

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH 'SMC' "I (2)", NEW DELHI]**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 2758/Del/2019
Assessment Year : 2010-11

Shri Yogendra, 250–Village Kanouja, Murad Nagar, Ghaziabad. Uttar Pradesh - 131 232. PAN : AUPY5440R	Vs.	The Income Tax Officer, Ward – 2 (1); Ghaziabad.
(APPELLANT)		(RESPONDENT)

Revenue by	Shri Jagdish Singh, Sr. D. R.;
Assessee by	NONE;

Date of hearing:	26/02/2020
Date of Pronouncement:	26/02/2020

ORDER

PER PRASHANT MAHARISHI, AM:

This appeal is filed by the assessee against the order of the learned CIT (Appeals) Ghaziabad, dated 31.01.2019 wherein the appeal of the assessee is dismissed. The assessee has raised following effective four grounds of appeal as under:

Grounds of appeal	Tax effect relating to each ground of appeal.
1. That no proper and reasonable opportunities being heard was allowed. Hence, assessment passed by AO is against the principal of natural justice.	31,03,300
2. That due to the wrong advise the assessee has filed FIR against the M/s Ketki Enterprises however the said firm was comes into existence on 07.07.2011 much after the AY 2010-11. Hence FIR was withdrawn on 06.03.2018. Hence FIR cannot be used against assessee as evidence;	31,03,300
3. That the credit entries relates to sales and withdrawal represents purchase of goods, which is not considered by Assessing Officer u/s. 144 / 147 is bad in law;	31,03,300
4. That the bank A/c of assessee was never exceeds Rs.1,00,000/- and in the absence of any credit or debit entries peak credit can be treated as income of the assessee otherwise it can be assessed u/s 44AD of I.T. Act because the assessee was not liable to maintained books of A/c.	31,03,300

2. Brief facts of the case shows that assessee is an individual. During financial year 2010-11 as per AIR information it was found that assessee has deposited cash in his Savings bank account of Rs.31,03,300/-. Verification letter remained un-complied with and, therefore, 148 notices were issued. Even 148, 142(1) and 144 notices remained un-complied with. Subsequently in response to notice assessee himself appeared and stated that he is working as Peon in M/s. Ketki Enterprises, B-21, Lohia Nagar, Ghaziabad, for the period 1996 to year 2015 and his Savings bank account with Punjab National Bank was opened by that concern and signed cheque-book as well as the pass book were kept in the custody of the partners of that firm. He further stated that all the bank transaction for which he is unaware and same has been carried out by those partners. He also referred to the complaint made before SSP, Ghaziabad on 27.09.2017 wherein such complaint was made. After that assessee did not appear before the Assessing Officer and no information was furnished. Therefore, the assessment order under section 147 r.w.s.144 of

the Income Tax Act, 1961 was passed on 06.12.2017 assessing the total income of the assessee at Rs.31,03,300/-.

3. Assessee preferred an appeal before the CIT (Appeals). The learned CIT (Appeals) dismissed the appeal of the assessee. Assessee contended that assessee had an opening balance of Rs.1,07,590/-, receipt from sale proceeds of Rs.32,25,272/-, bank interest of Rs.47/-. There are payments of purchases of Rs.29,67,315/- and drawing of Rs.2,76,800/-. This resulted into balance of Rs.88,794/- in his hands. It was stated that assessee is engaged in the business of retail goods and no ITR was filed by him. The learned CIT (Appeals) rejected the above contention as no evidences were produced before him. Though CIT (Appeals) admitted the additional evidences in the form of cash-flow statement and bank account of the assessee. Aggrieved with the order of the learned CIT (Appeals) the assessee preferred appeal before us.

4. Despite notice none appeared on behalf of the assessee and, therefore, we proceed to decide the issue on the merits of the case.

5. The learned Departmental Representative submitted that this is a clear-cut case of amount of a partnership firm was stated to be the owner of the same deposited in the Punjab National Bank account wherein the total operation of the bank account was from a partnership firm M/s. Ketki Enterprises. It was further submitted that it is a clear-cut case of benami account operated in the name of the assessee by the partnership firm. It was further submitted that though the amount is in the name of Peon of that firm, but the real owner are the three partners of M/s. Ketki Enterprises. As the assessee has failed to give any information of those deposits, the addition was made in the hands of assessee. He submitted that before the learned CIT

(Appeals). Counsel of the assessee submitted the false information that assessee is carrying on any retail business. No information was provided. Even of the account of retail business assessee is employed into was shown. In view of this the addition was confirmed.

6. We have carefully considered the rival contentions and found that in the present case though notices have been served to the assessee there is a non-compliance. Even the Advocate, who has filed the Power of Attorney also did not appear. The brief facts of the case shows that assessee is merely a Peon in M/s. Ketki Enterprises, a partnership firm, who opened the bank account in the name of the assessee and also obtained signed cheque book from him. The assessee also submitted the complaint of fraud before SSP, Ghaziabad on 27.09.2017. Thereafter the assessee did not appear and consequently it resulted into an addition of Rs.31,03,300/- the sum deposited in his bank account with PNB. The CIT (Appeals) has properly rejected the argument of the counsel of the assessee that he is carrying on retail business. It was merely a ploy to get out of the demand created in the hands of the assessee. As it is apparent that assessee is a Peon in M/s. Ketki Enterprises Ltd., he could not have earned such a sum of Rs.31,00,000/- to be deposited into his bank account with PNB. Apparently that bank account is operated by somebody who is having the source of the above sum as its income. Apparently in this case the version of the assessee speaks that three partners of M/s. Ketki Enterprises were operating this bank account. It is a trite law that only the real income of the assessee should be taxed. It is also true that income should be taxed in the hands of the person who has earned it. Prima facie it seems that assessee has not earned the above sum. When the assessee has stated that the money belongs to M/s. Ketki Enterprises, it is the duty of the Assessing Officer to have summoned the partners of that firm for further examination. The learned Assessing Officer has not done so. In view of this, we set aside the appeal back to the file of the learned Assessing

Officer with a direction to proceed to decide the true income the real income involved in the above transaction:

(i) The learned Assessing Officer should summon the assessee and also the partners of M/s. Ketki Enterprises to determine that who opened the bank account with PNB in the name of the above Peon;

(ii) The learned Assessing Officer should further enquire from the bankers about the fictitious transactions being carried out in the bank account of the assessee and while same were not reported in STR Report;

(iii) The learned Assessing Officer himself also obtained the bank account opening forms as well as the details from the bankers about who opened the above bank account and who operated this bank account. The bankers must also be enquired about who dealt with the bankers in day-to-day transactions when such a cash amount is deposited in the bank account of that person. The relevant bank deposit slips of cash as well as the instructions of the withdrawal of the money from the bank account will speak louder than in fact who is the owner of this money;

(iv) If it is found that money does not belong to the assessee, but to M/s. Ketki Enterprises, in terms of the provisions of Section 153(3) of the Act, the learned Assessing Officer may tax the same in the hands of the correct person;

(v) We also direct the learned Assessing Officer that to curb such a mall practice, he may also look into the Benami Transaction Act in the hands of the real owner.

7. With above direction the appeal filed by the assessee is allowed, for statistical purposes.

Order pronounced in the open court on : 26.02.2020.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

MEHTA

Date : 26.02.2020.

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	26.02.2020
Date on which the typed draft is placed before the dictating Member	26.02.2020
Date on which the typed draft is placed before the Other member	26.02.2020

Date on which the approved draft comes to the Sr.PS/PS	26.02.2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	26.02.2020
Date on which the fair order comes back to the Sr. PS/ PS	26.02.2020
Date on which the final order is uploaded on the website of ITAT	26.02.2020
Date on which the file goes to the Bench Clerk	26.02.2020
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order.	