

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

Sh. Sanjeev Kalia
S/o Sh. Ram Lubhaya,
Bhulla Rai, Buhulla Rai,
Phagwara, Kapurthala

[PAN: AVRPK 5764D]

(Appellant)

Vs. Income Tax Officer,
Ward-2, Phagwara.

(Respondent)

Appellant by : Sh. J. S. Bhasin, Adv.

Respondent by: Mrs. Kanchan Garg, Sr. DR

Date of Hearing: 16.02.2023

Date of Pronouncement: 17.02.2023

ORDER

Per Anikesh Banerjee, J.M.:

The instant appeal of the assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals)-2 [in brevity CIT(A)] order passed u/s. 250(6) of the Income Tax Act, 1961 (in brevity the Act), date of order 08.01.2018 for assessment year 2009-10. Impugned order was emanated from the order of the ld. Income Tax Officer- Ward 2, Phagwara (in brevity AO), order passed u/s. 147/144, order dated 26.09.2016.

2. The brief facts of the case is that the assessee's case was reopened u/s. 148 of the Act for depositing cash in two different Saving Bank accounts

bearing account no. 2042000125522065 with Punjab National Bank, Industrial Area, Jalandhar and account no. 0383000759125 with Punjab National Bank, G T Road, Phagwara amount of Rs. 33,85,170/- and 36,38,395/- respectively, which works out total amount to Rs.70,23,565/-. Assessee claimed that assessee was employee of M/s. Green Manufacturing Co. Ltd., Industrial Area, Jalandhar owned by Sh. Satish Bhagimal & his Son, Sh. Deepak Bhagimal being director of the said company. As per assessee, during the impugned year assessee worked as Sales Manager and entire cash was deposited related to business transaction of the said company. The entire cash was not related to assessee himself. But the ld. AO was not satisfied about the explanation of the assessee and added back the total amount of Rs.70.23.565/- with total income of assessee. Aggrieved assessee filed an appeal before the ld. CIT(A) and submitted the documents as additional documents under Rule 46A of the Income Tax Rule, 1962. The remand report was called for but the ld. CIT(A) was not satisfied with the submissions and upheld the order of the ld. AO. Being aggrieved assessee filed an appeal before us.

3. The appeal was filed with a delay for 5 days. The delay was duly explained by the assessee through the petition filed before bench. The reasons of delay was that assessee was in financial crisis and was unable to pay appeal fee of Rs.10,000/- for filing the appeal before the ITAT. After collecting the funds, assessee filed appeal before the Bench. The ld. Sr-Dr has not made any objection. So the delay for 5 days is condoned.

4. The ld. Counsel for assessee, during the hearing, filed an additional evidence before the Bench U/r 29 of Income-Tax (Appellate Tribunal) Rules, 1963. The counsel explained that the assessee was sales agent of the said company. The entire amount deposited in the bank was related to the collection

of amount on behalf of the company as an employee. The affidavit was filed, duly testifying by the assessee before the CIT(A) to claim that the assessee has no relation with the amount deposited in the bank and assessee is not the owner of the said amount.

5. In hearing the Id. Counsel vehemently argued and explained the additional evidence which was submitted through Paper Book before the bench. The assessee explained that a summons was received on 06.10.2020, served on assessee u/s. 19 to Prohibition of Benami Property Transactions Act, 1988 by the ACIT, BPU, Ludhiana, copy APB page 4 seeking personal appearance before the said authority on 13.10.2020. The Id. Counsel also filed copy of letter filed by Appellant with the ACIT, BPU, Ludhiana on 19.05.2022, requesting to supply the copy of the statement of assessee, recorded by said authority on 20.10.2020 u/s. 19(1)(b) pursuant to the above summons, copy APB page 5 to 6. Also, copy of the letter no. 106 dated 07.06.2022 of ACIT, BPU, Ludhiana to get that copy of statement on dated 20.10.2020, supplied to the assessee in response to the above letter dated 19.05.2022, copy APB page 7 to 18. The counsel also submitted the enquiry report which was collected by filing application under RTI Act, APB page 19 to 21 and it is explained that notice was issued under the Prohibition of Benami Property Transactions Act, 1988 and requested that the said amount is not assessee's own amount which is related to the company. But it is accepted by the counsel that the documents are not been filed in any of the lower authorities.

6. The Id. SR. DR vehemently argued and relied to the order of revenue authorities. But had not made any objection related to the acceptance of submission of additional evidence, filed by the assessee. Relevant paragraph of the Id. CIT(A)'s order is extracted as below:

“4.7 The appellant in the counter comments has reiterated the submissions filed earlier but could not substantiate the same with any evidence. Having considered the material available on record, I find that appellant has not been able to support its contentions with evidence. The appellant has made vague statements which are not supported with adequate documentary evidence. The appellant has filed to bring on record any concrete evidence even in the course of counter comments to support its contentions. The judicial decision relied upon the appellant are found to be not applicable to the present facts and circumstances of the case. Therefore, in the absence of any evidence to contradict the findings given by the AO, I hold that appellant has failed to discharge the onus which is placed upon him. Thus, I hold that AO was justified in treating the amount of cash deposits as unexplained income of the appellant. Accordingly, I confirm the addition of Rs.70,23,565/- by the AO under this head.”

7. We heard the rival submissions and considered the documents available on the record. Notice U/s. 19 of Prohibition of Benami Property Transaction Act, 1988 was issued to the assessee for attendance in proceeding. In recorded statement, the related bank transaction was discussed which was deposited in the bank on behalf of the employer, in **APB page-12-15**. During the appeal, assessee filed the affidavit duly testifying himself for denying the amount having deposited in the bank, which was not related to the assessee. We find that additional evidence, which was filed by the assessee under Rule 29 of the Income-Tax (Appellate Tribunal) Rules, 1963 has the evidentiary value for adjudication. The document issued was never been adjudicated by any of the lower authority. We remit back the issue before the Id. CIT(A) for further adjudication, *de novo*, by considering the additional evidence of the assessee. The assessee is directed to cooperate in proceeding before the revenue authority. 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/explanation submitted by assessee in its defence shall be admitted by

the Id. CIT(A) and adjudicated on merits in accordance with law. We order accordingly.

8. In the result, the appeal of the assessee in **ITA No. 229/Asr/2018** is allowed for statistical purposes.

Order pronounced in the open court on 17.02.2023

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

**Sd/-
(Anikesh Banerjee)
Judicial Member**

doc

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(A),
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T
- (6) The Guard File

True Copy

By Order