

**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. 99/Asr/2020**  
Assessment Year: 2011-12

Mohd. Amin Malik  
Vill. Chaka, Near Govt.  
Degree College,  
Bhaderwah, J&K

[PAN: ASDPM 1350L]  
**(Appellant)**

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

**(Respondent)**

Appellant by : Sh. P. N. Arora, Adv.

Respondent by: Smt. Ratinder Kaur, Sr. DR

Date of Hearing: 12.07.2023

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), Jammu dated 30.12.2019 in respect of Assessment Year 2011-12.

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

- “1. *That the Worthy Commissioner of Income Tax (Appeals) Jammu and Ld. Income Tax Officer Ward 2(1) Jammu have erred in law, facts and circumstances of the case. In any case they have not applied their mind to the actual facts, legal propositions and circumstances of the case*
2. *That the Worthy Commissioner of Income Tax (Appeals) Jammu has erred in confirming and upholding the addition of cash Bank deposits amounting to Rs. 13,50,000/- arbitrarily, illegally and without any justification.*
3. *That the Worthy Commissioner of Income Tax (Appeals) Jammu has erred in ignoring the justified true and genuine explanations of cash deposits presented before him and before the Ld AO and conformed the addition of Rs.13,50,000/- arbitrarily, illegally and without any justification,*
4. *That the Worthy Commissioner of Income Tax (Appeals) Jammu and LD. Income tax officer Ward 2(1) Jammu have erred in not servicing the statutory notices to the appellant to represent his case property.*

*That the appellant craves leave to add or amend any ground of appeal.”*

3. Apropos ground no. 4, the appellant assessee has challenged the order of the Id. CIT(A) that no notices have been served upon the assessee to enable it to represent its case before the CIT(A).

3.1 The Ld. AR submitted that the Commissioner of Income Tax (Appeals) Jammu has erred in law and on facts in dismissing appeal without application of his mind to the actual facts, legal propositions and circumstances of the case; that he upholds the addition of cash deposits

amounting to Rs. 13,50,000/- in arbitrarily manner and that due to non-service of the statutory notices on the assessee, the dismissal of the appeal of the assessee *in limine*, is in violation of principles of natural justice. He pleaded that the matter may be remanded to the CIT(A).

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. Admittedly, the Ld. CIT(A) has not mentioned the factum of service of either regular notices or the show cause notice alleged to be issued to the assessee. It is seen that the Id. CIT(A) has decided the appeal vide para 3 of the impugned order as under:

*“3. I have considered the facts of the case and the written submissions filed by the Authorized Representative of the appellant. From the written submissions filed, it transpires that the appellant has merely filed self made cash book without any supporting document. No evidence is filed regarding availability of cash in hand as on 31.03.2009, 31.03.2010 and 31.03.2011. Further, there is no evidence of sale/purchase of any pet and of any dairy business of the appellant. During the year under consideration, the appellant was receiving salary from PWD Deptt. where he was an employee and considering this aspect, it is difficult to believe that he was able to manage dairy business which is also a fulltime job. The assessee had saving bank account in J&K Bank, Sidhra where he had deposited cash amounting to Rs. 13,50,000/- during the period 01.04.2010 to*

*31.03.2011. Since, the assessee has not furnished the source of the above mentioned cash deposit amounting to Rs. 13,50,000/- during the period under consideration before the Assessing Officer as well as before me, I have no reason to interfere in the order of the Assessing Officer and upheld the addition of Rs. Rs.13,50,000/-. Regarding service of notice, it was the duty of the appellant to intimate the Assessing Officer about the change in address. But as the facts are narrated in the assessment order, he did not file the return of income despite having taxable income and only after receipt of notice **from** the A.O., return was filed. Considering the totality of facts and circumstances, all interconnected grounds of appeal are dismissed.”*

6. The Ld. AR contended that at that time assessment, the assessee was at Delhi in connection with his Knee replacement and that as such, no reasonable and proper opportunity of being heard was allowed as notice was never served on the assessee and this fact has already been brought to the notice of the department (APB, Pgs. 67-68). He further contended that only two days' time was allowed for compliance by the AO as the case was going to be barred by time. The Ld. CIT (A) has not appreciated the fact of the case, though duly explained before the worthy CIT(A) on 11/10/2019 (APB, Pgs. 9-10).

7. From the above, it is evident that the Ld. CIT(A) while upholding the addition of cash deposits amounting to Rs. 13,50,000/- acted in arbitrarily manner without appreciating the facts of the case and rebutting the submission of the appellant. In our view, the CIT(A) acted in violation of

principles of natural justice due to not servicing the statutory notices on the assessee and thereby dismissing the appeal of the assessee in limine.

8. Considering the peculiar facts of the case, in our view, it deem 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 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