had not filed any confirmation regarding the amount of Rs. 15,02,000/- having been deposited by the family friend of the assessee, Mr. Diwakar Chaudhary, and

therefore, the AO had no option but to add the same to the income of the assessee. It was further submitted that even before the Ld. CIT(A), the assessee had not been able to lead any evidence to demonstrate that the amount of Rs. 15,02,000/- was not belonging to him but rather belonged to Mr. Diwakar Chaudhary. It was further submitted that the assessee had also not furnished any evidence with regard to the claim that the money had been deposited as earnest money for auction and the conduct of the assessee became more suspicious when any such auction did not take place and the money, earlier deposited in cash was later withdrawn in cash. It was submitted that this entire matrix of events pointed out that the assessee's claim was more of an afterthought which had been submitted just to escape the rigors of Income Tax. It was prayed that the appeal of the assessee should be dismissed.

5.0 I have heard the rival submissions and have also perused the material available on record. The facts of the case are not in dispute at all and the only question before me is that whether the amount of Rs. 15,02,000/- which has been deposited by the assessee in his bank account could be treated as his income. It is seen that during the course of assessment proceedings, the assessee was given numerous opportunities by the AO to lead evidence and explain why the cash deposited in the bank account may not be treated as the income of the assessee and it has been noted in the assessment order that the assessee did not make any compliance before the AO leaving the AO with no option but to make the addition.

5.1 However, before the Ld. CIT(A) the Assessee submitted that there were apparent contradictions in the order of the assessment in as much as the assessee had attended Office of the Income Tax Officer on 07/12/2017 but no attendance was marked and further the assessee had requested the AO to afford ten days time for submitting the written reply as the counsel for the assessee was not available but the AO did not consider this request of the

assessee. It was further submitted before the Ld. CIT(A) that the assessee had submitted a detailed reply and had also filed an affidavit before the AO but the same was also not considered by the AO. This narration of facts has already been reproduced by the Ld. CIT(A) in the impugned order and the AO was required to submit a remand report on the same. As per the remand report, the fact of the assessee attending the proceedings on 07/12/2017 is not borne out from records and further the date of hearing was fixed for 06/12/2017 and not 07/12/2017. The AO has also mentioned in the remand report that as far as the assessee's claim for requesting further time of ten days was concerned, the said letter had been addressed to ITO-Ward-5(5), Chandigarh whereas the assessment proceedings were at ITO-Ward -5(1), Chandigarh. Similarly on the issue of the AO not considering the reply of the assessee, it has been mentioned in the Remand Report that the said reply dt. 17/12/2017 was filed with the office on 20/12/2017 and, therefore, the same could not have been considered while passing the assessment order which was passed on 15/12/2017.

5.2 Thus, this entire factual matrix would show that the order of assessment has been passed without the assessee being afforded appropriate opportunity. I have also noted that the assessee is just a small tea vendor and sells tea and 'pakoda' and is just a layman as far as the intricacies of Income Tax Law are concerned. Although, it is said that all men are equal in the eyes of law but all the same, cases of marginalized people need to be given extra sympathetic consideration. A tea-vendor cannot be expected to be knowing correctly as to in which Ward of the Income Tax Office was the reply to be filed. It is also a fact on record that earlier the assessee's case was being dealt with by ITO-Ward 5(5) Chandigarh i.e; the notice under section 148 was issued from Ward -5(5) but, subsequently, the case was transferred to Ward-5(1) from Ward-5(5) and no such intimation was ever given to the assessee and even the AO in the remand report before the Ld. CIT(A) has mentioned that since the case was transferred within the city limits, no such intimation was required to be given with respect to

the change in the AO. Even, the assessee's prayer for adjournment had been filed before the wrong AO. Thus, undoubtedly, the assessment order was passed *ex parte qua* the assessee.

5.3 During the course of proceedings before us, the Ld. AR was asked by me as to why no such confirmation had been filed and the Ld. AR stated at the Bar that Mr. Diwakar Chudhary had passed away and the assessee was not in a position to file any confirmation from Mr. Diwakar Chaudhary at this juncture.

5.4 I have given a considerable thought to the entire factual matrix and I am of the considered opinion that this is a case where, although, the assessee did not file any kind of confirmation nor could explain, with evidence, the source of entries appearing in his bank statement, his case requires a sympathetic view. Accordingly, without going into the question of the validity of the reopening or the question of the legality of the impugned addition under section 68 of the Act, on peculiar facts of the case, I hold that the impugned addition is not sustainable. While reaching this conclusion, the consideration which has weighed in favour of the assessee is the fact that he is a small time tea and pakoda seller and he could not have been expected to grasp intricacies of Income Tax Law. The deposits in the bank account are also on two dates only, as is evident from the assessment order, and it also lends credence to the version of the assessee that the amount had been deposited with a purpose to deposit the same towards margin money for the auction. Further, the amounts were also withdrawn immediately within a short period of time in cash, apparently, when the auction did not took place. Next, is the impossibility of obtaining confirmation of Mr. Diwakar Chaurdhary at this stage as he has already passed away. Therefore, keeping in mind all these facts, I have reached the conclusion that the assessee's case deserves that a sympathetic view may be taken. I also note that the assessment order was also passed *ex parte qua* the assessee as the assessee had furnished the reply before the wrong AO.

Restoring, the issue back either to the Ld. CIT(A) or the AO also would not serve any purpose as Mr. Diwakar Chaudhary, who would have been in a position to confirm the transaction, has already passed away. Therefore, looking into smallness of amount, the status of the assessee as well as the various facts as mentioned in the preceding paragraphs and without going into question of legality of reopening or legality of addition made under section 68 of the Act, purely on facts, I set aside the order of the Ld. CIT(A) and direct the AO to delete the addition.

6.0 In the final result, appeal of the Assessee is allowed.

(Order pronounced in the open Court on 26<sup>th</sup> August, 2022 )

Sd/-  
सुधांशु श्रीवास्तव  
(SUDHANSHU SRIVASTAVA)  
न्यायिक सदस्य / JUDICIAL MEMBER

AG

Date: 26/08/2022

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File