

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.6505/Del/2019
Assessment Year: 2011-12

Deepika Baheti,
206, Maitri Apartments,
Sec.9, Rohini,
New Delhi.

Vs. ITO,
Ward-39(4),
New Delhi.

PAN: AXNPB6252F

(Appellant)

(Respondent)

Assessee by	:	Shri S. Krishnan, Advocate
Revenue by	:	Shri R.K. Gupta, Sr. DR
Date of Hearing	:	25.08.2021
Date of Pronouncement	:	22.09.2021

ORDER

This appeal filed by the assessee is directed against the order dated 31st May, 2019 of the CIT(A)-13, New Delhi, relating to Assessment Year 2011-12.

2. Facts of the case, in brief, are that the assessee is an individual. In this case, proceedings u/s 147 of the Act were initiated after recording reasons and taking approval from the competent authority and, thereafter, notice u/s 148 of the Act was issued on 31.03.2018. The assessee, in response to the same, filed a copy of the acknowledgement of the return filed on 14th October 2011 for the

A.Y. 2011-12 declaring the total income at Rs.1,88,618/-. The AO issued notice u/s 142(1) of the Act on 10th October, 2018 fixing the date on 23rd October, 2018, but, there was no response. The AO noted that the assessee had declared income under IDS-2016 for A.Y. 2011-12 at Rs.6,12,867/- on 30th September, 2016. The assessee had filed her return of income for A.Y 2011-12 declaring total income at Rs.2,01,029/-, but, had not filed any revised return declaring income at Rs.6,12,867/- disclosed under IDS-2016 for A.Y. 2011-12. The AO issued a notice dated 19.11.2018 asking the assessee to explain as to why she has not filed any revised return declaring income at Rs.6,12,867/- disclosed under the IDS-2016. In absence of any compliance from the side of the assessee, the AO proceeded to complete the assessment u/s 147/144 of the Act and made addition of Rs.6,12,867/- to the income declared at Rs.1,88,618/- as per the original return of income and determined the total income of the assessee at Rs.8,01,485/-.

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

Findings:-

4.1 I have considered the material on record including oral and written arguments/submissions of the appellant/AR and the (impugned) assessment order.

4.2 The proceedings in appellant's case were initiated u/s 147 in response to which the copy of acknowledgement of ITR filed on 14.10.2011 was submitted declaring income of Rs. 2,01,029/-. It was learnt from record that the appellant had declared income of Rs, 6,12,867/- under the Income Declaration Scheme 2016 for AY 2011-12 on 30.09.2016 but had not revised the return declaring the income of Rs. 6,12,867/-. It was also observed that Form 4 was not issued in case of the appellant by the Competent Authority (Pr.CIT-13, New Delhi). In order to confirm the

same, a letter was written to Pr CIT 13, New Delhi. It has been conveyed vide letter F No. Pr.CIT-13/IDS/2019-20/282 dated 31.05.2019

"That the assessee Deepika Baheti, PAN:AXNPB6252F made declaration under IDS, 2016 declaring undisclosed income of Rs.18,38,588/-.

As per IDS module, tax payable was Rs.8,27,364/-. The IDS module does not authorise to issue form No. 4 stating that it is under verification whether challan are consumed or not."

This shows that the declaration ostensibly made in 2016 has not been authenticated by the competent authority till date even after 2 ½ years of the conclusion of the scheme.

4.3 Form 4 is a Certificate granted by the jurisdictional Principal Commissioner or Commissioner after upload of Form 3 by the assessee. For issuing Form 4, the ITD user should click on the link "issue Form 4" provided at "Action" column under "view Forms (Income Declaration Scheme/2016)". "issue Form 4" shall be enabled only when the following criteria is met: If the result of "[IDS Tax paid by the assessee as per OLTAS) + ("TDS/TCS claimed by the assessee in Form 3" AND "Amount available after considering the consumed status" whichever is less)] MINUS [Tax liability as per Form 2]" is (greater than -101) OR (Less than 101). The fields in Form 4 will be auto-populated from the relevant information available in Form 1, Form 2 & Form 3 records of the assessee and the ITD user will be able to edit the data, if required. After filling all the mandatory details, the ITD user can click on "submit" for successful submission of Form 4. View of issue Form 4 shall be made available under the hyperlink at "Receipt No." of the respective Form 1 record. Path for viewing, IDS- View Forms (IDS, 2016). As per rule the declaration would be treated as final and conclusive on the issuance of Form 4 by the Competent Authority, which is not the case as far as the appellant is concerned. Thus the appellant's plea that the said amount was declared under the IDS 2016 scheme is not confirmed by the office of the competent authority and is therefore not acceptable. In light of the above facts and circumstances of the case, the addition made by the AO is found to be in order and is hereby confirmed.ö

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

ö1. On the facts and in the circumstances of the case and in law, the authorities below erred in holding that income in a sum of Rs.6,12,867/- had escaped assessment while admitting that the Assessee had made a

declaration of the said income under IDS-2016, and had already paid the tax thereon.

2. On the facts and in the circumstances of the case and in law, the authorities below erred in making and confirming addition of Rs.6,12,867/-, despite the same having been duly declared in IDS-2016, and proof of payment of tax thereon being before the said authorities.

3. On the facts and in the circumstances of the case and in law, the authorities below have erred in penalizing the Assessee for non-issuance of Form 4, which was a circumstance beyond her control.

The Assessee seeks leave to add to, alter, forego, or otherwise modify all or any of the grounds of appeal as taken herein above.ö

4. The Id. Counsel for the assessee submitted that the assessee has declared the income of Rs.6,12,867/- under IDS-2016 and has paid the taxes on the same. He submitted that the assessee should not be penalized for non-issuance of Form No.4 by the competent authority. He submitted that since the default was committed by the Department, therefore, this matter should be restored to the file of the AO with a direction to verify the certificate issued by the jurisdictional PCIT and decide the issue as per fact and law.

5. The Id. DR has no objection for setting aside this issue to the file of the AO. 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 AO with a direction to verify the record and decide the issue as per fact and law after giving due opportunity of being heard to the assessee. The assessee is also hereby directed to appear before the AO and explain her case. 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 22.09.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 22nd September, 2021.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi