

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI MAHARISHI PRASHANT, ACCOUNTANT MEMBER**

ITA No. 2231/Del/2018

AY: 2011-12

Sh. Ram Lal C/o M/s RRA TAXINDIA D-28, South Extension Part I New Delhi 110 049 PAN: ACCPL5384L	vs.	ITO, Ward 33(4) New Delhi
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ITA No. 1692/Del/2016

AY: 2011-12

Sh. Ram Lal C/o M/s RRA TAXINDIA D-28, South Extension Part I New Delhi 110 049 PAN: ACCPL5384L	vs.	ITO, Ward 24(4) New Delhi
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(Appellant)

(Respondent)

Assessee by : Sh. Ashwani Taneja, Sh. Somil Agarwal,
Sh. Deepesh Garg, Sh. Abhishek Anant, Advs.

Department by : Sh. Surender Pal, Sr. D.R.

Date of Hearing : 29.10.2018

Date of Pronouncement: 31.10.2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeals have been filed by assessee against the orders passed by Ld.CIT(A)-11, New Delhi dated 29/01/16 and 06/03/18 for Assessment Year (A.Y.) 2011-12 on the following grounds of appeal:

ITA 1692/Del/16

1. *That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in confirming the action of Ld.AO in making disallowance of Rs.1,50,000/- u/s 24(b) of the I.T. Act, 1961.*
2. *That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in not allowing the deduction u/s 80C as claimed by the assessee and has further erred in directing the Ld.AO in this regard.*
3. *That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in confirming the action of Ld.AO in making addition of Rs.90,23,000/- by treating it as alleged unexplained cash deposits in bank account u/s 69 and that too by recording incorrect facts and findings and without observing the principles of natural justice.*
4. *That in any case and in any view of the matter, action of Ld.CIT(A) in confirming the action of Ld.AO in making addition of Rs.90,23,000/- by treating it as alleged unexplained cash deposits is bad in law and against the facts and circumstances of the case and without observing the principles of natural justice.*
5. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

ITA 2231/Del/18

“1. That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in confirming the action of Ld.AO in imposing penalty u/s 271(1)(CIT(A)) of Rs.27,38,654/- and that too without assuming jurisdiction as per law and the impugned penalty order being illegal and void ab -initio.

2. That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in not quashing the penalty order passed by Ld.AO as the impugned penalty order is contrary to law being the assessment order framed u/s 143(3) dated 28.02.2014 was also illegal, beyond jurisdiction and void ab-initio.

3. That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in confirming the action of Ld.AO in imposing penalty u/s 271(1)(c) on the addition made in the assessment order u/s 143(3) dated 28.02.2014 as the same addition is also contrary to law and facts.

4. That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in confirming the action of Ld.AO in imposing penalty u/s 271(1)(c) is bad in law being beyond jurisdiction and barred by limitation and contrary to the principles of natural justice and has been passed by recording incorrect facts and findings and without giving adequate opportunity to the assessee and the same is not sustainable on various legal and factual grounds.

5. That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in not quashing the penalty order passed by Ld.AO that too without establishing concealment of income or furnishing of inaccurate particulars of income by assessee.

6. That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in not quashing the penalty order passed by Ld.AO that too without observing the

principles of natural justice and without obtaining valid approval of Ld.JCIT before passing the impugned order and therefore not sustainable in the eyes of law.

7. That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in confirming the action of Ld.AO in imposing penalty u/s 271(1)(c) of Rs.27,38,654/- and that too without recording mandatory 'satisfaction' as per law.

8. That the assessee craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other.”

2. Brief Facts of the case are as under:

During the year under consideration assessee filed its return of income on 30/07/11 declaring total income of Rs.4,33,770/-. Case was processed under scrutiny and notice under section 143 (2) of the Income Tax Act, 1961 (the Act) was issued in response to which Representatives of assessee appeared before Ld.AO and discussed their case.

3. During assessment proceedings Ld.AO observed that assessee claimed deduction under section 24 (b) of the Act for a sum of Rs.1,50,000/-, against Income from House Property. As assessee had not filed any evidence in support of deduction claimed, Ld.AO disallowed the same.

3.1. Ld.AO also observed that assessee had cash deposits of Rs.19,23,000/- in the account maintained with State Bank of Patiala. Ld.AO accordingly show caused assessee, to explain source of these deposits. Assessee submitted that he was in the business of buying properties, both agricultural and residential and developing the same for rental purposes and/or selling there of as per market conditions. As cash is required by assessee to

conduct his business, any unused amount is deposited back into the account. Not satisfied with the explanation tendered by assessee Ld.AO called for various other details like nature of receipts, source from which money has been received, their confirmation, copies of bank statement etc. Assessee submitted before Ld.AO that source of deposits are out of withdrawals from bank which includes sum of Rs.24,50,000/- withdrawal in May/September,2009 almost a year ago. Unsatisfied with reply filed by assessee, Ld.AO made addition of Rs.90,23,000/- as unexplained cash deposits in bank under section 68 of the Act.

3.2. Ld.AO also disallowed the deduction under section 80 C of the Act claimed by assessee.

3.3. Aggrieved by order of Ld.AO, assessee preferred appeal before Ld.CIT(A). After considering submissions advanced by assessee, Ld. CIT (A) confirmed addition made by Ld. AO

4. Aggrieved by the order of Ld.CIT(A), assessee is in appeal before us now.

5. At the outset, Ld.Counsel submitted that **Ground No. 2** is relating to disallowance of deduction under section 80 C is not pressed which is expressly mentioned in the written submission filed before us at the time of hearing.

5.1. Accordingly we dismiss **Ground No. 2** as not pressed.

6. **Ground No. 1** is relating to disallowance of Rs.1,50,000/- under section 24 (b) of the Act.

6.1. Ld.Counsel while arguing upon this issue placed reliance upon page 31-32 of paper book. He submitted that at page 32 statement of loan account by Punjab National Bank for relevant period has been placed. He submitted that assessee has

genuinely made the payment of interest to bank against housing loan, which is apparently clear from documents relied upon.

6.2. On the contrary Ld.Sr.DR placed reliance upon orders of authorities below.

7. We have perused the submissions advanced by both sides in light of records placed before us.

8. Housing loan availed by assessee from Punjab National Bank has not been disputed by authorities below. Assessee submitted statement of loan account by Punjab National Bank, before Ld. CIT (A) which has not been found fault with. Merely because loan statement could not be filed before Ld. AO assessee cannot be denied benefit, which is available under law while computing Income from House Property. The Ld.CIT (A) in our considered opinion erred by not considering loan statement, which supports claim of assessee. Under such circumstances assessee cannot be denied benefit of such interest paid against housing loan.

8.1. We are accordingly inclined to reverse the order of Ld. CIT (A) and delete the addition made by Ld.AO.

Accordingly this ground raised by assessee stands allowed.

9. Ground No. 3 is relating to the addition made on account of unexplained cash credits amounting to Rs.90, 23,000/-.

9.1. Ld.Counsel submitted that assessee is engaged in buying of properties which includes agricultural as well as residential, which is then developed for rental purposes and/or selling thereof as per market conditions. He submitted that assessee do not have any current account and all activities are carried out from the Savings account maintained with State Bank of Patiala.

Ld.Counsel submitted that nature of business of assessee was such that, it requires cash on hand, and in the event of non-materialisation of any deal, cash is deposited back into same account. He submitted that submissions advanced by assessee has not been considered by authorities below. He vehemently opposed the manner in which Ld.AO has changed the source of cash deposits to be loan taken from various relatives and friends. Ld.Counsel submitted that the loans taken from friends and relatives are through proper banking channels and confirmation from lenders along with their ITR and bank statement were duly submitted before Ld. AO.

9.2. Ld.Counsel submitted that the withdrawals from bank account are made only when necessary and the same was deposited later in bank account in case of any cancellation of any agreement. He submitted that there is no material before authorities below to show that amount deposited in question were admittedly withdrawn from bank and were utilised for any other purpose. He placed reliance upon decision of Delhi Tribunal in case of :

ACIT vs. Baldev Raj Charla & Ors. Reported in (2009) 121 TTJ 366 and

Moongipa Investment Ltd vs. ITO reported in (2012) 32 CCH 201.

9.2. On the contrary Ld.Sr.DR submitted that addition made by Ld. AO is justified. He submitted that in the return of income placed at page 1-2 of paper book assessee does not have any business income declared for year under consideration. He pointed out referring to the computation at page 2 that the only income and income from other sources. Ld.Sr. DR submitted that

the money has been withdrawn on 6 occasions from the State Bank of Patiala account which is on 26/05/09, 01/09/09, 07/09/09 which falls in A.Y. 2010-11. Thereafter on 19/4 2010, 28/05/10 and 06/07/10 cash has been withdrawn again which relates to the year under consideration before us.

9.3. Ld.Sr.DR pointed out that assessee has not been able to establish by way of any documents/any agreement that has been entered into by assessee with any of the party relating to purchase/renting of any properties or development carried out by assessee which could have proved the utilisation of these money upon withdrawal. Ld.Sr.DR submitted that thereafter on 07/07/10, 17/07/10, 20/09/10 and 22/10/10 money has been deposited into the account.

9.4. Ld.Sr.DR submitted that entire onus is upon the assessee to establish the utilisation of these funds upon withdrawal which stands unfulfilled even as on date.

Placing reliance upon the decision of *Hon'ble Allahabad High Court* in the case of *Sneh Lata vs CIT* reported in *61 ITR 139* and decision of *Hon'ble Calcutta High Court* in the case of *Steel Containers Ltd vs. CIT* reported in *112 ITR 995* Ld.Sr.DR submitted that the addition deserves to be confirmed as assessee has not discharged its onus of explaining the cash deposits as per law.

10. We have perused submissions advanced by both sides in the light of records placed before us.

10.1. The facts of the case are rather glaring and one-sided. The appellant accepts and admits that cash deposit of Rs.90,50,000/- were made in bank accounts belonging to him

and his two minor sons during the period relevant to the AY 2010-11. These cash deposits were made on different dates. There were withdrawals and assessee has not substantiated by way of any documents/evidences regarding utilisation of the same. It was the stand of assessee before Ld. AO that assessee had taken loan from persons, vide his letter dated 10/02/14. Ld.AO also observed that 2 of the persons from whom money has been received were assessee's own brothers and one amongst the other is his son.

10.2. On perusal of the assessment order it is observed that ld.AO called for various details like nature of receipt in assessee's account, as the source of such receipt from his brothers along with other parties, their confirmations, copies of bank statement etc. However, assessee has not substantiated with any of these documents either before Ld. AO or before Ld. CIT(A). Even before us assessee has not been able to file any documents which could establish the withdrawal of these amounts and then redeposit of the same upon non-utilisation as has been alleged by Ld.Counsel. It is observed from the paper book that assessee vide letter dated 10/02/2014, simply stated regarding his brothers and his son of having independent source of income, which has been advanced as loan to assessee.

10.3. We are therefore inclined to set aside the issue back to Ld.AO. Assessee is directed to file documents/Agreements/Cancellation deed etc. as the case may be to prove the need of withdrawal of huge cash and subsequent deposits due to non-utilisation.

Assessee is also directed to file cash flow statement for the year under consideration in support of his claim. Ld.AO shall then verify all the details so filed by assessee and then consider the claim as per law.

10.4. Accordingly this ground raised by assessee stands allowed for statistical purposes.

10.5. In the result this appeal is partly allowed.

11. ITA No. 2231/Del/18

This appeal has been filed by assessee against the penalty proceedings initiated by the Ld. AO. Ld.Counsel submitted that Ld.A.O. initiated penalty under section 271 (1) (c) of the Act while passing the assessment order dated 28/02/14 for filing of inaccurate particulars of income. Ld. AO subsequently issued notices under section 274 of the Act after receipt of the appellate order.

11.1. However while passing penalty order under section 271 (1) (c) of the Act, Ld. AO levied penalty at 100% of tax sought to be evaded, for concealment of income. Ld.Counsel drew our attention to penalty notice placed at page 3 of paper book. He submitted that notice dated 23/02/14 has been issued without indicating under which limb, penalty has been sought to be levied by Ld. AO.

11.2. Ld.Counsel placed reliance upon decisions *Hon'ble Karnataka High Court* in the case of *CIT versus M/s SSA's Emerald Meadows* reported in (2016) 73 *Taxmann.com* 241 and decision of *Hon'ble Karnataka High Court* in the case of *CIT vs Manjunatha Cotton and Ginning Factory* reported in (2013) 35 *taxman.com* 250 in support of his argument of non-application of

mind by Ld. AO in as much as, the irrelevant portion of notice has not been struck off. He submitted that penalty has been initiated on filing of inaccurate particulars, whereas in order passed, penalty has been levied for concealment. It was submitted by Ld. Counsel that levy of penalty is thus illegal and deserves to be set-aside.

11.3. Ld.Counsel submitted that decisions relied upon herein above have also been approved by *Hon'ble Supreme Court* subsequently.

11.4. On the contrary Ld.Sr.DR placed reliance upon decision of *Hon'ble Delhi High Court* in the case of *CIT vs. Zoom Communications Pvt. Ltd.* reported in (2010) 191 taxman 179.

12. We have perused submissions advanced by both sides in light of records placed before us.

12.1. It is an admitted position that, show cause notice under section 274 of the Act was issued to assessee without indicating under which limb penalty has been sought to be levied. Further Ld.A.O. while passing assessment order under section 143(3), initiated penalty under section 271 (1) (c) of the Act for filing of inaccurate particulars, however, while passing order Ld.AO levied penalty for concealment. On perusal of penalty order passed, it is observed that Ld.AO followed decision of *Hon'ble Delhi High Court* in case of *CIT vs. Zoom Communications Pvt. Ltd.* (*supra*), wherein, *Hon'ble High Court* considered the issue of levy of penalty for filing of inaccurate particulars.

12.2. In our considered opinion Ld.AO himself is not clear on which limb the penalty is to be levied. He cannot change his mind for imposition of penalty for the reasons other than which

he has issued notice under section 274 of the Act. The charge against assessee in the assessment order was for filing of inaccurate particulars and not against concealment. Once Ld.AO proceeded on the footing that assessee filed inaccurate particulars of income, it is distinguishable from concealment of income. Since assessee has not been given reasonable opportunity of being heard for concealment of income hence penalty cannot be levied. We draw our support from the decisions of Hon'ble Karnataka High Court cited supra. We therefore set aside and quash the penalty levied.

Accordingly the grounds raised by assessee stands allowed.

13. In the result appeal filed by assessee against the penalty proceedings stands allowed.

Order pronounced in the Open Court on 31.10.2018.

Sd/

**(MAHARISHI PRASHANT)
ACCOUNTANT MEMBER**

Sd/-

**(BEENA A PILLAI)
JUDICIAL MEMBER**

Dt. 31st October, 2018

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Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	Date
Draft dictated on	30.10.18
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Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on & Order uploaded on :	
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Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	