

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

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI G.S.PANNU, PRESIDENT &
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No.6051/Del/2018

[Assessment Year : 2009-10]

Janesh Goyal S/o. Narender Goyal C/o Pirthi Chand Munna Lal, Uchana Mandi, Jind, Haryana PAN-AGZPG4095Q	vs	ITO Ward-2 Aayakar Bhawan, 1234, Urban Estate, Jind, Haryana
APPELLANT		RESPONDENT
Appellant by	Shri Prem Rajpal, Adv	
Respondent by	Shri Kumar Padmapani Bora, Sr. DR	
Date of Hearing	22.11.2021	
Date of Pronouncement	09.12.2021	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee is directed against the order of the Ld. CIT(A)-2, Gurgaon, dated 29/06/2018 pertaining to Assessment Year 2009-10. The assessee has raised following grounds of appeal:-

“1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming following action of the Assessing Officer in:

- i) initiating proceedings u/s 147 of the Income-tax Act, 1961 and completing assessment u/s 147/143(3) of the Act at an income of Rs.514435/- against the returned income in a sum of Rs. 154435I-.*
- ii) initiating proceedings u/s 147 of the Act without there being any reason to believe that income has escaped assessment;*
- iii) passing order y/s 147/»143(3) of the Act without supplying copy of reasons & without giving opportunity to file the objection;*
- iv) making an addition of Rs.360000/- on account of cash deposited in capital account in the books of M/s. Pirthi Chand Munna Lai, Anaj Mandi Uchana Distt. Jind.*

2. The facts given rise to the present appeal are that in this case, the Revenue received AIR Information. Therefore, the case was reopened for assessment. A notice u/s 148 of the Income Tax Act, 1961 was issued and served upon the assessee in response to the statutory notice. The assessee filed his reply wherein it was stated that the return which was filed on 23/2/2010 may be treated as the return filed in response to the notice u/s 148 of the Act. While framing the assessment, the Assessing Officer noticed that on perusal on account of M/s Pirthi Chand Munna Lal, Anaj Mandi Uchana Ditt. Jind, placed on record, the assessee had deposited Rs.

2 lacs in cash on 10/4/2008 and Rs. 3 lacs in cash 25/2/2009. The assessee was asked to explain the source of cash deposits. The Assessing Officer noticed that the assessee was unable to explain the sources of cash deposit of Rs. 2 lacs on 10/4/2008 and Rs. 1,60,000/- out of 3 lacs deposit on 25/2/2009. Therefore, an amount of Rs.3,60,000/- was treated as unexplained and added this amount in the income of assessee u/s 69 of the Act. Hence, the Assessing Officer assessed and computed the income of the assessee at Rs. 5,14,435/- against the returned income of Rs. 1,54,435/-.

3. Aggrieved against this, the assessee preferred appeal before the Ld.CIT(A) Before Ld.CIT(A) it was contended that Rs. 2 lacs was deposited in the bank account being cumulative savings pertaining to previous years and Rs. 1,60,000/- was deposited out of advance received from customers on account of sale and purchase of old motor vehicles.

This explanation was not found acceptable by the Ld. CIT(A) on the ground that the explanation was not given before the Assessing

Officer. Therefore, the Ld.CIT (A) dismissed the appeal of the assessee.

4. Aggrieved against this, the assessee is in appeal before the Tribunal.

5. Ground No. 1, 2 & 3 are against legality of the reopening of the Assessment u/s 147 of the Act.

6. Ld. Counsel for the assessee submitted that the assessment was reopened and the reasons for reopening of the assessment were not provided to the assessee. He further submitted the assessment was reopened without recording the fact that any income was escaped from the assessment. He submitted in the absence of such recording by the Assessing Officer the jurisdiction exercised was without authority of law.

7. On the contrary, Ld. DR opposed the submissions and submitted that this issue was never raised before the Ld.CIT (A).

8. In rejoinder, Ld. Counsel for the assessee pointed out that the assessee in Ground No 3 has categorically stated that the

assessment framed u/s 143(3) and proceedings initiated u/s 147 of the Act was illegal ab initio.

9. We have heard rival submission and perused the material available on record. We find that the Ld.CIT(A) has not decided this issue in the impugned order . Therefore, we deem it proper in the interest of justice to restore this ground to the file of the Ld.CIT(A) for deciding the same by way of a speaking order.

10. Ground No. 4 is against sustaining of the addition of Rs. 3,60,000/- on account of cash deposit in the capital account in the books of M/s M/s Pirthi Chand Munna Lal, Anaj Mandi Uchana Ditt. Jind.

11. Ld. Counsel for the assessee submitted before Ld.CIT(A) it was categorically stated that the cash deposit was out of cumulative savings of the past years and the advance received from the customer on account of sale /purchase of motor vehicles.

12. The Ld.CIT(A) did not accept the contention of the assessee merely on the ground that this explanation was not offered before

the Assessing Authority. He submitted that the action of the Ld.CIT(A) ex-facie is not justified.

13. On the contrary, Ld. Departmental Representative opposed the submission and supported the order of the authorities below.

We have heard the rival submissions and perused the material available on record gone through the orders. The Ld.CIT(A) has decided the issue by observing as under:-

“I have gone through the facts of the case and submissions of the appellant. It is apparent that the appellant was unable to explain the cash deposits made in his bank account. As the amounts remained unexplained, the Assessing Officer added them back to the total income returned.

During the appeal proceedings the appellant has submitted that Rs.2,00,000/- was deposited in the bank account being commutative savings of previous years income. Whereas Rs. 1,60,000/- was deposited out of advance received from custom account of sale/purchase of old'/fepites. These explanations were not submitted the Assessing Officer, therefore these cannot be accepted at this stage. Ah documentary evidences were given in support of these submissions.

On the light of above, the appeal of the appellant is dismissed.”

From the above finding of the Ld.CIT(A), it is clear that the issue was adjudicated without advertng to the submissions of the assessee and verifying the veracity of the same. In our considered view, the Ld.CIT(A) ought to have called for the remand report from the Assessing Officer. Therefore, looking to the totality of the fact we set aside the order of the Ld.CIT(A) and restore this ground as well on the file of the Ld.CIT(A) to decide it afresh after calling remand report from the assessing authority. Needless to say, the Ld.CIT(A) would afford reasonable opportunity to the assessee. This ground of the assessee is allowed for statistical purpose.

14. In the result, the appeal of the assessee in ITA No. 6051/Del/2018 is allowed for statistical purpose.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 09th December, 2021.

Sd/-

(G.S.PANNU)
PRESIDENT

09/12/2021
R. N

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI