

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER**

**ITA Nos.694 & 964/Del/2014
Assessment Years : 2008-09 & 2009-10**

Manmeet Singh, B- 1, Hathi Khanna, Azad Market, Delhi. PAN : AOPPS 6593 D	Vs.	ITO, Ward- 39(1), New Delhi.
(Appellant)		(Respondent)

**ITA No.2165/Del/2016
Assessment Year : 2011-12**

Manmeet Singh, B- 1, Hathi Khanna, Azad Market, Delhi. PAN : AOPPS 6593 D	Vs.	ITO, Ward- 39(1), New Delhi.
(Appellant)		(Respondent)

Appellant by : Shri S. L. Deepak, CA
Respondent by : Shri S. K. Jain, Sr.DR
Date of hearing : 25-01-2017
Date of pronouncement : 31-01-2017

ORDER

PER S.V. MEHROTRA, A.M :

The captioned three appeals preferred by the same assessee were heard together and are being disposed of by this consolidated order for the sake of convenience.

ITA No.694/Del/2014 (A.Y. 2008-09):

2. This appeal is directed against the order dated 24.12.2013 passed by the Commissioner of Income Tax (Appeals)-XXVIII, New Delhi, u/s 143(3) of the Income Tax Act, 1961 (in short “the Act”) relating to assessment year 2008-09.

3. Brief facts of the case are that the assessee had filed return of income declaring income of Rs.3,01,206/-. The assessment was completed at a total income of Rs.23,74,566/- u/s 144 of the Act by Assessing Officer, *inter-alia*, observing as under :-

“However, on the date of hearing i.e. 16.11.2010 there was no compliance as neither the assessee attended the proceedings, nor was any application for adjournment received nor were the details/explanation asked for vide notice issued under section 142(1) of the Income-tax Act, 1961 were filed by the assessee. In view of the above facts, it is clear that the assessee is non-cooperative with regard to the completion of his assessment. In the circumstances, I have no alternative but to complete the assessment ex parte under section 144 of the IT Act, 1961 on the basis the information available on record.”

4. Before Id. CIT(A), the assessee had filed application under Rule 46A of the Income Tax Rules, 1962 for admission of additional evidence in the form of copy of income-tax return, copy of balance sheet, copy of bank statement with narrations, copy of cash book and copy of daily cash flow statement, *inter-alia*, pointing out that documentary evidences could not be

filed as the assessee was busy in constructing his house. Ld. CIT(A) rejected the assessee's application under Rule 46A of the Rules.

5. Ld. counsel for the assessee submitted that assessee did not get proper opportunity to represent his case either before Assessing Officer or before ld. CIT(A) and, therefore, prayed that assessee be provided with reasonable opportunity to explain his case.

6. I have considered the submissions of both the parties and have perused the record of the case. Admittedly, the Assessing Officer has passed the order u/s 144 and the additional evidence filed before ld. CIT(A) under Rule 46A has not been admitted. Under such circumstances, it is evident that the assessee did not get an opportunity to plead his case before either of the lower revenue authorities and, therefore, in order impart substantial justice to assessee, I set-aside the order of the lower revenue authorities and restore the matter back to the file of the Assessing Officer for passing the assessment order *de-novo*.

7. In the result, the appeal of the assessee in ITA No.694/Del/2014 is allowed for statistical purposes.

ITA No.964/Del/2014 (A.Y. 2009-10):

8. This appeal is directed against the order dated 18.12.2012 passed by the Commissioner of Income Tax (Appeals)-XXVIII, New Delhi, u/s 143(3) of the Act relating to assessment year 2009-10.

9. At the outset, ld. counsel for the assessee pointed out that the appeal filed by the assessee is time barred and the delay in filing the appeal by 353 days was caused as the impugned order was received by Authorized Representative handling the case and got buried in the voluminous record in his office. In support of condonation petition, the assessee has filed an affidavit also, wherein, following averments have been made :-

“1. That the impugned CIT(A) order dated 18.12.2012 for assessment year 2009-10 was served on 02.01.2013 according to which the appeal before ITAT was due to be filed before 02.03.2013.

2. That the appeal under adjudication was filed on 19.02.2014 that is late by approx 11 and a half months.

3. The reason for the delay in filing of appeal is that the impugned order was received by the authorized representative (AR) handling the case and got buried in the voluminous record in his office and probably the negligent staff did not make an effort to inform the assessee and thereby its track was lost. The assessee enquired from the AR only when he received the Appellate Order of CIT(A)-XXVIII dated 24.12.2013 for the assessment year 2008-09 against which the appeal was filed on 07.02.2014 before ITAT-Bench E as ITA No.694/Del/14. The AR when checked up the records in his office discovered the impugned appellate order of the later year i.e. assessment year 2009-10 passed a year ago.

4. That a petition of condonation of delay has been filed with Hon’ble ITAT along with the appeal.”

10. I have considered the submissions of both the parties and have perused the record of the case. I find that the delay in filing the appeal was caused on account of papers being got buried in the voluminous record of authorized representative and, therefore, assessee should not be made suffer.

I, accordingly, condone the delay in filing the appeal.

11. Brief facts of the case are that the assessee derived income from business of financing of autos under the name and style of M/s Joginder Auto. He had filed his return declaring income of Rs.3,02,137/-. The assessment was completed u/s 143(3) at a total income of Rs.13,16,636/-, *inter-alia*, making an addition of Rs.9,79,569/- on account of cash deposits in bank account, rejecting the assessee's explanations that he had deposited the cash and withdrawn only to show more transactions so that he could get a Visa for Canada. Ld. CIT(A) dismissed the assessee's appeal observing in paras 3, 4 and 5, which are reproduced hereunder :-

"3. I have considered the grounds raised in appeal and the submissions of the AR of the appellant.

The ground against the addition of Rs.9,79,569/-. The assessing officer has made the said addition because there were cash deposits. The explanation of the assessee that the deposits were made and withdrawn only to show more transactions in order to get visa for Canada, was rejected by the assessing officer. The assessing officer has rejected the explanation also for the reason that there were huge cash deposits in previous year also. In appeal the appellant has given same explanation. There is no justification for cash deposits for getting the said visa. The appellant's explanation is rejected and the ground raised in appeal is dismissed.

4. The ground against the addition of Rs.11,580/-. The appellant has not shown this amount in his return of income but the same was credited to his two

Bank accounts. The addition is correctly made. There is no need to interfere with that. The ground is dismissed.

5. The ground against the addition of Rs.23,350/- claimed under chapter VIA. The assessing officer has made the disallowance because there was no proof in support of the claim. This is correctly made. The ground raised in appeal is dismissed.”

12. Ld. counsel pointed out that the Assessing Officer in his order has, *inter-alia*, observed that the authorized representative of the assessee had been persuaded to pay tax on the peak balance available in the saving account. He referred to ground no.4 raised before Id. CIT(A), which reads as under :-

“4. That the order is bad in law, as the AR never accepted to pay tax on peak balance available in saving account.”

13. He referred to the order of Id. CIT(A) reproduced above and pointed out that he has not considered this aspect. Ld. counsel submitted that the matter may be restored back to the file of Assessing Officer because he has not considered the assessee's plea in detail.

14. Ld. DR submitted that assessee was provided sufficient opportunity by both the revenue authorities and, therefore, matter should not be restored to lower revenue authorities.

15. I have considered the submissions of both the parties and have perused the record of the case. Admittedly, Id. CIT(A) has not considered

ground no.4 raised by assessee before her and, therefore, it would be appropriate to restore the matter back to the file of Id. CIT(A). The plea of Id. counsel that the matter may be restored back to the Assessing Officer cannot be accepted because the Assessing Officer has rejected the assessee's explanation, *inter-alia*, observing that assessee had deposited huge cash in the previous year also. The order has been passed u/s 143(3) and under such circumstances, it is appropriate to restore back the matter to the file of Id. CIT(A) for passing a reasoned order on all the issues as he has summarily rejected the assessee's submissions.

16. In the result, the appeal of the assessee in ITA No.964/Del/2014 is allowed for statistical purposes in terms of aforementioned observations.

ITA No.2165/Del/2016 (A.Y. 2011-12):

17. This appeal is directed against the order dated 03.03.2016 passed by the Commissioner of Income Tax (Appeals)-20, New Delhi, u/s 143(3) of the Act relating to assessment year 2011-12.

18. Brief facts of the case are that the assessee had filed return of income declaring total income of Rs.3,65,910/-. The Assessing Officer observed that, as in earlier year, the assessee was doing the business of financing and commission of Autos (Three Wheelers) as proprietor of M/s Joginder Auto. As per AIR information, the assessee had deposited cash of Rs.12,70,000/-

and Rs.4,00,000/- in his saving bank account. The assessee gave the same reason for frequent deposits and withdrawals as in earlier year viz. that he was advised by the Visa Agent to show some bank transactions for Visa purposes. The assessee also explained that cash deposits of Rs.4,00,000/- and Rs.2,00,000/- did not belong to the assessee. The Assessing Officer, however, did not accept the assessee's contentions and determined the peak credit at Rs.7,57,672/- and added the same to assessee's income. Ld. CIT(A) confirmed the Assessing Officer's action.

19. Ld. counsel referred to ground no.6 raised before Id. CIT(A), which reads as under :-

“6. The cash deposited in the saving Account is being transferred from his business for which cash book is maintained.”

20. Ld. counsel pointed out that the entire deposits in the bank account were not from business and included loans also which have not been properly segregated by the Assessing Officer. He further pointed out that source of cash deposit in savings bank account has not been correctly appreciated. He, therefore, submitted that the matter may be restored back to the file of Assessing Officer for re-computing the peak credit correctly.

21. Ld. DR submitted that assessee was provided sufficient opportunity to explain his case.

22. I have considered the submissions of both the parties and have perused the record of the case. The assessee vide his letter dated 04.08.2005 had filed additional ground before Id. CIT(A) which has been reproduced at page 3 and 4 of his order, which, *inter-alia*, reads as under :-

“That I am hereby enclosing the copy of cash book which clearly shows beyond the reasonable doubt that the cash deposited by the assessee was out of cash in hand available in the cash book. There is no negative balance during the whole year. I also filed the copy of judgment of the income tax appellate tribunal Delhi bench: ‘B’ New Delhi. In this case it was held that no adverse inference can be drawn against the assessee about the impugned cash deposits as this is not the case of the AO that the amount withdrawn from bank were utilized somewhere else for some irrelevant purpose. There is no negative balance at any point of time. It is not the case of the AO that the amount withdrawn were utilized anywhere else. It is not mandatory under any law of the land that individual has to keep his saving in the bank account only and as cash in hand.”

23. Ld. CIT(A) did not accept the additional evidence by observing as under :-

“I have considered the additional ground of appeal as filed by the appellant during the appellate proceedings. I am not able to make out about the ground of appeal that the appellant wants to make. Perhaps, the appellant want to file additional evidence. However, from the perusal of the assessment records it is seen that assessee was given adequate opportunities to file evidences in favour of his claims. However, the appellant has not availed the opportunity provided during the assessment proceedings. Therefore, additional evidence cannot be accepted as per rule 46A.”

24. The main contention of Id. counsel is that the peak needs to be correctly computed by taking only the business receipts and corresponding withdrawals. Therefore, it would be appropriate to afford one more opportunity to assessee to explain the nature of receipts in respective bank

accounts. Accordingly, I restore this matter to the file of the Assessing Officer for *de-novo* adjudication on this issue.

25. In the result, the appeal of the assessee in ITA No.2165/Del/2016 is allowed for statistical purposes.

26. Resultantly, all the three appeals are allowed for statistical purposes.

Order pronounced in the open court on this 31st day of January, 2017.

Sd/-

(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated : 31-01-2017.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)-
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi