

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. UDAYAN DAS GUPTA, JUDICIAL MEMBER**

**I.T.A. No.686/Asr/2017
Assessment Year: 2010-11**

Smt. Iqbal Kaur Kataria, Dashmesh Nagar, Disco Wali Gali, Moga. [PAN:AACPK1045M] (Appellant)	Vs.	ITO, Ward (1), Moga. (Respondent)
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Appellant by	Sh. V. M. Singhal, CA
Respondent by	Sh. Ravinder Mittal, Sr. DR

Date of Hearing	01.07.2024
Date of Pronouncement	28.08.2024

ORDER

Per: Udayan Das Gupta, JM

This appeal is filed by the assessee against the order of the Ld. CIT (A) dated 25/05/2017, passed u/s 250 (6) of the Act 1961, confirming the assessment order passed by the AO u/s 143(3) of the Act 1961, dated 29.11.2012.

2. Condonation of Delay:

This appeal is filed belatedly by 78 days as pointed out by the registry. An application for condonation of delay has been filed by the assessee, explaining that the appeal order passed by CIT (A), Ludhiana, dated 25/05/2017, has been posted

at the old address at Dashmesh Nagar, Disco Wali Gali, Moga, whereas, the correct address was Smt Iqbal Kaur Kataria, w/o Krishan Singh Kataria, Model Town, Gali No 9 (Brar Street) Amritsar Road, Moga, as such the order was received late routed to the new address. As soon as the appellant received the order, she contacted her lawyers, prepared the appeal memorandum and filed the same before the tribunal, and the delay was neither intentional nor willful on her part, and as such the appellant prays that the delay may please be condoned. The Ld. DR did not raise any objection on the ground of delay. Considering the facts and the reasons put forward by the assessee, the delay is condoned and appeal admitted for hearing on merits.

3. This appeal was dismissed by the tribunal vide earlier order dated 26/03/2019, for non-prosecution and non-curing of defects, as un-admitted. Subsequently, the order has been recalled vide order dated 13th September, 2023, in MA No: 40/ASR/2019.

4. The grounds of appeal of the assessee are as follows:

“1. The orders passed by the Ld. Commissioner of Income Tax (Appeal) vide orders dated 25.05.2017 are illegal, uncalled for and against the law & facts.

2. The Ld. Commissioner of Income Tax (Appeal) has made additions merely on conjectures and surmises without any legal basis.

3. *The order passed by Ld. Commissioner of Income Tax (Appeal) is ex-parte and upheld the additions of Rs. 1,80,000/- without allowing the proper opportunity of being heard to the Assessee. So the order of Ld. Commissioner of Income Tax (Appeal) should be set aside and calls for fresh adjudication with CIT(A), Ludhiana.*
4. *The addition of Rs. 1,80,000.00 is against the facts of the case & Assessing Officer has not given any reason of not accepting the available cash in hand to the appellant.*
5. *The cash book showing enough cash in hand to make deposit in bank account duly placed on office records. Thus, no addition can be made without rejecting that.*
6. *The interest on housing loan of Rs. 20980.00 has not been considered by Ld. Commissioner of Income Tax (Appeal) which now should be allowed.*
7. *The assessee craves leave to argue by any other question of law or facts at the time of hearing of this appeal.”*

5. The brief facts are that the assessee and her husband, both are Government employees, and return of income filed by the assessee in normal course has been accepted u/s 143(1) of the Act. Subsequently the case was picked for scrutiny under CASS, to examine the source of cash deposits in bank account which was more than Rs. Ten lakhs. As evident from the assessment order two separate bank accounts of the assessee were discussed, (i) PNB A/c No 7308, and (ii) bank

account No 2302 / Punjab and Sind Bank, Moga, where cash were deposited, which needed explanation of source from the assessee.

6. After considering submissions of the assessee, supported by documentary evidences, the AO accepted the deposits in PNB A/c -7308 to have been explained, and regarding the deposits in PSB A/c - 2302, the AO considering all the facts and evidences before him accepted the explanation of the assessee regarding part of the cash deposits in the said bank account to be explained, and the remaining portion of Rs. 1,80,000/- was added back to the total income, treating the same as unexplained cash deposits.

7. The matter was carried in appeal against the addition of Rs.1,80,000/- before the CIT (A), which was physically filed on 1st January, 2013, before Ld. CIT (A) - 4, Ludhiana, where it is seen that the Ld CIT(A) has disposed off the appeal ex parte, vide order dated 25th May, 2017, (physical order), in absence of any representation by the assessee and in absence of any written submissions, in respect to the grounds of appeal contained in Form 35.

8. Now the assessee is in appeal before the tribunal on the grounds contained in the memorandum of appeal in Form 36. The Ld. AR of the assessee has filed a short paper book, of five pages containing the copies of the bank pass book A/c No 2302, which is jointly held by the assessee and her husband (S. Krishnan Singh) as appearing from bank records, and a copy of the bank certificate issued by Punjab

and Sind bank regarding interest charged on repayment of housing loan, amounting to Rs. 20,980/-.

9. The Ld. AR of the assessee at the very beginning arguing on ground no 3 , submitted , that in the instant case opportunity of hearing has not been provided by the first appellate authority , and he referred to the appeal order paragraph No 5.1 to show that none of the notices issued by post has been actually served on the assessee and the same has been returned with postal remarks “ *insufficient address without house no* ” (notice dated 19/09/2016), thereafter notice dated 18/11/2016, has also been returned un-served with postal remark “ *insufficient address* ”. The notice marked as last opportunity dated 22/03/2017, has been served on the counsel of the assessee through the AO, but the counsel never took any steps neither to appear nor to intimate the assessee. As such he submits that in the instant case at the particular period of time, there was physical hearing and notices were also issued physically through notice server or by post, and it is proved that in this case notice has been not served and the same has returned un served, and the assessee should be allowed opportunity of proper hearing before the first appellate authority.

10. The Ld. DR relied on the order of the CIT (A), and argued that the Ld. CIT(A) has decided the issue on merits, after number of attempts to serve notice through posts has failed and notice served through AO has also remained non

represented. He further submitted that on merits of the case, the assessee has tried to explain cash deposit in the bank amounting to Rs. 2,80,000/- in the month of November, 2009, out of cash withdrawal from the same bank made one year earlier in the month of December 2008, amounting to rs.2,85,000/-, which is not acceptable on its face value. He further submitted that even then also, the AO was very judicious to allow the assessee the benefit of cash amounting to Rs. One lakh as on November, 2009 and has added back only Rs. 1,80,000/-, which has been sustained by the Ld. CIT(A) and the same is perfectly in order.

11. We have heard the rival submissions and considered the materials on record and we are of the opinion that the contention of the assessee regarding lack of opportunity of hearing before the first appellate authority and non-service of notices by post which has admittedly been returned back un-served, cannot be denied , and as such we are of the opinion that justice will be served if the matter is remanded to the files of the Ld. CIT (A), to allow the assessee another opportunity of hearing to explain his case with materials and documentary evidences to establish his claims regarding the grounds of appeal contained in memorandum of appeal .

11.1 Since, we have restored the matter before the first appellate authority, we are not adjudicating on other grounds of appeal contained in form 36 and we have not expressed any opinion on the merits of the case.

As a result, the appeal of the assessee is allowed for statistical purpose.

12. In the result, the appeal of the assessee bearing **ITA No. 686/Asr/2017** is allowed for statistical purposes.

Order pronounced in the open court on 28.08.2024

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(UDAYAN DAS GUPTA)
Judicial Member

AKV

Copy of the order forwarded to:

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

True Copy
By order

