

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

HEARING THROUGH: HYBRID 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. 376/Chd/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Dilbagh Singh PO: Chintawala Tehsil, Nabha Punjab- 147201	बनाम	The ITO Ward Nabha
स्थायी लेखा सं. / PAN NO: FZNPS6253J		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Rakesh Cajla, Advocate
राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT Sr. DR

सुनवाई की तारीख/ Date of Hearing : 11/09/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 25/09/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/NFAC, Delhi dt. 09/02/2024 pertaining to Assessment Year 2017-18.

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

1. That the order of the Ld. CIT (A), Income Tax Department, is bad in law and against facts of the case.
2. That the Ld. CIT (A), Income Tax Department is not justified in confirming the addition of Rs.900000/- received by the assessee from his brother-in-law Sh. Jatinder Pal Singh. He failed to appreciate the fact that the assessee discharged his onus of proving genuineness, credit worthiness of the unsecured loan.
3. That the Ld. CIT (A), Income Tax Department, is not justified in upholding the addition of Rs.319755/-, received by the assessee on account of agricultural produce, which was sold jointly by the assessee along with his cousin brother Sh. Harpreet Singh.
4. That the Ld. CIT (A), Income Tax Department is erred in confirming the addition u/s 69-A r.w.s. 115 BBE of the Income Tax Act. While doing so he failed to

appreciate the fact that the provisions of section 115 BBE are not applicable in the case of the assessee.

5. The appellant Craves leave to add, amend or delete any of the ground (s) of appeal before it is finally heard.

3. Briefly the facts of the case are that the assessment in this case was completed under section 144 dt. 15/12/2019 wherein the AO brought to tax a sum of Rs. 17,43,000/- being the cash deposit in the bank account maintained by the assessee holding the same as unexplained. It was stated by the AO that the assessee has neither filed any original return of income nor filed the return of income in response to notice under section 142(1) of the Act and even failed to file any explanation about the nature and source of cash deposit, hence the deposits so appearing in his bank account were deemed as unexplained money and brought to tax invoking provision of Section 69A of the Act.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has allowed part relief to the assessee to the extent of Rs. 5,23,245/- and the remaining addition of Rs. 12,19,755/- has been confirmed.

5. Against the said findings and directions of the Ld. CIT(A), the assessee is in appeal before us.

6. During the course of hearing, the Ld. AR submitted that out of the cash deposited in the bank account of the assessee, an amount of Rs. 9,00,000/- has been received by the assessee from his brother in law, Shri Jatinder Pal Singh. In this regard, it was submitted that the assessee has submitted a copy of the confirmation from his brother-in-law in the form of notarized affidavit as well as a copy of his bank account statement from which the said amount was withdrawn. It was submitted that the assessee has taken the said amount from his Brother in Law for repaying the loan to Bank of Maharashtra. It was submitted that there is no adverse findings reported by the AO in his remand report and in

spite of that, the Ld. CIT(A) has gone ahead and sustained the said addition holding that the assessee has not proved the genuineness and creditworthiness of the loan transaction with supporting evidence and only a confirmation in the form of affidavit has been filed which is not adequate to prove the genuineness of the loan transaction.

6.1 In this regard, it was submitted that the assessee is an agriculturist and being an illiterate person and basis his understanding of the legal requirement, he has submitted a confirmation in form of an affidavit from his Brother in Law wherein in he has clearly stated that he has advanced money to the assessee. It was further submitted that the source of money in the hands of the Brother in Law has also been explained and evident from credits and withdrawals from his bank statement. Further, his Brother in Law is holding ten acres of agriculture land at Village Kansia Tehsil, Patiala in his name and in the name of his family members and our reference was drawn to the copy of J Forms wherein the sale proceeds from sale of the agriculture produce has been received. It was submitted that the said proceeds were deposited in his bank account and subsequently withdrawn for advancing the money to the assessee. It was accordingly submitted that the assessee has discharged the necessary onus in terms of identification, creditworthiness and the genuineness of the transaction and even the source of credits in the hands of the Brother in Law has been satisfactorily explained and therefore there is no basis for making the addition in the hands of the assessee.

6.2 It was further submitted that during the course of appellate proceedings, the assessee has further explained the source of cash deposit out of sale proceeds from sale of crops and submitted J Forms amounting to Rs. 9,08,116/-. It was submitted that in respect of the J Forms which were issued in the name of the assessee, the Ld. CIT(A) has fairly allowed the relief however in respect of J Forms issued in the name of his cousin brother, Shri Harpreet Singh, the Ld. CIT(A)

has not allowed the relief. It was submitted that both the assessee and his cousin brother, Shri Harpreet Singh are first cousins and living jointly under one roof and cultivating their agriculture land jointly and given that the amount of the sale proceeds in respect of land holding of his cousin brother were also deposited in the bank account of the assessee. It was submitted that the Ld. CIT(A) has not disputed the fact that there are sale proceeds and issuing of J Forms in the name of Shri Harpreet Singh. However for the reason that the assessee could not support any documentation to the effect that Shri Harpreet Singh gave cash to the assessee, the source of the cash deposit made in the bank account of the assessee was not accepted. It was submitted that being the demonetization period where there were heavy rush of depositing the old currency in the bank account with in the stipulated time period, it so happened that even the sale proceeds of the cousin brother, Shri Harpreet Singh also happened to be deposited in the bank account of the assessee. It was accordingly submitted that given the extraordinary circumstances in which the old currency was demonetized and have to be necessary deposited in the bank account, the assessee has deposited the amount and the source thereof have been duly explained and has put forward best available evidence in form of J Form which have not been disputed by the Ld. CIT(A), the explanation of the assessee deserves to be accepted and necessary relief be provided to the assessee.

6.3 Without prejudice, it was submitted that the assessee had certain house hold savings in form of cash from the past sale of the agriculture produce as well as cash withdrawals from the bank which was kept at home for meeting his day to day requirement and which was deposited during the demonetization period and therefore the necessary benefit on past savings and cash withdrawals be allowed to the assessee.

7. Per contra, the Ld. DR has relied on the order and the findings of the lower authorities. It was submitted that the assessee did not file any return of income inspite of sufficient opportunity provided by the AO and it is only during the appellate proceedings that additional evidence were submitted which were admitted by the Ld. CIT(A) and thereafter after calling for the remand report from the AO, the Ld. CIT(A) has fairly allowed the necessary relief to the assessee and given the nature of documentation and the explanation submitted by the assessee, the assessee does not deserve any further relief and the addition so sustained by the Ld. CIT(A) be confirmed.

8. We have heard the rival contentions and perused the material available on record. The limited issue under consideration relates to nature and source of cash deposit in the bank account during the period of demonetization to the extent of Rs. 12,19,755/- which has been sustained by the Ld CIT(A). The assessee has explained that out of the same, Rs 9 lacs has been received from his brother-in-law, Shri Jatinder Pal Singh for the purposes of repayment of loan taken from Bank of Maharashtra and in support, the confirmation of Shri Jatinder Pal Singh in form of an affidavit, his bank statement showing credits from sale of agriculture produce and necessary linkage thereof with the withdrawals and money given to the assessee and further, J Forms supporting the receipts from sale of agriculture produce and the credits in his bank account have been submitted. We therefore find that the assessee has discharged the necessary onus cast on him in terms of explaining the nature and source of cash deposits of Rs 9 lacs and even the source of source has been explained and in such circumstances, there is no justifiable basis to sustain the addition and the same is hereby directed to be deleted.

9. Regarding the remaining addition of Rs 3,19,755/-, the assessee has submitted that the same represent sale proceeds from sale of agriculture produce of his cousin brother, Shri Harpreet who is living jointly under one roof

and cultivating their agriculture land jointly and given the extraordinary circumstances in which the old currency was demonetized, the sale proceeds got deposited in assessee's bank account. It has been further explained that the assessee has put forward best available evidence in form of J Forms issued in name of his cousin brother, Shri Harpreet Singh which have not been disputed by the Ld. CIT(A) and therefore, the explanation of the assessee deserves to be accepted. Alternatively, it has been explained that being an agriculturist, there were household savings and earlier cash withdrawals which were deposited in the bank account during the demonetization period and necessary relief be provided in respect of such past savings and cash withdrawals.

10. There is no dispute that demonetization of old currency was an extraordinary chapter in the history of the country and the events that unfolded were unprecedented beyond comprehension of any layman and more so, for a rural agriculturist as is the case of the assessee before us. At the same time, question before us relates to nature and source of cash so deposited and there is an expectation that the assessee reasonably put forward his explanation when called upon by the authorities at a later point in time and which can be tested basis documentation placed on record. All through the assessment proceedings which happened three years down the line, the assessee didn't submit any explanation and during the appellate proceedings, has come forward with the explanation that the amount so deposited belongs to his cousin brother. In spite of sufficient time at his disposal and the fact that the cousin brother happens to stay with him, the assessee could not come forward with a confirmation from his cousin brother that the money belongs to him and given to the assessee during the demonetization period. In absence of establishing the said linkage where the person who has given money to the assessee has not put forward his confirmation, we do not find any infirmity in the action of the Ld CIT(A) in disregarding such explanation so put forward by the assessee.

11. Having said so, we find merit in the explanation of the assessee that there were household savings and cash withdrawals which were kept at home and given the demonetization announcement, the same was compulsory required to be deposited. The fact that the assessee is an agriculturist is a matter of record and even during the period under consideration, the Id CIT(A) has considered the sale proceeds from sale of agriculture produce as duly explained, considering the same. Further, from perusal of the bank statement, we find that the assessee had withdrawn Rs 15 lacs in cash from his bank account earlier during the year and part thereof has been deposited later during the demonetization period. Considering the same, we deem it reasonable to allow necessary relief to the assessee in respect of Rs 3,19,755/- and the addition so sustained by the Id CIT(A) is hereby directed to be deleted.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 25/09/2024

Sd/-

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

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ 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