

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", 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. 209/Chd/2020
निर्धारण वर्ष / Assessment Year : 2010-11

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| Mr. Gulab Singh H.No. 173, Ward-3, Kehar Colony, Laheer Road, Khanna | बनाम | The ITO Ward-5, Ludhiana |
| स्थायी लेखा सं. / PAN NO: BLVPS7798Q | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by : Shri Vivek Vardhan, JCIT, Sr. DR
सुनवाई की तारीख / Date of Hearing : 23/09/2024
उद्घोषणा की तारीख / Date of Pronouncement :

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-2, Ludhiana dt. 19/07/2018 pertaining to Assessment Year 2010-11.

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

1. *"The impugned order of the Assessing Officer is bad in law and nature. Hence, it is liable to be quashed.*
2. *The Ld. AO wrongly added back Rs. 6,00,000/- on adhoc basis ignoring the opening balance of cash in hand as on 01/04/2009.*
3. *The Assessee has reserved his right to modify, to alter, to amend the grounds of appeal on or before the hearing of this case."*

3. At the outset, it is noted that there is a delay in filing the present appeal as pointed out by the Registry. In this regard, the assessee has filed a condonation application alongwith affidavit which has been placed on record. The assessee had submitted that due to ill health of his mother who was continuously hospitalized and attended to for a long period of time, the assessee could not prefer the present appeal within stipulated time period. It was submitted that there was no other person in the family to attend to his mother and he was therefore required to continuously attend to her and remain in hospital along with her and thereafter, had to travel to Uttarakand for

her further treatment. It was submitted that for reasons beyond his control, he couldn't attend to his other matters including the tax matters resulting in delayed filing of the present appeal. It was submitted that the assessee is not going to gain anything by delayed filing the present appeal. Hence, in the interest of substantial justice, the delay so happened in the filing of the present appeal may be condoned and the appeal of the assessee be admitted and heard on merits. After hearing the Id DR and considering the contents of the affidavit which have not been disputed by the Id DR and going by the principle that where technicalities and substantial justice are pitted against each other, the latter should take precedence, the delay in filing the present appeal is condoned and the appeal of the assessee is admitted for adjudication.

4. Briefly the facts of the present case are that the assessee filed his return of income for the year under consideration manually on 24.09.2010 declaring total income of Rs. 1,65,610/- which was processed under section 143(1) of the Act at the returned income. Thereafter, the Assessing Officer received information that the assessee during the F.Y. 2009-10 relevant to AY. 2010-11 has made cash deposits of Rs. 86,01,236/- in his saving bank account maintained by him jointly with Sh. Jaspal Singh in ICICI Bank, Doraha. On the basis of this information, the Assessing Officer recorded the reason to believe that the income has escaped assessment and notice under section 148 of Act dated 29.03.2017 was issued and served upon the assessee on 30.03.2017. In response to notice under section 148 of the Act, the assessee has submitted that the income tax return already filed by him on 24.09.2010 may be treated as his return in response to notice u/s 148 of the Act. Thereafter, during the course of assessment proceedings, the Assessing Officer issued notice to the assessee under section 143(2) and 142(1) of the Act along with detailed questionnaire and asked him to explain the source of cash deposit of Rs.86,01,236/- in his saving bank account maintained with ICICI Bank, Doraha. In response, the assessee filed detailed reply which has also been reproduced in the assessment order. The AO on perusal of the submissions so made and information available on record noted that the assessee has made cash deposits of Rs.86 lacs whereas the withdrawals are only to the extent of Rs.80 lacs and the assessee was asked to explain the difference in deposits and withdrawals. In response thereto, the AO noted that the learned AR of the assessee could not give any plausible reply and

agreed for an addition of Rs.6,00,000/- subject to no penal action. However, the Assessing Officer was not satisfied with the conditional offer made by the assessee as in her opinion, the assessee had concealed particulars of income to the extent of Rs.6,00,000/-. So, the Assessing Officer made an addition of Rs.6,00,000/- to the returned income of the assessee by treating this amount as concealed income of the assessee. Apart from this, the undisclosed interest income of Rs.4,347/- was also added to the returned income of the assessee. The assessment in this case was completed by the Assessing Officer vide order under section 143(3) of the Act dated 22.12.2017 at an assessed income of Rs.7,69,957/- as against returned income of Rs. 1,65,610/- and penalty proceedings were separately initiated.

5. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has confirmed the findings of the AO and the findings of the Ld. CIT(A) in this regard read as under:

"5.2 I have considered the observations of the Assessing Officer as made by her in the assessment order while making the impugned addition. I have also considered written submissions filed by the assessee through his learned AR vide letter dated 16.07.2018 on the issue under reference. I have further considered various judicial pronouncements relied upon by the learned AR of the assessee as well as other material placed by him on record. On careful consideration of the assessment order, it has been noticed that the Assessing Officer has made the impugned addition as the assessee, in the opinion of the Assessing Officer, could not explain the source of cash deposits to the extent of Rs.6,00,000/- made by him in his saving bank account maintained by him with ICICI Bank, Doraha to the satisfaction of the Assessing Officer. Another reason for making the impugned addition was that the learned AR of the assessee agreed for the impugned addition. On the other hand, the learned AR of the assessee had submitted that as the Assessing Officer had neither found any defect in the cash flow chart submitted by the assessee during assessment proceedings nor considered the opening cash balance shown in the cash flow statement, addition made by the Assessing Officer has no basis. It has also been submitted that the surrender made by the learned AR of the assessee was conditional one as it was made subject to no penal action. It has further been submitted that as the Assessing Officer has also initiated concealment penalty, he should not have made any addition on agreed basis. On careful consideration of the rival contentions, I do not find any force in the contentions of the learned AR of the assessee as he himself surrendered an income of Rs.6,00,000/- during assessment proceedings. The order made by the learned AR of the assessee is contrary to his submissions now being put forward. By offering an amount of Rs.6,00,000/- for tax, the learned AR of the assessee stopped the Assessing Officer from making further investigations. So, the submissions now being made are summarily rejected and the plea now being taken is nothing but an afterthought. The judicial pronouncements relied upon by the learned AR of the assessee are also distinguishable on facts. Under such circumstances, the action of the Assessing Officer in making an addition of Rs.6,00,000/- in this case on account of undisclosed cash deposits made by the assessee in his saving bank account maintained by him with ICICI Bank, Doraha cannot be said to be unjustified and the addition made by the Assessing Officer deserves to be upheld. Having said so, the addition of Rs.6,00,000/- made by the Assessing Officer in this case on account of undisclosed cash deposits made by the assessee in his saving bank account maintained by him with ICICI Bank, Doraha is therefore, upheld. In the result, the grounds No. 1 and 2 of appeal taken by the assessee are dismissed."

6. Against the aforesaid findings of the Ld CIT(A), the assessee is in appeal before us.

7. None has appeared on behalf of the assessee, however an adjournment application has been filed by the Counsel of the Assessee dt. 20/09/2024 and on perusal of the same, we find that there is no reasonable cause for not attending the appellate proceedings which have been pending since 2020 and considering the fact that the matter has been adjourned from time to time and there has been complete non-compliance / non-appearance on behalf of the assessee, it was decided to reject the adjournment application and proceed to decide the matter based on material available on the record including the written submissions filed by the Id Counsel.

8. In its written submission dt. 18/01/2023, the Ld. Counsel for the Assessee submitted as under:

" The Id AO wrongly made addition of Rs 600000/- on adhoc basis ignoring the cash flow and opening balance. During the course of assessment proceeding we had submitted cash flow of cash received and deposited in bank. Cash flow was duly shown by Ld AO on Page No 25 to 31 of assessment order. Ld A.O was of the opinion Rs 86 Lac was deposited and Rs.80 lac was withdrawn by assessee from the bank and Rs.6 lac is liable to be added. We argued that Ld A.O has not pointed out any defect in the cash flow so nothing is concealed by us. Ld A.O during assessment proceeding (it is a general practice adopted by A.O's in the case of manual assessment) compelled us to surrender Rs.6 Lac. Our counsel accepted the offer to buy mental peace on the condition that this offer is subject to no penal action. So we allowed Ld A.O to add Rs.6 lac in total income. This fact was also admitted by Ld CIT(A) in Para 5.2 on page 5 & 6 of CIT (A) order.

Why we filed appeal against the order of Ld A.O, it is only due to the reason that surrender was subject to no penalty. Ld A.O has breached the agreement and initiated penalty proceeding. We have explained every penny of deposit and no defect was found in cash flow. The CIT(A) has also ignored our submission and accepted the argument of Ld A.O ignoring surrender as subject to no penalty and surrender was made only to buy peace. Nowhere we have accepted that we have concealed the income. But as per order it was shown as if we are culprit and concealed the income.

Various judgment has been given by us at the time of hearing of CIT(A). We rely on those judgments

It is an adhoc addition and without pointing out defect in cash flow so is liable to be quashed. It is an addition against natural justice and to justify their reason of opening the case."

9. Per contra, the Ld. DR relied on the orders of the lower authorities.

10. We have heard the rival contentions and perused the material available on record. The AO in para 4 of her order has stated that basis submission dated 19/12/2017 filed by the Counsel of the assessee, the assessee had made cash deposits of Rs 86 lacs and withdrawals of Rs 80 lacs from his saving bank account maintained with ICICI Bank, and the difference of Rs 6 lacs thus remain unexplained and in any absence of any plausible explanation submitted by the Counsel of the assessee and the fact that he has agreed for the addition, addition of Rs 6 lacs was made in the

hands of the assessee as unexplained cash deposits which, on appeal, has been confirmed by the Id CIT(A). On perusal of the reply dated 19/12/2017 which has been reproduced in the assessment order, it is noted that in para 2 of the said reply, the Counsel of the assessee has stated that the cash deposited in the account is Rs 86 lacs and withdrawn amount is Rs 80 lacs which has been considered by AO. The Id AR has further stated in his submissions that the cash flow statement was submitted wherein there is no cash shortage and so, the cash deposited is justifiable. Further, cash available as on 1/04/2009 has been withdrawn from bank earlier and copy of bank statements for 2008-09 and 2009-10 were also submitted. This latter part of the submissions, though reproduced in the assessment order, apparently has not been considered by the AO resulting in the impugned addition. On perusal of the cash flow statement so submitted by the assessee and available on record, we find merit in the submissions of the assessee as there is opening cash balance of Rs 11,20,160/- as on 1/04/2009 which has been withdrawn earlier and deposited in the bank account during the year and there is no cash shortage as appearing in the cash flow statement. Therefore, the deposits of Rs 6 lacs stand duly explained by the assessee out of opening cash in hand and the addition so made is hereby directed to be deleted.

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

Order pronounced in the open Court on 30/09/2024

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. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar