

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

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER**

I.T.A. No. 7051/Del/2018  
Assessment Year: 2010-11

HARENDRA MALIK,  
57/1, PREM PURI,  
MUZAFFARNAGAR  
UTTAR PRADESH  
(PAN: AKAPM1401D)  
**(ASSESSEE)**

vs. ITO, WARD 1(2),  
MUZAFFARNAGAR

**(RESPONDENT)**

**Assessee by:** Sh. Ankit Gupta, Adv.  
**Revenue by:** Ms. Ekta Vishnoi, Sr. DR.

**ORDER**

This appeal is filed by assessee against the Order dated 20.08.2018 passed by the Ld. CIT(A), Muzaffarnagar relating to Assessment Year 2010-11 on the following grounds:-

*"1. That the notice issued u/s 148 and reassessment order passed u/s 147 r.w.s. 144 are illegal, bad in law and without jurisdiction.*

*2. That, in view of the facts and circumstances, no satisfaction is recorded by the assessing officer as required u/s 147(1) of the Act prior issuing the notice under section 147 of the Income Tax Act, 1961.*

*3. That, no application of mind by the assessing officer while recording the alleged satisfaction, merely reproducing the AIR information on account of CASH deposit in the Bank Account and failed to establish the live nexus between tangible material and income escaped assessment, which is vague, incorrect and baseless, hence, the proceedings*

*initiated is illegal, bad in law and without jurisdiction. The CIT(A) has erred in upholding the validity of the proceedings initiated U/s 147 read with section 148.*

*4. The addition/ disallowances made by the assessing officer are illegal, unjust, highly excessive and are not based on any material on record by the assessing officer. The total income of the appellant has been wrongly and illegally computed by the assessing officer at Rs.21,33,950.00 as against declared income of Rs.4,06,896.00. The CIT (A) has erred in confirming the addition to Rs. 15,02,500.00 which is highly arbitrary and unjustified.*

*5. That, the CIT(A) has failed to appreciate, that, the source of CASH deposit has been explained, that, the amount has been withdrawal time to time from same bank accounts, and Agriculture Income, which is under dispute, hence, the addition made by the assessing officer is purely based on presumption and surmises and conjecture without appreciating the facts of the case.*

*6. That the Assessing Officer/CIT(A), in view of the facts and circumstances of the case erred on facts and in law in making the ad-hoc addition/ disallowance on estimated basis, which is unjust, arbitrary, unlawful, highly excessive, based on surmises and conjectures and cannot be justified by any material on record.*

*7. The additions confirmed and the observations made by CIT (A) are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record.*

*8. That the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/ allowances made.*

*9. That the impugned Assessment Order passed by the Assessing Officer and order passed by CIT(A) are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.*

*10. That the interest U/s 234A & 234B has been wrongly and illegally charged as the appellant could not have foreseen the disallowances/additions made and could not have included the same in current income for payment of Advance tax. The interest charged under various sections is also wrongly worked out.*

*11. The appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.*

*All of the above grounds of appeal are without prejudice and are mutually exclusive to each other."*

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

3. During the hearing, Ld. counsel for the assessee has stated that lower authorities have erred in law and on facts in passing the orders without providing adequate opportunity of being heard and without observing the principle of natural justice. He further submitted that the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/allowances made. He filed the Paper Book containing pages 1-42 in which he has attached the copy of reason

recorded dated 6.3.2017; copy of notice u/s. 133(6) of I.t. Act, 1961 dated 22.11.2017 issued by the AO to bank; written explanation before CIT(A), Muzaffarnagar dated 14.08.18; copy of assessment proceedings before ITO, Ward 1(2), Muzaffarnagar dated 12.12.2017; copy of Tehsildar certificate in reference to the agriculture activity; copy of bank statement for the period 1.4.2009 to 31.3.2010 with State Bank of India; Copy of Family Chart alongwith Family registration and copy of Khasra (proof of land holding) which has not been properly appreciated by the revenue authorities. Therefore, he requested that the issue in dispute may be set aside to the file of the AO for fresh consideration, after giving adequate opportunity of being heard to the assessee and AO may be directed to consider the documents/evidences to be filed by the Assessee.

4. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records, especially the orders of the revenue authorities. I find that it was the contention of the Id. Counsel for the assessee that adequate opportunity of being heard was not afforded to the assessee and the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted by the lower authorities. I further find that assessee's counsel has filed the Paper Book containing pages 1-42 in which he has attached the DR copy of reason recorded dated 6.3.2017; copy of notice u/s. 133(6) of I.T. Act, 1961 dated 22.11.2017 issued by the AO to bank; written explanation before CIT(A), Muzaffarnagar dated 14.08.18; copy of assessment proceedings before ITO, Ward 1(2), Muzaffarnagar dated 12.12.2017; copy of Tehsildar certificate in reference to the agriculture activity; copy of bank statement for the period 1.4.2009 to 31.3.2010 with State Bank of India; Copy of Family Chart alongwith Family registration and copy of Khasra (proof of land holding) which has not been properly appreciated by the revenue authorities, however, the same are very essential to be properly considered. Keeping in view of the facts and circumstances as explained

above and in the interest of justice, I set aside the issues in dispute to the file of the Assessing Officer with the directions to decide the same afresh, after giving adequate opportunity of being heard to the assessee and consider all the evidences / documents to be filed by the Assessee. Assessee is at liberty to file any evidences for substantiating his case before the AO and did not take any unnecessary adjournment in the proceedings.

6. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced on 11/10/2019.

**Sd/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

Date 11/10/2019

**"SRB"**

**Copy forwarded to: -**

1. Appellant -
  2. Respondent -
  3. CIT
  4. CIT (A)
  5. DR, ITAT
- TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches