

IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHIBENCH "A" : DELHI ]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER,  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No. 48/Del/2020  
निर्धारणवर्ष/Assessment Year: 2013-14.

Shri Amrik Singh, S/o. Shri Lakhbir Singh, Dhani Village, Aharwa, District: Fatehabad. Haryana - 125 051.	<u>बनाम</u> Vs.	Income Tax Officer,  Ward : 1,  Fatehabad.
<b>PAN No. CDTPS1806E</b>		
<b>अपीलार्थी /Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

निर्धारितकीओरसे /Assessee by :	N o n e.
राजस्वकीओरसे / Department by :	Shri Kanv Bali, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	20/09/2023
उद्घोषणाकीतारीख/Pronouncement on :	14/12/2023

आदेश / O R D E R

PER C.N. PRASAD, J.M. :

1. This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-5 [hereinafter

referred to CIT (Appeals)] Ludhiana dated 7.11.2019 for assessment year 2013-14.

2. The assessee in its appeal has raised the following substantive grounds of appeal:-

“1. Assessment made under section 144 was bad in law as the requisite conditions for assessment were not fulfilled.

2. That the Id. Commissioner of Income Tax (Appeals) has erred in law and facts of the case in denying the benefit of opening balance of cash.

3. The Ld Commissioner of Income Tax (Appeals) as well as Assessing authority has erred in law and facts while not appreciating the submission and explanations filed by the assessee during the appeal and assessment proceedings.

4. The Commissioner of Income-tax (Appeals) erred in law in upholding the part addition of Rs.23,00,000 on account of cash deposit into bank and have been wrongly treated as alleged unexplained income.

5. The Commissioner of Income-tax (Appeals) erred in law in not allowing the credit of business gross turnover of Rs. 32,25,780/-

6. The Commissioner of Income-tax (Appeals) erred in law in not allowing the credit of cash received from sale of agriculture crop.”

3. In spite of issue of notice none appeared on behalf of the assessee nor an adjournment was moved. It is also noticed from the record that the notice sent to the assessee fixing the date of hearing on 5.07.2013 along with acknowledgement returned un-served with the remarks of the Postal authorities that “No

such person in given address”. Several notices were issued on several dates. However, none appeared on behalf of the assessee. Therefore, we proceed to dispose of the appeal on hearing the ld. DR.

4. Perusal of the assessment order dated 3.03.2016 shows that in spite of issue of several notices to the assessee requiring the assessee to explain the cash deposits of Rs.71,00,000/- in the bank account of the assessee, the assessee did not appear or furnished any explanation. Thus, since the assessee has failed to offer any explanation with regard to cash deposits the Assessing Officer treated such deposits as income of the assessee under section 69 of the Income Tax Act, 1961 (the Act) and passed best judgement assessment under section 144 of the Act.

5. The assessee preferred appeal before the ld. CIT (Appeals) and in the course of appeal proceedings the assessee furnished various additional evidences. Admitting the additional evidences the ld. CIT (Appeals) called for a report from the Assessing Officer. After obtaining the report from the Assessing Officer and the comments from the assessee on the report, the ld. CIT (Appeals) partly sustained the addition to the extent of Rs.23,00,000/- observing that the benefit of opening cash of Rs.19,24,286/- cannot be given to the assessee. Further the negative balance of Rs.3,75,714/- is also added to the income of the assessee thereby sustaining the addition to the extent of Rs.23,00,000/- observing as under:-

“3.2 Grounds of Appeal Nos. 2 & 3 are regarding passing an ex-parte order u/s 144 and making addition of Rs.71,10,000/- on account of cash deposited in the bank account of the assessee. The AO has mentioned that the return declaring an income of Rs.1,96,920/- (plus agriculture income of Rs.2,52,100/-) was filed on 30.09.2015. Subsequently, the case was selected for scrutiny on account of huge cash deposits in the bank account of assessee exceeding the turnover. The AO mentioned that questionnaire along with the notices were issued and served upon the assessee but neither any information/document nor request for adjournment was received. The AO mentioned about various notices and non-compliance by the assessee. Thereafter a final show cause was issued on 15.02.2016 which is reproduced in the assessment order. As per the AO, the assessee neither attended the proceedings nor furnished any written submission/ information and it was presumed that the assessee has no explanation with regard to the huge cash deposits made by him in the bank account. Accordingly, the assessment was finalized ex-parte and the deposit of Rs.71,10,000/- in the HDFC Bank account of the assessee, was considered out of assessee's undisclosed income and addition of this amount was made to the returned income of the assessee u/s 69 of the Income Tax Act, 1961.

The facts of the case, the basis of passing the ex-parte assessment order, the addition made by the AO and the arguments of the AR during the course of appellate proceedings have been considered. During the appellate proceedings, the AR filed an application under Rule 46A along with a cash flow statement and other documents to explain the source of cash deposit. In the remand report submitted by the AO, it is mentioned that sufficient opportunities were provided to the assessee but no explanation was offered. It is further mentioned that in the return for assessment year 2013-14, the assessee has shown gross receipt of Rs. 32,25,780/- and net profit of Rs. 2,62,920/- @ 8.15% but the assessee has neither declared his nature of business nor he has taken any

single entry from business receipts in the cash flow statement. The submissions of the assessee were thus not found acceptable. It is also mentioned that though the assessee has claimed sale of agriculture crop amounting to Rs. 9,03,356/- to M/s. Fateh Singh Niyamat Singh, however in the return the assessee declared agriculture income of Rs. 2,52,100/- only. It is also mentioned that in the account statement with M/s. Fateh Singh Niyamat Singh, the assessee has taken outstanding balance as on 01.04.2011 at Rs. 2,00,505/-, as on 01.04.2012 at Rs. 4,23,735/- and as on 31.03.2013 at Rs. 7,12,000/- but in the income tax return, the assessee has not declared these amounts. In the rejoinder, the AR has mentioned that in the similar circumstances, the assessment of the preceding assessment years 2010-11 & 2012-13 were reopened on the same fact of cash deposit of Rs. 11,51,500/- and Rs. 93,90,000/- respectively and as per the AR the AO accepted the contention of the assessee without making any addition on account of huge cash deposited in the bank account. Along with the submission, the AR has filed a cash flow statement, incorporating the cash withdrawal and deposit as appearing in the bank account of the assessee. A perusal of the same shows that the opening cash at the beginning of the year has been taken at Rs. 19,24,286/- and the first cash deposit during the year is of Rs. 18,00,000/- on 02.05.2012 followed by Rs. 5,00,000/- on 03.05.2012. This cash has been withdrawn on 04.05.2012 amounting to Rs. 22,50,000/- and thereafter there are entries of cash deposits and withdrawals. To explain this opening cash of Rs. 19,24,286/-, the assessee has shown receipts from M/s. Fateh Singh Niyamat Singh Commission Agent amounting to Rs. 8,46,286/- apart from cash withdrawal from HDFC Bank account. It is however relevant to note that there are cash deposits also in the bank account of the assessee during the month of February and March, 2012. As mentioned by the AO in the remand report, from the Income Tax return, it is seen that the assessee has declared agriculture income of Rs. 2,52,100/- apart from normal income of Rs. 1,96,920/- which as per the AO, are only sufficient to meet the household/personal expenses of the assessee. It is also relevant to note that no amounts have been debited on account of agriculture expenses in the cash flow statement, although the

receipts of Rs. 9,03,356/- in the shape of J-Form for sale of agriculture crops have been filed. On the basis of facts mentioned by the AO in the assessment order and in the remand report and after considering the documents filed by the AR, the claim regarding the agriculture receipts is not found acceptable and appears to be just an afterthought since there is no technique available at present where the agriculture yield can be obtained without making expenses. Accordingly, the claim of agriculture receipts is not found acceptable. Also perusal of the cash flow shows that even after taking the opening cash at Rs.19,24,286/- the cash balance become negative at Rs. (-) 3,75,714/- after cash deposit of Rs.23,00,000/- in HDFC Bank on 02.05.2012 & 03.05.2012. Hence, the cash flow filed by the AR, is not found reliable to explain the cash deposit in the bank account of the assessee. Only the benefit of immediate cash withdrawals from the bank can be claimed by the assessee to explain the source of cash deposit in the bank account. It is seen that there are cash withdrawals from the bank accounts but part of the same has to be treated as used for meeting the day to day personal expenses of the assessee and household expenses of the family. Accordingly, no benefit of the opening cash of Rs. 19,24,286/- can be given to the assessee and further the negative balance of Rs.3,75,714/- is also required to be added to the income of the assessee. Accordingly, the addition to the extent of Rs.23,00,000/- is found sustainable and hence confirmed.”

6. On going through the observations of the ld. CIT (Appeals) we do not see any good reason to interfere with the findings of the of CIT (Appeals) especially in the absence of any evidences produced before us to rebut the findings of the ld. CIT (Appeals) by the assessee. Thus, we sustain the order of the ld. CIT (Appeals) and reject the grounds raised by the assessee.

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

Order pronounced in the open court on : 14/12/2023.

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Sd/-  
( C. N. PRASAD )  
JUDICIAL MEMBER

Dated : 14/12/2023.

*\*MEHTA\**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक / Assessee.
2. राजस्व / Revenue.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (Appeals)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI /  
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	11.12.2023
Date on which the typed draft is placed before the dictating Member	12.12.2023
Date on which the typed draft is placed before the Other Member	14.12.2023

I.T.A. No. 48/Del/2020

Date on which the approved draft comes to the Sr. PS/PS	14.12.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	14.12.2023
Date on which the fair order comes back to the Sr. PS/PS	14.12.2023
Date on which the final order is uploaded on the website of ITAT	14.12.2023
Date on which the file goes to the Bench Clerk	14.12.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	