

**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.442/Asr/2019
Assessment Year: 2014-15**

Smt. Anisha Rani Chambial 179, Mohan Market, Pathankot, Punjab. [PAN: AEVPC7724G] (Appellant)	Vs.	ITO, Ward-1, Pathankot. (Respondent)
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Appellant by	Sh. Tej Mohan Singh, Adv.
Respondent by	Ms. Priyanka Singla, Sr. DR

Date of Hearing	19.12.2022
Date of Pronouncement	26.12.2022

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-2, Amritsar, [in brevity the 'CIT (A)'] bearing appeal 10386/2016-17, date of order 23.08.2017, the order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2014-15. The impugned order is emanated from the order of Id. Income Tax Officer, Ward 6(1), Pathankot, order passed u/s 143(3)/144 of the Act, date of order 08.12.2016. The assessee has taken the following grounds:

“1. The Ld. CIT(A) has erred both question of law and facts in upholding the addition of Rs. 1670000/- when the Ld. A.O. has not taken the approval of Ld. Pr. CIT which is against the instructions of the board and therefore rendering the assessment framed as void-abinitio. The Ld. CIT appeals has admitted to the fact that the Ld. A.O. has not taken the prior approval of Pr. CIT but has considered the same as just an irregularity when the same is against the instructions of the CBDT therefore the assessment so framed against the instructions of the board needs to rendered as invalid.

2. The Ld. CIT(Appeals) has erred both question of law and facts in sustaining the addition of Rs. 1605000/- out of the total addition of Rs. 1670000/- by considering the same as cash deposits from undisclosed sources when the source for the deposits of the cash was explained at the time of assessment itself.

3. The appellant craves leaves to amend alter or add any grounds of appeal before the same is heard of disposed off.”

2. The assessee has also filed an additional ground which reproduced as under:

The abovementioned appeal is fixed for hearing on the 12th of October, 2022. The Assessing Officer during the course of assessment proceedings made an addition of Rs. 16,70,000/- on account of unexplained bank deposits, it was submitted during the course of assessment and appellate proceedings that the assessee had received loan of Rs.6,00,000/- from Sh. Jagdev

Singh and Rs.4,00,000/- from Sh. Budhwan Singh. The Assessing Officer did not give the benefit of the loans for the reason that there was no compliance by Sh. Jagdev Singh and Sh. Budhwan Singh in response to summons issued u/s 131. The assessee has since obtained the affidavits from both the persons wherein they have categorically admitted to have given the loan.”

3. Brief fact of the case is that the assessee's case was assessed under limited scrutiny. Due to non submission of the proper documents, the assessment was completed u/s 144. The addition was made for deposit of cash in the bank account from 11.10.2013 to 31.01.2014 total amount of Rs.16,70,000/-. The source of cash was explained during assessment. Amount of Rs. 6,61,240/- was cash in hand as on 31.03.2013 and the rest amount Rs.10 lac was received from Mr. Jagdev Singh amount to Rs.6 lac and Mr. Budhwan Singh amount to Rs. 4 lac. Both are the agriculturist and paid the cash as loan to assessee. But during assessment the assessee was unable to produce the loan-creditors before the Id. AO. So, the entire cash deposit was added back with the total income of the assessee. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

4. During hearing before ITAT, the Id. counsel for the assessee has filed a paper book and additional evidence in his support before the bench. The additional evidence is reproduced as below:

The abovementioned appeal is fixed for hearing on the 12th of October, 2022. The Assessing Officer during the course of assessment proceedings made an addition of Rs. 16,70,000/- on account of unexplained bank deposits, it was submitted during the course of assessment and appellate proceedings that the assessee had received loan of Rs.6,00,000/- from Sh. Jagdev Singh and Rs.4,00,000/- from Sh. Budhwan Singh. The Assessing Officer did not give the benefit of the loans for the reason that there was no compliance by Sh. Jagdev Singh and Sh. Budhwan Singh in response to summons issued u/s 131. The assessee has since obtained the affidavits from both the persons wherein they have categorically admitted to have given the loan.”

5. The grievance of the Id. Counsel for the assessee is that in assessment order the AO mentioned that the scrutiny was limited but in the other page mention that the scrutiny as a normal. The grievance of the Id. counsel is that the Id. AO has not taken any permission from the higher authority to convert the limited scrutiny into normal scrutiny. Further section 133(6) which was issued to bank for collection of evidence related to deposit of cash was erroneous because the bank account

number was wrongly mentioned. Later on, the correct no. was implemented, and the assessment was completed with a speaking and justifiable order.

5.1 The Id. counsel further invited our attention in the order of the Id. CIT(A) in page nos. 3 to 5 the relevant para is extracted as below:

“Decision:- In the assessment order the AO has stated and the first page of the order that the case has been selected scrutiny through CASS - limited scrutiny but has not mentioned the reasons on the basis of which the case was selected under limited scrutiny. On the other hand on page 2 of the assessment order the AO had only mentioned that the case has been selected under scrutiny under CASS with reasons that “cash deposits in savings bank account(s) (other cases)”. Therefore there is contradiction in the statements of the AO whether the case was selected under scrutiny or limited scrutiny.

If the case was selected under limited scrutiny, the appellant is correct in stating the as per instruction of the board under limited scrutiny if any other addition is proposed to be made for than Rs 500,000/- other than the information in hand, the AO is duty bound to take prior approval of the Pr CIT before issuing any notice or making assessment on reasons other than reasons in hand of limited scrutiny. The AO had not taken prior approval of the Pr. CIT as nothing is mentioned in this regard in the assessment order and has assessed the deposits in the bank account of the appellant, which is violation of the instructions of the CBDT on limited scrutiny. This is an

irregularity but in my opinion does not render the assessment invalid. Therefore the ground of appeal is dismissed.

(ii) The ground of appeal no. 2 is against the addition of Rs 750,000/-. In the assessment order the AO has observed cash deposits during the F Y 2013-14 was Rs 16,70,000/- on different dates. The appellant had submitted her copies of accounts from F Y 2008-09 to create cash in hand of Rs 661,240/- as on 31-03-2016 showing tuition income as her source of income. The AO held that mere filing of capital accounts does not justify the fact that the assessee was having cash in hand of Rs 661,240/-. Further assessee failed to prove to have taken cash loans of Rs 10,00,000/- from agriculturist Sh Jagdev Singh and Sh Budhwan Singh. The Summons send by the AO were not complied with and the AO pointed out their non compliance to the counsel of the appellant vide order sheet entry dated 28-09-2016. As the appellant had failed to explain the source of cash deposits of Rs 16,70,000/- in her saving accounts no. 30376148254 in SBI, Bharmar, therefore the AO made the addition of Rs 16,70,000/- u/s 69 of the act.”

6. The ld. Sr. DR further argued that there is no deviation in the reasons recorded by the ld. AO. There is no improper addition or any erroneous addition was made by the ld. AO during assessment proceeding. She prayed that the additional evidence should be rejected, as the issue was already agitated before the ld. AO related to loan creditorsof the assessee amount of Rs.10 lacs. The ld.

counsel relied on the order of the ld. AO and the relevant para in page no. 2 to 3 is extracted as below:

“Further vide reply furnished on 16/09/2016 the assessee stated as under:

That the source of cash deposit amounting to Rs 750000/- has already been furnished in the shape of personal statement of affairs for the last years in the last hearing of the case.

The balance amount of Rs 920000/- has been deposited out of the loan taken by the assessee from the following persons who are agriculturist:

<i>Name of Person</i>	<i>Address</i>	<i>Amount of Loan Taken</i>
<i>Jagdev Singh</i>	<i>S/o Vishwashwar Singh R/o VPO Ganoh Tehsil Nurpur</i>	<i>Rs.6,00,000/-</i>
<i>Budhwan Singh</i>	<i>S/o Milkhi Singh R/o VPO Rehan Tehsil Nurpur</i>	<i>Rs.4,00,000/-</i>

The replies filed by the assessee have been duly considered. Summon u/s 131 dated 19/09/2016 was issued to both ShJagdev Singh S/o Vishwashwar Singh R/o VPO Ganoh Tehsil Nurpur and ShBudhwan Singh S/o Milkhi Singh R/o VPO Rehan Tehsil Nurpur and sent through registered post fixing the date for hearing on 26/09/2016 but both the persons failed to appear in this office. On 28/09/2016 Sh Vaibhav Aggarwal, CA attended this office and he was informed on

order sheet that Summons were issued to Sh Jagdev Singh and Sh Budhwan Singh but both the persons failed to make compliance.”

7. We heard the rival submission and relied on the documents available in the record. In the argument the ld. counsel has invited our attention **APB in page 3**, the notice under section 133(6) which is itself erroneous for wrong mentioning the bank account. Further in the order of the ld AO there is confusion in between nature of scrutiny, limited or normal scrutiny. From conversion from limited scrutiny to normal scrutiny the approval is required from PCIT. The ld. CIT(A) was also accepted the fact but the rejected the claim of the assessee. The ld. Counsel relied on the order of the ITAT Pune Bench in ITA No. 670/PN/2016, dated 28.06.2019. But in factual matrix the nature of scrutiny was never be verified by the ld CIT(A) by allowing the opportunity to assessing authority. The ld. Counsel for assessee was unable to produce any substantial evidence that the conversion was made without approval. A mere assumption can not be the basis for abrogated the assessment order.

Considering the additional evidence of the assessee, the details of loan-creditors were already filed before the ld. AO. It is onus of the assessee to produce the evidence before the authority. But during assessment the assessee was failed to do so.

7.1 In our considered view, the appellate authority never be allowed the Id. AO to substantiate the fact and the issue for conversion of scrutiny was never be clarified by the Id. CIT(A).

In submission of additional evidence the Id. counsel only submitted two affidavits of loan creditors. The copy of the affidavit of Mr. Jagdev Singh is extracted as below:

AFFIDAVIT

I, Jagdev Singh S/o Sh. Vishwashwar Singh resident of VPO: Ganoh, Tehsil Nurpur solemnly declare and affirm as under:-

1. That I am an agriculturalist holding 15 Acres of agriculture land and have no other source of income other than agriculture income.
2. That I have given a loan of Rs. 6 Lakhs to Smt. Anisha Rani Chambial W/o Sh. Chetan Chambial resident of H. No. 406, Defence Colony, Chhatwal, Pathankot.
3. That the said loan was given in cash during the financial year 2013-14 as interest free friendly loan.
4. That I have received back the said amount from Smt. Anisha Rani Chambial in different years and nothing is outstanding as on date.

Jagdev Singh
DEPONENT

I, Jagdev Singh S/o Sh. Vishwashwar Singh resident of VPO: Ganoh, Tehsil Nurpur, do hereby further declare that whatever stated above is true and correct to the best of my knowledge and belief and nothing has been concealed in it.

ATTESTED

NOTARY PUBLIC
Nurpur Distt. Kangra

Jagdev Singh
DEPONENT

7.2 The other loan creditors Mr. Budhwan Singh is also extracted as below:

AFFIDAVIT

I, Budhwan Singh S/o Sh. Milkhi Singh resident of VPO: Rehan, Tehsil Nurpur solemnly declare and affirm as under:-

1. That I am an agriculturalist holding 5 Acres of agriculture land and have no other source of income other than agriculture income.
2. That I have given a loan of Rs. 4 Lakhs to Smt. Anisha Rani Chambial W/o Sh. Chetan Chambial resident of H. No. 406, Defence Colony, Chhatwal, Pathankot.
3. That the said loan was given in cash during the financial year 2013-14 as interest free friendly loan.
4. That I have received back the said amount from Smt. Anisha Rani Chambial in different years and nothing is outstanding as on date.

Budhwan Singh
DEPONENT

I, Budhwan Singh S/o Sh. Milkhi Singh resident of VPO: Rehan, Tehsil Nurpur; do hereby further declare that whatever stated above is true and correct to the best of my knowledge and belief and nothing has been concealed in it.

ATTESTED

NOTARY PUBLIC
Nurpur Distt. Kangra

Budhwan Singh
DEPONENT

7.3 Other than this affidavit, no other documents was filed by the Id. counsel for the assessee for substantiate its claim.

8. The Id. Sr. DR in her argument prayed before the bench not to accept that this additional evidence as the details were already submitted before the Id. AO and there is no such any new document is found.

9. We find that the additional evidence is not bearing any substantial new evidence to reach the true fact which is liable to be dismissed.

The case is remanded back to the Id. CIT(A) for further adjudication *de novo*. 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 the Id. CIT(A), and be adjudicated on merits in accordance with law. We order accordingly.

10. In the result, the appeal of the assessee bearing **ITA No. 442/Asr/2019** is allowed for statistical purpose.

Order pronounced in the open court on 26.12.2022

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