

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH
HEARING THROUGH: HYBRID MODE
श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 337/Chd/ 2019
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Charanjit Singh #46, Charan Singh Patiala	बनाम	The Addl. CIT Patiala Range, Patiala
स्थायी लेखा सं. / PAN NO: ACYPS4015R		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारित की ओर से/ Assessee by : Shri Tej Mohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/ Date of Hearing : 07/03/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 13/03/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A), Patiala dt. 21/01/2019 pertaining to A.Y 2011-12.

2. At the outset, it is noted that the appeal was earlier disposed off by the Coordinate Bench vide order dt. 23/09/2019, thereafter, the Assessee filed a Miscellaneous Application No. 26/Chd/2020 and the Bench had recalled the abovementioned order vide order dt. 28/08/2023, hence, the matter has again come up for hearing before us.

3. The grounds of appeal raised by the assessee read as under:

"1. That the Ld. Commissioner of Income Tax(Appeals) has erred in law as well as on facts in upholding the addition of Rs.9,00,000/- made by disallowing the expenditure incurred on improvement of property which is arbitrary and unjustified.

2. That the explanations and evidence placed on record has been brushed aside without appreciating the same in the correct perspective and as such the addition upheld merits to be deleted.

3. That the order of the Ld. CIT (A) is erroneous, arbitrary, opposed to the facts of the case and thus untenable."

4. The sole grievance of the assessee before us is against the disallowance of claim of expenditure incurred on improvement of property of Rs.9 lacs. A perusal of the assessment order reveals that during assessment proceedings, the Assessing Officer (AO) noted that the assessee, while returning the income from capital gains of Rs.2,16,45,122/-, had claimed an amount of Rs.9 lacs towards cost of improvement of the property sold. The AO asked the assessee to substantiate its claim of the said expenditure with evidence. The assessee produced vouchers, which the AO stated were self made. He further held that no evidence of improvement or tax deduction at source on the payment made was provided by the assessee. Accordingly, he disallowed the deduction claimed by the assessee of the cost of improvement while calculating the capital gains earned.

5. Aggrieved by the same, the assessee went in appeal before the Ld.CIT(A). Detailed submissions were filed in writing before him, which are reproduced at para 4 of the order, wherein, briefly stated, the assessee contended that the improvement to the shop was made through a local contractor at settled rate. That the contractor used his own material and raised invoice on the basis of improvement of work completed. That the payment was made by the assessee after verification and the same were duly recorded in his books. Therefore, the invoices were sufficient evidence of the work done. The Ld.CIT(A) forwarded the assessee's submissions to the AO for his comments. The same are reproduced at para 4.1 of the CIT(A)'s order, wherein the AO stated that nothing new has been stated by the assessee in his submissions. He further stated that a letter had been sent to the contractor to produce his income tax return, the copy of account of the assessee maintained by him and the original cash receipts issued by him to the assessee, but the same could not be served on the contractor being returned by the postal authorities with the remarks "incomplete address". The AO further noted that the assessee had been asked to give complete address of the contractor, but no response had been

received till date. He, therefore, stated that the addition/disallowance had been rightly made. The comments of the AO were forwarded to the assessee who filed his reply, reproduced at para 4.2 of CIT(A)'s order reiterating the contentions made earlier and further stating that efforts were made to get the whereabouts of the contractor and it had come to his knowledge from the father of the contractor that the contractor had migrated to U.K. in the year 2011. A certificate obtained from the father of the contractor stating that his son had been doing contract work earlier and migrated to U.K. in 2011 was also filed by the assessee. On the basis of the above, the Ld. CIT(A) held that considering the fact that it was the assessee who had claimed an expenditure of Rs.9 lacs on the improvement of the building, the onus was on him to prove the same and also considering the fact that the bills did not bear any revenue stamp and gave no description of the work done and neither was it clear that they were bills or cash receipts, held that the assessee had failed to discharge the onus. He, therefore, upheld the disallowance/addition made by the AO.

6. The relevant findings of the CIT(A) at pages 7 to 10 of his order are as under:

"The points raised in the appellants submission and the Ld.A.O's counter comments and the Ld.A.R's rebuttal thereto are briefly tabulated as under:

Ld AR's submission	Ld. AO's counter comments	Ld. AR's rebuttal
<p><i>This improvement to the shop was made through a local contractor at a settled rate. Contractor used own material on completion of a particular segment, contractor raised his invoice on the basis of measurement of the work so completed.</i></p> <p><i>payments were made to the contractor after verification payments were duly recorded in the books of account, maintained by the appellant appellant had neither purchased those materials at his end nor there was any such arrangement requiring the contractor to supply the bills of</i></p>	<p><i>Ld AO has not specifically commented on points i to ix and xii on points . as regards point x Ld AO states : "Moreover, this office has sent a letter vide No. 154 dated 15.06.2018 to Sh. Bhupinder Singh, Labour Contractor, Village Sanour, Patiala to produce Income Tax return, copy of account of Sh. Charanjit Singh and original cash receipt vouchers issued to Sh. Charanjit Singh. But the letter could not be served upon Sh. Bhupinder Singh as the same has been returned by the postal authorities with remarks "Incomplete address".</i></p>	<p><i>The Ld AO sent a letter addressed to Shri Bhupinder Singh, Village Sanour And the same has been returned by the postal authorities with the remarks The appellant tried to get the whereabouts of Shri Bhupinder Singh-contractor of Village Sanour. ... and came o know that Shri Bhupinder Singh had migrated to England (U.K.) in the year 2011.</i></p> <p><i>The appellant produced a " A certificate to this effect that he had been carrying on the above activity of contract job work and had migrated to England since</i></p>

<p>those materials amounts were payable to the contractor at a settled per sq. foot rate only.</p> <p>It is not the case of Ld. Officer that the improvement in the Shop had not been made during the period Ld. Officer holds that the appellant had failed to deduct at source against such payments. Such an observation can be made only after perusing the details and related documents, The Invoices raised by the Contractor, bear name and address of the contractor, the date, the exact measurement of wood work and interior work done and the resultant amount payable to him and are duly signed by the contractor, Bhupinder Singh. Invoices have been raised by the contractor and not by the appellant.</p> <p>Copies of these invoices are being filed.</p>	<p>Further, this office has sent letter vide No. 484 dated 30.08.2018 to Charanjit Singh to provide this office the Complete address along-with the contact number of the contractor namely Sh. Bhupinder Singh, Labour Contractor. But till date nobody attended nor any address has been provided by the assessee.</p>	<p>2011, has been obtained from his father, Shri Jagir Singh. "</p> <p>"this enquiry has been attempted after a gap of almost 8 years from the period when the job was got executed...</p> <p>the Ld. A.O. did not make any move for the verification thereof during the assessment proceedings</p>
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I have also examined the copy of the bills purported to have been raised by the contractor and the bills are 14 in number and made on a computer. Further all the bills relate to the previous year relevant to the AY of the impugned order between April and August of 2010. The bills are inter-alia are termed cash receipt and contain the date the bill was raised, the rate per square foot (example 619.83 per square foot with material with wood work & interior written in hand) the quantity of work done, the amount of the bill raised and are purportedly signed by the labour contractor Bhupinder Singh. The bills do not bear any revenue stamp and it is not clear whether the bills are invoices or cash receipts or both rolled in one . Further other than giving mere square foot of work done no description thereof is given with regards to the tilling, wood work etc. a copy of one such bill is inserted infra:

Labour Contractor Bupinder Singh
Village Sanour, Distt. Patiala
Cash Receipt
1-Apr-2010 to 31-Mar-2011

To Charanjit Air Conditioning Services, Model Town Patiala

Date	Rate Per (Sq.ft)	Quantity (Sq.ft)	Amount(Rs.)
5-04-2010	619.83 sq.ft With material Wood work & Interior	72.60	44,999.65
		Total	45,000.00

Sd/-
Bhupinder Singh(Pro.)
Labour Contractor

I have carefully examined the submissions of the Ld. AR and the finding and counter comments of the Ld AO and contextualized these to the facts of the case That normal business practice of raising such bills by labour/ construction contractors are distinct/different from the bills shown in this case in that they lack clarity with regards to being invoices or cash receipts, lack revenue stamps, do not give any detailed description of the work done is apparent from the discussion supra. However that the Ld. AO did not make any enquiries with regards to the existence of the contractor and His accounting of the receipts during assessment proceedings is also matter of record. While there is some merit in the appellant's submission that 8 years have elapsed since the so called work was done; in the first instance the expenses were made during the previous year relevant to the assessment year and the initial burden of proof to establish the improvements was on the appelland which he, in my considered opinion failed to discharge.

Merely making entries in books of account with regards to expenses on improvements and producing bills that run contra to regular/ common sense business practices, in my considered view, does not discharge the initial burden of proof on the appellant. I see no reason to interfere with the order of the Ld. AO and the grounds of appeal are dismissed. It is ordered accordingly."

7. Before us, the Ld. AR has reiterated the contentions raised before the Id CIT(A) and the Id DR has relied upon the findings of the CIT(A).

8. We have heard the rival contentions and perused the material available on record. The Id CIT(A) has rightly pointed out that the initial burden of proof rested on the assessee to substantiate his claim of having incurred expenditure on improvement of the property to the stated extent of Rs. 9 lacs. But as is evident from the facts noted in the order of the Ld. CIT(A), the assessee failed on this count. Except for filing copies of so called invoices of the contractor through whom the work was done, no other evidence was filed by the assessee. Also the so called invoices were deficient in several respects, as pointed out by the Ld. CIT(A). There was no mention of the nature of work done for which the invoices were raised, the address on the same was also incomplete since letters issued by the department on the said address were returned back by the postal department with the comment "incomplete address". No evidence regarding source of cash payment and payment so claimed to be made to the contractor was filed by the assessee. The Ld. CIT(A) has mentioned that it was not clear whether the bills raised served as receipts also and even if they did, they did not bear any Revenue stamp to evidence receipt of money by the contractor. Further the inquiry by the department at the address of the

contractor mentioned in the bills drew a blank since the postal authorities remarked that the address was incomplete and despite the assessee being specifically asked to give complete details/address of the contractor, no information was provided by the assessee. The certificate furnished by the assessee, of the father of the contractor stating that he had been engaged in the activity of contract and had left for England in 2011, since not duly verified, we hold, serves no purpose. We therefore agree with the Ld.CIT(A) that merely making entries in the books of accounts and producing bills which are deficient in providing basic information regarding the transaction, is not sufficient for discharge of initial burden of proof on the assessee regarding its claim of cost of improvement. The Ld. CIT(A) therefore rightly disallowed the claim of the assessee to the extent of Rs 9 lacs and we therefore do not find any infirmity in the said order and the same is hereby confirmed.

9. In the result, the appeal of the assessee is dismissed.

(Order pronounced in the open Court on 13/03/2024)

Sd/-
आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 13/03/2024

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