



आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘B’, CHANDIGARH
BEFORE: SHRI N.K. SAINI, VICE PRESIDENT
AND SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 135/Chd/2021
(Assessment Year: 2017-18)

Smt. Tripta Rani, 881/7, Urban Estate, Ambala City – 134003.	बनाम	The Assistant. Commissioner of Income Tax, Central Circle-1, Ludhiana.
स्थायी लेखा सं./PAN NO: ABJPR6009C		
अपीलार्थी/ Applicant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/Assessee by: Shri Sudhir Sehgal, Adv.
राजस्व की ओर से/ Revenue by : Shri Sarabjeet Singh, CIT DR
सुनवाई की तारीख/Date of Hearing: 21.03.2022
उद्घोषणा की तारीख/Date of Pronouncement: 13.06.2022

आदेश/ORDER

Per Sudhanshu Srivastava, Judicial Member:

This appeal is preferred by the assessee against the order dated 30.04.2021 passed by the Learned Commissioner of Income Tax (Appeals)-5, Ludhiana [in short the ‘Ld.CIT(A)’], for the assessment year 2017-18.

2.0 The brief facts of the case are that this case pertains to M/s Rajan group of cases where search and seizure operation u/s 132(1) of the Income Tax Act, 1961(hereinafter called

'the Act') was conducted on 01.11.2017 and various incriminating documents were found and seized from various business and residential premises of the group. Subsequently, notice u/s 153A of the Act was issued and in response thereto the assessee filed return of income declaring income at Rs.10,30,070/- which was the same income as had been reflected in the original return of income filed earlier on 21.09.2017. The assessee declared income from salary, business and other sources.

2.1 During the course of assessment proceedings, the AO(Assessing Officer) observed that during the demonetization period the assessee had deposited Rs.10 lacs in her proprietorship concern M/s Syna Creations and Rs.17 lacs in another concern M/s Wool World. The AO required the assessee to submit details of all the cash deposits made during the period from 09.11.2016 to 31.12.2016 alongwith certified copies of bank accounts for financial year 2016-17 and also month-wise cash book and cash sales ledger for financial year 2016-17. The assessee was also required to explain the source of cash deposit made and also explain the reason for making such cash deposits alongwith details of persons from whom cash had been received and deposited, etc. In response, the assessee filed detailed submission and no adverse view was taken by the AO in the case of M/s

Wool World but in the case of cash deposited in M/s Syna Creations, as per the AO, the assessee failed to submit any satisfactory reply regarding cash deposited and, therefore, the AO went on to hold that the assessee had introduced her own unaccounted money in the garb of sale during the demonetization period. The AO observed that the assessee was the owner of the money appearing in the bank account and, therefore, the same was chargeable to tax u/s 69A of the Act. The AO also invoked the provisions of section 115BBE of the Act and held that tax was imposable @ 60%. The assessment was completed at an income of Rs.20,30,070/-.

2.2 Now the assessee has approached this Tribunal challenging the order of the Ld.CIT(A) by raising the following grounds:

- “1. That the Ld. CIT(A)-5, Ludhiana, has erred in confirming the action of the Ld. Assessing Officer in computing the income at Rs. 20,30,070/- against the returned income of Rs. 10,30,070/-.*
- 2. That the Ld. CIT(A)-5, Ludhiana, while confirming the addition of Rs.10,00,000/- on account of deposit of cash in the regular bank account of the assessee and has ignored the facts that the assessee is maintaining regular books of accounts, which are duly audited and no defects have been found either by the AO or by the worthy CIT(A)-5, and, therefore, rejection of the valid documented evidence has been ignored summarily by the Worthy CIT(A)-5, Ludhiana and which is against the facts & circumstances of the case.*

3. *That the Ld. CIT(A)-5, Ludhiana has erred in confirming the addition without rejecting the regular books of accounts u/s 145(3) and, therefore, that the books of accounts having not been rejected, it is settled law that the addition cannot be sustained and which fact have been ignored by the CIT(A).*
4. *That the Ld. CIT(A), have failed to appreciate that due to the need of business i.e. embroidery work is done by assessee. She is consistently engaged for the last number of years in this business model with M/s Rajan Enterprises, whereby, cloth is purchased from Rajan Enterprises & then after embroidery work, sale of cloth with embroidery is again made to 'M/s. Rajan Enterprises' and others and, such, entries have been accepted both in the hands of M/s. Rajan Enterprises and in the case of the assessee and, therefore, the findings of the CIT(A) that it is just an arrangement between the two parties and confirming the addition of Rs. 10,00,000/- is not proper.*
5. *That the CIT(A) has also erred in confirming the applicability of provision of Section 115BBE, of the Income Tax Act, 1961.*
6. *That the appellant craves leave to add or to amend any of the grounds of appeal before the appeal is finally heard or disposed-off."*

3.0 The Ld. AR also drew our attention to the additional ground of appeal filed by the assessee which reads as under:

"Notwithstanding the above said ground of appeal, the assessment as framed by the Assessing Officer deserves to be quashed since "Mandatory Approval" as given by the Ld. Addl. CIT u/s 153D is without any application of mind and being a 'Mechanical Approval' only, the assessment as framed by the Assessing Officer at an income of Rs. 20,30,070/- deserves to be quashed in view of the binding judgment of Hon'ble Jurisdictional Bench of ITAT, in the case of Inder International in ITA No.1573/Chd/2018."

3.1 The Ld. AR submitted that this additional ground goes to the very root of the matter and is a legal ground and, therefore, the same should be admitted and adjudicated in view of the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. Vs. CIT, reported in (1998) 229 ITR 383 (SC).

3.2. The Ld.CIT DR opposed the prayer of admission of additional ground.

3.3. After considering the submissions of both the parties and looking into the nature of ground raised by the assessee, we agree with the contention of the Ld. AR that it is a legal ground which goes into the very root of the matter and, therefore, we admit the same.

4.0 Arguing the additional ground raised by the assessee, the Ld. AR submitted that the assessee was challenging the assessment on the ground that the mandatory approval given u/s 153D of the Act by the Ld.Addl.CIT had been given without any application of mind and thus the assessment order deserved to be quashed. In this regard, reliance was placed on the order of the ITAT Chandigarh Bench in the case of M/s Inder International Vs. ACIT in ITA No.1573/Chd/2018 vide order dated 07.06.2021.

4.1 In response, the Ld.CIT DR submitted that the contention of the Ld. AR regarding mechanical approval was factually incorrect. It was submitted that although the approval might have not been in elaborate terms, the approval was granted after duly considering the facts of the case and after due application of mind by the Ld. Addl.CIT. The Ld.CIT DR submitted that the assessee should argue the case on merits rather than trying to escape the rigours of income tax by taking a feeble legal ground lacking foundation

5.0 On merits of the case, the Ld. AR submitted that the assessee, during the year under consideration, was proprietor of two concerns namely/s Wool World, which was engaged in the business of trading of textile, and of M/s Syna Creations, which was engaged in the business of purchase and sale of cloth and was also carrying on business of embroidery wherein the cloth was purchased from the market and was sold to one of the family concerns M/s Rajan Enterprises. It was submitted that the assessee had been regularly filing her return of income year after year and had also been maintaining regular books of account which were duly audited and the assessee was maintaining such books of account for both the concerns separately. Drawing our attention to the assessment order,

the Ld. AR submitted that the AO has not pointed out to any discrepancy in the books of account being maintained by the assessee and further the books of account have also not been rejected in either of the two concerns. He also drew our attention to the observation of the AO that the said books of account had been produced before the AO and the requisite information, details and explanation had been filed before the AO. It was further submitted that although the AO had accepted the deposit of Rs.17 lacs in the books of M/s Wool World, he did not accept the cash deposit of Rs.10 lacs in M/s Syna Creations, and that too, without assigning any reason. He drew our attention to the reply dated 20.11.2019 submitted to the AO in this regard wherein the assessee had produced details of cash sales, monthly cash book, monthly cash in hand, cash sale as well as the details of amounts received from the various debtors before demonetization period. The Ld. AR reiterated that nothing in this regard has been doubted by the AO. Our attention was also drawn to another reply submitted by the assessee dated 18.11.2019 wherein the assessee had filed copy of account of the assessee in the books of M/s Rajan Enterprises with whom major transaction with respect to purchase of cloth had taken place and it was pointed out that the AO had not doubted the veracity of the same. The Ld. AR submitted

that, thus, in effect, the AO had made the addition without pointing out any discrepancy in the books of account especially when all the cash entries had been duly incorporated in the regular books of account.

5.1 The Ld. AR also drew our attention to the submissions made before the Ld.CIT(A) wherein the assessee had submitted the details of sales from assessment year 2014-15 to assessment year 2018-19. This chart is reproduced hereinunder for ready reference:

<i>Assessment Year</i>	<i>Sales</i>
<i>2014-15</i>	<i>56.95 Lacs</i>
<i>2015-16</i>	<i>59.98 Lacs</i>
<i>2016-17</i>	<i>90.39 Lacs</i>
<i>2017-18</i>	<i>97.47 Lacs</i>
<i>2018-19</i>	<i>450.77 Lacs</i>

5.2 It was pointed out that all sales had been accepted in earlier years as well as the immediately succeeding year and that even the sales made during the year under consideration had been accepted by the AO. It was also submitted that, thus, when the sales have been accepted, purchases have been accepted, job work charges, job work receipts and realization from sundry debtors have been accepted and the books of account have not been rejected, no addition could have been made with respect to cash deposit.

5.3 Drawing our attention to the order of the Ld. First Authority, the Ld. AR submitted that the Ld.CIT(A) has confirmed the addition only on account of the fact that there was no cash sales in earlier years as compared to this year but he had totally ignored that there were cash realization from the debtors in earlier as well as the captioned assessment year. It was submitted that the Ld.CIT(A) also doubted the genuineness of the transaction with M/s Rajan Enterprises regarding the amount of Rs.1,20,000/- being recovery of outstanding, but again, there was no basis for doubting this fact when all the other entries had been duly accepted. The Ld. AR vehemently argued that the lower authorities had merely acted on surmises and conjectures and the addition based on such surmises and conjectures could not be sustained.

6.0 In response to the arguments raised by the Ld. AR on the merits of the case, the Ld.CIT DR placed extensive reliance on the observation of the AO as well as the Ld.CIT(A) on the issue. The Ld.CIT DR vehemently argued that the Ld.CIT(A) has rightly observed that there was no past history of the assessee regularly depositing cash in the bank account of M/s Syna Creations and suddenly in the wake of demonetization, cash of Rs.10 lacs had been deposited which raised serious doubts about the

genuineness of the transaction. The Ld.CIT DR pointed out page 34 of the impugned order wherein the Ld.CIT(A) has observed that most of the cash receipts were from M/s Rajan Enterprises, which was another family concern, and, apparently, there was an arrangement to route the cash between the different family concerns without conducting regular business actually. He also pointed out that the Ld.CIT(A) has rightly observed that there was no requirement to receive and deposit the cash every day when both the parties i.e. M/s Rajan Enterprises and M/s Syna Creations were situated at the same place and, therefore, these transactions were actually means to introduce unaccounted cash in the books of account under the garb of job work. The Ld.CIT DR submitted that, therefore, the appeal of the assessee deserved to be dismissed and he also supported the action of the AO in invoking the provisions of section 115BBE of the Act.

7.0 We have heard the rival submissions and have also gone through the records. First we would like to proceed to adjudicate on the merits of the case. In ground Nos.2, 3 and 4, the assessee has challenged the action of the Ld.CIT(A) in confirming the addition of Rs.10 lacs on account of deposit of cash during the demonetization period. It has been argued by the Ld. AR that the assessee has been regularly

maintaining the books of account which are duly audited and all the cash deposits, which the AO has held to be sham transactions, were routed through the books of account maintained by the assessee. It has been further argued by the Ld. AR that no defect in these books of account has been pointed out by the AO and neither these books have been rejected. It has also been argued by the Ld. AR that there is no bar against having financial dealings with sister concerns and, therefore, to reject the contention of the assessee that cash deposits emanated from receipts from sister concerns or sales, was not correct in the eyes of law. In this regard, we fully agree with the contention of the Ld. AR that the AO had no sound reason to reject the contention of the assessee vis-à-vis the source of cash deposits made in the bank account of M/s Syna Creations especially when the deposits have been routed through the regular books of account of the assessee. It is also a case in point that books of account have not been rejected and the AO has accepted the sales as well as purchases and also the expenses claimed by the assessee and has only found fault with the quantum of cash deposits during the demonetization period. Thus, apparently, this impugned addition has been made without any foundation and in our considered view, the AO has acted on mere surmise and conjectures without duly

appreciating the undisputed fact that he himself has accepted the books of account as well as the book results. The Ld.CIT(A) has also upheld the findings of the AO without assigning any cogent reason and he also seems to have simply approved the addition without proper appreciation of facts. It is also to be noted that on the same set of facts, the AO has accepted the cash deposit of Rs.17 lacs in another proprietorship concern of the assessee namely M/s Wool World but has proceeded to doubt the cash deposited in the proprietorship concern M/s Syna Creations without any cogent reason. Therefore, on overall facts of the case, we are of considered view that the impugned addition was not called for especially when the assessee's books of account have not been rejected and all the income and expenses and the book results have been accepted except the cash deposit without there being any iota of evidence, which would point out that the assessee had deposited her unaccounted money under the garb of sales or receipts from sister concern M/s Rajan Enterprises. Thus, in our considered view, the AO has proceeded in a very hasty and an illogical manner without taking a holistic view of the entire case record before him. It is also to be noted that the captioned case was a search case and even during the course of search no incriminating material was found which would point out towards the

assessee introducing her unaccounted cash into the books of account under the garb of sales or receipts from sister concern. Therefore, we find ourselves unable to confirm the view taken by the Ld.CIT(A) in upholding the addition of Rs.10 lacs and we set aside the order of the Ld.CIT(A) on the issue and direct the AO to delete the same.

7.1 As far as the assessee's legal ground challenging the validity of assessment proceedings for want of valid approval u/s 153D of the Act is concerned, we are not inclined to go into this issue at the present moment as we have allowed complete relief to the assessee on the merits of the case and this additional ground has become academic in nature. Accordingly, this ground is dismissed as having become infructuous.

8. In the final result, the appeal of the assessee stands partly allowed.

Order pronounced on 13.06.2022.

Sd/-
(N.K. SAINI)
उपाध्यक्ष/Vice President

Dated: 13.06.2022

रती

Sd/-
(SUDHANSHU SRIVASTAVA)
न्यायकि सदस्य/Judicial Member

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