

IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH
HEARING THROUGH: HYBRID MODE/PHYSICAL MODE/ VIRTUAL MODE
BEFORE: JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND
SHRI. VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

ITA NO. 638/Chd/2024
Assessment Year :2017-18

Shri Jai Karan Singh C/o Tejmohan Singh, Advocate # 527, Sector 10-D	Vs.	The ITO Ward-6(4), Mohali
PAN NO: AAQPS0963C		
Appellant		Respondent

Assessee by : Shri Tejmohan Singh, Advocate
Revenue by : Shri Rohit Sharma, CIT DR

Date of Hearing : 12/07/2024
Date of Pronouncement : 12/07/2024

Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi dt. 25/04/2024 pertaining to Assessment Year 2017-18.

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

1. *"That the Ld. Commissioner of Income Tax (Appeals) has erred 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. *That the Ld. Commissioner of Income Tax (Appeals) has further erred in law as well as on facts in dismissing the appeal ex-parte and in limine in utter disregard of the Principals of Natural Justice which is arbitrary and unjustified.*

3. *Without prejudice to the above, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the addition of Rs.26,04,49,981/- made on account of alleged unexplained cash deposit in the bank*

account treating the same to be unaccounted income of the assessee applying the provisions of Section 69A which is arbitrary and unjustified.

4. That the amount deposited in the bank account did not belong to the assessee but represented CSD receipts as the PAN given was of the assessee being the officer incharge at that point of time and as such the addition made and upheld is arbitrary and unjustified.

5. That the addition upheld is based only on suspicion, surmises and conjectures in utter disregard of the evidence placed on record of the assessing officer which is not permissible and as such the order passed is illegal, arbitrary and unjustified.

6. That the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding the charging of tax at 60% applying the provisions of Section 115BBE which are not applicable in the instant case.

7. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

8. That the order of the Ld. Commissioner of income Tax(Appeals) is erroneous, arbitrary, opposed to the facts of the case and thus untenable."

3. Briefly the facts of the case are that the assessee filed his return of income declaring total income of Rs. 9,48,690/- under the head "income from Salary" and "income from other sources" after claiming deduction under Chapter VIA of the Act. The case of the assessee was thereafter selected for scrutiny under CASS. AS per the AO, basis database and information in possession of the Revenue, the assessee has been maintaining an account in Punjab National Bank (PNB) A/c No. 3353010008641 in the name of Akash Canteen, Una and had deposited a sum of Rs. 26,01,85,175/- during the period 01/04/2016 to 08/11/2016 and a sum of Rs. 2,64,806/- during the period 09/11/2016 to 30/12/2016 and during the course of assessment proceedings, the assessee was issued notice and was asked to furnish copy of the bank statement and source of cash deposited during the year under consideration alongwith documentary evidence. However, the assessee failed to respond to the notice and furnished the requisite information as called for and failed to give any explanation about

the nature and source of cash so deposited in their bank account. The AO accordingly, invoked the provision of Section 69A of the Act and held that the whole of the amount deposited in the bank account as unexplained money under section 69A of the Act and the same was brought to tax under section 115BBE @ 60% and the assessment order was passed under section 144 dated 12/12/2019 wherein the assessed income was determined at Rs. 26,15,48,670/- wherein the amount of Rs. 26,04,,49,981/- was brought to tax under section 69A of the Act. Further, deduction claimed under Chapter VIA amounting to Rs. 1,50,000/- was also denied to the assessee in absence of necessary information/ supporting documentation in support of the amount so claimed to be deposited for seeking necessary deduction.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) and the appeal of the assessee was dismissed by the Ld. CIT(A) vide the impugned order dt. 25/04/2024 on account of non- prosecution by the assessee. Against the said order of the Ld. CIT(A), the assessee is in appeal before us.

5. During the course of hearing, the Ld. AR submitted that the assessee is a retired Commander from Indian Navy and at the relevant point in time, he was employed as Manager in Akash Canteen Stores, Una, Himachal Pradesh. It was submitted that he has since retired from the Akash Canteen due to health issues and has been hospitalized at Sohana as he has suffering from Brain Stroke and was diagnosed by Brain Tumor due to which he lost his part memory and he is currently under treatment. It was submitted that he received a communication from the Department to make necessary submissions in response to his appeal filed before the Ld. CIT(A). However due to his health condition he could not attend to the proceeding. Later on, he consulted his Lawyer Mr. R.K. Rana and told that he has forgot password of his email id which he has not used for past one year, his profile was thereafter updated on 22/04/2024 at the Lawyer office

and at that time he came to know on 25/04/2024 that the appeal filed by him has been dismissed by the Ld. CIT(A). It was accordingly submitted that the assessee because of his health reason could not attend to the proceedings before the Ld. CIT(A) and there was thus reasonable cause for non appearance and in support, the Affidavit of the assessee has been placed on record.

5.1 It was further submitted that the assessee has also moved an application for admission of additional evidence before the Tribunal. In this regard, it was submitted that the Assessing Officer during the course of assessment proceedings completed u/s 144 of the Act made an addition of Rs.26,04,49,981/- on account of cash deposits and Rs.1,50,000/- disallowing the deduction claimed u/s 80C in respect of deposit in PPF a/c. The assessee is a retired Commander from Indian Navy. He was employed as Manager in Akash Canteen Stores Depot(CSD) Ex-Serviceman Canteen at Una, Himachal Pradesh and was staying in Una. The canteen is run by the Ministry of Defence under Commanding Officer 4 Assam Rifles. It was submitted that during demonetization, the sales from CSD was made compulsory to be made through Point of Sales Machines(POS). CSD was having a bank account with Punjab National Bank bearing account number XXXXXX in the name of Akash Canteen Una and a request was made to the bank manager for issue of POS machine to CSD. The bankers demanded the PAN card of the canteen. The canteen as run by the Ministry of Defence did not have a PAN card. The bank manager asked the assessee to give his own PAN card till the canteen is issued its own PAN card. The assessee, in good faith provided his PAN AAQPS0963C to the bank as CSD did not have a PAN Card. CSD applied for the PAN Card (AAFAA7584H) which was later on issued in the month of March 2017.

5.2 In this regard, the assessee wishes to submit a certificate alongwith details of cash/cheques deposited which has been issued on behalf of Akash Canteen,

Una by way of additional evidence, where it is mentioned that Akash Canteen, Una is an ex-serviceman canteen for serving as well as retired defence personnel functioning under the control of Integrated Headquarters of Ministry of Defence army, canteen stores directorate, New Delhi. Functioning of Akash Canteen, Una is controlled by the Indian army. The CSD was having a bank account with Punjab National Bank bearing account number 3353010008641 in the name of Akash Canteen Una. Further, all the transactions in the above mentioned account pertain to Akash Canteen, Una. Further, the assessee wishes to submit the bank statement of the Akash Canteen, Una by way of additional evidence.

5.3 It was further submitted that the Assessing officer disallowed the deduction claimed under section 80 C of the act. The assessee had deposited a sum of ₹1,50,000 in this PPF account but evidence for the same could not be placed on record since the assessee was not in the know of the proceedings initiated against him under scrutiny and the assessee wishes to place on record, a copy of PPF account of the assessee maintained with SBI.

5.4 It was accordingly submitted that the aforesaid additional evidence may please be admitted which goes to the root of the matter. It was further submitted that the matter may be remanded back to the file of the AO to examine the additional evidence and adjudicate the matter afresh as per law after reasonable opportunity to the assessee.

6. Per contra, the Ld. CIT/DR has relied on the order of the lower authorities. The contents of the Affidavit so submitted by the assessee in support of non appearance before the Ld. CIT(A) were not disputed. Further, no specific objection were raised where the additional evidence were allowed to be admitted and the matter be remitted back to the file of the AO for necessary examination and verification.

7. We have heard the rival contentions and perused the material available on record. As per the AO, as per information in possession of the Revenue, the assessee has been maintaining an account in Punjab National Bank (PNB) A/c No. 3353010008641 in the name of Akash Canteen, Una and had deposited a sum of Rs. 26,01,85,175/- during the period 01/04/2016 to 08/11/2016 and a sum of Rs. 2,64,806/- during the period 09/11/2016 to 30/12/2016. Basis the same and in absence of any explanation from the assessee during the course of assessment proceedings, the AO completed the assessment u/s 144 bringing to tax the whole of the amount so deposited as unexplained money u/s 69A of the Act in the hands of the assessee which has since been confirmed by the Id CIT(A). During the course of hearing, it has been submitted by the Id AR on behalf of the assessee that the said bank account is in name of Akash Canteen, Una which is an ex-serviceman canteen for serving as well as retired defence personnel functioning under the control of Integrated Headquarters of Ministry of Defence army, canteen stores directorate, New Delhi, that the functioning of Akash Canteen, Una is controlled by the Indian army and that all the transactions in the above mentioned account pertain to Akash Canteen, Una. He has further explained the reasons as to why the assessee's PAN number, being the stores manager at the relevant point in time, was used to procure and install the POS machine during the demonetisation period in absence of PAN number of the defence canteen. In support of his explanation, the assessee has sought to submit the additional evidence by way of certificate issued by the competent authority, Akash Canteen, Una, details of monthly transactions in the bank account and copy of the bank statements.

8. On perusal of the certificate so issued by the Competent authority, Akash Canteen, Una, it is noted that it has been stated therein that account No. 3353010008641 at Punjab National Bank, Una Branch is in the name of Akash Canteen, Una (PAN AAFAA7584H) and it is an ex-servicemen canteen for

servicing and retired defence personnel, functioning under the control of Integrated headquarters of the Ministry of Defence, QMG Branch, Canteen Stores Directorate New Delhi and all transactions in the said bank account pertain to Akash Canteen, Una. The said certificate is further supported by the details of monthly transactions and copy of the bank statements. We therefore find that the particulars of the bank account in possession of the Revenue and as per certificate issued by the Competent authority of Akash Canteen, Una shows that both the bank account number and the name in which the bank account was opened matches with each other and further, as per the Certificate, all the transactions in the said bank account pertain to Akash Canteen, Una. In view of the same, we are of the considered view that additional evidence so sought to be submitted by the assessee deserve to be admitted as the same goes to the root of the matter in terms of determining the nature and source of cash deposits in the said bank account. Further, the assessee has submitted copy of the PPF statement in support of claim of deduction. As to the reasons as to why the same couldn't be submitted earlier, we find that the assessee has a reasonable cause due to his health conditions, partial memory loss, and especially given that the assessment has been completed u/s 144, the additional evidence deserve to be admitted to thrash out the relevant facts of the case and bring substantive justice to the assessee who merely happens to be store manager at the relevant point in time and in good faith and for smooth functioning of the store canteen and installation of POS machine, has shared his PAN number with the bank which the latter shared with the Revenue authorities as part of its regulatory filings though the bank account continue to be in name of the Akash canteen and all transactions pertains to Akash Canteen as so stated in the certificate. We further note that even though the assessee couldn't attend to the proceedings before the AO, the latter once seized of the bank details should have atleast enquired from the bank u/s 133(6) which has also not happened in the instant case. Even the Id

CIT/DR has not objected to the admittance of the additional evidence and has fairly submitted that the same may be admitted and at the same time, matter may be remitted to the AO for necessary verification.

9. In the entirety of facts and circumstances of the case and in light of aforesaid discussions, we are therefore of the considered view that the additional evidence deserves to be admitted keeping in view the principal of substantial justice, fair play and the fact that the same goes to root of the matter. The additional evidence is accordingly admitted and the matter is remitted back to the file of the AO to examine the same and decide the matter a fresh as per law after providing reasonable opportunity to the assessee.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 12/07/2024.

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT 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