

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH**

**BEFORE: SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND SHRI PARESH M. JOSHI, JUDICIAL MEMBER,**

आयकर अपील सं. / ITA No. 662/CHD/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Shri Kapil Dev, Chandigarh Road, Ludhiana.	बनाम VS	The ITO, Ward - 1(4), Ludhiana.
स्थायी लेखा सं./PAN /TAN No: AHDPD1572E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None (Adjournment Application)
राजस्व की ओर से/ Revenue by : Shri Manpreet Duggal, JCIT, Sr.DR
तारीख/Date of Hearing : 01.10.2024
उद्घोषणा की तारीख/Date of Pronouncement : 08.11.2024

PHYSICAL HEARING

आदेश/ORDER

PER PARESH M. JOSHI, JM

This is an appeal filed by the assessee under Section 253 of the Income Tax Act, 1961 before this Tribunal as and by way of a second appeal as provided for in the Income Tax Act, 1961 (hereinafter referred to as Act). The relevant assessment year is 2017-18 and the corresponding previous year period is from 01.04.2016 to 31.03.2017. The assessee is aggrieved by the order of the Id. CIT(A) bearing No.ITBA/APL/S/250/2023-24/1063400827(1) dated 26.03.2024 passed in first appeal which is hereinafter referred to as the "impugned order" u/s 250(6) of the Income Tax Act, 1961.

Factual Matrix

2. That as per information available with the income Tax Department on AIMS Module of ITBA, it was noticed that during the period of demonetization

from 09.11.2016 to 31/12/2016, the assessee had made cash deposits in his bank accounts with Axis Bank of Rs.12,19,000/-.

3. That the assessee did not file his regular return of income as per the provisions of Section 139 of the Income Tax Act, 1961 for the assessment year 2017-18.

4. That accordingly, a notice under Section 142(1) of the Income Tax Act, 1961 was issued on 10.03.2018 electronically, requiring the assessee to file his return of income for the assessment year 2017-18. In response thereto, neither anybody attended nor the return of income was filed by the assessee.

5. That subsequently, again a notice under Section 142(1) of the Income Tax Act, 1961 dated 06.08.2019 alongwith Questionnaire was issued and served upon the assessee electronically as well as through **Registered Post** fixing the case for hearing on 21.8.2019. However, on 21.08.2019 neither anybody attended the proceedings nor any reply or any written request seeking adjournment was filed by the assessee.

6. That once again a **Show Cause Notice dated 17.09.2019** for 24.09.2019 was issued electronically and **through Speed Post**. However, on 24.09.2019 the appointed date, neither anybody attended the proceedings nor any reply or any written request seeking adjournment was filed by the assessee.

7. That however, once again a notice under Section 142(1) of the Income Tax Act, 1961 dated 22.11.2019 for 27.11.2019 was issued electronically.

8. Thereafter, another notice under Section 142(1) dated 30.11.2019 was issued for 06.12.2019, however, assessee made no compliance.

9. That further vide order under Section 127 dated 09.12.2019 which was passed by the Pr. CIT-3 Ludhiana, the jurisdiction over the case was transferred to present Id. AO.

10. That once again subsequently too, the notice under Section 142(1) alongwith a Show Cause Notice dated 13.12.2019 was issued, fixing the case for 16.12.2019. However, there was no compliance to the Show Cause Notice.

11. That the statement of bank accounts maintained by the assessee for the Financial Year 2016-17 relevant to assessment year 2017-18 **were obtained from the concerned bank.**

12. That by adopting a judicious approach and in order to meet the principle of natural justice, once again a final opportunity was provided to the assessee to present his case by issuing notice under Section 142(1) alongwith Show Cause Notice on **17.12.2019** fixing the case for hearing on 19.12.2019 proposing an addition of Rs.61,90,200/-. In brief the show cause notice read as under:

"During the year under consideration, you have deposited substantial cash of Rs. 61,90,200/- in your bank accounts no. 91620003789654 maintained with Axis Bank. As you have failed to file any reply to the notices issued, source of cash deposit remains unexplained and addition of Rs.61,90,200/- on account of unexplained cash deposit is proposed in your case u/s 69A of the I. T. Act, 1961 as unexplained money"

13. That the assessee in response to the above Show Cause Notice filed a reply for the first time on 24.12.2019 alongwith copy of Cash Flow Chart vide reply dated 24.12.2019 wherein the assessee stated that he was not doing any business during the year under consideration and therefore, no ITR was filed. Further the assessee explained the source of cash deposits from the cash withdrawals made from the same bank account in / or earlier dates. However, it was noticed and carefully noted from the 'Cash Flow Statement' and 'bank statement' of the assessee that **heavy credit entries** have been received in bank account of the assessee and there are also heavy debits from the bank account, in the shape of cash withdrawals and transfer to other parties. The quantum of credit entries and debit entries in bank account was Rs.3,37,66,939/- and Rs.3,37,62,772/-.

14. That the aforesaid reply of the assessee was perused, however, the same cannot be accepted keeping in view of the fact that the assessee was **a failure in substantiating the nature, reason and source of heavy entries in his bank account**. Therefore, vide this office notice under Section 142(1) dated 24.12.2019, certain information was called for from the assessee as under :

In response of your reply submitted on 24/12/2019, it is submitted that you have submitted only cash flow account for the financial year 2016-17, and source of cash deposits in bank account cannot be accepted without supporting documents to justify the source of credit entries received in bank account, as you have claimed the benefit of cash withdrawal. Therefore, you are requested to submit the following reply.

1. *Please give complete narration of all debit & credit entries in your bank account.*
2. *Please submit confirmed copy of your account in the books of persons from / to whom credit & debit entries have been made.*
3. *Please explain exact nature of work done by you during the year under consideration.*

4. Please explain the reason & nature of heavy credit & debit entries in your books of account.
5. Please explain the reason of frequent withdrawal & deposits of cash in your bank account.
6. Please give details of income earned by you from the heavy debit and credit entries received/paid from/to various parties as reflected in your bank account.

15. That in response to the same the assessee has submitted that he was contemplating to start business of trading of yarn and received advance from the customer and paid advance to the suppliers which was later on returned because the assessee has not started the business during the year under consideration. The assessee submitted some confirmed copies of accounts of the parties from whom the heavy credits and debit entries were received in his bank accounts. On perusal of the same, it was noted that heavy credit and debit entries have been made in accounts/statements, **without any purpose and reasons.** The plea of the assessee that the "amounts" represent to "advances" was found not acceptable 'as the amounts were frequently credited and debited through cheques and cash during the year under consideration' as it is not possible that parties were giving and taking advances during the entire period of the year under consideration without taking the delivery of the goods. **Story of the assessee is a concocted story created by the assessee so as to give shape to the unexplained entries in bank account as genuine one.** Ledger showed all accounts with regard to closing balance as settled on 31.03.2017 by issuing or receiving heavy amounts cheques. **However, on perusal of bank statement, it was noted that these cheques are not reflected in the bank account of the assessee** i.e. ledgers of M/s Balaji Spinning Mills which is

reproduced by Id. AO in his assessment order clearly shows that heavy amount and cheques have been shown on various dates in the month of March 2019, just to settle closing balance, **however actually no payments made or received as the cheques do not reflect in the bank account of the assessee.** Above observations revealed that **bogus cheques** have been placed in the ledgers to project the account as settled. The Id. AO concluded that **actual closing balance is not reflected in books of account of corresponding parties** and therefore, this trick has been made to conceal actual position of books of account of those parties.

16. That **basis above trend** the modus operandi of the assessee was nothing but activity of providing accommodation entries to the beneficiaries. A Reconciliation Statement was submitted by the assessee to show that some cheques were debits or credits in books of the parties but not in his accounts. Since the reply/answer of the assessee was not found to be acceptable, a notice under Section 142 dated 28.12.2019 was issued calling upon the assessee to furnish the details as under :

1. *The assessee has not provided submit PAN number and complete address of the following parties:-*

2. *1. M/s Balaji Spinning Mills*
2. *M/s Unitech Textiles*
3. *M/s Golden Textiles*
4. *M/s Naga International*
5. *M/s Metro Enterprises*
6. *M/s United Enterprises*
7. *M/s Thomas Rubber*

3. *As per closing balance reflecting in your ledgers of all the above parties, huge amounts are standing to be paid. Please furnish the reason and source of the repayment of the closing entries in next financial year, with complete ledgers, bank account and confirmation from 'all parties for next A. Y. 201819.*

4. It is noted from the ledgers of all above mentioned parties that heavy amount have been received from M/s Balaji Spinning Mills and M/s Unitech Textiles, and subsequently transferred to other parties i.e. M/s Golden Textiles, M/s Naga International, M/s Metro Enterprises, M/s United Enterprises, M/s Thomas Rubber without any purpose and reasons. Please explain the issue.

5. Further, it is noted in all the cases that accounts have been settled by showing cheques as 'received' or 'paid' in the month of March, 2017, which were actually never paid or received as cleared from your bank account. Please provide copies of cheques issued or received in the month of March, 2017.

Keeping in view the above facts, it is clear that the assessee was indulged in providing only accommodation entries to these parties as all credit entries received by the assessee has subsequently transferred to other connected parties without any reason or purpose clarified till date. Therefore, it is clear that you have failed to provide any details, source and reasons for all credit and debit entries in your bank accounts and therefore, your income @ 8% on these credit entries of Rs. 3,37,66,939/- in your bank accounts is liable to be added back as commission income for providing entries to beneficiary parties, which comes to Rs. 27,01,355/-.

In response to the notice issued, no reply was received. Therefore, it is clear that the assessee has nothing to say in this matter.

17. That above non compliance of the statutory notice(s) and Show Cause Notice clearly showed that the assessee does not wish to say anything in the matter or rather has no explanation to offer to support his claims. The Id. AO, therefore, proceeded to decide the case basis above facts and position by resorting to Section 144(1)(b) of the Act as there was no other option left but to complete assessment proceedings as ex-parte.

18. The Id. AO has thus concluded that from the verification of bank statement of the assessee it is clear that before the demonetization period, heavy cash deposits and withdrawal is noted in the bank account of the assessee. The assessee has submitted the source of these cash deposits from the withdrawal made from bank account. However, the assessee has failed to prove the source, nature and reason of heavy credit and debit entries in his bank account. Further, even the assessee has failed to explain the

genuineness of the transactions reflected in the ledgers submitted by him during the course of the assessment proceedings. Thus, the assessee's acts, omissions and commissions reveal that the assessee was engaged in the activity of providing accommodation entries. **Further, the assessee has not filed ITR for assessment year 2017-18.**

19. The Id. AO in the assessment order dated 30.12.2019 has held as under :

- 1) That cash of Rs.61,90,200/- was deposited by the assessee during the Financial Year 2016-17, A.Y. 2017-18 in his bank account which was treated as previous withdrawal from same bank account.
- 2) That source of the same were through heavy credit entries which were thereafter either withdrawn in cash or transferred to other parties.
- 3) That the assessee has not filed ITR declaring any type of income on these heavy debit and credit entries in his bank account.
- 4) That as per bank statement, credit entries from various parties other than "cash deposit out of withdrawal on previous dates" comes to Rs.2,75,76,739/- [Rs.3,37,66,939 – Rs. 61,90,200/-]
- 5) That since the assessee has deliberately avoided to provide the details, nature addition source of transaction and PAN and complete address of the parties, so also the details of actual payment and receipts, the transactions reflected in his bank accounts cannot be treated as a genuine transaction.
- 6) That Id. AO treated credit entries of Rs.2,75,76,739/- received from various parties for Financial Year 2016-17, A.Y. 2017-18 as accommodation entries provided by the assessee. Consequently determination of income of Rs.22,06,139/- @ 8% on credit entries of Rs.2,75,76,739/-.

- 7) That total income of the assessee was computed as Rs.22,06,140/- with no return of income filed for assessment year 2017-18.
- 8) The aforesaid assessment order of Id. AO bears No.ITBA/AST/S/144/2019-20/1023484411(1) dated 30.12.2019 which is under Section 144, of the Act.
- 9) The assessee being aggrieved by the aforesaid assessment order dated 30.12.2019 files first appeal under Section 246A of the Income Tax Act, 1961 before Id. CIT(A) who by the impugned order has sustained the aforesaid findings of AO.

20. The assessee being aggrieved by the impugned order under Section 250(6) of the Income Tax Act, 1961 in first appeal filed second appeal before this Tribunal under Section 253 of the Income Tax Act, 1961 in Form 36 and inter-alia has raised following grounds of appeal :

- “1. That the impugned order is bad both on facts and law.
2. That the Id. CIT(A) has wrongly and illegally upheld the addition of Rs.22,06,140/- against the facts and circumstances of the case by passing an ex-parte order in a mechanical manner.
3. That the Id. CIT(A) has erred in passing an ex-parte order under Section 250 without assuring the service of notices.
4. That the Id. CIT(A) has erred in confirming the income as all the credit entries in the bank account are per se not income.
5. That the appellant craves permission to add, amend, elucidate any ground of appeal at the time of hearing.”

Record of Hearing

21. The hearing in the matter took place on 01.10.2023 before this Tribunal when Id. DR appeared for and on behalf of the Income Tax Department. The Id. AR was, however, absent. The Registry placed before us an adjournment application dated 30.09.2024 which was moved by Id. AR of the assessee in which adjournment was sought on the ground that briefing counsel is busy

with Audit work. It was also stated therein that a Clarification was sought from briefing Counsel on issue of registered e-mail on which assessee has claimed that notices were not received. This Tribunal, however, after perusing the application and upon hearing the Id. DR who opposed the adjournment request, rejected the application for adjournment. Thereafter, the matter was heard. The papers and proceedings were perused by us minutely. The Id. DR contended that order of Id. AO is rightly sustained by the Id. CIT(A). The assessee since original assessment proceedings have not cooperated with the Department. All the requisitions made by the Department on several dates were not complied with by the assessee. The assessee has remained evasive and no material particulars which were required from him were furnished to the Id. AO. Consequently, the Id. AO was left with no other option but to exercise his power under Section 144. The Id. DR has filed a small Paper Book from pages 1 to 3 dated 30.09.2024. On page 1, there is an e-mail from ITO Ward 1(3), Ludhiana to Department attaching a document. The attachment shows on page 2 notice sent by Ludhiana CIT(A) 1 @ Incometax.gov.in to pk_mittal1909@gmail.com with CC to Virdianu@yahoo.com it evidences a notice for a PAN No. AHDPD1572E. Basis this, it was contended by Id. DR that office of CIT(A) had sent notice (supra).

22. Per contra we notice that assessee has stated in his written submission that email address is PKMITTAL1909@gmail.com. Whereas the Notice has gone to PK_MITTAL1909@gmail.com which is an incorrect one.

23. **Observations, findings & conclusions**

23.1 We now examine the legality, validity and propriety of impugned order.

23.2 We observe and hold that order of Id. CIT(A) is an ex-parte order as no notice went to correct email Id, which was PKMITTAL1909@gmail.com. Notice from CIT(A) office went to PK_MITTAL1909@gmail.com.

23.3 We have minutely perused affidavit of assessee where above fact is disclosed on oath.

23.4 The Id. DR at page 3 confirms that notice went to PK_MITTAL1909@gmail.com which is an incorrect email Id.

23.5 We, therefore hold that all five notices from office of CIT(A) dated 09.03.2020, 12.08.2020, 06.01.2021, 23.03.2021 and 15.03.2024 went to PK-MITTAL1909@gmail.com and not on PKMITTAL1909@gmail.com.

23.6 We hold impugned order as an ex-parte one and in violation of principles of natural justice. We, therefore, set aside the same and remand the case back to the file of CIT(A) with a direction to serve notice afresh on correct email Id of the assessee/appellant including hard copy of notice by Registered AD, and proceed to re-adjudge and re-adjudicate the first appeal afresh by passing a speaking order which should be well reasoned. The assessee is at liberty to raise such contentions as advised to him.

ORDER

24. The impugned order is set aside and matter is remanded to CIT(A).

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

Order pronounced on 08/11/2024.

Sd/-

**(VIKRAM SINGH YADAV)
ACCOUNTANTMEMBER**

Sd/-

**(PARESH M. JOSHI)
JUDICIAL MEMBER**

“Poonam”

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 फाइल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar