

**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. 149/Asr/2023
Assessment Year: 2013-14

Gamdoor Singh
Near Atta Chakki,
Vill. Talabwala VPO Boha
The Budhlada, Mansa
151 503

[PAN: GXIPS 1950Q]
(Appellant)

V. Income Tax Officer,
Ward-1(5), Mansa

(Respondent)

Appellant by Sh. Sudhir Sehgal & Sh. P.K. Singla, Adv.
Respondent by Sh. Prashant Singh, Sr. DR

Date of Hearing : 21.06.2023
Date of Pronouncement : 07.07.2023

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the order of the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 20.03.2023 in respect of Assessment Year 2013-14.

2. In the present appeal assessee has raised the following grounds:

- “1. That the learned CIT(A) has erred both in law and on facts in rejecting the application for condonation of delay in filing appeal observing that it appears to be only due to lax approach and nothing but gross negligence and inaction without appreciating the fact that assessee is uneducated agriculturists living in a small village of backward area of Mansa District and unaware of the technicalities for e-verification for appeal is against humanity and natural justice.
2. That the learned CIT(A) has erred both in law and on facts by not allowing adjournment submitted within time on the plea that no submission has been filed but adjournment after another adjournment was sought is against the principles of natural justice.
3. That the learned CIT(A) has erred both in law and on facts by upholding the addition made by the learned AO amounting to Rs 9,10,000/- without appreciating the facts that assessee family owns agricultural land measuring 63-64 Acres and out of this agricultural land, 53.5 Acres of land has been given on Theka and balance cultivated by the assessee appellant and having no other source of income except income from agricultural land. As such, addition confirmed is unjustified and uncalled for. The same be deleted.
4. That the learned CIT(A) has erred both in law and on facts by upholding addition of Rs. 9,10,000/- without appreciating the explanation furnished and material already placed on record before the A.O. As such no addition is called for.
5. The Ld. CIT(A) has erred in law and on facts in upholding the addition of Rs. 9,10,000/- by invoking the provisions of section 68 of the I.T. Act whereas as per facts and circumstances of the case, the provisions of section 68 are not applicable as the assessee appellant has made repayment of loan taken from the bank against limit. As such addition of Rs. 9,10,000/- confirmed by the Ld. CIT(A) is unjustified and bad in law. The same be deleted.

6. *That the appellant craves to add, amend or alter any ground of appeal on or before the hearing.”*

3. At the outset, the Ld. Counsel submitted that the Ld. CIT(A) has not condoned the delay in filing the appeal and has decided the case on merits in arbitrary manner without appreciating the facts of the case. He submitted that the date of receipt of the assessment order was 11.12.2018 and the appeal was filed manually within time on 10.01.2019, however, the assessee being agriculturists, illiterate and non-filer, was not having digital verification, the appeal was filed digitally delayed on 15.02.2019. Thus, considering the manual appeal was being filed in time, the CIT(A) ought to have condoned the delay and adjudicated the appeal on merits by passing a speaking order after granting adequate opportunity of being heard to the assessee. He filed a written synopsis in support, relevant part reads as under:

- “1. *It is submitted that the Ld.CIT(A) has not condoned the delay in filing the appeal before him and has been proceeded to decide the case on merits.*
2. *However, the facts are that the date of receipt of the order of Assessing Officer was 11.12.2018. The appeal was filed manually within time on 10.01.2019.*
3. *However, because the assessee being agriculturists, illiterate and non-filer, was not having digital verification, the appeal was filed digitally on 15.02.2019. Thus, though, the manual appeal was filed in time but the appeal in digitally was filed late.*

4. *The Ld. CIT(A) has not condoned the delay, but it is submitted that the delay was on account of bonafide reason because the assessee is an agriculturist, non filer and had no digital signatures and it takes time to prepare the digital signature and also the expert person is required for filing the appeal and, therefore, delay was not deliberate.*
5. *Though, the CIT (A) has decided the appeal on merits but still we are narrating the facts as they are. The reliance is being placed on the judgment of Hon'ble Amritsar Bench of the ITAT in the case of M/s Gurfateh Films and Sippy Grewal Productions (P) Ltd., where there was delay of 665 days but after relying upon the judgment of Hon'ble Apex Court, the delay was condoned.*

In view of above said facts, it is submitted that the CIT(A), was not justified in not condoning the appeal.”

6. *At the outset, the following undisputed for your Honor's kind consideration:*
 - 6.1 *The Appellant and his family own agriculture land measuring 64 acres.*
 - 6.2 *53.50 acres of the said agriculture land has been given on Theka/lease and the Assessee is earning incomes on account of such lease.*
 - 6.3 *Balance 10.50 acres of land is being cultivated by the appellant is also earning agriculture income on account of such cultivation.*
 - 6.4 *Both the above mention incomes i.e., lease income and agriculture income have been earned in CASH.*
 - 6.5 *Statements of the lessees have been recorded during assessment proceedings wherein they have agreed to have paid the Appellant the declared lease incomes.*
 - 6.6 *The appellant has withdrawn major chunk of cash amounting to Rs. 24,55,000/- from his father's bank account on even dates.*
 - 6.7 *The AO and Worthy CIT(A) accepted the cash deposit in appellant's bank account to be out of the cash withdrawn from his father's bank account.*
 - 6.8 *The Appellant and his family members have furnished AFFIDAVIT stating the fact that the cash deposited in bank is out of the withdrawals made from father's bank account and earning of agriculture income.*
 - 6.9 *The AO has made additions on the basis of suspicion as evident from the words chosen by the AO while drafting the order, every now and then the words written are 'MIGHTBE', 'MAY BE'.*

7. Now, coming to the details of information/documents furnished during the course of the proceedings in order to substantiate the contention before the AO:
- 7.1 Reply filed in response to letter No. 572 dated 28-04-2015 and 10-02-2016 detailing/
- 7.2 Another reply detailing the land holding of the appellant and his family.
- 7.3 Affidavits from each family member
- 7.4 Bank Accounts Statement of the Appellant of bank account No. 911030059101707 and Account No. 9110139337773 wherein the cash has been deposited
- 7.5 Bank Account Statement of the Appellant's father from where the cash has been withdrawn.
- 7.6 Cash flow statement evidencing the flow of cash withdrawal and cash deposit from the furnished bank accounts.
- 7.7 All the IKRARNAMAS between the appellant and the various lessees stating the holding of Appellant's land on lease for agricultural purposes.
- 7.8 J Forms received from each lessee stating the agriculture income received by the appellant.
8. Thus, it is clear from above that neither any doubt was raised nor any defect was pointed out in the details or the supporting documents furnished by the Appellant during the course of the proceedings and both the additions have been made purely on the basis of suspicion which is bad in law.
9. Also, it is quite a trite law that suspicion how so ever strong may be but cannot be the basis of addition except for some material evidence brought on record. The theory of preponderance of probability" is applied to weigh the evidences of either side and draw a conclusion in favour of a party which has more favorable factors in his side, and conclusions have to be drawn on the basis of certain admitted facts and materials and not on the basis of presumption of facts. Once nothing has been proved against the appellant with aid of any direct material especially when three rounds of investigation have been carried out, then nothing can be implicated against the appellant. Reliance is placed on the judgment of **ITAT Pune in case of Prashant Pratap Ahir Vs ACIT in ITA No. 1954/PUN/2018 dated 12.10.2022.**
10. The above action of the AO is more so important to be pressed here because of the fact that the Appellant and his family members duly furnished the Affidavits stating the complete facts and the source of cash deposited in the appellant's bank account.

11. Reliance in this regard is placed on the judgment of Gujarat High Court in case of **GLASS LINES EQUIPMENTS CO. LTD. vs. COMMISSIONER OF INCOME TAX as reported in 253 ITR 0454 (2002) wherein it has been held that** "It was not open to the Revenue to ignore that portion of the affidavit wherein the capitalized expenses were stated to be incurred for setting up of the plant when it was accepting the other portion of the affidavit where certain items were expressly excluded; whole of the precommencement expenditure was includible in the actual cost of plant".

12. It has been further erroneously alleged that the Appellant was having negative balance in the bank accounts on his CC Limits and has been holding cash in hand instead of depositing the same in his bank accounts, it is worth mentioning here that the appellant is the best judge for his affairs and the Income Tax Authorities cannot guide him as to management of funds available with him. It is the discretion of the Appellant as to where he wants to keep his cash in come, more importantly when such income is not from undisclosed sources and is not amounting to any tax evasion.

13. Reliance is being placed on the judgment of Apex Court in the case of **S.A. Builders as reported in 288 ITR page 1 (SC) and also on the judgment of Delhi High Court in the case of CIT Vs. Dalmia Cement as reported in 254 ITR 377 (Del)**, in which, it has been held as under:-

"The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of the "borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits."

14. Lastly, for the sake of brevity of the facts, the Detail of amount received against Theka as per assessment order are tabulated hereunder:

	Name and address of the person to whom land was given on lease	The agriculture land belongs to	Area of Agricultural land given on lease	Amount received in April	Amount received in October

1.	Sh. Subava Singh S/o Sh. Sulkhan Singh R/o Vilage-Lakhiwala (Budhlada) (Affidavit/Ikrarnama placed at page 27. Lease amount of 9 lacs)	Sh. Gamdoor Singh (Self)	18 Acre	200000/-	700000/-
	-do- Affidavit/ Ikrarnama placed at page 28. Lease amount of 3 lacs)	Smt. Hamir Kaur (Mother of the assessee)	6 Acre	50000/-	250000/-
2.	Sh. Jagtar Singh S/o Sh. Narotam Singh R/o Village-Budhlada Affidavit/Ikrarnama placed at page 31. Lease amount of 9	Sh. Banta Singh (Father of the assessee)	18 Acre	150000/-	750000/-
3.	Sh. Gurvinder Singh S/o Sh. Mauja Singh R/o Village-Talabwala (Budhlada) Affidavit/ Ikrarnama placed at page 29.	Smt. Hamir Kaur (Mother of the assessee)	6 Acre	50000/-	250000/-
	-do- Affidavit/ Ikrarnama placed at page 30.	Sh. Banta Singh (Father of the	11.5 Acre	100000/-	475000/-
				550000/-	2425000/-

Also, the Details of Bank withdrawals as per cash flow statement attached with the return after 08-06-2012

12-06-2012 10,00,000/-
27-06-2012 50,000/-
02-07-2012 8,00,000/-
19-07-2012 9,45,000/-
TOTAL 27,95,000/-

So, the totals funds in hand available with the appellant are sufficient to explain the source of cash deposited in the bank account.

Thus, based on the above facts and legal pronouncements, the addition made by the AO and confirmed by the Worthy CIT(A) deserves to be deleted.”

4. Per contra, the Ld DR although supported the impugned order, however, he failed to rebut the contention of the counsel.

5. We have heard the rival contentions, perused the material on record, impugned order, written submission and case law cited before us. It is seen that the manual appeal was filed in time, and therefore, in our view, the CIT(A) ought to have condoned the delay and adjudicated the appeal on merits by passing a speaking order after granting adequate opportunity of being heard to the assessee. The Ld. CIT(A) has not condoned the delay, without rebutting that the delay was on account of bonafide reason as the assessee was an agriculturist, non filer and had no digital signatures and that it takes time to prepare the digital signature and also the expert person's assistance is required for filing the appeal. Therefore, delay in filing the appeal before the appeal is directed to be condoned for bonafide reason as above.

6. The Id. AR contended that during the fresh assessment proceedings, in compliance to 263 order dated 01-03-2018, the appellant assessee has explained the source of repayment in the bank, but the Assessing Officer has disbelieved the source of Rs. 3,60,000/- out of the repayment of Rs. 10 lacs made on 08-06-2012 against cash credit limit obtained amounting to

Rs. 28,14,913/- and further disbelieved the source of Rs. 5,50,000/- out of the repayment of Rs. 30 lacs made on 31-10-2012 against cash credit limit obtained amounting to Rs. 28,01,205/- as unexplained source of repayment in the bank ignoring the cash flow statement. The Ld. AR further argued that the disputed amounts were deposited in the appellant's loan account, then how would addition can be made under section 68 of the act. The counsel argued that the Ld. CIT(A) has also ignored the facts regarding the cash flow statement and deposit being made in the KCC Loan account where interest has been paid by the assessee.

7. From the above, it is evident that the Ld. CIT(A) has not appreciated the merits of the case while invoking the provisions of section 68 of the I.T. Act to uphold the addition of Rs. 9,10,000/- without rebutting the contentions of the appellant that the appellant assessee has made repayment of loan taken from the bank against KCC limit. In our view, such decision of CIT(A) in confirming the addition of Rs. 9,10,000/- is unjustified and bad in law. It is evident from the order of the CIT(A) that the reply filed by the assessee has not been considered and the appeal has been disposed of by non-speaking order by jumping on the decision that assessee failed to explain the source of the deposits and having failed to

discharge his onus and explain the source of cash credit the addition has been aptly made u/s 68 as undisclosed income of the appellant.

8. Considering the peculiar facts of the case, in our view, it deems fit to remand the matter back to the file of the CIT(A) with the direction to adjudicate the appeal afresh on merits after considering the material evidence filed on record, to be filed during fresh proceedings and by granting adequate fresh opportunity of being heard, in view of the principle of natural justice. Accordingly, the case is restored to the CIT, to decide the appeal afresh by speaking order on merits of the case as per law. No doubt, the assessee shall cooperate in the fresh proceedings.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 07.07.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

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

GP/Sr./P.S.

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