

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.5182/Del/2018  
Assessment Year: 2010-11

Masroor Bag Mirza,  
R/o Tyre Wali Gali,  
Near Taj Masjid,  
Anupshahr Road,  
Bulandshahr.

Vs. ITO,  
Ward-1(4),  
Meerut.

PAN: ALEPM3852F

(Appellant)

(Respondent)

Assessee by	:	Shri Vaibhav Gupta, CA
Revenue by	:	Shri S.L. Anuragi, Sr.DR
Date of Hearing	:	13.08.2019
Date of Pronouncement	:	21.08.2019

ORDER

This appeal by the assessee is directed against the order dated 10<sup>th</sup> May, 2018 of the CIT(A), Meerut, relating to Assessment Year 2010-11.

2. The assessee, in the various grounds of appeal has challenged the order of the CIT(A) sustaining the addition of Rs.2 lakhs out of Rs.3 lakhs added by the Assessing Officer on account of unexplained cash deposit in the bank account.

3. Facts of the case, in brief, are that the assessee is an individual. On the basis of the information received that the assessee has made transaction of Rs.10 lakhs or more in the commodities exchange during F.Y. 2009-10, an enquiry letter was issued to the assessee. Since there was no compliance from the side of the assessee, the Assessing Officer reopened the assessment by issue of notice u/s 148 on 29<sup>th</sup> March, 2017. In response to the notice u/s 148, the assessee filed the return of income declaring total income at Rs.1,49,600/-. During the course of assessment proceedings, the Assessing Officer noted that the assessee has made cash deposit of Rs.3 lakhs. The Assessing Officer asked the assessee to explain the source of such cash deposit. Since there was no response from the side of the assessee explaining the source of such cash deposit, the Assessing Officer made an addition of Rs.3 lakhs to the total income of the assessee. In appeal, the Id.CIT(A) restricted the addition to Rs.2 lakhs.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The Id. counsel for the assessee, at the time of hearing, submitted that the Assessing Officer has reopened the assessment on the ground that the assessee has entered into the transaction of Rs.10 lakhs or more in the commodity exchange. However, no such addition has been made on account of which the case of the assessee was reopened and the Assessing Officer has made addition on some other issue. Relying on various decisions, he submitted that when no addition has been made by the Assessing Officer on an issue on which the case of the assessee was

reopened, the Assessing Officer cannot make any other addition in the order passed u/s 147/143(3). He accordingly submitted that on this legal ground itself the addition sustained by the CIT(A) has to be deleted.

6. The ld. DR, on the other hand, heavily relied on the order of the CIT(A) and submitted that the CIT(A) has already granted substantial relief to the assessee and, therefore, the assessee should not have any grievance.

7. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. It is an admitted fact that the case of the assessee was reopened by recording the following reasons:-

“The PAN based AIR information was received and NMS notice for verification was issued. The information was ‘Contract for Rs.10,00,000/- or more in the commodities exchange in F.Y. 2009-10 i.e., A.Y. 2010-11. The assessee does not replied and also not filed ITR of this assessment it seems that Shri Masroor Baig Mirza is avoiding from providing the details because the assessee is concealing the income from the department to till date. Hence, I have reasons to believe that these transactions income chargeable to tax more than rupees one lakhs has been escaped assessment for assessment year 2010-11. It approved the notice u/s 148 may be issued for A.Y. 2010-11.’”

8. However, a perusal of the assessment order shows that no addition has been made by the Assessing Officer on account of transaction in commodity exchange and he has made addition of Rs.3 lakhs being the unexplained source of cash deposit in the bank account. It is the settled proposition of law that when a case is reopened on an issue, but, no addition has been made by the Assessing Officer on that very issue, the Assessing Officer is precluded from making any other addition without issuing fresh notice u/s 148. Since, in the instant case, no addition has been made by the Assessing

Officer on account of which the case of the assessee was reopened, therefore, the Assessing Officer cannot make addition on some other issue. Therefore, the very basis of addition made by the Assessing Officer is not legally sustainable. I, therefore, delete the entire addition. The appeal filed by the assessee is accordingly allowed.

9. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 21.08.2019.

Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMFBER

Dated:21<sup>st</sup> August, 2019

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

Asstt. Registrar, ITAT, New Delhi