

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 308/Chd/2023
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Satwinder Mohan Sood, C/o Shri Tejmohan Singh, Advocate #527, Sector-10D, Chandigarh	बनाम	The ITO Ward-1, Mandi Gobindgarh HQ. Sirhind
स्थायी लेखा सं. / PAN NO: LCMP57459G		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारित की ओर से/ Assessee by : Shri Tejmohan Singh, Advocate

राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr. DR

सुनवाई की तारीख/ Date of Hearing : 19/06/2024

उदघोषणा की तारीख/ Date of Pronouncement : 24/06/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the Assessee who is an individual and a person resident in India in terms of section 253 of the Income Tax Act, 1961. The Assessee is aggrieved by order of CIT(A) bearing No. ITBA/NFAC/S/250/2022-23/1051156383(1) dt. 23/03/2023 passed under section 250 of the Income Tax Act, 1961 which is hereinafter referred as the "impugned order" for the sake of brevity. The relevant AY is 2011-12 corresponding to F.Y. 01/04/2010 to 31/03/2011 the previous year.

FACTUAL MATRIX

2. The Income Tax Department had credible information that assessee has made a cash deposits during the F.Y. 2010-11 relevant to the A.Y. 2011-12.

3. Based on it the case of the assessee was reopened under section 147/148 of the Income Tax Act, 1961 on basis of reasons recorded.
4. A statutory notice under section 148 was issued on 30/03/2018 and that the same was duly served on the assessee.
5. In response to the aforesaid notice dated 30/03/2018 the assessee did not file any reply nor attended the proceedings.
6. A notice under section 142(1) was issued to the assessee alongwith a questionnaire on 24/08/2018 fixing a date of personal hearing on 17/09/2018. On this date neither anybody attended the proceedings nor any written submission or request for adjournment was received.
7. The Department of Income Tax however further issued a letter dt. 10/10/2018 so as to give one more opportunity to the assessee to give his say and attend hearing. The hearing was scheduled for 16/10/2018. However on 16/10/2018 neither anybody attended the assessment proceeding nor furnished any reply / information.
8. That on 20/11/2018, a show cause notice was issued to the assessee fixing the case for hearing on 28/11/2018, to which the assessee was requested to furnish his reply and explain the source of

cash deposits amounting to Rs. 91,62,200/- which was made by the assessee in his bank account.

9. However, on 28/11/2018 , the assessee neither furnished any reply nor attended the assessment proceedings and also not furnished any information as was sought from him. On said date neither anybody attended the proceeding nor any submission or request for adjournment received.

10. However on 31/10/2018 the assessee attended the office of Ld. AO and sought adjournment. The case was adjourned to 02/11/2018. On 02/11/2018 no reply was filed. Another show cause notice was issued to the assessee on 07/12/2018 to explain the source of cash deposits in his bank account. **The assessee however attended the office on 11/12/2018 and filed a reply.** The assessee stated in his reply wherein he contended that he is doing agriculture activity since last 20 years and that he cultivate his own land and land on lease which is about 127 acres. That he grows 3 crops out of which 1 acre yields rice of Rs. 30,000/- to Rs. 35,000/- , Potato of Rs. 60,000/- to Rs. 70,000/- and Sunflower of Rs. 15,000/- to Rs. 20,000/- and consequently there is an income of Rs. 1 Crore 50 lacs per year. In so far as potato is concerned he also prepares seeds and sell the same to the local population as well as to other towns and villages. The payment thereof are received

in cash or cheques in his account and that of his family members. He further contended in the letter that during the year 2010 & 2011 he alongwith his family members had sold ancestral property for Rs. 36.00 lacs. The payment for which was received in cash and cheque and that the same was deposited in different accounts.

11. That the assessee merely filed he above reply without any documentary evidence in support of same. No proof of any land holding including of lease land, no proof of sale of agriculture produce or any bill for potato sale and were produced and placed on record. No sale deed evidencing sale of ancestral land was also produced.

12. In the premises the Ld. AO in the assessment order dt. 11/12/2018 was left with no other alternative but to exercise his power under section 144 r.w.s 148 of the Income Tax Act, 1961 and assessed the income of Rs. 91,62,200/- as **unexplained cash deposit** for which there is no plausible and reasonable explanation is/was given by the assessee.

13. The assessee being aggrieved by the aforesaid assessment order dt. 11/12/2018 had preferred an appeal before the Ld. CIT(A) who has sustained the addition vide impugned order. Be it noted that order of CIT(A) is also exparte as despite number of opportunities afforded by the Ld. CIT(A) on 17/03/2020, 15/11/2020 and 22/03/2023 the assessee did not appear. Hence impugned order.

14. Being aggrieved by the impugned order the assessee is before us in second appeal and has interalia raised following grounds of appeal in Form No. 36

1. *That the Ld. Commissioner of Income Tax(Appeals) has erred in law in passing an ex-parte order without affording a proper opportunity of hearing which is against the Principles of Natural Justice and as such the order passed is arbitrary and unjustified.*
2. *Without prejudice to the above, the Ld. Commissioner of Income Tax(Appeals) has erred in law as well as on facts in upholding the addition of Rs.91,62,200/- made on account of cash deposits in the bank account which is arbitrary and illegal.*
3. *That the assessee had complete sources of cash deposit in the bank account being receipts from agricultural income and sale of agricultural land duly explained during the course of assessment proceedings and as such upholding of the addition is arbitrary and unjustified.*
4. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*
5. *That the order of the Ld. CIT(A) is erroneous, arbitrary, opposed to the facts of the case and thus untenable.*

Record of Hearing

15. The hearing before us took place on 19/06/2024 when both parties appeared before us and were heard for some time. The Ld. AR expressed few difficulties on part of assessee which was both personal and few occupational hazards. The Ld. DR strongly opposed the contentions of Ld. AR. Be that as it may looking to the assurance given by Ld. AR to the Bench that necessary documents in support of cash deposit would be submitted before the Ld. CIT(A), the matter be set aside and remanded.

Order

16. In the foregoing, we set aside the order of Ld. CIT(A) dt. 23/03/2023 and remand the matter back to the file of Ld. CIT(A) with a direction to conduct denovo proceedings as soon as possible within three months from date of receipt of this order. The assessee to cooperate and produce all material in support of his defence if any. We however caution the assessee that he would be fully cooperative with the Income Tax Authorities.

17. The impugned order is set aside as and by way of remand.

18. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court on 24/06/2024.

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar