

**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. 557/Asr/2018
Assessment Year: 2009-10**

Smt. Rashmi Bhagat, A-3, Opp. Railway Crossing, Industrial Area, Jalandhar. [PAN:AFDPB4383H] (Appellant)	Vs.	ITO, Ward 2(3), Jalandhar. (Respondent)
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Appellant by	None.
Respondent by	Sh.S.M. Surendranath, Sr. DR.

Date of Hearing	25.08.2022
Date of Pronouncement	30.08.2022

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal was filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-1, Jalandhar, [in brevity the CIT(A)] bearing appeal No. 10123/17-18/CIT(A)-1/Jal, date of order 24.08.2018, the order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act] for A.Y.2009-10. The impugned order was originated from the order of the Id. Income Tax

Officer, Ward II(3), Jalandhar (in brevity the AO), order passed on dated 29.11.2016, u/s 144 of the Act.

2. Brief facts of the case are that during the assessment proceeding the assessee was out of India and holding the status of NRI. Assessee made payment Rs.6,39,400/- through credit card account during the relevant period. The assessee was unable to represent his matter due to his absence in India as NRI and was not informed properly. The order was passed u/s 144 of the Act. The addition was made Rs.6,39,400/- for payment through credit card & the nature of payment which was remain unexplained before the assessing authority.

3. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the AO.

4. Being aggrieved assessee filed an appeal before us.

5. On perusal of the record the extract from the order of the CIT(A) is reproduced as below:-

“7. Vide letter dated 24.04.2018, the assessee filed additional evidence as under:-

- i) Passport copy attached as a proof of not Presence in India.*
- ii) Credit Card statement copy attached as payment proof.*
- iii) Bank Statement attached.*

Since, the assessee was not present in India at the time of the assessment proceedings and could not file the requisite information, therefore the additional evidence filed by the assessee is admitted.

On the submissions filed by the assessee, reply of the AO was received as under

The facts of the case is that the assessee is an 'Individual' who has e filed his frn of income for the A.Y. 2009-10 on 22.03.2010 declaring income of Rs. 1,10,000/-. Assessment in this case was completed by the AO at assessed income of Rs. 7,49,400/- by making the addition of Rs.6,43,940/-.

In order to verify the above payment through credit/transaction High Value financial transaction, verification letters were issued on 03.02.2012, 09.03.2012, 17.12.2015 and served by post but no response was received. Again a verification letter was issued on 16.12.2015 but the assessee was not found at the above mentioned address and father of the assessee refused to receive the letter stating that his daughter has since been left the country far ago. Finally, a verification letter was issued to the on 15.01.2016 giving her final opportunity to explain the transactions fixing the case on 27.01.2016 and was duly served on father of the assessee Sh. Gurbachanlal Bhagat. In response to the above letter neither any body attended the office, nor any written reply was furnished.

So no reply against the verification letter was furnished by the assessee, the source of payment made by the assessee amounting to Rs. 6,39,400/- through credit card during the financial year 2008-09 relevant to assessment year 2009-10 remained unexplained leading to the fact that the assessee deliberately attempted to evade tax.

After the satisfaction of the AO and recording the reasons thereof that the income to the tune of Rs. 6,39,400/- had escaped assessment in the hands of the assessee for the accounting period relevant to A.Y. 2009-10 proceedings u/s 147 of the income tax Act, 1961 were initiated. Subsequently notice u/s 148 of the Income Tax 1961 dated 15.03.2016 was issued. Since the service of the above said notice u/s 148 of the Act could not be possible in the normal course the service

was made through affixture on the last known address of the assessee in the presence of witness.

Since there was no response to the notice u/s 148 of the Act, notice u/s 142(1) of the Income Tax Act, 1961 was issued and served on 28.07.2016 requiring the assessee to furnish return of income for the A.Y. 2009-10 by 03.08.2016. There was, however, again no response by the assessee and neither she attended personally or through an authorized representative nor any written reply was filed.

Notice u/s 142(1) of the Income Tax Act, 1961 was again issued and served on 08.08.2016 and served on 10.08.2016 requiring the assessee to furnish return of income for the A.Y. 2009-10 by 16.08.2016. There was, however, again no response by the assessee and neither she attended personally or through an authorized representative nor any written reply was filed.

In view of the fact and circumstance of the case the AO was the option to frame the assessment u/s 144 of the Act, 1961 on the basis of material on record and made addition of Rs. 6,39,400/-.

In the light of the fact stated above it is submitted that the appeal of the assessee may be decided of merits.

8. I have carefully considered the facts of the case and submission of the appellant. The assessing officer has issued and served the various notices on the same address which has been mentioned in the appeal. Since all the notices were issued on the last known address of the assessee, therefore, it is deemed that there was valid of issue and service of notice u/s 148 and u/s 142(1) of the Income Tax Act. The assessing officer has made addition of Rs. 6,39,400/- on account of credit card payments made by the assessee. The Ld. Counsel has explained that their credit card payments was made on behalf of the employer for transferring university/visa fee of the students. The assessee has neither given name and details of the employer not the names and details of the students whose fees was

transferred by the assessee. In the absence of basic details, the plea of the assessee is not verifiable and can not be relied. Since, the assessee has failed to explain the source of credit card payments, therefore, the appeal of the assessee is dismissed.”

6. The Id. Sr. DR argued and relied on the order of the revenue authorities.
7. During the hearing, none was present on behalf of the assessee. The matter was long pending. We have taken it for the adjudication with the consent of the Id. Sr.DR. After a thoughtful consideration of both the orders of revenue, it is our opinion that during the appellate proceeding the assessee filed details of payment through credit card account & the statement of credit card was submitted before the Id. CIT(A). Related to dispute in nature of payment through credit card account, the Id. CIT(A) was not able to find out any lacuna in the transaction of the assessee. The nature of payment was well clarified before the appellate authority for payment amount of Rs.6,43,940/-.The amount was transferred for University/Visa Application fee of the students on behalf of his employer. The assessee paid her own money on direction of her employer during his service. The source is well clarified. We find no infirmity in the clarification related to source of the assessee. The Id Sr. Dr was unable to bring any contrary view against the assessee's

clarification. Accordingly, the addition amount of Rs.6,39,400/- is liable to be quashed.

8. In the result, appeal of the assessee in **ITA No.557/Asr/2018** is allowed.

Order pronounced in the open court on 30.08.2022

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order