

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCHES (CAMP AT MEERUT))**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6608/Del./2018
(ASSESSMENT YEAR : 2009-10)**

Mohd. Gulzar, vs. ITO, Ward 3 (4),
C/o Shri Vinod Kumar Goel, Meerut.
282, Boudry Road, Civil Lines,
Meerut.

(PAN : AOUPG9186K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vinod Kumar Goel, Advocate
REVENUE BY : Shri Munshi Ram Bihagra, Senior DR

Date of Hearing : 11.01.2019

Date of Order : 24.01.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Mohd. Gulzar (hereinafter referred to as ‘the Assessee’) by filing the present appeal, sought to set aside the impugned order dated 25.02.2018 passed by Ld. CIT (Appeals), Ghaziabad qua the assessment year 2009-10 on the grounds inter alia that :-

“1. That the A.O. is in error in holding that the assessment made U/s 144/148 is bad in law as the assessee has made compliance and filed the evidence along the submission dated 28-

09-2012. CIT(A) has confirmed the order of I.T.O. without any basis.

2. That the assessee already filed Income tax Return filed in Ward 36(4), New Delhi therefore, the assessment made by the A.O. is out of jurisdiction. CIT(A) has confirmed the order of I.T.O. without any basis.

3. That the A.O. has received AIR information relating to cash deposit ignoring cash withdrawal in the assessment order the A.O. himself stated that Rs.13,91,000/- was deposited in bank account is shown reflected in his Income Tax Return which is more than the bank deposit hence explaining asset without considering the Income Tax Return while the assessee had already provided the same, the assessment was made is bad in law. CIT(A) has confirmed the order of I.T.O. without any basis.

4. That the penalty proceeding U/s 271 (1)(c) initiated by the A.O. in routine and mechanical manner, which is not permitted in law.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing Officer framed the assessment under section 144/147 of the Income-tax Act, 1961 (for short ‘the Act’) due to non-appearance of the assessee despite notice by making addition of Rs.13,91,000/- on account of unexplained cash deposited in the saving bank account during the year under assessment.

3. Assessee carried the matter by way of an appeal before the Id. CIT (Appeals) who has confirmed the addition by rejecting the application for additional evidence moved under Rule 46A of the Income-tax Rules, 1962 (for short ‘the Rules’) and thereby

dismissed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, the assessment in this case has been framed by the AO u/s 144/147 of the Act on the ground that the assessee has not cooperated before the AO by joining the proceedings. However, when we examine the impugned order passed by the Id. CIT (A) in para 6.1 assessee has categorically sought to lead additional evidence by moving an application under Rule 46A of the Rules to prove on record copy of ITR filed, computation of income, copy of bank account and cash flow statement, but Id. CIT (A) has summarily rejected the same on the ground that all these documents were available with the assessee during the assessment proceedings but he has not produced the same.

6. In the totality of the facts and circumstances of the case, when undisputedly the assessee remained unrepresented during the assessment proceedings and the assessment was framed u/s 144/147 of the Act, the question of producing the documents sought to be proved by way of additional evidence before him,

does not arise. We are of the considered view that to meet with the ends of justice, all the documents sought to be proved by the assessee during appellate proceedings by way of additional evidence are necessary to reach at the logical conclusion and in these circumstances, the assessee is entitled to be given adequate opportunity of being heard. Consequently, we order to set aside the impugned order passed by the Id. CIT (A) and remand the file back to the AO to decide afresh after providing an opportunity of being heard to the assessee. So, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in open court on this 24th day of January, 2019.

**Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 24th day of January, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Ghaziabad.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**