

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 210/Chandi/2020
Assessment Year: 2015-16

Sh. Jaspal Singh Prop.
M/s. Jaspal Singh & Sons,
VPO Bilaspur, Distt. Moga

Vs. Income Tax Officer,
Ward-3, Moga.

[PAN: BDFPS 6472K]

(Appellant)

(Respondent)

Appellant by : Sh. Sudhir Sehgal

Respondent by: Ms. Kanchan Garg, Sr DR

Date of Hearing: 15.02.2023

Date of Pronouncement: 17.02.2023

ORDER

Per Anikesh Banerjee, J.M.:

The instant appeal was filed against the order of the Id. Commissioner of Income Tax (Appeals)-3 [in brevity CIT(A)] order passed u/s. 250(6) of the Income Tax Act, 1961 (in brevity the Act) date of order 28.08.2018 for assessment year 2015-16. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-3, Moga (in brevity of AO), order passed u/s. 143(3), date of order 22.09.2017.

2. The case was previously filed in ITAT, Chandigarh Bench. Considering the jurisdiction, the case was transferred to ITAT, Amritsar Bench by the order of the

Hon'ble V.P., Chandigarh Zone, order dated 22.03.2021. The appeal of the assessee fixed for hearing on dated 15/02/2023 before the bench.

3. The assessee has taken the following grounds of appeal:

- “1. *That the Ld. CIT(A) has confirming the action of the Assessing Officer in making the addition of Rs. 11 lac as assessee's unexplained money.*
2. *That the Ld. CIT(A) has erred in not appreciate that the balance sheet filed along with the return of income, the figures of capital accounts tallies with the figures as reflected in the balance sheet and, thus, there is no discrepancy at all.*
3. *That the ld. CIT(A) has erred confirming the action of the Assessing Officer for making the addition of Rs. 11 lacs as assessee's unexplained money, which is against the facts and circumstances of the case.*
4. *That the Ld. CIT(A) has failed to appreciate the fact that it was an inadvertent mistake in submitting the capital account, which has been reproduced by the Assessing Officer at page 2 of the order and which cannot be taken as the basis for making the addition since the capital balance has been reflected in the balance sheet at Rs.12.56.041/- and which is evident from maintenance of cash book on day to day basis.*
5. *That the Ld. CIT(A) has also erred in not considering the valid affidavit as submitted by the accountant as well as appellant wherein the appellant was completely depended on such accountant for presentation of accounts and related details being illiterate person himself.*
6. *That the Ld. CIT(A) has erred in confirming the action of AO of rejection of books of accounts u/s. 145(3) of the Income Tax Act, 1961.*
7. *That the Ld. CIT(A) has also erred in not considering our submission properly.*
8. *That the appellant craves leave to add or amend the grounds of appeal before the Appeal is finally heard or disposed off.”*

4. The case was filed with a delay of 49 days. The assessee filed the petition for condonation of delay and explained that after hearing of the appeal of the ld.

CIT(A), the assessee travelled abroad. After the return in India, he came to know that the order of the appeal was passed. The application has made for certified copy of the order. After receiving the same, the case was filed. The assessee prayed for condonation of the delay for 49 days. The ld. SR. Dr had not made any objection against the assessee submission. Accordingly, the delay for 49 days is condoned.

5. The brief fact of the case is that during the assessment, the accountant of the assessee made a mistake to submit Capital account of the assessee. Due to the typographical mistake the balance of capital account was reduced to amount of Rs. 11 lac. The accountant of assessee wrongly mentioned capital balance amount of Rs.1,56,040/- instead of Rs. 12,56,041/-. The assessee's claim that the balance was mentioned in the ITR during filing the return. Assessee filed an affidavit with details of ledger to recover the mistake, but the addition was confirmed by the ld. AO amount of Rs. 11 lacs. Aggrieved assessee filed an appeal before the ld. CIT(A). But the assessee was unsuccessful. The ld. CIT(A) upheld the order of the ld. AO. Being aggrieved the assessee filed an appeal before us.

6. The counsel for the assessee has filed written submissions which are kept in the record. As per the ld. Counsel in arguments mentioned that assessee filed the return u/s. 139(1) in ITR 4, and the balance of capital is mentioned in return amount to Rs. 12,56,041, **APB page 5**. During the assessment, the counsel for the assessee had mistakenly filed the capital account of 31.03.2015 carrying the

closing balance Rs. 1,56,041/- as against the correct balance amount to Rs.15,56,041/-. Copy of documents is annexed in **APB PAGE 24A**. Suddenly the assessee found the mistake and rectified copy was filed before the Id. AO vide letter dated 18.09.2017, **APB page 23-24 &25**. Further the assessee also filed an affidavit of the accountant of the assessee and himself regarding the said clerical mistake on the part of the accountant and requesting the Id. AO for accepting the correct capital account, **APB page 27 & 28**. In arguments, the counsel further mentioned that the assessee has filed cash flow statement and copy of the personal bank account of the assessee evidencing the cash in hand position at each point of time during the year under consideration. The copy is enclosed in **APB page 26 and 29 to 42**. But the Id. AO has rejected the books u/s. 145(3) and addition was confirmed amount of Rs. 11 lacs.

7. The Id. SR. DR relied on the order of the Revenue Authorities and vehemently argued. The Id Sr. Dr relied on the order of CIT(A) page no. 12 para 4.3, which is reproduced as below: -

“4.3 I find that the Assessing Officer has rightly drawn a conclusion to this anomaly that the books of accounts maintained by the assessee cannot be relied upon at the time of assessment proceedings. The Assessing Officer has pointed out the anomalies in the submission given by the assessee at the time of assessment proceedings correctly. The assessee during the course of appellate proceedings also has tried to plain that due to technical glitch the entries pertaining to difference in introduction of proprietor’s capital amounting to Rs. 11 lakh has occurred. The assessee has stated during the course of appellate proceedings it is also observed that the books of accounts of appellant were

produced before the Assessing Officer, where he has test checked the books and no anomaly was pointed by him in the said books. However I find that the Assessing Officer as per para -3 of the assessment order the Assessing Officer has clearly mentioned that due to the anomaly as discussed in the above paragraphs the books of accounts of the assessee cannot be relied upon. It is observed that as per the claim of the appellant, the appellant has failed to bring any evidence to corroborate his claim that the missing entries in the incorrect version of the capital account of the assessee were due to technical glitch. Apart from this the assess has also completely failed to explain the source of the introduction of this capital at the time of assessment proceedings. I fail to understand the reasoning given by the assessee during the course of assessment proceedings as well as appellate proceedings. It is the case wherein the return has been filed by the assessee himself and at the time of assessment proceedings also the written submission has been filed by the assessee himself only from where the Assessing Officer could see the anomaly between the proprietor's capital and the cash in hand reflected by the assessee. A simple perusal of the assessment order shows that the assessee has failed to explain this anomaly with the help of documentary evidence. The introduction of Rs. 11,00,000/- in proprietor's capital could have been genuinely explained by the assessee during the course of assessment proceedings relying upon related documentary evidence, however I find that the assessee has failed completely in doing so. Accordingly in my considered view the disallowance made by the Assessing Officer on account of unexplained introduction of proprietor's capital is upheld."

8. We heard the rival submission and perused the documents available on the record. The assessee had made a mistake during the assessment proceedings for wrong submissions of the capital account. But suddenly, the error was rectified and placed the correct one. There is no question of the different presentation of capital account of the assessee amount to Rs.12,56,041/- which was already reflected in the return of the income filed u/s. 139(1). By submitting the evidence, the assessee was trying to establish that the said difference is mere mistake but no concealment.

The books of the accounts were produced before the Id. AO. No specific lacuna was found in the books of assessee. The assessee was running as proprietary concern. So, the transfer of funds from individual account to business account had no meaning for levying of the tax in this respect. It is correct that cash account was duly changed during the rectified submission. But this is an internal effect in between the proprietorship business and proprietor himself. Both the Revenue Authorities was not able to prove that undisclosed cash was introduced to establish the capital Rs. 11 lacs which was omitted by the accountant of the assessee. The proper inflow of cash account is undoubtedly matched with cash withdrawals from the personal bank account of the assessee. We interfere in the impugned order of Id. CIT(A). The addition amount of Rs. 11 lac is quashed.

9. In result the appeal of the assessee in **ITA No. 210/Chandi/2020** is allowed.

Order pronounced in the open court on 17.02.2023

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

Sd/-
(Anikesh Banerjee)
Judicial Member

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Copy of the order forwarded to:

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

True Copy
By Order