

GURBAX SINGH
2018.09.10 14:25

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No. 286 of 2017 (O&M)

Date of decision: 05.07.2018

**Inderjit Singh Gill Son of Sh. Gurnam Singh Resident of House No.
2549, Phase VII, Mohali**

.....Appellant

Vs.

ITO, Ward4 (2), Chandigarh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Ritesh Parshad, Advocate for Mr. Harsh Bungar, Advocate
for the appellant- revenue.

Ajay Kumar Mittal,J.

CM No. 13582-CII-2017

1. This is an application under Section 151 of the Code of Civil Procedure read with Section 5 of the Limitation Act, 1963 for condonation of delay of 180 days in re-filing the appeal.

2. For the reasons mentioned in the application and after hearing learned counsel for the appellant-assessee, the delay in re-filing the appeal is condoned. The application stands disposed of.

ITA No. 286 of 2017

3. The appellant-assessee has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 19.04.2016, Annexure A.3, passed by the Income Tax Appellate Tribunal, Division Bench, Chandigarh (in short, "the

Tribunal”) in I.T.A. No.281/CHD/2014 for the assessment year 2009-10, claiming following substantial questions of law:-

- “(a) Whether on the facts and in the circumstances of the case, impugned order of learned ITAT is perverse?
- (b) Whether on the facts and in the circumstances of the case, learned ITAT was justified in making addition of ₹ 42,99,000/- to the income of the assessee?
- (c) Whether the ITAT erred in law and on merits in not admitting fresh evidence under Rule 29 of the Income Tax Appellate Tribunal) Rules, 1963?”

4. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. Return declaring income of ₹ 5,72,510/- was filed by the appellant-assessee on 10.09.2013 which was processed under Section 143(1) of the Act. Case of the assessee was picked up for scrutiny under Section 143(3) of the Act. Notice under Section 143(2) of the Act was issued to the assessee by the Assessing Officer. The assessee was specifically asked to explain source of cash deposit of ₹ 42,99,500/- in his three bank accounts. The assessee replied that he entered into an agreement to sell dated 28.03.2008 with one Biant Singh pertaining to the land measuring 500 square yards at the rate of 1560/- per square yard totalling ₹ 78 lacs at Village Manakwal, District Ludhiana. The assessee-appellant received advance of ₹ 31,00,000/-. He filed copy of the sale agreement dated 28.03.2008 and cash flow statement before the Assessing Officer. On 05.12.2011, the assessee was asked to produce the purchaser of land i.e. Biant Singh. The assessee replied that Biant Singh had come to India for sometime and then left. He further intimated that he came to know that Biant Singh had

died and none of his family members was in India. Thereafter, the assessee was asked for filing of affirmation statement of witnesses to sale agreement dated 28.03.2008. The assessee through his Chartered Accountant filed death certificate of Sh. Biant Singh and affidavits of two witnesses of the sale agreement. To the utter surprise of the appellant, despite providing all requisite documents and information regarding sale agreement dated 28.03.2008, the Assessing Officer vide order dated 30.12.2011 made an addition of ₹ 42,99,500/- to the returned income of the assessee. Penalty proceedings under Section 271(1)(c) of the Act were also initiated. According to the appellant-assessee, it had been wrongly observed in the assessment order dated 30.12.2011 that there was no mention of the advance payments received by him or by the purchaser after the conclusion of the agreement. It was finally concluded by the Assessing Officer that the assessee deposited cash in the bank accounts out of income from undisclosed sources. Aggrieved by the order, the assessee filed an appeal before the CIT(A). Vide order dated 23.12.2013, the CIT(A) upheld the entire addition of ₹ 42,99,500/- made by the Assessing Officer. The assessee filed second appeal before the Tribunal against the order dated 19.04.2016 passed by the CIT(A). In the mean-time, the assessee filed an application for admission of additional evidence before the Tribunal to place on record receipt of cancellation of agreement dated 28.03.2008; copy of bank statements and copy of an application for additional evidence. The assessee stated before the Tribunal that his brother met with an accident in Canada on 25.12.2011, due to which he travelled to Canada. Since, the assessment was getting time barred, the Assessing Officer passed the order on 30.12.2011 and, thus, he could not file such documents before the Assessing Officer. Vide

order dated 19.04.2016, the Tribunal while rejecting application of the assessee for admission of additional evidence, dismissed the appeal also. It was recorded by the Tribunal that no cancellation of agreement was submitted by the assessee before the authorities and there was no endorsement of the same. It was further recorded that though the bank accounts revealed that on different dates from May, 2009 to August, 2011, the assessee made different withdrawals from the bank accounts but why such amount was not returned on one day and why such withdrawal was made for several months. There was also no mention of any advance made to the assessee by Sh. Biant Singh. Aggrieved thereby, the appellant-assessee is before this Court through the instant appeal.

5. We have heard learned counsel for the appellant-assessee.

6. After considering the entire evidence on record, it has been categorically recorded by the Tribunal that the assessee failed to explain that when substantial amount was returned to the purchaser, why no receipts had been taken from the purchaser on different dates and why a common receipt had been executed later on in one day. There was no cancellation agreement to the effect and even no endorsement has been made on the agreement itself regarding cancellation of the agreement. The conduct of the assessee was, thus, held to be not bonafide. The assessee also did not appear before the CIT(A). The application for admission of additional evidence was accordingly rejected by the Tribunal. It was further recorded by the Tribunal that the affidavits of the witnesses filed before the authorities below showed that the witnesses had not made any statement in the affidavit as to if any amount was given as advance by Biant Singh to the assessee. When the assessee's counsel

was asked to explain the source of receipt, when and how advance money was received, he refused to explain the same before the Assessing Officer. With regard to the addition of ₹ 1,00,535/- on account of unexplained payment through credit card, the assessee made payment of ₹ 2,34,535/- through credit card but he could not prove the source of the balance amount of ₹ 1,00,535/-. Therefore, the same was treated as unexplained income of the assessee. Lastly, it was submitted before the Tribunal that the order was passed by the CIT(A) without affording reasonable opportunity of being heard. It was recorded by the Tribunal that the order passed by the CIT(A) showed that the appeal was adjourned five times on the request of the assessee and on the last date of hearing, when the matter was adjourned on the request of the assessee, nobody attended the proceedings. No adjournment was sought and even no written submissions had been filed. Thus, there was no denial of opportunity of being heard to the assessee. The relevant findings recorded by the Tribunal in this regard read thus:-

“7. After hearing rival contentions, we do not find any merit in this ground of appeal of the assessee. The learned counsel for the assessee filed application for the additional evidence i.e. receipt of cancellation of agreement and copy of the bank account of the assessee with Punjab and Sind Bank. The learned counsel for the assessee contended that brother of the assessee met with serious accident in Canada, therefore, assessee had to urgently move to Canada and assessment was getting time barred and further when assessee was about to file these documents before learned CIT (Appeals), learned CIT(A) passed the ex-parte order and dismissed the appeal of the assessee. He has, therefore, prayed that these evidences may be admitted for hearing.

The learned DR objected to the admission of the same at this stage and submitted genuineness of same is doubtful.

7. (i) Considering the rival submissions, we do not find any justification to admit the additional evidence. The assessee filed photo copy of the receipt through which Rs.31 lacs alleged to have been returned by the assessee to the purchaser on 25.05.2009, 14.07.2009 and 11.08.2009. The assessee has, however, failed to explain that when substantial amount was returned to the purchaser, why no receipts have been taken by the assessee from the purchaser on different dates and why a common receipt has been alleged to have been executed later on in one day. The contents of the receipt itself are, therefore, doubtful and against the human probability. It is unbelievable that the assessee on returning the substantial amount on different dates, did not take any receipt from the purchaser. There is also no cancellation agreement to the effect and even no endorsements have been made on the agreement itself regarding cancellation of the agreement. The copy of the bank account revealed that on different dates from May, 2009 to August, 2009, assessee made different withdrawals from the bank accounts. It is not explained when the agreement to sell was cancelled, why the amount was not returned on one day and why assessee was withdrawing the amount from the bank account for several months. This explanation of the assessee was never filed before the authorities below and no reasons have been explained why no steps have been taken before the authorities below for filing these documents. The conduct of the assessee before the authorities below clearly show that the assessee was most negligent and did not cooperate with the authorities below and remained ex-parte and as such, we do not find any cause for admission of these additional evidences, which itself are highly doubtful and not relevant. The application for admission of additional evidence is accordingly, rejected.

7. (ii) The ld. counsel for the assessee submitted that affidavits of the witnesses were filed in support of the execution of the agreement to sell. However, the affidavits of the witnesses filed before the authorities below show that the witnesses have not made any statement in the affidavit if any amount has been given as advance by the purchaser Shri Baint Singh. Therefore, in the absence of any source explained through the Agreement to sell, the affidavits of the witnesses would not serve any purpose. When assessee's counsel was asked to explain the source of receipt i.e. when and how advance money was received, ld. Counsel for the assessee refused to explain the same before Assessing Officer and assessee did not appear to explain the source of the bank deposits. The assessee has not made any effort before ld. CIT (Appeals) to produce himself for examination 'on oath' by the Assessing Officer therefore, the crux of the findings of the authorities below would show that assessee did not cooperate before the authorities below in finalization of the matter and did not explain the source of the cash deposits in the bank accounts. The story propounded by the assessee was not substantiated by any evidence or material on record. In the absence of any satisfactory explanation, we are not inclined to interfere with the orders of authorities below.

7. (iii) The ld. counsel for the assessee lastly contended that the withdrawals of the assessee from the bank account should also be considered which remained unutilized. However, for the same preposition also, no evidence or material have been filed before the authorities below to substantiate the same. In the absence of any cogent and reliable evidence on record, we are not inclined to interfere with the findings of fact recorded by the authorities below. We, therefore, do not find any merit in ground No. 2 of the appeal of the assessee. Same is accordingly, dismissed.

8. On ground No. 3, assessee challenged the addition of ₹ 1,00,535/- on account of unexplained payment through credit card. The assessee made payment of ₹ 2,34,535/- through credit card. The Assessing Officer asked the assessee to explain source of the payment. The details filed on record show that payment of ₹ 1,34,000/- have been made but assessee could not prove the source of the balance amount of ₹ 1,00,535/-. Therefore, same was treated as unexplained income of the assessee. No submissions have been made before Id. CIT(Appeals), therefore, this ground was dismissed. Same is the position before us because Id. counsel for the assessee did not make any explanation and did not file any evidence to explain this addition. Therefore, ground No. 3 of appeal of the assessee is dismissed.

9. On ground No.4, assessee challenged the order of Id. CIT(Appeals) in passing the impugned order without affording reasonable opportunity of being heard.

9. (i) The impugned order revealed that appeal was adjourned five times on the request of the assessee and on the last date of hearing, when the matter was adjourned on the request of assessee/counsel for assessee, nobody attended the proceedings before Id. CIT(Appeals) and no adjournment was sought for and even no written submissions have been filed. Therefore, there is no denial of reasonable opportunity of being heard to the assessee. The assessee has not explained through any reliable or cogent evidence that why on the last date of hearing, assessee could not appear before the Id. CIT(Appeals) for arguing the appeal. In the absence of any evidence or material on record, we are not inclined to interfere with the orders of the authorities below. The Id. CIT(Appeals) passed the order after giving reasonable and sufficient opportunity of being heard to the assessee. Therefore, there is no merit in this ground of appeal of the assessee. Same is accordingly dismissed.”

7. Learned counsel for the appellant-assessee has not been able to point out any error or illegality in the findings recorded by the CIT(A) as well as Tribunal warranting interference by this Court. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

July 05, 2018
‘gs’

(Avneesh Jhingan)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes