

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 6292/DEL/2018
[Assessment Year: 2009-10]

Shri Prakash Singh
Village Behta, Hazipur
Ghaziabad

Vs.

The I.T.O,
Ward - 2 (1)
Ghaziabad

PAN: CQUPS 5354 K

[Appellant]

[Respondent]

Date of Hearing : 22.04.2019
Date of Pronouncement : 24.04.2019

Assessee by : Shri Mayank Patwari, CA.
Revenue by : Shri S.L. Anuragi, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 1, Noida dated 29.06.2018 pertaining to A.Y 2009-10.

2. The solitary grievance of the assessee of the assessee is that the CIT(A) erred in confirming the addition of Rs. 19 lakhs made by the Assessing Officer u/s 69 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'].

3. Briefly stated, the facts of the case are that as per AIR information, the Assessing Officer came to know that the assessee has deposited cash in his Savings Bank account amounting to Rs. 35 lakhs. Accordingly, assessment was reopened and statutory notices were issued and served upon the assessee. In response, no return was filed by the assessee nor any compliance was made and the Assessing Officer was left with no choice but to frame the assessment exparte u/s 1344 of the Act. However, while examining the bank statement, the Assessing Officer noticed that only Rs. 19 lakhs have been deposited in cash and accordingly, made addition of Rs. 19 lakhs.

4. The assessee carried the matter before the CIT(A) but without any success.

5. The CIT(A) dismissed the appeal since the assessee has not paid tax and invoking the provisions of section 249(4) of the Act, the CIT(A) was of the opinion that the appeal can be admitted either on payment of an amount equal to the advance tax payable by the assessee with reference to assessed income or being exempt from such a liability by his office, the CIT(A) dismissed the appeal.

6. Before me, the ld. AR stated that the assessee is a pure agriculturist and, therefore, is not liable to file Income tax returns. To support his contention, the ld. AR submitted documents relating to agricultural holding by the assessee, crop grown by the assessee on his agricultural land and also Statistical Abstract issued by the Department of Economic and Statistical Analysis, Haryana. The ld. AR strongly contended that since there was no liability to file Income tax return, there was no question of payment of any advance tax and the CIT(A) should not have dismissed the appeal.

7. Per contra, the ld. DR stated that on the basis of evidences furnished by the assessee, let the first appellate authority decide the issue afresh.

8. I have carefully considered rival submissions and the documentary evidences brought on record. I find force in the contention of the ld. AR. Since the assessee is a pure agriculturist, there was no need for him to file return of income. However, the impugned issue can be decided after verification of al the relevant documentary evidences. I, therefore, restore this issue to the file of the CIT(A). The CIT(A) is directed to consider the documentary evidences and decide the issue afresh after allowing sufficient opportunity of being heard to the assessee.

9. In the result, the appeal filed by the assessee in ITA No. 6292/DEL/2018 is allowed for statistical purposes.

The order is pronounced in the open court on 24.04.2019.

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 24th April, 2019.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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Date on which the file goes to the Head Clerk	
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Date of dispatch of the Order	

