

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'SMC': NEW DELHI)**

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER

**ITA No.:- 6025/Del/2018
(Assessment Year: 2010-11)**

Jugal Kishore Malhan F- 48J, Khasra No. 75, Radhey Mohan Drive, Fatehpur Beri, New Delhi, Pin: 110074	Vs.	ACIT Central Circle- 15 New Delhi
PAN No: AGBPM0268M		
APPELLANT		RESPONDENT

Assessee by : Sh. A. Moitra, CA
Revenue by : Sh. V.R. Sonbhadra, Sr. DR
Date of Hearing : 10.06.2019
Date of Pronouncement : 12.06.2019

ORDER

PER BENCH:

The present appeal has been filed by the assessee assailing the correctness of the Order dated 31.08.2018 of CIT(A)-XXVI, New Delhi, pertaining to 2010-11 Assessment Year on the following grounds:

GROUND OF APPEAL
ADDITION OF RS. 13,58,000/-

- "1. That the case of the assessee has been reopened without having regard to the provisions of law applicable in the matter and without regard to the intent behind such provisions and is therefore unlawful.*
- 2. That the case of the assessee has been reopened on insufficient reason to believe escapement of income and is therefore unlawful.*
- 3. That the reasons for re-opening of the assessee's case have been drafted without due application of mind and are therefore bad in law.*
- 4. The addition has been made and upheld without duly and equitably considering the provisions of the Act and of their applicability to the assessee.*
- 5. The addition has been made without equitably considering the facts and circumstances of the case and the evidence provided by the assessee and by making baseless assumptions & without adducing any reasons for disregarding the explanations and documents submitted by the assessee.*
- 6. That the addition has been made without due application of mind and is therefore bad in law.*
- 7. The LAO as well as the Learned CIT(A) has erred in making the stated addition, as in doing so, they have gone against the principle of natural justice."*

2. The Ld. AR assailing the finding given by the CIT(A) at page 8 submitted that the CIT(A) has proceeded on incorrect facts without addressing the detailed arguments extracted by him at pages 1-7 in his Order. Referring to the finding arrived at, it was his submission that the reopening has been done on the basis of deposits in the bank account and the CIT(A) has instead considered these withdrawals from the bank account. Even otherwise it was his submission that the assessee by way of his submissions has assailed the reopening on various grounds including lack of application of mind in framing the reasons for reopening the case and insufficiency of reasons for reopening etc. However, the CIT(A) in his cryptic finding has failed to address these.

3. The Ld. Sr. DR, Mr. Sonbhadra agreed that arguments have been advanced by way of written submissions extracted in the Order. It was his submission that no specific ground was raised by the assessee before the CIT(A). He relied on the Order.

4. I have heard the submissions and perused the material available on record. It is seen that the assessee had returned an income of Rs.7,99,000 odd by way of filing a return of income on 30.09.2015. The case was reopened U/s 148 and addition under challenge was made in view of the following reasons:

“2 Addition on the account of Unexplained cash deposit:- During the year under consideration, the assessee has deposited cash amounting to Rs. 13.58 lakhs in his Saving bank a/c. During the assessment proceedings, the assessee was asked to explain the source and justification for the same vide questionnaire dated 13.06.17 and note sheet entry dated 14.08.17. The assessee vide response dated 14.08.17 submitted that this cash is out of cash in hand generated in preceding years. No other supporting or justifications have been filed.

2.1 The submission of the assessee have been considered but not found legally tenable because the assessee has failed to substantiate his claim through any documentary evidence. Merely stating that cash deposited is out of opening balance and from preceding years, cannot be taken as valid source. Therefore, this unexplained cash deposit of Rs.13.58 lakhs is added back income of the assessee.

(Disallowance of Rs.13,58,000/-)”

4.1. It is seen that the CIT(A) considering the detailed submission advanced on reopening on merits has concluded the issue in the following manner:

“5. Findings

I have considered the facts of the case, the basis of addition made by the AO and the arguments of the appellant as detailed above. The issues per this appeal pertain to cash deposit in the bank account.

The Ld. AR has filed detailed submissions. The AO made addition in this case by concluding as per para 2 of the assessment order that the appellant could not explain the source of the deposits. The Ld. AR filed a cash book document on behalf of the appellant. It is seen that the appellant has made certain withdrawal from the bank account and there is a steady increase in cash in hand with the appellant. The appellant doesn't seem to have factored in his personal and household expenses, which are likely to be substantial given the status of the appellant. It was submitted that the appellant maintains high cash volume. But no explanation was furnished for this nor was any withdrawal from bank account or the cash in hand shown to have been used for the personal expenses of the appellant. In view of this rationale, the alibi that the appellant maintains high cash is without any convincing or logical basis. The purported cash book filed was thus not reliable in view of the very visible gaps as above. The appeal is thus not tenable. The action of the AO is upheld on the facts as discussed above.

In the result, the appeal is dismissed”

4.2. On perusal of the same, it is evident that the Order passed cannot be upheld as it is not addressing the specific grievances of the assessee extracted in the Order itself. Accordingly it cannot be said to be an Order in terms of the statutory mandate as set out in Sub Section (6) of Section 250 of the Income Tax Act, 1961. In view thereof it is deemed appropriate to set aside the impugned Order back to the file of CIT(A) with the direction to pass a Speaking Order in accordance with law. The assessee in his own interest is directed to raise the points at issue by way of specific grounds and participate in the proceedings fully and fairly. The CIT(A) it goes without saying shall first address the jurisdiction challenge posed by the assessee as is evident from the written submissions extracted in the Order itself and thereafter proceed to decide the issue on merits. Said Order was pronounced in the Open court at the time of hearing itself.

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

Order pronounced in the open court on 12.06.2019.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Dated: 12.06.2019

Bidhan

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	10.06.19
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	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	