

**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.42/Asr/2019
Assessment Year: 2012-13**

Sanjit Singh Prop. Sunny Cable TV, Old Dusshera Ground, Moga. [PAN: AWQPS9303L] (Appellant)	Vs.	Asstt. CIT, Moga. (Respondent)
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Appellant by	Sh.Vinamar Gupta, CA .
Respondent by	Ms. Amanpreet Kaur, Sr.DR

Date of Hearing	21.09.2022
Date of Pronouncement	23.09.2022

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax(Appeals)-4, Ludhiana, [in brevity the CIT(A)] bearing appeal no.12/ROT(75)/IT/CIT(A)-4/LDH/2015-16, date of order 28.09.2018, the order passed u/s 250(6) of the Income Tax Act 1961, [in brevity

the Act] for A.Y. 2012-13. The impugned order was originated from the order of the Id. Assistant Commissioner of Income Tax, Circle-Moga, (in brevity the AO) order passed u/s 143(3) of the Act date of order 31.03.2015.

2. The assessee filed the petition with delay of 30 days. The assessee filed a petition for condonation of delay with proper reasoning. The reason for delay was the illness of the assessee. The delay for 30 days is condoned with consent of the Id. Sr. DR.

3. Assessee has raised the following grounds which are reproduced as below:-

“1. That the Learned CIT (A) has erred in law and facts and circumstances of the case by upholding the disallowance of Rs. 44331/- u/s. 36(1) (iii) in respect of Advances given by Assessee to his wife who is also in the business of Cable Operator and this is very much for the purposes of business of the Assessee.

2. That the Learned CIT (A) has erred in law and facts and circumstances of the case by upholding the disallowance of Rs. 408440/- u/s. 36(1) (iii)

3. That the Learned CIT (A) has erred in facts and circumstances of the case by upholding the addition of Rs. 750000/- on account of Cash Credit from uncle of the Assessee in spite of the fact that identity as well as genuineness of the transaction had been proved .

4. That the Learned CIT (A) has erred in law and facts and circumstances of the case by upholding the addition as pointed out in point no. 3 above inspite of admitting the additional evidence but yet not mentioning any thing in the order regarding remand report of the learned A.O. on the additional evidence admitted.

5. The appellant craves leave to and permission of Hon'ble Bench of ITAT to add to or alter any of the grounds of appeal at any time up to final decision of the appeal.

6. The appellant craves leave and sanction of Hon'ble Bench of ITAT to file additional evidence, if so required for proper prosecution of the case, based on facts and circumstances, which has not been or could not be adduced before lower authorities and CIT (A) either because proper and sufficient opportunity was not provided or because it was not solicited its need was not appreciated.

7. The order passed by Ld. A.O. and CIT (A) be set aside as null and void and/ or such other relief as your honor may deem fit, under the circumstances of the case, be granted.

8. The Delay in Filing the Appeal may also be condoned by the Hon'ble Bench for which a separate request letter has been annexed."

4. The brief fact of the case is that the assessment was completed u/s 143(3) with addition u/s 36(1)(iii) amount of Rs.44,331/- and disallowance of interest amount of Rs.4,08,440/-, the addition u/s 68 amount of Rs.7,50,000/-. The assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the AO.

5. Being aggrieved assessee filed an appeal before us.

6. The Id. Counsel argued and first pointed out the ground no. 4 of appeal. The grievance of the assessee was that the remand report under Rule 46A of Income tax Rule,1962, was called for by the appellate authority. But the said report was not taken of cognizance during passing the appeal order. The assessee made submission before the Id. CIT(A) which is annexed in **paper book page no. 1 to 7** but the submission was not taken in cognizance by the Id. CIT(A) during passing the order. So, the reasonable opportunity of the assessee is denied.

7. The Id. Sr. DR argued and relied on the order of the revenue authorities.

8. We heard the rival submission and consider the documents filed by the Id. Counsel which is in **APB page no. 1 to 38** and which is kept in the record. The assessee submitted the documents and prayed for cognizance of evidence before the Id. CIT(A) but the reasonable opportunity was denied during passing the order by

the Id. CIT(A). We direct that the assessee should get further opportunity to substantiate its claim before the appellate authority. We set aside the order of the Id. CIT(A) for fresh adjudication. Needless to say, that the Id. CIT(A) shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanations submitted by assessee in its defence shall be admitted by Id. CIT(A) and adjudicated by him on merits in accordance with law. We order accordingly.

9. In the result, the appeal of the assessee **I.T.A. No.42/Asr/2019** is allowed for statistical purposes.

Order pronounced in the open court on 23.09.2022

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