

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. N. S. Saini, Accountant Member

ITA No. 6489/Del/2018 : Asstt. Year : 2010-11

Sh. Gulashanobar, Sanjay Parashar, Adv., 47-A, Devika Chamber, Raj Nagar, District Centre, Ghaziabad	Vs	Income Tax Officer, Ward-1(2), Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. AMVPG8719P		

**Assessee by : Sh. Anoop Sharma, Adv. &
Sh. Sanjay Parashar, Adv.
Revenue by : Sh. S. L. Anuragi, Sr. DR**

Date of Hearing: 05.02.2019	Date of Pronouncement:08.02.2019
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ORDER

This is an appeal filed by the assessee against the order of CIT(A), Ghaziabad dated 31.08.2018.

2. The assessee has raised following grounds of appeal:

"1. That the Ld. CIT(A), erred in law, on facts and in surrounding circumstances in sustaining the impugned addition of Rs. 2206440 under inapplicable section 69 of I.T. Act in a mechanical, arbitrary and ex-parte manner, ignoring that the following fundamental errors of law, render the initiation and completion of proceedings u/s 147 of I.T. Act unsustainable in law ab-initio.

2. That the Ld. CIT(A) and Ld. A.O. both erred in law, on facts and in surrounding circumstances in failing to appreciate that the mere fact that cash deposits having been made in bank account does not itself indicate/reflect that these deposits constitute an income which has escaped assessment.

3. That in doing so, Ld. A.O. proceeded on a fallacious assumption that the cash deposits in the bank account

constituted an income/investment which has escaped assessment without bringing any material on record to substantiate that the so called income/investment had escaped assessment.

4. The since there was no relevant tangible material worth the name on record at the time of formation of belief except vague AIR information, the impugned belief so entertained by Ld. A.O. being pre-supposed and speculative in nature, not only loses its legal sanctity but also eclipsed the jurisdiction of Ld. A.O. to proceed u/s 147/148 of I.T. Act.

5. That without prejudice to above, fundamental errors of law, issuance of inquiry letter without prior approval of competent authority u/s 133(6) of I.T. Act also render the entire proceedings from A to Z null and void in law, ab-initio.

6. That the appellant craves leave to modify/amend or add any one or more grounds."

3. The AR of the assessee submitted that the Assessing Officer passed order u/s 147 r.w.s. 144 of the Income Tax Act, 1961 as the assessee did not appear before him and filed the details of cash deposit in the bank account of Rs.22,06,440/-. Therefore, he treated the entire deposit as unexplained and added the same to the income of the assessee.

4. The assessee before the CIT(A) sought adjournment on 09.08.2018, 16.08.2018 which was granted by him. The assessee sought adjournment on the date of hearing on 29.08.2018 which was rejected by the CIT(A) on the ground that four adjournments were already granted to the assessee. Thereafter, he dismissed the appeal of the assessee and upheld the order of the CIT(A). He prayed that the matter should be restored back to the file of the AO and the assessee be granted

opportunity to present its case before the AO with the necessary documents. The AR of the assessee also submitted that non appearance before the AO as well as the CIT(A) was, by the Authorized Representative of the assessee and the assessee depended on him for presenting its case before the AO and CIT(A). He argued that for mistake of the Counsel of the assessee, the assessee should not be penalized.

5. On the other hand, the Id. Departmental Representative vehemently opposed the submission of the AR of the assessee and submitted that as sufficient opportunity was allowed to the assessee both by the AO and the CIT(A) and as the assessee failed to appear and file necessary documents required for completing the assessment, the order of the CIT(A) should be confirmed and appeal of the assessee should be dismissed.

6. After considering the rival submissions and perusing the materials available on record, I am of the considered opinion that the assessee had engaged counsel for appearing before the Assessing Officer and the CIT(A) who failed to put in appearance and file the necessary details on behalf of the assessee. Hence, the addition came to be made in the hands of the assessee for deposit of cash in the bank account of Rs.22,06,440/-. I am of the view that for the default of the Counsel of the assessee, the assessee should not be penalized. Therefore, in order to render substantial justice to the assessee, I set aside the orders of the lower authorities and remand the matter back to the file of the Assessing Officer to re-adjudicate the issues involved in this appeal afresh after allowing reasonable and proper opportunity of hearing to the assessee. The assessee is directed to appear before the AO and file all necessary documents and evidences on which it wishes to rely upon and when called upon to do so by the Assessing Officer. Thus, the appeal of the assessee is allowed for statistical purposes.

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

(Order Pronounced in the Open Court on 08/02/2019).

Sd/-
(N. S. Saini)
Accountant Member

Dated: 08/02/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR