

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC-1 : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.5902/Del/2019  
Assessment Year: 2010-11

Harish Kumar,  
C/o Raman Sharma, Advocate,  
117, FF, Navyug Market,  
Ghaziabad.  
Uttar Pradesh.

Vs ITO,  
Ward-1(3),  
Ghaziabad.

PAN: BCEPK4087J

(Appellant)

(Respondent)

Assessee by : Shri Rohit Tiwari, Advocate  
Revenue by : Shri Farath Khan, Sr. DR  
Date of Hearing : 18.02.2021  
Date of Pronouncement : .02.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 28<sup>th</sup> February, 2019 of the CIT(A), Ghaziabad, relating to assessment years 2010-11.

2. Facts of the case, in brief, are that the assessee is an individual. Information was obtained by the AO as per AIR information that the assessee has deposited an amount of Rs.17,57,500/- in the savings bank account during F.Y. 2009-10. To verify the genuineness of the transaction, verification letters dated 29<sup>th</sup> April, 2016 and 20<sup>th</sup> January, 2017 were issued to the assessee at the address given by the filer.

Since there was no compliance to the notice issued by the AO, he reopened the assessment invoking the provisions of section 147 of the Act after obtaining necessary approval u/s 151 from the appropriate authority and statutory notice u/s 148 dated 24<sup>th</sup> March, 2017 was issued to the assessee on his last known address. There was no compliance from the side of the assessee despite number of opportunities granted. Only on 26<sup>th</sup> May, 2017 the assessee appeared and sought adjournment which was duly granted by the AO. Since there was non-appearance from the side of the assessee thereafter, the AO made addition of Rs.17,57,500/- to the total income of the assessee u/s 69 in the ex parte order passed by him. Before the CIT(A), the assessee filed an application under Rule 46A for admission of certain additional evidence. However, the Id.CIT(A) rejected the additional evidences filed before him and dismissed the appeal filed by the assessee.

3. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

ö1. That on facts and in the circumstances of the case and in law, the Ld. CIT (A), Ghaziabad has erred in confirming the Order passed by the Assessing Officer U/s 147/144 for non compliance with the notices U/s 148 and 142(1) of the IT Act, 1961.

2. That on facts and in the circumstances of the case and in law, the Ld. CIT (A), Ghaziabad has erred in sustaining the addition of cash deposit of Rs 17,57,500/- to the total income of the appellant without considering the facts that impugned Order passed is ex-parte to assessee without material on records.

3. That the Ld CIT (A) also erred in law on facts and surrounding circumstances in out rightly rejecting the application U/s 46A of the Income Tax Act, 1961 without any speaking order in an arbitrary and fanciful manner leading to closure of the doors of justice to the appellant.ö

4. I have considered the rival arguments made by both the sides and perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find, the case of the assessee was reopened on the ground that the assessee did not respond to the verification letters issued by the AO seeking information from the assessee regarding the source of deposit of Rs.17,57,500/- in the savings bank account maintained by him with State Bank of India, Kamla Nehru Nagar, Ghaziabad Branch, during F.Y. 2009-10. Since there was no compliance to the statutory notices issued by the AO, the AO, invoking the provisions of section 144 of the Act, determined the total income of the assessee at Rs.17,57,500/-. I find, although the assessee filed certain additional evidences before the CIT(A), the Id. CIT(A) rejected the admission of such additional evidence under Rule 46A and decided the issue against the assessee by sustaining the addition made by the AO. It is the submission of the Id. Counsel that the source of deposit in the bank account is out of sale proceeds of certain properties and given an opportunity, the assessee is in a position to explain with evidence to the satisfaction of the lower authorities regarding the source of such cash deposits. Considering the totality of the facts and circumstances of the case and in the interest of justice, I deem it proper to restore the issue to the file of the AO with a direction to grant one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the AO and

substantiate his case failing which the AO is at liberty to pass appropriate order as per law.

5. In the result, the grounds raised by the assessee are allowed for statistical purposes.

The decision was pronounced in the open court on conclusion of the hearing on 18.02.2021.

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

Dated: 18<sup>th</sup> February, 2021.

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi