

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC-2" : DELHI  
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.8839/Del./2019  
Assessment Year 2011-2012

M/s. Ashok Kumar & Family, Prop. No.38, North Ex. Model Town, Delhi. PIN – 110 009 PAN AACHA9166R	vs.	The Income Tax Officer, Ward-36(2), Prataksh Kar Bhawan, Civic Centre, New Delhi-110002.
(Appellant)		(Respondent)

For Assessee :	Shri Satinder Singh Kalra, CA
For Revenue :	Shri Vijay Kumar Kataria, Sr. DR

Date of Hearing :	27.07.2021
Date of Pronouncement :	24.09.2021

**ORDER**

This appeal filed by the Assessee is directed against the Order dated 18.09.2019 of the Ld. CIT(A)-12, New Delhi, relating to the A.Y. 2011-2012.

2. Facts of the case, in brief, are that the assessee is a HUF and has not filed its return of income. AIR information was received in respect of the assessee that it has made transaction in commodities exchange at Rs.19,48,71,150/- during the F.Y. 2010-2011 relating to the

A.Y. 2011-2012 and has not filed its return of income. Therefore, the A.O. recorded the reasons for reopening of the case under section 147 and notice under section 148 of the I.T. Act was issued on 31.03.2018. There was no response to the said notice issued under section 148. There was also no compliance to the statutory notice issued under section 142(1) of the I.T. Act, 1961. The A.O, therefore, completed the assessment under section 144/147 of the I.T. Act, 1961 by estimating the profit rate of 0.5% on the commodity transaction of Rs.19,48,71,150/- and made addition of Rs.9,74,355/- to the total income of the assessee. In otherwords, the A.O. determined the total income at Rs.9,74,355/-.

2.1. Before the Ld. CIT(A), the assessee apart from challenging the addition on merit, challenged the validity of the assessment in the absence of service of any notice to the assessee. However, the Ld. CIT(A) was also not satisfied with the arguments advanced by the assessee and upheld the action of the A.O. by observing as under :

7. **Decision**

7.1 The facts as brief by the Assessing Officer are that he received information that Assessee made transactions amounting to Rs.19,48,71,150/- in the commodity exchange during FY 2010-11 relevant for AY 2011-12. The Assessing Officer also noted that Assessee had not filed return of income for this year. On the basis of the above information, the Assessing Officer recorded reasons to believe that income with reference to the transactions in the commodity exchange has escaped assessment. Notice u/s 148 of the IT Act was issued on 31.03.2018. The Assessing Officer issued notices u/s 142(1) subsequent to the issue of the notice u/s 148 of the IT Act. But the above notices were not complied with by the Assessee. The Assessing Officer added Rs.9,74,355/- by computing @ 0.5% of the transaction amount i.e. Rs.19,48,71,150/-. However, the Assessing Officer observed that this amount was undisclosed cash deposit in the bank account.

7.2 In the written submission, the Appellant has explained that he was not aware of the assessment order passed by the Assessing Officer. In the assessment order, the address of the Assessee given is C-121, New Subzi Mandi, Azadpur, Delhi whereas the Assessee has not been carrying out any activity at this address as the property was sold. The Assessing Officer has nowhere mentioned the date of service of the notice or the return of the registered post. It has been argued that the order passed by the Assessing Officer is bad in law without the service of the notice. It is further stated that the Assessing Officer did not allow to inspect the file. Hence, he did not follow the procedure for the initiation of reassessment proceedings. The





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notice of demand was sent on correct address. Therefore, the Assessing Officer was aware of the correct address of the Assessee.

7.3 I have considered the arguments of the Appellant with regard to the service of the notice. The Appellant has nowhere stated as to which address was given on the PAN database. Whether the Assessee applied for PAN from the old address? Whether the Assessee applied for the change of the address on the PAN database? If the Assessing Officer was having the old address of the Assessee as per the PAN database, he did not have any choice to send the notice / notices to an address other than available on the record. Hence, this plea taken by the Appellant is dismissed.

7.4 The Appellant has submitted that the Assessing Officer could have called for the information from the bank and verified the deposit of the cash. If he had done so, he would have come to know that there was no cash deposit in the bank. From the bank statement, it may be seen that there was no cash deposit of Rs.19,48,71,150/-. It is submitted that AO (it seems to be a clerical error and the Appellant wants to refer to the Assessee) entered into small speculative transaction through Hitech BPO Solutions Pvt. Ltd. From the statement of the party, it may be seen that Assessee did not earn any profit. There was loss of Rs.34,206/- in the account. The Assessing Officer ignored the information provided by Hitech BPO Solutions Pvt. Ltd. and framed the order on the basis of surmises and conjecture only.

7.5 During the hearing, the Ld. AR for the Appellant was requested to furnish the following information on 16.08.2019 :

- a) Details of cash deposits in the bank account held by the Assessee.
- b) Summary of transaction details in future & option segment
- c) Copy of account of the Assessee in the books of the broker/s.
- d) Details of margin money paid to the broker supported by contract note & source of funds.

7.6 In response to the above queries, it has been submitted by the Ld. AR for the Appellant that Assessee did not deposit any cash in the bank account. The copy of the bank statement has been enclosed. In a mail dated 9<sup>th</sup> September, it has been also informed that the Assessee is not having any other bank account than State Bank of India copy of which has already been submitted. Having regard to the credit entry of Rs.50,000/- handwritten in





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the bank statement it is submitted that this entry of Rs.50,000/- is in the system of the bank and the deposit of Rs.50,000/- is verifiable from closing balance appearing opposite this entry. Balance appearing prior to this entry was Rs.1,39,445/- and after the credit entry of Rs.50,000/-, the balance became Rs.1,89,445/-. The Appellant has submitted the summary of the transactions through Hitech BPO Solutions Pvt. Ltd. (broker) which shows the sales of Rs.14,36,88,953.18 and the purchases of Rs.14,37,01,444.31 with net value of Rs.(-)12,491.13. It is submitted that the margin money of Rs.5,00,075/- was paid from the bank as under :

<b>Date of payment</b>	<b>Amount</b>
27.10.2010	Rs. 50,000/-
27.10.2010	Rs. 75/-
04.11.2010	Rs. 80,000/-
06.01.2011	Rs.1,70,000/-
27.01.2011	Rs.2,00,000/-
<b>Total</b>	<b>Rs.5,00,075/-</b>

7.7 It is submitted that the transactions are finalized mostly on the telephone only.

7.8 I have considered the facts of the case and the submission of the Appellant. I have already held that the service of the notice u/s 148 or subsequent notices issued by the Assessing Officer cannot be questioned by the Assessee because it is not his case that the Assessing Officer issued the notice to an address which was not on the PAN database or the Assessing Officer failed to notice the information given by the Assessee about the change of the address. Hence, I hold that the Assessing Officer issued the notices to a correct address available on the record. On the merits, I agree with the Appellant that the amount of Rs.19,48,71,150/- was not cash deposit in the bank account. The Assessing Officer has himself mentioned in the first para of the assessment order that this was the transaction amount in the commodity exchange as informed through AIR. However, the Assessing Officer computed the income of the Assessee @ 0.5% of the transaction amount but in the assessment order he added the amount saying that Rs.9,74,355/- was undisclosed cash deposit in the bank account. In the summary of the transactions furnished by the Assessee loss of Rs.34,206/- has been shown. However, the AIR data reported the transaction amount at Rs.19,48,71,150/-. As per the 26AS details, the Assessee received





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Rs.90,000/- and Rs.40,725/- on which TDS of Rs.9,000/- and Rs.4,073/- was made.

7.9 From the details submitted by the Assessee, it is clear that there was no cash deposit of Rs.9,74,355/- in his bank account. It seems the Assessing Officer made the addition for margin money paid to the broker. The Assessee has himself informed about the margin money paid by him but the source thereof has not been explained. As stated above by the Appellant, the margin money paid by him during the year under consideration was Rs.5,00,075/-. In the absence of any explanation about the source of the margin money, addition to this extent is confirmed. The Appellant gets the relief of Rs.4,74,280/-.

3. Aggrieved with such order of the Ld. CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds :

*“1. That on the facts and circumstances of the case the Ld. CIT(A) has erred in not treating reassessment proceedings u/s 147 of the I T Act, as invalid, bad in law, unjust and contrary to the facts and law.*

*2. That on the facts and circumstances of the case the Ld. CIT(A) has made the addition of Rs.5,00,075/- on the other ground than the reason stated u/s 147 / 148 of the I T Act. The Ld. CIT (A)*

*has made the addition without verifying all the facts available on the record.*

3. *That on the facts and circumstances of the case the Ld. CIT(A) has erred in without considering the facts of the case and without considering the statement of law by the Appellant.*
4. *That notice u/s 148 was issued based on borrowed material without independent application of his own mind by the Ld. A.O. & this vitiates the action taken.*
5. *That the Ld. CIT(A) has made the addition on the basis of assumption that the assessee has not paid any margin money to the broker. The assessee provided the information of the deposit of margin money of Rs.5,00,075/ but Ld. CIT(A) made the addition of flimsy ground, surmises and conjecture only.*
6. *That there was no “nexus” between the primary facts & “belief” for reopening.*

7. *That the addition was made on mere surmise ignoring relevant material & was based on irrelevant material & moreover the assessment was made without grant of a proper opportunity of being heard & without following rules of natural justice.*

8. *The appeal craves leave to amend or delete any of the above ground of appeal.”*

4. Learned Counsel for the Assessee referred to Para 7.5 of the order of the Ld. CIT(A) and submitted that during the course of appellate proceedings the Ld. CIT(A) has asked the assessee to furnish details of cash deposits in the Bank account, summary of transaction details in future and asset segment, copy of the account of the assessee in the books of brokers and details of margin money etc. He submitted that after discussing the issue thoroughly, the Ld. CIT(A) has sustained the addition of Rs.5,00,075/- only towards margin money, but, has deleted the addition of Rs.4,74,280/-. Referring to provisions of Section 251(2), he submitted that as per the said provision the Ld. CIT(A) shall

not enhance an assessment or a penalty or reduce the amount of refund unless the assessee has, on a reasonable opportunity of showing cause against such enhancement or reduction. He submitted that the Ld. CIT(A) has not given reasonable opportunity to the assessee before sustaining the addition of Rs.5,00,075/- on account of margin money. Further no notice was served on the assessee by the A.O. He accordingly submitted that the addition sustained by the Ld. CIT(A) should be deleted.

5. The Ld. D.R. on the other hand relied on the order of the Ld. CIT(A) and submitted that the assessee is a non filer of tax return and the Ld. CIT(A) has already given substantial relief to the assessee and, therefore, the assessee should not have any grievance.

6. I have heard the rival arguments made by both the sides and perused the record. It is an admitted fact that the A.O. reopened the assessment on the ground that the assessee has made transactions in commodities exchange of Rs.19,48,71,150/- during the impugned assessment year and had not filed its return of income. Since the assessee

neither responded to the notice issued under section 148 nor responded to the notice issued under section 142(1) of the I.T. Act, 1961, therefore, the A.O. estimated the profit @ 0.5% of Rs.19,48,71,150/- and added an amount of Rs.9,74,355/- to the total income of the assessee under section 69 of the I.T. Act, 1961 as undisclosed cash deposit in the Bank account. I find the Ld. CIT(A) found that there is no such cash deposit, for which, he deleted the same. However, since the assessee could not explain the details of margin money of Rs.5,00,075/-, he sustained the same, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Learned Counsel for the Assessee that no reasonable opportunity was given to the assessee to explain the source of margin money. It is also his grievance that notice was never served on the assessee from the side of the A.O. for which there was no compliance and the A.O. had passed the order under section 144 of the I.T. Act, 1961. 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

A.O. with a direction to give one more opportunity to the assessee to substantiate its case and decide the issue as per fact and Law. The assessee is also hereby directed to appear before the A.O. and substantiate its case without seeking any adjournment under any pretext, failing which, the A.O. 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.

7. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court on 24.09.2021.

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

Delhi, Dated 24<sup>th</sup> September, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-2' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.