आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "ए" , चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य

BEFORE: SHRI. N.K.SAINI, VP & SHRI , SANJAY GARG, JM

आयकर अपील सं./ ITA NO. 1042/Chd/2019

निर्धारण वर्ष / Assessment Year : 2016-17

Sh. Mahesh Kumar Chopra House No. 17, Gren Park Ludhiana	बनाम	The ITO Ward-7(4), Ludhiana
स्थायी लेखा सं./PAN NO: AFMPC7629C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Parikshit Aggarwal, CA

राजस्व की ओर से/ Revenue by : Shri Daya Inder Singh Sidhu, Sr. DR

सुनवाई की तारीख/Date of Hearing : 24/08/2020

उदघोषणा की तारीख/Date of Pronouncement : 24/08/2020

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the assessee against the order dt. 01/05/2019 of Ld. CIT(A)-3, Ludhiana.

2. Following grounds have been raised in this appeal:

> *1. That the learned Commissioner of Income Tax (Appeals)-3, Ludhiana has erred the confirming the addition of Rs. 13,99,372/- made by the learned Assessing Officer on account of Investment made for the Purchases/Imports of Machinery without considering the submissions field by the appellant during the course of assessment proceedings as well as in appellate Proceedings and without giving any opportunity to the appellant. Therefore, addition made by the Learned Assessing Officer for Rs. 13,99,372/- and confirmed by the Learned Commissioner of Income Tax (Appeals)-3, Ludhiana is Illegal, Unwarranted, Uncalled for and needs to be deleted.*
>
> *2. That the Learned Commissioner of Income Tax (Appeals)-3, Ludhiana has erred the confirming the addition of Rs. 13,99,372/- made by the Learned Assessing Officer on account of Investment made for the Purchases/Imports of Machinery without giving any proper opportunity to the appellant, whereas*

during the course of assessment proceedings as well as in appellate proceedings, complete details along with necessary information of such Imports were filed by the appellant. Therefore, addition made by the Learned Assessing Officer for Rs. 13,99,372/- and Confirmed by the Learned Commissioner of Income Tax (Appeals)-3, Ludhiana is Illegal, Unwarranted, Uncalled for the needs to be deleted.

3. That the appellant craves to leave or to amend the Ground of appeals before or at the time of hearing.

3. Vide Ground No. 1 the main grievance of the assessee relates to the proper opportunity not being given either by the A.O. or by the Ld. CIT(A).

4. Facts of the case in brief are that the assessee e-filed the return of income on 12/10/2016 declaring an income of Rs. 2,84,780/-. Later on the case was selected for scrutiny.

5. During the course of assessment proceedings the A.O. noticed that the assessee had imported machineries amounting to Rs. 36,00,000/- and Rs. 13,03,575/-. The A.O. issued the questionnaire alongwith notice under section 142(1) of the Act to the assessee on 08/12/2018 . In response the assessee submitted as under:

" 1. That the assessee is doing the business of Manufacturing and Job work of hosiery Goods during the year under consideration.

2. That the copy of Income Tax Return receipt and Computation Chart of Income is for the year under consideration attached herewith for your kind perusal. That the assessee has filed his return of income u/s 44AD of the Income Tax Act, 1961 during the year under consideration.

3. That the assessee has earned income from Business of Manufacturing and Job shown in the computation chart of Income.

4. That the assessee has maintained following bank accounts:

Name of the Rank	*Address*	*Account No. 3876201000187*	*Account Type.*
Canara Bank	*SME, Sunder Nagar, Ludhiana*	*3876201000187*	*Current*
Punjab National Bank	*Chaura Bazar, Ludhiana*	*240300100154907*	*Savings*

5. *That, the assessee has made the Import of Four Machines from outside India for Rs. 36,00,000/-. That the assessee has made the payment against the Import of Machines as under:*

Narration	*Amount*	*Dale of payment*
Paid through RTGS from current account with Canara Bank	*6,00,000/-*	*20.07.2015*
Paid through RTGS from current account with Canara Bank	*3,00,000/-*	*21.07.2015*
Paid through RTGS from current account with Canara Bank	*3.00,000/-*	*22.07.2015*
Paid through RTGS from current account with Canara Bank	*4.00.000/*	*31.07.2015*
Paid through Loan account Bearing No. 3876766000045 with Cunara Bank	*18,00,000/-*	*06.08.2015*
Paid cash on Different Dales	*2.00.000/-*	*On Different Dates*

Further, submitted that the Imports shown at Serial No. 2 having Invoice Value of Rs. 13,03,575/- of AIR information provided by your honor to the assessee has not made by the assessee and does not relates to the assesee.

6. That the copy of Form 26AS, for the year under consideration as required by your honor is attached herewith for your kind perusal."

5.1 Thereafter the A.O. again issued the notice dt. 18/12/2018 to the assessee which reads as under:

"Please refer to the assessment proceedings in your case of the A. Y. 2016-17.

2. Your case for the A. Y. 2016-17 was selected for Limited Scrutiny through CASS with the reason "Large value of imports shown in the Export Import Data" and notice u/s 143(2) has been issued on 18.09.2017.which is served upon the assessee through ITBA portal & Notice Server of this office.

In the course of assessment proceeding, following notices have been sent to you:-

Sr. No.	*Notice u/s*	*Date of Notice*	*Date of response to be submitted*	*Mode of Service*	*Remarks*
1	*u/s 143(2)*	*18.09.2017*	*02.08.2016*	*Through 1TBA & Notice server*	*No response submitted.*
2	*Notice u/s 142(1) alongwith Questionnaire*	*29/08/2018*	*10/09/2018*	*Through 1TBA*	*No response submitted*
3	*Notice u/s 142(1) alongwith Questionnaire*	*08.12.20 18*	*10.12.2018*	*Through 1TB A*	*No response* ***submitted***

4. On perusal of ITS for the A. Y 2016-17, it is noticed that you have purchased the machinery amounting to Rs. 36,00,000/- on dated 01.09.2015 & Rs. 13,03,575/- on dated 15.09.2015.

5. On perusal of your reply dated 17.12.2018, you have submitted that you have made the import of four machines from China tor Rs 36.00,000/- only through M/s Ess Ess Fabrics, Ludhiana. But you did not give any documents/evidence regarding the purchase of machinery amounting to Rs.13,03,575/-. Therefore, you are given to show cause as to why addition of Rs. 13,03,575/- may not be made u/s 69 w.r.t. unexplained investment, in your returned income. In this respect, to meet the ends of natural justice you are hereby allowed final opportunity to give response on 20.12.2018. Please note that the proceedings in your case shall get barred by limitation of time by 31.12.2018, hence, no further adjournment will be allowed. Failure to respond to this notice will mean that you have nothing to say in the matter, consequently, your case will be decided on merits.

Notice u/s 142(1) is enclosed herewith."

5.2 In response to the above the assessee submitted as under:

"That the assessee has already denied the Import of Machinery of Rs. 13,03,575/- further submitted that the show cause notice has been issued on the basis of AIR information. That the Burden lies on the department to prove that the assessee has purchased the machinery on received the information received by your honor and requested to your honor to get the details information regarding the import of the machinery on receiving the information from your honor Reply to show cause notice will be filed in detailed".

5.3 The A.O. however was not satisfied from the submissions of the assessee and made the addition of Rs. 13,99,372/- by observing in para 6 & 7 of the assessment order dt. 28/12/2018, as under:

6. All the submission documents filed by the assessee are duly perused and found incorrect. It is pertinent to mention here that the primary onus is always upto the assessee to prove that the information given by him is true alongwith supporting evidence. As per ITS information available with this department the assessee has purchased the machinery amounting to Rs. 36,00,000/- on dated 01.09,2015 & Rs. 13,03,575/- on dated 15.09.2015. This ITS details has been filed by the Central Board of Direct Taxes (CBEC) which is fully authentic and reliable. The same is already confronted to the assessee. But the assessee failed to prove that the information received by the CBEC is not correct and only submitted that the information with regard to the purchase of machinery having Invoiced value Rs. 13,03,575/- is not related to him and shifted the burden on the department to *prove the genuineness of the information provided by the CBEC only the fag end of the e-assessment when it is going to be time barred on 31.12.2018.*

7. Based on the above facts and circumstances of the case, the submission/explanation regarding the purchase of machinery amounting to Rs.36,00,000/- is accepted and addition of Rs. 13,99.372/ (including all charges), as per information received from the CBEC through ITS details is made u/s 69 of the Income-tax Act, 1961 w.r.t. unexplained investment in machinery.

6. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and furnished the written submissions which has been incorporated by the Ld. CIT(A) at page no. 3 to 5 of the impugned order, for the cost of repetition the same is not reproduced herein. The Ld. CIT(A) sustained the addition made by the A.O. by observing in para 5.2 & 5.3 of the impugned order as under:

" 5.2 During the appellate proceedings the assessee has challenged the addition of Rs. 13,03,575 /- on account of investments made for the purchase/imports of machinery without considering the submissions filed by the appellant during the course of assessment proceedings. The assessee has stated that he has denied the purchases /imports of machinery worth Rs.13,03,575/- under question during the course of assessment proceedings. Apart from it the assessee also challenged that the addition stating that, the assessee was not given proper opportunity by the assessing officer during the assessment year as the assessing officer was requested to supply the detailed information of such imports, but no details were given by the assessing officer.

I have carefully considered rival submission. After considering the facts of the case I do not find myself in agreement with the contention of assessee. It is seen that during appellate proceedings the assessee has filed submission stating that the assessee has not purchased the machinery worth Rs. 13,03,575/- . The assessee has further explained that assessee has imported the machinery worth Rs. 36 lakh through M/S Ess Ess fabrics, Ludhiana and all the necessary formalities have been performed by the assessee for the import. However when purchase order of purchase of machinery Rs. 36 lakh was completed by the M/S Ess Ess fabrics, Ludhiana .thereafter M/S ESS fabrics, Ludhiana misused some signs loose papers lying with it and did not return these documents. Later on M/S Ess Ess fabrics, Ludhiana made further import machinery of Rs. 13,03,575/- without consent of assessee and without informing to the assessee. Thereafter M/S Ess Ess fabrics, Ludhiana , filed a civil suit proceedings against assessee wherein the assessee has been alleged to issue cheques which have been dishonored. In this connection I have gone through the complaint filed by M/S Ess Ess fabrics, Ludhiana against the in signs cheque assessee and other details have been mentioned. After considering the detailed submission of assessee evidence filed by the assessee, I do not find myself in agreement with contention of assessee. Apparently these are the documents which have been duly signed by the assessee and it further shows that the assessee had issued cheques to the M/S Ess Ess fabrics Ludhiana, which have been dishonored. Most importantly apparently *this explanation has not been given by the assessee during the assessment proceedings before the assessing officer as the same has not been discussed by the assessing officer in the assessment order. Apparently the assessee has not requested for admission of additional evidence and has rule 46 A, therefore even this explanation cannot be considered as the same has not been explained by the assessee at the time of assessment proceedings and the documents as relied upon by the assessee has not been subjected to verification and enquiry by the assessing officer during the assessment proceedings. Therefore the submission of the assessee has cannot be considered in absence of explicit request for admittance of additional evidence and the reasons under which the same could not be filed before the assessing officer.*

5.3 The assessee has also challenged the addition on the ground, that the assessee was not given due opportunity at the time of assessment proceedings. After careful consideration of the facts I do not find myself in agreement with the assessee as apparent from the assessment order the assessee was given due opportunities in time and again the assessee was asked to explain the purchase of machinery to import worth Rs. 36,00,000/- and Rs. 13,03,575/- for which the assessee even after availing opportunities failed to explain, with regard to machinery purchase worth 13,03,575/- . Accordingly in my considered view since the assessee has failed to explain purchase of machinery worth Rs. 13,03,575/- , even to discharge its onus , that the purchase has not been made by him. Accordingly the disallowance made by assessing officer on this account is upheld."

7. Now the assessee is in appeal.

8. Ld. Counsel for the assessee submitted that all the information and details were furnished before the A.O. as well as the Ld. CIT(A) who did not consider the same in right perspective and made the impugned addition in arbitrary manner without providing proper opportunity of being heard to the assessee. He requested to set aside this case back to the file of the A.O. for fresh adjudication after considering the documents furnished by the assessee before the Ld. CIT(A) and giving due and reasonable opportunity of being heard.

9. In his rival submissions the Ld. Sr. DR although supported the orders of the authorities below but could not controvert the aforesaid contention of the Ld. Counsel for the assessee.

10. We have considered the submissions of both the parties and perused the material available on the record. In the present case it appears that the

reasonable opportunity of being heard was not provided to the assessee by the A.O. and the Ld. CIT(A) did not consider the evidences furnished before him for the reason that the application was not furnished under Rule 46A of the Income Tax Rules 1962 by the assessee. We therefore deem it appropriate to set aside this case back to the file of the A.O. to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order pronounced on 24/08/2020)

Sd/-	**Sd/-**
संजय गर्ग	**एन.के.सैनी,**
(SANJAY GARG)	**(N.K. SAINI)**
न्यायिक सदस्य/ Judicial Member	**उपाध्यक्ष / VICE PRESIDENT**

AG
Date: 24/08/2020

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