

**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. 60/Asr/2020
Assessment Year: 2008-09

Sh. Amarjeet Singh
Flat No. 4, Old Municipality
Flats, Near Church, Bakshi
Nagar, Jammu J&K, 180001

[PAN: AWNPS 5583K]

(Appellant)

Vs. Income Tax Officer, Ward 2(1),
Aayakar Bhawan Railway
Complex, Jammu (J&K)

(Respondent)

Appellant by : Sh. Aman Raj Bawa &
Rakesh Raj Krishan, Advs.

Respondent by: Smt. Ratinder Kaur, Sr. DR

Date of Hearing: 11.07.2023

Date of Pronouncement: 18.07.2023

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the order of the
Ld. Commissioner of Income Tax (Appeals)-1, Ludhiana dated 02.12.2019
in respect of Assessment Year 2008-09.

2. The assessee has raised the following grounds of appeal:

- “1. That the Worthy Commissioner of Income Tax (Appeals) -1 Ludhiana and Ld. Income Tax Officer Ward 2(1) Jammu have erred in law and facts. In any case they have not applied their mind to the actual facts circumstances and legal propositions of the case.
2. That the Worthy Commissioner of Income Tax (Appeals) -1 Ludhiana has erred in confirming the addition of Rs. 23,90,887/- treating as unexplained cash credit u/s 68 of the Income Tax Act, 1961 arbitrarily, illegally and without any justification although the total actual cash deposits were Rs. 9,55,471/- which were explained with documents and evidences submitted to them
3. That the Commissioner of Income Tax (Appeals)-I Ludhiana and Income Tax Officer Ward 2(1) Jammu have erred in ignoring the documents evidences, affidavits of loanees, gift from mother and other genuine explanations, arbitrarily, illegally and without any justifications although they have fully checked scrutinized and verified each entry of credit and debit from the bank records and accounts produced before them.
4. That the appellant craves leave to add or amend any ground of appeal.”

3. Facts as per record are that the appellant had not filed any return of income for the period under consideration, whereas, the jurisdictional AO had information regarding substantial amount of cash deposit in the bank of the appellant. On the basis of this information coupled with the fact that the appellant had not cared to file his return of income for the year, the AO formed a prima-facie belief of escapement of income from taxation and, thereafter, assumed the jurisdiction to assess the appellant under the provisions of section 147 after following the due formalities in this regard in

terms of recording of satisfaction as per the provisions of section 148(2) and obtaining the sanction of the competent authority within the meaning of section 151 of the Income Tax Act, 1961. However, since the appellant did not present himself before the AO in the assessment proceedings, the AO on the basis of information in his possession framed the assessment, whereby salary income of Rs.86,410/- and cash credit of Rs.23,90,887/- was taken as total taxable income, which was brought to tax.

4. In appeal, the Id CIT(A) confirmed the finding of the AO, by observing as under:

“4. During the appellate proceedings, it was contended that the appellant was an employee of Municipal Corporation of Jammu from where he received salary of Rs.99,218/-. It was further submitted that the appellant had received an amount of Rs.4,50,000/- from his mother during the relevant period as gift being part of sales consideration of ancestral property, which was lent to the relatives and friends and when they returned the said amount, the same were deposited in the bank account. In support of the aforesaid contention, the appellant submitted a cash book. Ledger account of salary and persons to whom short term loans were purportedly given along with their affidavits. The aforesaid submissions of the appellant were forwarded to the AO for his verification and report as the impugned order of assessment was passed ex parte under the provisions of section 144 of Income Tax Act, 1961.

5. The AO returned the remand, duly forwarded by the Additional Commissioner of Income Tax, Range-2, Jammu, whereby the submissions of the appellant were stated to be non-verifiable and bogus. The appellant contested the aforesaid observations of the AO and reiterated the ground

of appeal, insisting on having earned only salary income, which was less than the taxable limit.

6. The entire facts obtaining in the case of the appellant have been considered with reference to the impugned order of assessment, the grounds of appeal, remand report of the AO and rebuttal of the same by the appellant. The appellant has been able to prove that during the period under consideration, he earned a net salary of Rs.1,01,914/- as Field Assistant in the office of the Chief Accounts Officer, Jammu Municipal Corporation. This fact is borne out of Form-16 issued by the chief Accounts Officer, Dr. Tabasum. Presuming that the appellant would have deposited the entire amount of salary in his bank account, then also only Rs.1,01,914/- out of the total deposits in the bank account would be considered as explained. For the rest of the deposits, the appellant has taken two fold argument, namely, (1) re-deposit of the withdrawals and (2) return of short term loans from various persons, which loans were given out of the purported gift of Rs.4,50,000/- from the mother, subsequent to the sale of an ancestral property. The appellant has been completely unable to prove the aforesaid two averments. The re-deposit of withdrawals has merely been stated without providing any details with regard to the dates of withdrawals and deposits. A cash flow statement needed to have been made, which has not been done, precisely for the reason that the same could not have been proved. Besides, the appellant received a very meagre salary which would not leave him with the luxury of withdrawals and subsequently deposits. This explanation is absolutely unsustainable in the case of the appellant who is, admittedly, only a salary earner with no other sources of income and not a trader or a businessman. The purported gift of Rs.4,50,000/- in cash from the mother of the appellant pursuant to the sale of an ancestral property has also not been proved in as much as neither any document has been adduced regarding sale of the ancestral property nor any affidavit from the mother of the appellant has been brought on record to suggest the same. Besides, the affidavits of the various purported loanees are merely self-serving documents, which do not lend any credibility in view of the fact that the appellant is a small salary earner, who would dish out accommodation loans to his near and dear ones and friends. This argument is also an absolutely make-believe argument to anyhow explain the cash credit in his bank account. Considered in this background, no fault can be found in the action of the AO in assessing the appellant at a total tax income of Rs. 24,77,297/-. The

appeal is, thus, dismissed as devoid of any merit. It is ordered accordingly."

5. At the outset, the Id. counsel for the appellant submitted that the assessment order was passed ex-parte qua the assessee and the same was confirmed by the Id. CIT(A) in arbitrary manner, ignoring the documentary evidences, affidavits of loanee, gift from mother etc. He pleaded that the matter may be restored to CIT(A).

6. Per contra, the learned DR supported the impugned order. He argued that the appellant failed to explain the cash deposits in its bank account and therefore, the CIT(A) was justified in confirming the addition u/s 68 of the I.T. Act.

7. Heard the rival contention and perused the material on record and impugned order. The Id. AR for the appellant has objected to the impugned order on account of non application of mind to the actual facts and circumstances and legal proposition of the case by the CIT(A). He contended that CIT(A) was not justified in confirming the addition of rupees 23,90,887/- under section 68 of the Income Tax Act 1961 arbitrary without any justification although the total cash actually deposited were 9,55,471/- and therefore, he has been in error while confirming the addition by

ignoring the documentary evidence such as, affidavits, gifts from mother and other genuine explanations illegally without justifications though they have been fully checked scrutinized and verified each and every entry as per the bank statement.

8. Admittedly, the assessee has been granted many opportunities of being heard by the AO however, neither the assessee nor his any representative on behalf of the assessee appear on the said date of hearings before the AO. The appellant assessee has failed to file any corroborative documentary evidence in support of the objections raised in rebuttal to the addition confirmed by the Id. CIT(A) in the impugned order. The Id. CIT(A) has passed a comprehensive speaking order after granting sufficient opportunity of being heard to the assessee and considering the submissions made before him after taking rebuttal of the Id. Assessing Officer by way of calling for a remand report on the submissions made by the assessee before the Id. CIT(A).

9. The appellant-assessee is an employee of Municipal Corporation of Jammu who receives a salary of Rs. 99,218/- per month. The appellant assessee has claimed before the Id. CIT(A) that he has received Rs.4,50,000/- as gift from his mother during the relevant period out of sale

consideration of ancestral property which was let out to the relatives and the same was deposited in the bank account. The appellant assessee has also taken plea before the Id. CIT(A) that the cash deposits in the bank account were made out of the withdrawals and the return of short term loans from the various persons and that purported gift of Rs.4,50,000/- from its mother. However, the assessee has failed to furnish a cash flow statement either before the AO or the CIT(A) or even before the Tribunal to substantiate the source of the cash deposits in its bank account with the supporting corroborative material and documentary evidence. Since, the appellant assessee received a salary of Rs. 99,218/- per month which is hardly enough to meet out his monthly household expenses of the family. Under the circumstances, the explanation offered by the assessee is held hold to unsustainable, in the absence of tangible material corroborative evidence. The assessee has even failed to substantiate the purported gift of Rs.4,50,000/- claimed to be received in cash from his mother in pursuant to sale of ancestral property, in absence of production of registered sale deed before the authorities below. The copy of the affidavits purported to be produced from the loanees are held to be merely self serving documents in the absence of corroborative supporting evidences in order to

establish the credibility/creditworthiness of the creditors. Thus, the contention raised by the appellant in the ground of appeal are absolutely make to believe arguments without being substantiated with documentary evidence to explain the cash credit in its bank account. In view of that matter, we find no infirmity or perversity in the order of the Id. CIT(A) to the facts on record confirming the unexplained cash credits of Rs. 23,90,887/- u/s 68 of the Act. Our view on creditworthiness of the loan creditor's gets support from the judgment delivered by Hon'ble Apex Court in the case of Principal Commissioner of Income Tax vs. Nra Iron Steel Pvt. Ltd. dated 05.03.2019.

10. In the above view, we find no merits and substance in the grounds of appeal of the appellant assessee, accordingly, the appeal of the assessee is rejected.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 18.07.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

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

GP/Sr.PS

Copy of the order forwarded to:

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

True Copy
By Order