

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

**श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & SMT. ANNAPURNA GUPTA, AM**

आयकर अपील सं./ITA No. 527/CHD/2017

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Malwinder Singh, S/o Shri Gurnam Singh, M/s Dasmesh Automobiles, Pehowa, Distt. Kurukshetra.	बनाम VS	The ITO, Ward - 1, Kurukshetra.
स्थायी लेखा सं./PAN /TAN No: BCSPS2898P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Sudhir Sehgal

राजस्व की ओर से/Revenue by : Shri Apul Jaiswal, Sr.DR

सुनवाई की तारीख/Date of Hearing : 15.07.2019

उद्घोषणा की तारीख/Date of Pronouncement : 23.07.2019

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee assailing the correctness of the order dated 04.01.2017 of CIT(A) Karnal pertaining to 2011-12 assessment year on the following grounds:

1. That Ld. CIT (A) erred in confirming the addition of A.O made in ex-parte order u/s 144.
2. That Ld. CIT (A) failed to appreciate the true facts of the case explained before him and in written submissions too.
3. That Ld. CIT (A) also failed to appreciate and consider that cash-deposits were either out of sale-proceeds of tractors, agriculture loan raised from banks and other general transactions.
4. That the appellant be allowed to submit an additional evidence at this stage as appellant could not submit before A.O or CIT (A) level as was involved in a criminal proceedings.
5. That the appellant craves leave to amend, alter or delete any of the above grounds of appeal before or at the time of hearing of appeal.

(emphasis supplied)

2. The ld. AR inviting attention to the record submitted that the assessment in the case of the assessee had been concluded u/s 144 of the Act by an order dated 04.03.2014 as the assessee failed to participate in the proceedings before the AO. Accordingly, in these circumstances the assessee filed fresh evidences before the CIT(A). These evidences, it was submitted, were referred to the AO by the CIT(A) and without confronting the Report, the CIT(A) by merely relying upon the report of the AO dismissed the appeal of the assessee. It was his submission addressing the impugned order that in case the evidences were found to be not sufficient or complete, either by the AO or the CIT(A) then this fact should have been communicated to the assessee.

2.1 Addressing the reasons for the non-appearance before the AO, copy of the **decision dated 13.01.2015 of the Additional Session Judge (exclusive Court for heinous crimes against women) Kurukshetra** was filed. Referring to the said order, it was submitted that the assessee had been implicated in a false case instituted on 13.10.2011/24.02.2014 and had been acquitted subsequently. Thus, in the facts of the present case, it was submitted that the assessee was prevented by a sufficient cause for non-participating before the AO justifying the filing of fresh evidences. Referring to the order it was submitted that the assessee was one of the accused and his name is appearing at Sr.No. 4, Malwinder Singh S/o Shri Gurnam Singh. On a perusal

of the order it is seen that a criminal case instituted on the basis of a dying declaration of Ms. Dhanpati implicating the assessee amongst others for offences under sections 148, 302, 120-B, 109 and 149 of the Indian Penal Code, 1860 who died of burn injuries on the night of 25.06.2011 claiming that she was set ablaze in broad daylight on 24.06.2011 at about 11 a.m. while ploughing a field which she had taken on lease from Gram Panchayat in an open auction on 02.06.2011. The case was closed as it was seen that on 23.06.2011 physical possession of land was handed over to her and no untoward incident had happened. The prosecution failed to show previous enmity and lack of motive noticing that the witnesses relied upon had turned hostile. Relying on the order of acquittal, it was submitted that the assessee admittedly remained pre-occupied and non-represented before the AO.

2.2 Inviting attention to the impugned order as well as the assessment order, it was submitted that the assessee has been described as **‘Malwinder Singh S/o Shri Gurnam Singh, M/s Dashmesh Automobiles.** Thus, it was his submission that the assessee had a stated business was a fact available to the AO as well as the CIT(A). Relying on the copy of the narrations of the credit and debit entries maintained in the ICICI Bank account filed before the CIT(A) as fresh evidences confronted to the AO, it was submitted that the assessee believed that these narrations of the entries fully explained the credit and the debit entries. On a

perusal of the same it was seen that these were mere narrations without any supporting evidences and thus, to the extent that the explanation was not substantiated, we find cannot be faulted with.

2.3 The Id. AR in response re-iterated that had this fact been communicated, the assessee being in a position to file supporting documents would have filed them.

2.4 Accordingly, it was his prayer that the issue may be remanded back.

2.5 Without prejudice to the above arguments, it was also submitted that in the facts of the present case, there is no clear finding as to whether the evidences have been admitted or not by the CIT(A) is not clear.

2.6 Addressing the past history of the assessee on the stated activity, on query it was stated that the assessee has been engaged in this line of business of selling agricultural implements and old tractors etc. for the last many years, the exact numbers, it was stated, he was not readily in a position to address immediately, the matter may be enquired into by the tax authorities on remand.

3. The Id. Sr.DR Mr.Jaiswal, on the other hand on a perusal of the narrations of the credit and debit entries in the specific Saving Bank Account maintained in ICICI, Pehowa submitted that most definitely the evidence is neither sufficient nor complete.

Accordingly, it was submitted that the CIT(A) on facts was fully justified in coming to the said conclusion.

3.1 The fact that this shortcoming pointed out by the AO was not confronted to the assessee was not disputed by him. Prayer for remand back, accordingly was not objected to.

4. We have heard the rival submissions and perused the material available on record. It is seen that admittedly at the assessment stage, the assessee who had returned an income of Rs. 1,79,730/- was required to explain the deposits of Rs. 72,15,100/- made in ICICI Bank, Pehowa, Kurukshetra by the AO after issuance of statutory notices etc. On a failure of the assessee to participate in the proceedings, addition of the said amount stood made by the AO by an order u/s 144 of the Act.

5. In appeal, the assessee explained that on account of a criminal case against him, he could not participate before AO. Accordingly, fresh evidences were filed to explain the deposits made in the specific bank account. We have considered the fresh evidences before the CIT(A) which is shown to consist of mere narrations of the entries in the specific bank account. On a consideration thereof, we have no hesitation in holding that without the benefit of supporting evidences these cannot be contemplated to be a "sufficient explanation" on facts in the eyes of law.

6. The submissions of the ld. Sr.DR are held to be fully justified. Considering the prayer made by the ld. AR praying for remand so that supporting evidences can be filed, the parties were required to address their arguments especially keeping in mind the fact that the stated activity of dealing in sale of agricultural implements and old tractors etc. has been stated to have been carried out for many years which aspect has to be considered as in the orders of the tax authorities, there is no discussion on the past history of the assessee. The ld. Sr.DR made a prayer that since fresh evidences need to be considered by the AO, the matter may be remanded to the AO. Mr. Sehgal appearing on behalf of the assessee submitted that the assessee shall place full facts and evidences before the said authority. Accordingly, accepting the prayer in the interests of substantial justice after hearing the parties, it was deemed appropriate to set aside the impugned order back to the file of the AO with a direction to pass a speaking order in accordance with law taking into consideration the past history of the assessee from the stated activity and considering the evidences filed.

7. In the eventuality the evidences are found to be insufficient or incomplete, the AO shall duly confront the said shortcoming and thereafter pass an order in accordance with law.

8. While remanding back, it is hoped that the assessee participates in the proceedings fully and fairly and does not abuse

the trust reposed as in the eventuality of abuse of the trust, it is made clear that the Id. Assessing Officer shall be at liberty to pass an order on the basis of record. Said order was pronounced in the Open Court at the time of hearing itself.

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

Order pronounced in the Open Court on 23rd July, 2019.

Sd/-

(अन्नपूर्णा गुप्ता)

(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

“पूनाम”

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

Sd/-

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/ Judicial Member

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar