

**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.169/Asr/2022
Assessment Year: 2010-11**

Raj Kumari, 15/473, Gali Mast Khoo, Near Moni Chowk, Amritsar. [PAN: CCBPK1076M] (Appellant)	Vs.	Asstt. Commissioner of Income Tax,(OSD) Ward- 2(3)Amritsar. (Respondent)
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Appellant by	Sh. A.R. Dogra, Adv.
Respondent by	Ms. Priyanka Singla, Sr. DR

Date of Hearing	21.12.2022
Date of Pronouncement	31.01.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeal), NFAC, Delhi,[in brevity the 'CIT (A)'] bearing appeal DIN & Order No. ITBA/NFAC/S/250/2022-23/1043692848(1), date of order 30.06.2022, the order passed u/s 250of the Income Tax Act 1961, [in

brevity the Act] for A.Y. 2010-11. The impugned order was emanated from the order of the Id. Asstt. Commissioner of Income Tax (OSD) Ward-2(3), Amritsar, (in brevity the AO) order passed u/s 144/148 of the Act date of order 29.12.2017.

2. Brief fact of the case is that the assessee was reopened u/s 148 for depositing cash Rs. 9 lac in the bank account of the assessee. The assessee is running a Tea Shop in the name of "Shrma Tea". The cash was deposited in different dates in Punjab National Bank, Hansli Branch. The assessee denied about the deposit of cash and accordingly the confirmation was submitted before the revenue authorities. The assessee claimed that the fraud was accomplished by the banking authority against the deposit and withdraw of the cash in the bank account. She further claimed that as a small tea seller the maximum balance was Rs.500/- in bank account. But the Id. AO without considering the assessee's submission made the addition amount of Rs.9 lac and completed assessment u/s 144 of the Act. Aggrieved assessee filed an appeal before the Id. CIT(A). The appeal was decided *ex-parte* without considering the merit of the case. Being aggrieved assessee filed an appeal before us.

3. During hearing, the Id. counsel for the assessee has filed the written submission which kept in the record, and also filed additional documents in afresh before the bench which was not filed before the lower authorities. As per the counsel of the assessee, the assessee has no connection about the deposit of cash in the bank account. He submitted in the bank account of the assessee, the regular deposit and withdrawal of cash was depicted there. As per the assessee, the entire amount was withdrawn by the bank manager by defrauding the assessee's account. The police complaint was filed on dated 22.05.2022. Copy of the FIR is enclosed in **APB page no. 8 to 18**. The relevant para of the FIR is extracted as below:

“Harish ChanderJuneja in his own hand writing. It is also mentioned over here that the applicant-complainant Raj Kumari in her account number 09780000106220892 on dated 03/06/08 to dated 20.3.2009 herself made small transaction number 13 and the total amount of Rs. 12,366/- deposited and from that amount she has withdrawn Rs.8005/- and in addition to that the complainant Raj Kumari due to deposit the big amount in the bank the department of Income Tax a sum of Rs. 6,68,060/-imposed fine on her and due to poorness could not pay the same and the department of Income tax issued notice to Raj Kumari bearing notice number 3573/30.12 17 is enclosed

for perusal. It is also mentioned over here that if Bank Manager Harish ChanderJuneja while knowing in all respect only has withdrawn Rs.7000/- can be withdrawn and on that vouchers has withdrawn big/heavy amount and from that it is clear if Bank Manager Harish ChanderJuneja the complainant Raj Kumari is not so much educated and while getting benefit for completing histarget withfraud from her bank account while makingheavy transaction bank and the complainant who has given application Raj Kumari have committed fraud and in this regard Bank Manager Harish ChanderJuneja sonof Hira LalJuneja caste Khatri resident of kothi No.27 Foju Street Makhdumpura Jalandhar while registration of case against him under section 420,409 IPC the enquiry is required to be made and if it is accepted and then order be given to SHO PS C Division Amritsar The report is presented Sd Assistant Commissioner of police- Financial crime Amritsar city Dated 8.4.2021 and after enquiry report has been sent for proper order to the Commissioner Sahib On it hon'ble Commisd oner Sahib has written DA/Legal examine and give legal opinion Sd/-Commissioner of Police Amritsar Dated 14.2.21 Subject : Application number 1940 PC-COP Dated 8.12.17 Respected Sir I have examined the inquiry file and discussed with your goof self but not opinion at this stage a case under section 20 IPCmay be registered and thereafter the handwriting on

voucher etc may be got compared and further legal action may be taken accordingly, further the role of all concern may also be verified during the course of investigation if proved. SD DA(L) dated 21.5.2021 on this hon'ble Commissioner Sahib has written SHO C Div to register the case and investigate Sd Commissioner of Police dated 22.5.2021.

Today at the Police Station On the receipt of the said information the case under the section 420 IPC has been registered and original Application alongwith FIR copy CCTNS while obtaining from the computer for further investigation has been handed over to SI Shamsher Singh 3723 .To the SHO has been informed at the police station on control room through telephone Completion of rapat number 27 time 8.08.PM.

13 Action taken since the above information reveals commission of offences(s) under section as mentioned at Items No.2

(1) Registered the case and took up the investigation.

Or

(2) Directed (Name of IO) No.-3723 ASR Shamsher Singh SI (Sub Inspector)

(3) Refused investigation due to or

(4) Transfer to P S District or point of jurisdiction FIR read over to the complainant/informant admitted to be correctly

recorded and a copy given to the complainant/informant free of cost.

RO A C C

14. Signature/thumb impression of the complainant/informant.

15. Date and time of dispatch to the court.

Signature of officer in charge

Police Station

Name Gurnam Singh

Rank Asst SI(Assistant Sub Insp NO.1039/ASR”

4. The assessee was operating the bank account from 2008 and the assessee made allegation that the transaction was formulated with convenience of the bank manager. The ld. Sr. DR vehemently argued and submitted that the assessee had not filed any documents before any of the authorities. She relied on the relevant para of the assessment order para 3 is extracted as below:

“3. The notice under section 142(1) was issued on 01/09/2017 for calling the return as called for vide notice under section 148 dated 31/3/2017 and explain the source of cash deposits in the bank during the relevant period. On 20-11-Smt Raj Kumari attended the proceedings along with her brother Sh. Ashwani Kumar and furnished the photo copy of Affidavit dated

25/06/2015. She also stated that the cash deposited in her account does not belong to her. She further stated that her account was used by the then Branch Manager of P.N.B., Hansli Branch , Amritsar Sh. H.C. Juneja and she is unaware of the same , case was adjourned to 29-11-2017 for further discussion. Summon u/s 131 of the Income Tax Act was issued to Sh. H.C. Juneja on 21-11-2017 to confront the Affidavit submitted by Smt. Raj Kumari On 28-12-2017 Sh. H.C Juneja attended the proceedings and stated that the amount in question is not related to him.”

5. We heard the rival submission relied on the documents available in the record. In factual matrix it is correct that amount was deposited and withdrawn in the bank account of the assessee frequently during year of appeal. The assessee had never withdrawn the amount as per her claim before police. But both the revenue authorities had not taken any point to verify the banking transaction through the bank manager/ banking authority during the entire proceeding. The entire assessment order was lac of verification by the assessing authority from the bank. Further the assessee has submitted new documents afresh before the bench which was subject to verification by the lower authorities. In our considered view, we

remand back the matter to the ld. AO for fresh verification and for adjudication de novo. Needless to say, that the AO 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 AO, and adjudicated by AO on merits in accordance with law. We order accordingly.

6. In the result, the appeal of the assessee bearing **ITA No. 169/Asr/2022** is allowed for statistical purposes.

Order pronounced in the open court on 31.01.2023

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