

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI  
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.7761/Del/2019  
Assessment Year: 2011-12

Vinod Kumar,  
H.No.320, Kakrola Housing  
Complex, Karola More,  
DK Mohan Garden,  
Uttar Nagar,  
New Delhi.

Vs. ITO,  
Ward-43(1),  
New Delhi.

PAN: ADTPV7972Q

(Appellant)

(Respondent)

Assessee by	:	Shri Rattan Singh Yadav, CA
Revenue by	:	Shri R.K. Gupta, Sr. DR
Date of Hearing	:	25.08.2021
Date of Pronouncement	:	16.09.2021

ORDER

This appeal filed by the assessee is directed against the order dated 23<sup>rd</sup> July, 2019 of the CIT(A)-15, New Delhi, relating to Assessment Year 2011-12.

2. Facts of the case, in brief, are that the assessee is an individual and has filed his return of income on declaring total income at Rs.1,65,000/-. The case of the assessee was reopened on the ground that the assessee, during the period from 01.04.2010 to 31<sup>st</sup> March, 2011, had deposited a sum of Rs.15,93,000/- in cash in

his savings bank account maintained with Allahabad Bank, Kakrola Housing Colony Branch, New Delhi. Accordingly, notice u/s 148 of the IT Act, 1961 was issued on 20<sup>th</sup> March, 2018 after recording reasons and with the prior approval of the PCIT, New Delhi, which was duly served upon the assessee through speed post. Subsequently, the jurisdiction over the case was assigned to Ward 43(1), New Delhi. Accordingly, fresh notice u/s 142(1) of the Act was issued on 10<sup>th</sup> August, 2018 with a detailed questionnaire to furnish the relevant information. However, there was no compliance from the side of the assessee. Various letters/reminders issued to the assessee also remained uncomplied with. No return in response to the notice u/s 148 of the Act was also filed. The Id. AR of the assessee, Shri Chahat Sharma appeared before the AO and filed his Power of Attorney and promised to file the return. However, no such return was also filed. Since there was no response from the side of the assessee to explain the source of deposit in the bank account, the AO proceeded to complete the assessment u/s 144 of the Act and made addition of the same to the total income of the assessee u/s 69A of the IT Act.

2.1 In appeal, the Id.CIT(A) upheld the action of the AO by observing as under:-

¶4.2 It is seen from the order of the AO that the assessee had been a non-filer. The AO was in possession of certain information about the cash deposits of Rs. 15,93,000/- made by the assessee in his bank account. It is stated by the AO that the assessee had been a non-filer. During the course of assessment proceedings, as mentioned by the AO on page 4 of his order the assessee failed to respond to various notices and therefore the AO had reasons to believe that the entire amount was unexplained credits in the

bank account and therefore the total income of the assessee was assessed at Rs. 13,35,500/- u/s 144/147 of the I.T Act.

4.3 It is seen that there are following cash deposits in the bank account of the appellant :

Date	Amount Deposited
19-Jul-10	400,000.00
20-Aug-10	100,000.00
18-Oct-10	500,000.00
19-OcMO	450,000.00
20-OcMO	100,000.00
<b>TOTAL</b>	<b>1,550,000.00</b>

It is submitted by the AR that out of the total cash deposit only INR 3,87,500 belongs to the assessee and rest belongs to his three brothers namely Shri Karamvir Singh, Shri Ramesh Kumar & Shri Satish Kumar INR 3,87,500 respectively for each. The assessee has filed additional evidences, which cannot be considered considering the detailed discussion made in para 4.1 above. The assessee was given enough opportunity at the assessment stage, however the assessee did not co-operate with the proceedings. Even in the additional evidences, the assessee had filed copy of SB account with Alahabad Bank the deposits in which are still in explicable. The purpose of deposit is stated to be the payments to be made to DDA. However, the fact of making payment to DDA does not justify or explain the source of deposits. Therefore, I do not find any force in argument of the AR of the appellant and accordingly the addition of Rs. 15,50,000/- made by the AO is hereby confirmed.

5. In the result, appeal is dismissed.ö

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

ö1. On the facts and circumstances of the case and in law, the notice u/s 148 issued in this case is bad-in-law, illegal, without jurisdiction and, therefore, the said notice u/s 148 alongwith assessment order passed on the foundation of such notice are liable to be quashed.

2. On the facts and circumstances of the case and in law, the assessment proceedings initiated are contrary to the provisions of law ,where the notice not being served properly. No opportunity of being heard given by the Ld. AO . There is clear violation of Principle of Natural Justice and justice

denied to assessee by Ld. AO and Ld. CIT(A) and therefore, the assessment proceeding initiated alongwith assessment order passed and Order of Ld CIT( A) are liable to be quashed.

3. On the facts and circumstances of the case and in law, the assessing officer has erred in completing the assessment at income of Rs. 17,15,000/- instead of Rs. 1,65,000/- returned by the assessee. Case is not decided on merits . Ld CIT( A) has also rejected the additional evidences filed by the appellant without giving the proper opportunity of heard, which is violation of constitutionally guaranteed Principle of Natural Justice.

4. On the facts and circumstances of the case and in law, the assessing officer has erred in making addition of Rs. 15,50,000/- on account of unexplained money.

5. On the facts and circumstances of the case and in law, the addition of Rs. 15,50,000/- made by the assessing officer is beyond the scope of provisions of section 144 of the Income Tax Act, 1961.

6. On the facts and circumstances of the case and in law, the assessing officer erred in charging interest u/s 23 4B of Income Tax Act, 1961.

7. On the facts and circumstances of the case and in law, the assessing officer erred in charging interest u/s 234C of Income Tax Act, 1961.

8. On the facts and circumstances of the case and in law, the assessing officer erred in charging interest u/s 23 4D of Income Tax Act, 1961.

9. On the facts and circumstances of the case and in law, the assessing officer erred in initiating penalty proceedings u/s 271(l)(c) of Income Tax Act, 1961.

10. On the facts and circumstances of the case and in law, the assessing officer erred in initiating penalty proceedings u/s 271B of Income Tax Act, 1961.

The aforesaid grounds of appeal are without prejudice to each other.

The appellant craves leave to add, alter, modify or delete one or more ground of appeal before or at the time of hearing of appeal.ö

3. The ld. Counsel for the assessee at the time of hearing submitted that additional evidences were filed by the assessee before the ld.CIT(A) to explain

the source of deposit in the bank. However, the same were not considered by the Id. CIT(A). He submitted that the case was not properly represented by the then authorized representative and the assessee being a small assessee, natural justice should be given. He accordingly submitted that one last opportunity should be granted to the assessee to explain the deposit.

4. The Id. DR, on the other hand, heavily relied on the order of the CIT(A) and submitted that despite number of opportunities granted, the assessee did not file any details to substantiate the source of cash deposits in the bank account. Therefore, the Id.CIT(A) has rightly sustained the addition.

5. I have considered the rival arguments made by both the sides and perused the record. I find the case of the assessee was reopened on the ground that the assessee has made cash deposit of Rs.15,93,000/- in his bank account maintained with Allahabad Bank, Kakrola Housing Colony Branch, New Delhi. Since there was neither any compliance to the statutory notices issued by the AO, nor any return was filed in response to the notice u/s 148 or notices u/s 142(1), the AO, after considering the various deposits made in the bank account, made addition of Rs.15,50,000/- to the total income of the assessee as unexplained money u/s 69A of the Act being the peak balance in the bank account. I find, the Id.CIT(A) upheld the action of the AO, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Id. Counsel that given an opportunity, the assessee is in a position to explain the source of cash deposits in

the bank account. I find, the various additional evidences filed before the CIT(A) were not considered by him. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the Id. CIT(A) 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 CIT(A) and substantiate his case without seeking any adjournment under any pretext failing which the Id.CIT(A) is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

The decision was pronounced in the open court on 16.09.2021.

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 16<sup>th</sup> September, 2021.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi