

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "एकल सदस्यीय", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'SMC' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM

आयकर अपील सं./ITA No. 1152/CHD/2019
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Ashish Chaudhry, C-12, Focal Point, Phase-V, Ludhiana.	बनाम VS	The ITO, Ward 1(1), Ludhiana.
स्थायी लेखा सं./PAN No: AASPC4446N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vibhor Garg, C.A.

राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT

आयकर अपील सं./ITA No. 1154/CHD/2019
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Suresh Chaudhry, C-12, Focal Point, Phase-V, Ludhiana.	बनाम VS	The ITO, Ward 1(3), Ludhiana.
स्थायी लेखा सं./PAN No: AASPC4450C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vibhor Garg, C.A.

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl. CIT

आयकर अपील सं./ITA No. 1156/CHD/2019
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Amit Chaudhry, C-12, Focal Point, Phase-V, Ludhiana.	बनाम VS	The ITO, Ward 1(1), Ludhiana.
स्थायी लेखा सं./PAN No: AASPC4449D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vibhor Garg, C.A.

राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 16.06.2021

उदघोषणा की तारीख/Date of Pronouncement : 18.06.2021

Hearing conducted via Webex

आदेश/ORDER

These three appeals of three different assessees are being taken up together as in each of these appeals pertaining to 2011-12 assessment years, the issues and arguments remain identical. Accordingly, on the request of the parties, common order in all these appeals is being passed.

2. For the sake of convenience, the issues as found addressed in **ITA 1152/CHD/2019** are being taken up first. Herein the assessee is aggrieved by the order passed by the CIT(A)-I Ludhiana. Various grounds have been raised therein, however, the parties argued ground No. 2 & 3 in the present appeal. These read as under :

“2. That in the facts & circumstances of the case, the re-opening of the assessment proceedings u/s 147/148 are illegal, without jurisdiction and without application of mind as addition is made on protective basis and further ignored the fact that the investment was made in AY 2012-13 and not in AY 2011-12.

3. That the Ld Appellate Authority wrongly & illegally confirmed the protective assessment without a clear finding regarding the addition on protective basis.”

3. Referring to the submissions advanced on 06.05.2021 and 09.06.2021, the ld. Sr.DR invited attention to the reply of the department by way of information relatable to M/s KOC Industries Ltd. wherein the position and facts required to be addressed has been clarified. It has been informed that this very addition had been made on a substantive basis therein and

by way of abundant caution had also been made in the case of the assessee on a protective basis so as to keep the department's interest alive. Accordingly, elaborating her stand referring to submission made on earlier dates, it was submitted that the present appeal can accordingly be disposed off. However, her only concern was that the assessee had argued before the CIT(A) that cheque of Rs. 20 lacs dated 31.03.2011 was cleared in the next assessment year. This factual position in each of these cases may either be directed to be verified or this issue may be kept open. As far as the present appeal is concerned, she agreed that since the substantive addition has become final in the hands of M/s KOC Industries Ltd. as per Report of the AO, addition in the present cases on protective basis, in the circumstances may not be maintainable unless the facts vary.

4. The ld. AR Mr. Vibhor Garg submitted that the assessee would be able to satisfy the authorities on the fact that the cheque was cleared in the next fy i.e. assessment year 2012-13 and he would have no objection if the said issue is kept open and the hearing is concluded on the basis of the fact that the addition on substantive basis stands concluded in the hands of M/s KOC Industries Ltd. as in these circumstances, the protective addition is not maintainable.

5. After hearing the parties, it is seen that the finding of the CIT(A) in para 5 that the protective addition needs to be sustained, cannot be upheld. The facts as considered and decided by the CIT(A) in the present appeal are set out in para 2 to 5 of the order. These are extracted hereunder for the sake of completeness :

"2. The appellant had, for the year under consideration i.e. A.Y.2011-12, income from salary and other sources. However, on receipt of information by the AO regarding the investment of Rs.20 lakhs by the appellant as share application money with M/s KOC Industries Ltd., the jurisdictional AO formed a prima facie belief of escapement of income from taxation in the hands of the appellant and, therefore, assumed the jurisdiction to reassess the appellant by issuing the necessary notice under the provisions of section 148 of the Act, after following the necessary procedure in this regard in terms of recording his satisfaction obtaining the requisite approval from the competent authority. In the ensuing re-assessment proceedings, the appellant could not explain the sources of investment of Rs.20 lakhs as share application money with the aforesaid company. The said investment was thus considered as unexplained within the meaning of section 69 of the Act. However, it

was noted by the AO that M/s KOC Industries Ltd. was assessed under the provisions of section 143(3)/263 for the A.Y.2011-12, in which the aforesaid investment of the appellant was considered as unexplained cash credit within the meaning of section 68 of the Act on substantive basis. Thus, to avoid double taxation, Rs.20 lakhs was added back by the AO in the hands of the appellant on protective basis.

3. Appeal against the aforesaid order of assessment was preferred on 24/01/2019, in which the solitary ground against the impugned assessment was that the appellant had given a cheque of Rs.20 lakhs, which was not declared before the close of the F.Y.2010-11

4. In the appellate proceedings, the appellant merely stated the following:

The Assessing Officer has made an addition of Rs. 20,00,000/- on protective basis in the hands of the assessee, also the said amount has been treated as unexplained credits in the hands of KOC Industries Limited on substantive basis.

The Assessee has filed his income tax return on 29-02-2012 vide acknowledgement number-345125000290212 consisting of Salary income from M/s KOC Industries Limited and interest income.


The assessee has issued a cheque of Rs. 20,00,000/- dated 31-03-2011 as share application money in M/s KOC Industries Limited. The cheque was cleared in the next financial year having assessment year 2012-13 out of proceeds of long term capital gain earned by the assessee.

The assessee has not earned any long term capital gain during the assessment year 2011-12 and the assessee has not made any investments of any kind during the assessment year 2011-12.

On the basis of above mentioned facts, your honour is requested to delete the addition of Rs. 20,00,000/- made as unexplained investments u/s 69 of the Income Tax Act, Income Tax Act, 1961."

5. From the aforesaid submissions of the appellant, the sources and genuineness of the purported investment remained unexplained. Besides, the AO has been reasonable enough to make the assessment protective basis. The appellant should not have any grievance inst such assessment, the substantive assessment having been 'made in the hands of the company. Considered in this background, the instant appeal is dismissed on account of inability of the appellant to explain the sources and genuineness of the purported investment either at the assessment stage or at the appellate stage. It is ordered accordingly."

6. The Id.Sr.DR Ms. Vohra has placed the following reply of the department dated 07.06.2021 which is reproduced hereunder for the sake of completeness and clarity:


 भारत सरकार / Govt. of India
 आयकर विभाग / Income Tax Department
 कार्यालय आयकर आयुक्त(DR)(आई०टी०ए०टी०), आयकर भवन, सेक्टर 17-ई, चण्डीगढ़-160017
 O/o the Addl. Commissioner of Income Tax-2 (Sr.DR) (ITAT), AayakarBhawan,
 Sector- 17-E, Chandigarh, Tel./Fax: 0172-2544305

F. No.: CIT(DR)/ITAT/Chd/2021-22/ 121

To,

The Assistant Registrar,
Income Tax Appellate Tribunal,
Sector-9, Chandigarh

Madam,

Date: 07-06-2021
 आयकर अपीलिय अधिकरण
 चण्डीगढ़ सिटी, चण्डीगढ़
 प्राप्त किया / Received on
07 JUN 2021
 Income Tax Appellate Tribunal
 Chandigarh

Sub.:- Appeal filed by the assessee before the Hon'ble ITAT in the case of Sh. Ashish Chaudhary, C-12, Focal Point, Phase-V, Ludhiana Ludhiana ITA No. 1152/Chandi/2019 for the A.Y. 2011-12 - reg.-

Kindly refer to the subject cited above.

2. In this regard, I am directed to submit herewith factual report in the above mentioned cases as directed by the Hon'ble Bench as under :-
- (i) The assessee Sh. Ashish Chaudhary had made an investment of Rs. 20,00,000/- towards share application money paid to M/s KOC Industries by cheque, which was held to be unexplained investment u/s 69 of the I.T.Act, 1961 on protective basis.
- (ii) Substantial addition was made in the case of M/s KOC Industries Ltd., for the assessment year 2011-12 on account of cash credits u/s 68 of the I.T.Act, 1961.
- (iii) The worthy CIT(A) has dismissed the appeal of the appellant.
- (iv) A report as called from the Assessing Officer in the case of M/s KOC Industries Ltd., for the A.Y. 2011-12 is enclosed for your kind reference. As per this report the assessee company had introduced share capital of Rs. 1,23,03,695/- from five individuals who had received bogus Long Term Capital Gains through sale of shares of Penny Stock [Twenty First Century (India)] Ltd., which was considered as assessee Company's unaccounted income and addition made u/s 68 of the I.T.Act, 1961.
- (v) As per Para 2.3 of the AO's report (copy enclosed), Id. CIT(A)-5, Ludhiana vide his order dated 05-10-2018 in appeal No. 449/IT/CIT(A)-5/Ldh/2016-17 dismissed appeal filed by the assessee and upheld the addition made by the Assessing Officer.

(vi) As per Para 2.4 of AO's report (copy enclosed) the assessee Company i.e. M/s KOC Industries Ltd., has not filed any further appeal against the order of the CIT(A).

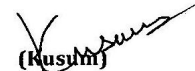
(vii) This fact has also been cross checked and verified from the site of the ITAT, Chandigarh and no such appeal is filed/pending before the Hon'ble ITAT as on date.

(viii) The AO vide his report No. 280 dated 25-05-2021 has also confirmed that the assessee company M/s KOC Industries Ltd. has not opted for Vivad Se Vishwas Scheme.

3. Thus from the available record it is inferred that substantial addition made in the hands of M/s KOC Industries as per the AO's report dated 07-04-2021 has attained finality.

Encl: As above.

Yours faithfully


(Rusult)
Income Tax Officer,
O/o Commissioner of Income Tax-2,
ITAT, Chandigarh.

7. Specific paras 2(vi) to (viii) and Para 3 of the above Report clearly address the departmental position. In the light of these facts and submissions, it is deemed appropriate to allow the appeal of the assessee on the aforesaid grounds as the substantive addition has attained finality. At the same time, it is clarified that the factum of the cheque dated 31.03.2011 of Rs. 20 lacs in favour of M/s KOC Industries Ltd. stated to be cleared in 2012-13 assessment year is kept open for consideration in the said appeal and is not being considered or decided in the present appeal as the present appeal is being decided only on the basis of the fact that substantive addition has attained finality. In the circumstances, protective addition cannot be sustained. Said order was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

8. The appeal, accordingly, is allowed.
9. **In ITA 1154/CHD/2019**, the facts and circumstances remain identical, however, in the present appeal the CIT(A) has considered and decided the issue dismissing the appeal on limitation as well as on protective basis.
10. The relevant findings under challenge are set out in para 3 which reads as under :

“3. Appeal against the aforesaid order of assessment was preferred belatedly on 29/03/2019 and the reasons for the delay have been stated to be the non-linking of mobile number of the appellant with the Aadhar No. This explanation was also not substantiated either in the Appeal Memo or during the appellate proceedings. The aforesaid ground for condonation of delay in filing the instant appeal is not satisfactory enough or sufficient cause for this Appellate Authority to condone the delay. In addition to that, the appellant has also not explained the sources of making the aforesaid investment in the share capital of M/s KOC Industries. Besides, the AO has been reasonable enough to make the assessment on protective basis. The appellant should not have any grievance against such assessment, the substantive assessment having been made in the hands of the company. Considered in this background, the instant appeal is dismissed on both counts, not being maintainable on account of inability of the appellant to show sufficient cause for filing the appeal late as also on account of no grievance occurring to him. In addition to that, as stated earlier, the appellant has neither explained the sources of the purported investment at the assessment stage nor at the appellate stage.”

11. The grounds raised by the assessee in the said appeal reads as under :

1. *That the impugned order of penalty is bad both on facts and Law.*
2. *That in the facts & circumstances of the case, the re-opening of the assessment proceedings u/s 147/148 are illegal, without jurisdiction and without application of mind as addition is made on protective basis and further ignored the fact that the investment was made in AY 2012-13 and not in AY 2011-12.*

3. *That the Ld Appellate Authority wrongly & illegally confirmed the protective assessment without a clear finding regarding the addition on protective basis.*

4. *That Ld Appellate Authority wrongly & illegally held that the Appellant has neither explained the sources of purported investment of Rs .20,00,000/-at the assessment stage nor at the appellate stage ignoring the detailed explanation in its reply dated 18.12.2018 reproduced in assessment order.*

5. *That the Ld Appellate Authority has wrongly & illegally rejected the application for condonation of delay in filing appeal on account of technical glitches of Income Tax portal being in infancy stages of new e-filing procedure.*

6. *That the Appellant craves permission to add, amend, elucidate any ground of appeal at the time of hearing*

12. Both the parties have been heard. Addressing the specific reasoning in the context of ground No. 5, first it is seen that the impugned order is non-speaking and vague as the Id. CIT(A) has not even cared to set out the specific number of days by which the appeal was found to be delayed. As per law, the adjudicating authority in all fairness is first required to put the appellant to specific notice of the fact of delay noticed, if any in the filing of the appeal. The adjudicating authority necessarily needs to set out the number of days by which the petition/application is found to be delayed and thereafter afford the party an opportunity and reasonable time to explain the delay. It is only after considering the submissions, the adjudicating authority is to pass a speaking order setting out the reasons as to why the delay is being condoned or the application is being dismissed. In the facts of the present case, it is seen that the adjudicating authority has passed a vague

generalistic order where it is not clear whether any such opportunity in clear term was afforded to the assessee. It is seen that no care was taken even to set out the number of days by which the appeal was noticed to be delayed.

12.1 Accordingly, after hearing the parties, it was deemed appropriate to set aside the impugned order restoring the issue back to the file of the CIT(A) with direction to first set out the specific number of days by which the appeal was noticed to be late and thereafter afford a specific opportunity to the assessee to explain the delay. On merits also, it is seen that no specific reason, it is seen, has also been given to proceed to uphold the protective addition. In the light of the submissions of the AO as considered in ITA 1152/CHD/2019 which are stated to be identical in the present case also, it is seen that thus even on merits, the addition cannot be sustained. In the absence of any change in facts and circumstances as available on record, it is deemed appropriate to set aside the impugned order directing the CIT(A) to verify this factual position of finality and pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard.

13. Accordingly, ITA 1154/CHD/2019 is restored back to the file of the CIT(A).

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

15. **In ITA 1156/CHD/2019**, it was common stand of the parties before the Bench that the facts, circumstances and the reasoning of the CIT(A) is identical to the facts, circumstances and reasoning as considered in the case of Shri Ashish Chaudhry (ITA 1152/CHD/2019). Similar submissions dated 07.06.2021 on facts have been placed by the concerned AO before the ITAT. Accordingly, in the light of the decision as set out in ITA 1152/CHD/2019, the appeal of the assessee is allowed.

16. In the result, ITA 1152/CHD/2019 and ITA 1156/CHD/2019 are allowed and ITA 1154/CHD/2019 is allowed for statistical purposes.

17. Order pronounced on 18th June,2021.

Sd/-

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

“पूनम”

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 अधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाइल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar