

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "B" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.3875/Del/2018
Assessment Year : 2013-14**

Mr. Firoz Ali, 358, Kabir Basti, Old Subzi Mandi, Malka Ganj, Delhi-110007	vs	Income Tax Officer, Ward No.34(5), New Delhi
PAN-AMEPA3744R		
APPELLANT		RESPONDENT

Appellant by	Sh. V.K. Sabharwal, Adv.
Respondent by	Ms. Nidhi Srivastava, CIT-DR
Date of Hearing	07.10.2021
Date of Pronouncement	08.10.2021

ORDER

Per Sanjay Garg, Judicial Member :

The present appeal has been preferred by the assessee against the order dated 17.01.2018 of the Ld. Commissioner of Income Tax (Appeals)-13, New Delhi, (hereinafter referred to

‘(CIT(A))’ for the Assessment Year 2013-14. The assessee has raised following grounds of appeal:-

1. *That the order passed on 30.03.2016 by the Assessing Officer which were upheld by the Ld. CIT(A) vide order dated 17.01.2018 were perverse to the law and to the facts of the case, because of the non-issuance and non-receipt of the primary notice claimed to be issued u/s 143(2) on dated 02.09.2014 by the Assessing Officer which the Ld. CIT(A) failed to consider.*

2. *That on the facts and circumstances of the case, the order passed by the Assessing Officer as upheld by the Ld. CIT(A) were further illegal against the law and to the facts of the case, because of the non-service / non-receipt of show cause notice claimed to be issued on 25.03.2016 at the fake-end to the appellant confirming his dissatisfaction upon the information furnished, documents produced and placed upon records as evidence in support of the receipt of loans and advances and for balance of sundry creditors appears in the books of the appellant as on 31.03.2013.*

3. *That the orders passed by the Assessing Officer as upheld by the Ld. CIT(A) were further not correct under the law and to the facts of the case, because the material gathered on the back of the appellant by the Assessing Officer was never confronted for its rebuttal thereof prior to use the same against the appellant.*

4. *That the orders passed as upheld by the Ld. CIT(A) were further not justified under the law and to the facts of the case, because the Assessing Officer failed to appreciate that any sum found credited in the bank account of the appellant does not cover u/s 68 of the Income Tax Act 1961, under which the additions were made in the hands of the appellant.*

5. That the Assessing Officer has not exercised his powers contained u/s 133(6) of the Act, prior to disapprove the information given and material filed by the appellant in support of the receipts unsecured loan of Rs. 32,50,000/-.

6. That the order passed are further illegal against the law and to the facts of the case, because the Assessing Officer has made the additions for the entire amount of credit balance appears in his books of Rs. 27,31,75,058/- without taken into consideration their opening balance appears as on 01.04.2012 in his books.

7. That the additions made of Rs. 27,31,75,058/- declaring to be the bogus liability of the appellant appears in his books of accounts were further not correct under the law and to the facts of the case, because of not confronting any adverse material if any be collected or ever possessed with regard thereto to the appellant for its rebuttal thereof prior to use the same against the appellant.

8. That the additions made of Rs. 3,36,000/- u/s 40(a)(ia) was further not correct under the law and to the facts of the case, because on the payment of rent of Rs. 3,36,000/-, no TDS was applicable, which the Assessing Officer has failed to appreciate.

9. That the disallowance of exemption claimed of Rs. 124000/- under Chapter- VIA of the Act, for the payment of Rs. 1 lakhs and Rs. 24000/- u/s 80C & u/s 80-GG, the Assessing Officer was further not correct as the appellant was having its proper evidence with regard thereto, for which he was never asked to submit the same by the Assessing Officer prior to pass the assessment order.

10. That 1 /6th disallowance of expenses on lump sum

basis to the tune of Rs. 1,41,058/- was further not supported with any material either collected or ever placed upon records, which could justify the nexus to the disallowance of expenses to the extent of 1/6th thereof on lump sum basis, as the same were never incurred or not relates to the income earned / declared.

11. That no proper and reasonable opportunity if any has ever been afforded by the Assessing Officer and by the Ld. CIT(A) prior to make illegal and impugned additions in the hands of the appellant which subsequently confirmed by the Ld. CIT(A) only on the basis of assessment order passed by the Assessing Officer without adjudicating the same on the merits of the case.

12. That the ex-parte orders passed by the Ld. CIT(A), thereby upholding the illegal and impugned additions made by the Assessing Officer was further unlawful because of the non-issuance / delivery of notice as per the provisions of law contained under the Income Tax Act 1961.

13. That the penalty proceedings initiated u/s 271(l)(c) and interest charged u/s 234B of the Act while completing the order was further not in consonance of the illegal and impugned additions made in the hands of the appellant while finalizing the orders on 29.12.2016.

14. That the appellant assessee assails his right to amend, alter, change any grounds of appeal at any time even at the stage of hearing of the instant appeal.

2. At the outset, the Ld. Counsel for the assessee has invited our attention to the impugned order of the Ld. CIT(A) and submitted that the same is an ex-parte order. The Ld. Counsel

for the assessee further has submitted that no notice of hearing was ever received by the assessee from the Ld. CIT(A). He has further submitted that even the assessee had given his address and email-id in appeal form no.35 before the ld. CIT(A) and had also mentioned that notices can be sent on his email-id but even no notice was received on the email address also. He, therefore, has submitted that the impugned order has been passed by the Ld. CIT(A) violating the principle of natural justice.

3. The Ld. DR, however, relying upon the order of the Ld. CIT(A) and contended that if the assessee had not received the notice, how come the assessee got in possession of the appeal order passed by the Ld. CIT(A).

4. The Ld. Counsel for the assessee, at this stage, has submitted that the assessee did not receive the copy of the appeal order in due course rather the assessee had received the certified copy by moving a separate application to the revenue authorities.

5. In view of the above factual position, in our view, the interest of justice will be well served, if the matter is restored back to the file of the Ld. CIT(A) for adjudication afresh. Needless to say that the Ld. CIT(A) will give proper opportunity to the assessee to present his case and then to decide the same in accordance with law.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order was pronounced in the Open Court on 08/10/2021.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER
Delhi; Dated: 08/10/2021.
Shekhar

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI