

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “एकल सदस्यीय”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH ‘SMC’ CHANDIGARH**

**श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM**

आयकर अपील सं./ITA No. 490/CHD/2019

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Jai Bhagwan, S/o Shri Barkha Singh, H.No.161, Ward No.20, Dashera Colony, Near Civil Hospital, Yamuna Nagar.	बनाम VS	The DCIT, Circle, Yamuna Nagar.
स्थायी लेखा सं./PAN No: ALUPB3203D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None (Application of Shri Ajay Jain, CA)

राजस्व की ओर से/Revenue by : Smt. Priyanka Dhar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 07.06.2022

उद्घोषणा की तारीख/Date of Pronouncement : 02.09.2022

आदेश/ORDER

The present appeal has been filed by the assessee wherein the correctness of the order dated 11.02.2019 of CIT(A) Ludhiana pertaining to 2010-11 assessment year is assailed on the following grounds:

“1. That the Id CIT(A) has wrongly confirmed the business Income at Rs 1082321 / simply on the basis of closing bank balance as on 31-03-2010 in place of Business income of Rs 228800/- declared by appellant in ITR.

2. That the CIT(A) has wrongly confirmed the business Income of Rs 1082321/- without appreciating the fact that closing bank balance represents advances from customers and same has been utilized for purchase of material in succeeding year.”

2. At the time of hearing, no one was present on behalf of the assessee, however, an adjournment request was made

seeking time. Considering the material available on record, the adjournment request was rejected and the ld. Sr.DR was directed to argue the appeal on merits.

3. The ld. Sr.DR specifically referring to pages 4 and 5 of the assessment order submitted that in view of the fact that huge deposits were found to have been made by the assessee in his bank account, the AO was justified to make the addition and considering the fact that a very meager earnings have been shown by the assessee from the activity despite a deposit of huge amounts in his bank account, the ld. Commissioner was fully justified to sustain the addition.

3.1 It was her submission that no doubt the assessee was doing the work of installation of tubewell connections and transformer connections for the farmers through Uttar Haryana Bijli Vitran Nigam (UHBVN), however, the assessee has failed to explain the deposits and the withdrawals.

3.2 Apart from that, the other hand the statement of Shri Mam Raj which has been recorded and confronted to the assessee was also relied upon. It was highlighted that he has categorically stated that the payment was made after the work was completed.

3.3 Accordingly, in the circumstances, the occasion to have an amount of Rs.10,82,321/- outstanding in his bank account remains unexplained.

3.4 On query, she agreed that the work is not complete as the said activity is an ongoing activity for the assessee atleast in the next year.

4. Attention of the Id. Sr.DR was invited to page 2 of the assessment order wherein the AO has recorded that, "*the assessee is a petty farmer having only 2 acres of agriculture land in the name of his wife which is hardly sufficient to maintain the family*". The AO, it was noticed has made the following observation also :

"Facts of the case are that assessee is an agriculturist based at VPO Sadhaura, Distt. Yamuna Nagar & holds about 02 Acres of agricultural land in his wife's name."

4.1 The Id. Sr.DR was required to address these findings.

5. Considering the record, Id. Sr.DR agreed that the assessee has pleaded in his written submissions dated 19.12.2017 that, "*the assessee was approved (UHBVN HARYANA BIJLI VITRAN NIGAM) Licencee for installation of pole mounting" Sub Station and Material for release of Tubewell connections to farmers under 'SELF EXECUTION SCHEME' of Uttar Haryana Bijli Vitran Nigam. Assessee was also having agricultural land.* However, it was her submission that assessee was not maintaining books of account which fact has been accepted by

the assessee himself as per the explanation before the AO and noticed in the order.

5.1 For ready reference, it is extracted hereunder :

“The assessee was not maintaining any books of accounts, as assessee was not carrying any business. The assessee only acting on behalf of UHBVN as their licensee. Assessee was to get installed the transformers by procuring the material from market, providing labour and getting the same 'inspected from UHBVN. However, an estimated statement of connections got installed by me during F.Y. 2009-10 is being enclosed herewith. Further, the deposits in bank accounts relate mainly to amounts received from farmers for installation of pole mounting Sub Station and Material for release of Tubewell connections”.

5.2. Accordingly, it was her submission that the AO specifically in view of sub-para (ii) and (iii) of para 4 of his order was fully justified in making the addition. Heavy reliance was placed upon the said finding. It is extracted hereunder for completeness :

“Keeping in view the facts & circumstances of the case, it is seen that though the assessee has executed the contract as entered by it with HSEB, yet complete details thereof have not been maintained. The very collection of cash receipts from the farmers & its utilization in the execution of erecting of poles, installation of transformers, expenses on labour etc. is not supported with any substantiating material. The AR has put on record the details with names - of farmers alongwith other costs incurred on the purchase of wires, poles, labour charges which though could not lead to any conclusive end in the absence of any concrete evidence/records as to how, the assessee has finally arrived at a net profit of Rs.1,16,665/- as on 31.03.2010. It cannot be accepted in view of the followings findings/discrepancies observed:-

- i. All the cash deposits with consequent withdrawals have not. been properly explained.*
- ii. Huge cash of Rs.25 Lacs deposited on 23.11.2009 & Rs.26.50 Lacs withdrawn on 26.11.2009 which was stated to have been utilized for purchase of land & cash received from brothers & own withdrawals. Thus the assessee has intermingled his own funds with that of the farmers.*
- iii. A number of payments have been withdrawn from the bank in cash by the assessee which are stated to have been utilized towards the purchases of transformers, wires, poles etc. These have not been co-related with the copies of accounts collected u/s 133(6) during the proceedings.*
- iv. As per the ITR and computation of income, the assessee has declared total income of Rs.2,91,113/- as under:-*

Profit u/s 44AE:	Rs.38,000/-	
Income from Other Sources		
i. Income from Work as licensee of UHBVN	Rs.2,28,800/-	
ii. Bank Interest	<u>Rs. 24,314/-</u>	<u>Rs.2,91,114/-</u>
Gross Total Income	:	Rs.2,91,114/

6. Attention of the Id. Sr.DR was also invited to the written submissions extracted in the impugned order itself.

For the sake of completeness, it is reproduced hereunder :

SUBMISSIONS:

1. *The Id. Assessing Officer has erred in treating the closing balance in bank accounts of the assessee as income of assessee. By no stretch of mind can closing balances in bank accounts be treated as income of that person.*
2. *The closing balance in bank account need not necessarily be the income of that person. The closing balance in bank account can be on account of any reason such as loans, advances, unsecured loans from friends and relatives taken or accepted by that person. These may be for personal reasons or for business reasons.*
3. *In the instant case, the closing balance in bank account was due to Advances received from farmers for installation of pole mounting Substation and Material for release of Tube well connections to them.*
4. *The Ld. Assessing Officer arbitrarily made addition of Rs.853522.00 to the returned income of the assessee without giving the assessee an opportunity of being heard neither any show cause notice was issued to the assessee before treating the closing balance in bank account of the assessee as his income. The assessee filed his return of income declaring Rs.228800.00 as his income as licensee of UHBVN. The Closing Balance as on 31.03.2010 in bank account of assessee was Rs.1082321.00 (Rs.1075308+7013). Therefore the impugned addition came to Rs.853521.00 (1082321 -228800.00).*
5. *In order to prove that closing balance in bank account was not on account of advances from farmers, the Ld. Assessing Officer has relied on statement of one of the farmers Sh.Mamraj S/o Sh. Paras Ram which was recorded during course of assessment proceedings. The Id. Assessing officer was highly confused while drafting his impugned assessment order. He was unable to establish that when the money was actually being received from farmers, whether it was taken before installation of transformers or after the installations of transformers: **In Para 3 of his Assessment Order he says that "the payments were made by farmer to the assessee only after completion of work" and at the same time in Para 5 he says that the assessee has undertaken the work of installation of transformers after receiving the full payments as is confirmed by Sh.Mamraj S/o Sh. Paras Ram in his statement recorded on 27.12.2017."** The two views of Ld.AO are self contradictory. Whereas, Sh.Mam Raj in his statement has said that he made payment only after the work had been executed. This statement was recorded arbitrarily and we were not given any*

opportunity to cross examine the statement. The statement on which the Ld. Assessing Officer is relying and statement, which he has reproduced in his assessment order do not have signature of Sh.Mam Raj. The copy of relevant page of assessment order is being enclosed herewith. (Refer Page No 10)

The actual fact was that some farmers gave money before installation of transformers and some farmers gave money after installations of transformers depending upon their financial condition. The decision regarding nature of work cannot be taken on the basis of statement of only one farmer where connections were provided to 127 odd farmers.

During the course of assessment proceedings itself we also submitted confirmation letters from four farmers which included the confirmation from above Sh. Mam Raj also. This confirmation was duly signed by Sh Mamraj along with his proof of identity. This confirmation says that his transformer was installed by Sh.Jai Bhagwan only after he has made full payment in advance. Three other similar confirmations were also filed vide our submission dated 26.12.2017. Copy of said submissions along with copies of confirmation letter and Aadhar Cards as proof of identities of farmers are being enclosed herewith for your kind perusal and ready reference. (Refer Page No 11 to 18)

This confirmation by Sh.Mam Raj is totally opposite from his statement of which reference has been made in the assessment order. Hence, the statement of Sh. Mam Raj S/o Sh.Paras Ram as recorded during the course of assessment proceedings is unreliable, uncalled for and does not have any evidencing value.

7. Connections of those farmers from whom advances were taken were installed in next year. This fact can be verified from assessment records of next year where case of assessee was also decided u/s 143(3) of the Income Tax Act, 1961. As on 31.03.2010, Sh.Jai Bhagwan has taken advances from farmers to the tune of Rs.1812233.00. Details are being enclosed herewith. (Refer Page No 19)

List of farmers whose connections were installed in next year i.e. F.Y.2010-2011 is also being enclosed herewith (Refer Page No 20 to 21) This list covers the name of farmers from whom advance was taken in the year 2009-2010 but the connections were installed during 2010-2011.

8 The Balance in banks as on 31.03.2010 was spent in the month of April 2010 itself for purchase of transformers, stores and spares and payment of labour. Copy of Bank Statement of next year i.e.2010-2011 is being enclosed herewith which shows that balance as on 15.04.2010 was only Rs. 12280.00 meaning thereby that the amount remaining in the bank account of the assessee as on 31.03.2010 was not his income and was utilized towards completion of pending connection of transformers of the year 2009-2010. (Refer Page No 22 to 25)

9. Moreover, if the contention of the Ld. Assessing Officer is assumed to be right for a single moment, than can it be concluded that assessee committed a blunder in not withdrawing all the amount from his bank account on or before 31.03.2010? No other objection was raised by the Ld. Assessing Officer in his assessment order other than closing balance in the bank accounts of the assessee. If there were no or very minimal balances in bank accounts there would have been no additions which seems very funny.

10. *The Ld. Assessing Officer has made additions on the basis of vague and false estimates regarding the probable unaccounted income which is based on surmises and conjectures. The Ld. Assessing Officer has himself admitted in Para 5 of his assessment order that " in the absence of any substantive details on record, it appears that an estimate has to be made regarding the probable unaccounted Income". It clearly means that the Ld. Assessing officer has himself admitted that no substantive details (irregularity) were present in the case, Hence, it can be assumed that the additions were made for the sake of additions only.*

11. *In the case of Principal Commissioner of Income Tax v/s Marg Limited on 20 July 2017. The Hon'ble Madras High Court dismissed the appeal of revenue and adjudged in favor of assessee upholding the decision of Income Tax Appellate Tribunal, Madras C Bench which confirmed the order of CIT(A) who deteted the addition of Rs.214000000/- on estimate basis.*

The Hon'ble High Court decided that" Owing to and in the light of all that have been stated supra, the appeal by the Revenue in T.C.A.No.302 of 2017 is dismissed as bereft of merits and as one In which no substantial question of law arises for being entertained under Section 260-A of the IT Act" Copy of order is being enclosed herewith. (Refer Page No 26 to 33)

In view of above submissions, it is most respectfully prayed that appeal of the assessee may very kindly be accepted and additions be dropped and accordingly penalty proceedings u/s 271(l)(c) be also dropped."

(emphasis supplied)

6.1 The ld. Sr.DR could not show from the order where the argument has been considered in the impugned order.

7. I have heard the submissions and perused the material on record. In the facts of the present case admittedly the assessee is shown to be a petty farmer having only 2 acres of agriculture land in the name of his wife which is hardly sufficient to maintain the family. It is also a fact that the assessee was approved by UHBVN HARYANA BIJLI VITRAN NIGAM for installation of pole mounting for release of Tubewell connections to farmers under 'SELF EXECUTION SCHEME' of Uttar Haryana Bijli Vitran Nigam. It is a matter of fact that the assessee has not been maintaining books of account. The

amounts received for installation of tubewells for farmers etc. has been consistently argued, the amounts had been deposited and withdrawn from the specific bank account and the payments have been made for the said purpose. The costs include purchase of wires, poles, labour charges etc. for getting the work executed. Estimated income from the stated activity has been shown. The said activity is stated to continue in the next assessment year also. Accordingly, in the circumstances, the amount of Rs. 10,82,321/- which remained in the account can be said to be well addressed. There is nothing on record to show that the assessee who was admittedly a licensee of Uttar Haryana Bijli Vitaran Nigal and entrusted with the task of installation of poles for tubewell connections had any other income except agricultural income. There is nothing on record to show the educational qualification of the assessee or his capacity of maintaining accounts. The stated activity of the State was entrusted to this local person, income therefrom has been assessed u/s 44AE by the AO. Nothing further consequently remains. The only factual matrix is the statement of one farmer Shri Mam Raj S/o late Shri Paras Ram as per para 3 of the assessment order stated that payments were made by him to the assessee after the completion of work. This single statement by itself cannot be the basis for concluding that

from all the other parties, the assessee was receiving payments after the completion of work where were the funds to come from. The assessee has consistently argued that the advance payments received were deposited. The single statement of one Shri Mam Raj, it has been alleged in the submissions before the ld. CIT(A) as extracted in the earlier part of this order that the statement of Shri Mam Raj relied upon is not signed. It has also been canvassed that a signed confirmation of Shri Mam Raj has been placed before the ld. CIT(A) alongwith similar confirmations from other parties stating that the full payments were made in advance. Thus, it is seen that the evidence relied upon by the Revenue ignoring the evidence on record is a meaningless exercise. Even otherwise practically it is impossible to visualize how the assessee would be making the purchases without receiving any advances. Some one stray errant payment received after the completion of work by itself cannot be the occasion to discount the entire version of the assessee. Accordingly, noticing my extreme disappointment in seeing how the Tax Authorities have functioned qua a vulnerable, ill equipped hapless citizen who has stepped out of his way to make available his time and local assistance for enabling the execution of the schemes of the Government. Referring to my extreme disappointment on the above issues, I on a

consideration of the entirety of facts, and circumstances of the case and the submissions of the Revenue direct that the addition sustained by the CIT(A) in the facts be deleted.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 02 September, 2022.

Sd/-

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/Judicial Member