

ITAT justified admission of fresh evidences as assessee was unaware of assessment proceedings

Summary – The Chandigarh ITAT in a recent case of Smt. Kamaljit Dhillon, (the Assessee) held that Assessee being NRI unaware of assessment proceedings in respect of cash deposited in bank and Assessing Officer having found that source of deposit was sale proceeds of ancestral agricultural land, admission of fresh evidence and deletion of addition was just

Facts

- The assessee was required to explain the cash deposit of Rs. 43 lakh in her saving bank account. Since nothing was filed by the assessee in response to the notices, the Assessing Officer made the addition of the said amount in the hands of the assessee by an order passed under section 144 read with section 147.
- On appeal, before the Commissioner (Appeals), it was submitted that the assessee being a non-resident Indian, permanently settled in Canada was unaware of the proceedings. A prayer was made for admission of fresh evidences in terms of the precedent available in the case of *CIT v. Chittosho Motors* [2011] 11 taxmann.com 81 (Punj. & Har.).
- The said application along with evidences was forwarded by the Commissioner (Appeals) to the Assessing Officer. The Assessing Officer *vide* his report stated that as the assessee did not participate in the proceedings during the assessment stage; thus, no further opportunity should be provided as the assessee has not co-operated. The Commissioner (Appeals) taking note of the objection directed the Assessing Officer to place his remand report on the merits of the evidence filed. In response thereto, the Assessing Officer made another report that the cash amounting to Rs. 43 lakh deposited in bank during the financial year 2008-09 appeared to be genuine as the assessee received Rs. 43 lakh from the sale proceeds of ancestral agricultural land on 21-5-2008.
- The Commissioner (Appeals), referring to the facts, concluded that there were justifiable reasons for admitting additional evidence and the appeal of the assessee was allowed taking into consideration the remand report of the Assessing Officer.
- On revenue's appeal:

Held

- As is evident from record, there were justifiable reasons for admission of fresh evidence for which purposes apparently the revenue also has refrained from raising any ground challenging the admission of additional evidence. The Assessing Officer in his remand report in very categorical terms has stated that the source of cash deposits in the bank account have been verified and are found to be correct and true as per the claim of the assessee which is the specific reasoning taken by the Commissioner (Appeals).
- The revenue by raising the present appeal has filed a frivolous appeal and thereby wasted the time of the Court. The procedures apparently set in place to ensure that frivolous appeals are not filed,

appear to be not functioning. The departmental grounds have been approved by Principal Commissioner, which approval, it appears, has been given mechanically. The insistence of the Assessing Officer to raise a ground relying upon the failure of the assessee to prove the cash deposits in the 144 proceedings wherein admittedly the Assessing Officer on facts finds that the assessee has successfully demonstrated that the assessment was passed under section 144 in particular facts where admittedly the assessee being a 'non-resident Indian' permanently settled in Canada, thus, remained unaware of the assessment proceedings during her absence from India. The said issue despite the mechanical objections of the Assessing Officer have not been accepted by the Commissioner (Appeals) who has directed the Assessing Officer to place another report on merits which is report dated 7-9-2016 already extracted in his order.

- In the peculiar facts, the filing of the instant appeal by the revenue is a case of sheer harassment and abuse of the powers vested under the Act in the Assessing Officer/his administrative controlling authority and also resulting in wasting the time of the Courts; litigants and public money. Such an action could not find judicial sanction. Recording dissatisfaction about the manner in which the appeal of the revenue has been filed, the same is to be dismissed.