

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

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.865/Del/2020  
Assessment Year : 2011-12**

Suresh Kumar, H.No.814, Main Chowk Pooth Khurd, Bawana, Delhi-110039. PAN-BNCPK1326D	vs	ITO, Ward-37(1), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Sh. Suresh Kumar (Appellant)	
<b>Respondent by</b>	Sh. R.K.Gupta, Sr.DR	
<b>Date of Hearing</b>	08.04.2021	
<b>Date of Pronouncement</b>	18.05.2021	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee for the assessment year 2011-12 is directed against the order of learned CIT(A), New Delhi dated 05.12.2019.

The assessee has raised following grounds of appeal:-

- 1. “That the Learned CIT(A) has erred in law and facts of the case by confirming the addition of Rs.25 lacs without providing reasonable opportunity to the appellant to represent his case. Thus, the addition is made on the basis of pre-determined mind and on the basis of surmises and conjectures and therefore the addition of Rs.25 lacs needs to be quashed and order needs to be set aside.*
- 2. That the CIT(A) erred in confirming the addition on account of cash deposited in the bank account out of cash balance alleging the same to be income chargeable to tax u/s 69 without appreciating that addition u/s 69 can be made for undisclosed investment whereas the cash deposited into*

*saving account cannot be construed as investment and thus addition sustained is not legally valid and beyond the precincts of the concerned section. The concerned order needs to be quashed and set aside.*

3. *That the Ld.CIT(A) failed to appreciate that the assessment was completed u/s 144 r.w.s. 147 of the Act. Thus, keeping in mind the concept of natural justice the appellant should have been allowed to represent the case and the application u/s 46A must have been accepted and after determining the facts of the case the order must have been passed. The order passed breaches the legal concept of Article 21 of the constitution and therefore the same needs to be quashed and set aside.”*

2. Facts giving rise to the present appeal are that the assessee made cash deposit of Rs.25,00,000/- in his saving bank account with State Bank of India during Financial Year 2010-11 relevant to Assessment Year 2011-12 as per AIR information and the case was selected for scrutiny assessment on the basis of AIR information. However, as per records, the assessee had not filed his ITR for Assessment Year 2011-12. Thus, notice u/s 148 of the Income Tax Act, 1961 (“the Act”) was issued on 29.03.2018 and duly served on the assessee. In response to the said notice, no return of income for Assessment Year 2011-12 was filed by the assessee. Further, a statutory notice u/s 142(1) was issued on 16.08.2018 fixing the case for hearing on 27.08.2018. On the fixed date, neither any one appeared nor any application was filed for adjournment. Subsequently, notice was issued on 31.10.2018 fixing the case for hearing on 06.11.2018. Again notice dated 13.1.2018 was issued u/s 142(1) of the Act and was personally served upon the assessee which was received by Ms. Meenakshi. Again penalty show cause notice dated 20.11.2018 u/s 271(1)(b) of the Act was issued to the assessee fixing the date of hearing on 27.11.2018.

On the fixed date, neither any one appeared nor any application for adjournment was filed. Again, final show cause notice u/s 144 of the Act was issued and served upon the assessee by the Inspector of the Ward on 28.11.2018 for compliance by 04.12.2018. On the fixed date, neither any one appeared nor any application was filed for adjournment. Despite issuance of several notices, no compliance was made. The Assessing Officer, therefore, proceeded to complete the assessment on the merits and on the basis of material/details available on the file.

3. Aggrieved by this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, dismissed the appeal of the assessee.

4. Now, the assessee is in appeal before the Tribunal.

5. At the outset, Ld. Counsel for the assessee submitted that Ld.CIT(A) failed to admit the additional evidences which are material for adjudication of the case. He further submitted that in the interest of principal of natural justice, the additional evidences as filed, ought to have been admitted and he prayed that the matter may be remanded back to the Assessing Officer after admission of additional evidences.

6. Per contra, Ld. Sr. DR opposed the submissions and supported the order of the authorities below.

7. I have heard the rival submissions and perused the material available on records. I find that Ld.CIT(A) has rejected the request of the assessee for admissions of additional evidences. However, considering the fact that the

assessee has demonstrated that these evidences were not available at the time of assessment proceedings. I therefore, set aside the impugned order and restore the assessment to the Assessing Officer who is hereby directed to consider the additional evidences after giving due opportunity to the assessee and frame the assessment afresh. The grounds raised by the assessee are allowed for statistical purposes.

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

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 18<sup>th</sup> May, 2021.

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI