

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

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

I.T.A. No. 377/Asr/2024
Assessment Year: 2016-17

Shriraja Zahoor Khan H.No.72, Vs.
Alnoor Colony Hyderpora,
Srinagar, Jammu & Kashmir
[PAN: AQKPK9929Q]
(Appellant)

Deputy Commissioner of Income
Tax, Central Circle, Jammu

(Respondent)

Appellant by	:	Sh. Sudhir Sehgal, A.R.
Respondent by	:	Sh. Himanshu, Sr. D.R.
Date of Hearing	:	21.08.2024
Date of Pronouncement	:	04.09.2024

ORDER

Per Dr. M. L. Meena, AM:

This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana dated 30.04.2024 which is arising out of the assessment order dated 11.09.2019 passed by DCIT,

Central Circle, Jammu u/s 144 r.w.s. 147 of the Income Tax Act, 1961 exparte qua the assessee, in respect of A.Y. 2016-17.

2. The assessee has raised the following grounds of appeal:

- “1. That the Ld. Assessing Officer has erred in reopening the case u/s 148 as there was no reason to believe that the income of the assessee had escaped assessment.*
- 2. That the Ld. Assessing Officer has only relied upon the information as received the National Investigation Agency, New Delhi without any independent application of mind by the Assessing Officer, which is mandatory and, thus, the reopening is bad in law in view of the various judgment of Delhi High Court and. Others in the case of Meenakshi Overseas as reported in 395 ITR 677(Del.) and Holyfaith International Pvt. Ltd. of ITAT, in ITA No. 181/Asr/2017, Amritsar Bench, Amritsar.*
- 3. Notwithstanding the above ground of appeal, the Ld. CIT(A) has erred in confirming the addition of Rs. 1,22,700/- on account of travelling expenses to Pakistan for a short period of few days i.e. from 19.02.2016 to 29.02.2016 by air.*
- 4. That the Ld. CIT(A) has erred in confirming the addition of Rs. 13,83,619/- on account of alleged transactions in respect of purchase of car.*
- 5. That the CIT(A) has erred in not considering the detailed reply as filed during the course of appellate proceedings and, thus, the confirmation of addition is bad in law.*
- 6. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”*

3. Ground nos. 1 & 2 are not pressed by the assessee, hence these are dismissed as not pressed.

4. In ground No. 3, the appellant challenged that the Ld. CIT(A) has erred in confirming the addition of Rs. 1,22,700/- on account of travelling expenses to Pakistan for a short period of few days i.e. from 19.02.2016 to 29.02.2016 by air.

4.1 The Ld. AR submitted that the assessee is the sole Proprietor of M/s Zahoor Fruit Traders and he is in the business of trading of fruits and vegetables etc. During the year under consideration the assessee was also a partner of M/s Raja Fruit Traders. The Ld. Assessing Officer (In short "the AO") has reopened the case by issuing notice u/s 148 of the Income Tax Act, 1961 dated 24.08.2018 based on the information received from the Dy. Director of Income Tax (Inv.) Jammu, that the assessee has visited Islamabad and Muzafrabad Pakistan and claimed to have made an aggregate expenditure of Rs 122,700/-. Being not satisfied with reply of the assessee the AO made the addition of 1,22,700/- to the returned income.

4.2 Aggrieved assessee filed an appeal before Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana [hereinafter referred to as "CIT(A)"]. The counsel of the appellant had filed written submissions alongwith relevant annexure during appellate proceedings as reproduced in para 4 on page 10

of the impugned order. However, the Ld.CIT(A) confirmed the addition by observing vide para 5.3.3, as under:

“5.3.3 I have carefully considered the submissions of the AR during the course of appellate proceedings, the documents submitted by the AR and the facts mentioned by the AO in the assessment order as well as legal positions.

It is pertinent to mention here that the assessee in his reply filed at the appellate stage has stated that the expenditure incurred was sourced from the proprietorship concern that is M/S Zahoor Traders and in support has referred and relied upon the drawings of the quantum of Rs 1,46,700/- as reported in the balance sheet. However, during the appellate proceedings, the assessee has never produced such documents and the instant change of the stance by the assessee casts a serious doubt on the admissibility of the additional evidence and the arguments therein. Even otherwise, the assessee, as discussed in the assessment order, had earlier stated that the source of expenditure was from the firm M/s Raja fruit Traders that is contradictory to what has been stated in the submission at the appellate stage. Moreover, the assessee has not produced any other documents to substantiate the assertion made in this regard. Therefore, the arguments of the assessee is nothing but an afterthought to secure his case and claim. Hence, the addition made by the AO on this count is upheld.

Accordingly, this ground of appeal is dismissed.”

4.3 The AR for appellant submitted that he has made the above expenditures from his proprietorship concern M/s Zahoor Traders. He has filed the confirmed copy of account in the name of the appellant, namely Raja Zahoor Khan (R.E Tour and Travel) which is placed at page No. 9 of paper book. The AR explained that the appellant has withdrawn a sum amounting to Rs. 1,46,700/- from his proprietorship concern and the above said amount withdrawn by the appellant for specific purpose. In view of the above-said facts and circumstances of the case, Ld. AR pleaded that the addition on

account of travelling expenditures made by the appellant may please be deleted.

4.4 The defendant Ld. Addl. CIT (DR) relied on the impugned order. He contended that the withdrawal claimed by the appellant could be partly for household expenses.

4.5 We heard both the sides, perused the material on record, impugned order and written submission filed before us. The Ld. CIT(A) has observed that in the assessment proceedings, the travelling expenditure to Pakistan was claimed to be sourced from the firm M/s Raja fruit Traders and that during the appellate proceedings, the assessee has never produced such documents and there was a change of the stand by the assessee such expenditure was incurred from proprietorship concern M/S Zahoor Traders referring and relying upon the drawings of Rs 1,46,700/- as per the balance sheet. It casted a serious doubt on the admissibility of the additional evidence and the arguments therein. So, it was rejected by the Ld. CIT(A). After considering the written submission and statement of account filed by the AR, we consider it deem fit to restore the matter to the file of the AO to verify the veracity of the evidence filed and examine the purpose and genuineness of source of the travelling expenditure claimed by the appellant as per law. We

understand that as discussed in the assessment order, it had earlier stated that the source of expenditure was from the firm M/s Raja fruit Traders that was contradictory to what has been stated in the submission at the appellate stage before the CIT(A), so the assessee was not eligible for any relief. However, in view of natural justice, the matter is restored to the AO to examine the evidence filed on record and adjudicate *denovo*. Thus, Grounds. Pertaining to claim of Travelling expenses to Pakistan is restored to the AO.

5. In ground No. 4, the appellant objected to the addition of Rs. 13,83,619/- confirmed by the Ld. CIT(A) on account of alleged transactions in respect of purchase of car.

6. The AO stated in the assessment order that the assessee had purchased a car Creta 1.6, bearing registration number JK01AB0050 on 14.09.2015 for Rs. 13,83,619/-. However, he failed to furnish any documentary evidence in support of his claimed. Thus, the AO being not satisfied with the information on record and due to non-compliance on the part of the assessee, the Ld. AO has made addition in exparte assessment under section 144 of the Income Tax Act, 1961.

6.1 In appeal, the Ld. CIT(A) has confirmed the addition by observing vide para 5.4.3, as under:

“5.4.3 I have carefully considered the submissions of the AR during the course of appellate proceedings, the documents submitted by the AR and the facts mentioned by the AO in the assessment order as well as legal positions.

The appellant has submitted that Rs 9,00,000/- has been paid from the HDFC Account No. 50200005578890 of the proprietorship concern of the assessee and the same is reflecting in the balance sheet. Also, as per the appellant, the remaining amount of Rs 4,83,619/- has been sourced from the firm M/S Raja Fruit Traders through drawings by the partner and the loan to him extended by the firm.

The assessee as seen has stated contradictory facts especially regarding the amount of Rs 9,00,000/- that as per record had been stated earlier to be paid from the firm M/s Raja Fruit Traders that is factually incorrect. As mentioned by the AO also, this bank account is a saving account. Also, there were credits before debit of Rs. 9,00,000/- which have not been explained. Further, the appellant had not produced any documentary evidences or furnished any details in the assessment proceedings or during the appellate proceedings and thus, the assessing officer had rightly made the addition in the case. Also, it is a fact that the assessee had been given sufficient opportunities and was well informed of the proceedings was sufficient to prove that the assessee had no valid explanation in this regard. In the light of these facts, the contradictions in the assertions made, the addition made by the AO is sustained. Accordingly, this ground of appeal is dismissed.”

6.2 The AR submitted that the appellant has purchased creta car for Rs. 13,83,619/- from M/s K C Hyundai. He explained that the appellant has given two cheques in the favour of the M/s K C Hyundai, first from his own saving bank account No. 50200005578890 with HDFC Bank Limited M.A Complex Qamarwari Srinagar for to Rs. 9,00,000/- on 14.09.2015 as per page 8 of Paper book and second from his partnership concern M/s Raja Fruit Traders. He has furnished both the bank account/statements in paper book at page No. 8 and 10. The appellant has filed balance sheet and profit and loss

account at page no. 5 to 7 of the paper book. The AR contended that the appellant has duly accounted for the above said expenditure incurred on purchase of car. The counsel further stated that the amount of Rs. 418870/- has been duly withdrawn from his partnership concern namely M/s Raja Fruit Traders. In support, he has enclosed the schedule A, as partner capital of the appellant at page no. 12 of paper book as a proof that the appellant has drawn the amount of Rs. 418870/- from the capital of the partnership concern.

6.2.1 The AR argued that the CIT(A)'s observation that the assessee has stated contradictory facts, especially regarding the amount of Rs. 9 lacs is not correct as the appellant has given documentary evidences such as bank statements of assessee and of his partnership concern i.e M/s Raja Fruit wherein the amount of Rs. 9 lacs and Rs. 4,18,619/- has clearly been debited in the name of car agency namely M/s KC Hyundai. The AR argued that the above documentary evidence are self- explanatory and cannot be doubted. In view of the above said documentary evidence and circumstances of the case, he requested that the additions of Rs. 13,83,619/- made by the Ld. Assessing Officer & confirmed by the Worthy CIT(A) may, please, be deleted and obliged.

6.3 On this issue, the Ld. Addl. CIT (DR) relied on the impugned order.

6.4 Having heard both the sides, perusal of the material on record, impugned order and written submission filed before us, we find that the assessment order was passed *exparte qua* the assessee. The Ld. CIT(A) has observed that the assessee has stated contradictory facts regarding the amount of Rs 9,00,000/- that as per record it had been stated earlier to be paid from the firm M/s Raja Fruit Traders that was factually incorrect. It is seen that the AO has mentioned in the assessment order that this bank account was a saving account. Further, the appellant had neither produced any documentary evidences nor furnished any details either in the assessment proceedings or during the appellate proceedings and thus, the CIT (A) has confirmed the finding of the assessing officer made in an order passed *exparte qua* the assessee.

6.5 After considering the written submission, bank statement and statement of account filed by the AR, we consider it deem fit to restore the matter to the file of the AO to verify the veracity of the evidence filed and examine the source of the credit for the purchase of Car as claimed by the appellant. We understand that as discussed in the assessment order, that the appellant had earlier stated that the source of the credit of Rs. 9,00,000/- was from the firm

M/s Raja fruit Traders that is contradictory to what has been stated in the submission at the appellate stage before the CIT(A), the assessee did not qualify or eligible for any relief. However, in view of natural justice, the matter is restored to the AO to examine the evidence filed on record and adjudicate the issue of source of funding for the purchase of the Car de novo as per law. The AO shall issue a show cause notice to the assessee before completing the assessment as per law and he shall grant adequate opportunity of being heard. The assessee shall cooperate in the *de novo* proceeding before the AO. Thus, Grounds pertaining to source of Car purchase is restored to the AO.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 04.09.2024

Sd/-
(Udayan Dasgupta)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T.

True Copy
By Order