

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'SMC': NEW DELHI**

(Through Video Conferencing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

**ITA No.3863/DEL/2019
[Assessment Year: 2010-11]**

Sohiab, 6521, Gali Jarsaiyan, Qusab Pura, Sadar Bazar, New Delhi-110006	Income Tax Officer, Ward-63(3), New Delhi-110002
PAN-BTWPS4282E	
Assessee	Revenue

Assessee by	Sh. Ranjan Chopra, CA
Revenue by	Sh. Om Prakash, Sr. DR

Date of Hearing	01.12.2021
Date of Pronouncement	13.12.2021

ORDER

This appeal filed by the assessee is directed against the order dated 26.02.2019 of the learned CIT(A)-16, New Delhi, relating to Assessment Year 2010-11.

2. Facts of the case, in brief, are that the assessee is an individual and had not filed the return of income for the impugned Assessment Year. Information was received as per ITS system that the assessee has purchased a property to the tune of Rs.19,20,000/-. Since, the assessee has not filed the return of income, the Assessing Officer reopened the

assessment after recording the reasons and after taking administrative approval from the Pr. CIT. Accordingly, a notice u/s 148 of the Income Tax Act, 1961 (in short 'the Act') was issued on 31.03.2017 but there was no compliance to the same. Thereafter, the Assessing Officer issued notice u/s 142(1) of the Act and again notice u/s 148 of the Act was served by affixture. Since, there was no compliance from the side of the assessee, the Assessing Officer completed the assessment u/s 144 of the Act. In absence of any explanation offered by the assessee regarding the source of purchase of property to the tune of Rs.19,77,600/-, the Assessing Officer, applying the provisions of section 69C of the Act made addition of Rs.19,20,000/- to the total income of the assessee. He also considered the deemed income of Rs.1,60,000/- for computing the total income and accordingly determined the taxable income of Rs.21,37,600/-.

3. Before the ld. CIT(A), the assessee filed additional evidence, the details of which are as under:-

“4. Application for admission of Additional Evidence

During the course of appellate proceedings, the appellant filed an application under Rule 46A for admission of Additional Evidence detailed as under:-

Required information and duly falls under Rule 46A. Hence, it is requested to kindly accept the additional evidences as detailed below-

- i. Copy of the bank statement*
- ii. Cash Book*
- iii. Bank Book*
- iv. Sales Ledger*
- v. Purchases Ledger*
- vi. Copy of the purchase bills*
- vii. Copy of the Medical papers*

4. The Ld. CIT(A) called for comments of the Assessing Officer, who submitted that despite number of opportunities granted to the assessee, he did not appear, therefore, the additional evidences should not be admitted. However, the Assessing Officer gave his report, which was confronted to the assessee. After considering the remand report of the Assessing Officer and rejoinder of the assessee to such remand report, the ld. CIT(A) upheld the validity of reassessment proceedings and the addition on merit.

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

1. *Whether on the facts and in the circumstances of the case*

the Ld. lower authorities has grossly erred in Law and on facts in making and confirming the addition of Rs. 19,77,600/- u/s 147/144 of the Act.

2. *Whether on the facts and in the circumstances of the case the Ld. lower authorities has grossly erred in Law and on facts in making and confirming the addition of Rs. 1,60,000/- by holding as deemed income upto the exemption level u/s 147/144 of the Act.*

3. *Whether on the facts and in the circumstances of the case the Ld. lower authorities has grossly erred in Law and on facts in making and confirming the above addition u/s 147/144 of the Act by ignoring any one of the following facts:*

3.1 *That the assessing officer was not having jurisdiction to issue the notice u/s 148 of the Act or*

3.2 *By without providing the copy of reasons recorded for reopening the assessment u/s 147 of the Act or*

3.3 *By without giving material on the basis of which the notice was issued u/s 148 of the Act or*

3.5 *By ignoring the fact that the various notices etc. as mentioned in the order were either not served upon the assessee or reasonable time was not granted to attend the proceedings.*

3.6 *By ignoring the fact that the assessee was prevented by reasonable cause to attend the assessment proceedings as the mother of the assessee was seriously ill and ultimately died on 27th March, 2018.*

3.7 *By ignoring the fact that the Principles of Natural Justice were totally ignored by the Assessing Officer.*

4. *Whether on the facts and in the circumstances of the case the Ld. lower authorities has grossly erred in Law and on facts in making and confirming the addition by ignoring the facts that the material on the basis of which action was taken u/s 147 of the Act does not exist as per the report sought u/s 133(6) of the Act from the office of Department of Delhi Archives vide letter Dt. 24/11/2017 and as per information received vide letter Dt. 30/11/2017 from the Department of Delhi Archives.*

5. *Whether on the facts and in the circumstances of the case the Ld. lower authorities has grossly erred in Law and on facts in making and confirming the addition by ignoring the fact that the permission u/s 151 of the Act was granted in a routine manner by non application of mind as the permission was granted on the same day it was sought by without perusing the material etc for taking action u/s 147 of the Act.*

6. *Whether on the facts and in the circumstances of the case the Ld. Assessing Officer has grossly erred in law in charging interest amounting to Rs.44,928/- u/s 234A and interest amounting to Rs. 5,22,288/- u/s 234B of the Income Tax Act.”*

6. The ld. Counsel for the assessee at the outset submitted that the assessee is an agriculturist and was not aware of the complicated Income Tax provisions. Further, no notice was received by the assessee from the AO for which there was non-compliance. He submitted that in the interest of justice, the assessee should be given an opportunity to substantiate his case before the Assessing Officer.

7. The ld. DR on the other hand, while supporting the order of the ld. CIT(A) submitted that he has no objection if the matter is restored to the file of the Assessing Officer since this is an ex-parte order by the Assessing Officer.

8. I have considered the rival arguments made by both the sides, perused the order of the Assessing Officer and the Ld. CIT(A) and the paper book filed on behalf of the assessee. I

have also considered the various decisions cited before me. I find the Assessing Officer in the instant case made addition of Rs.19,77,600/- to the total income of the assessee in his ex-parte order passed under section 144 of the Act due to non-appearance of the assessee before him. I find the ld. CIT(A) dismissed the grounds raised before him. It is the submission of the ld. Counsel for the assessee that due to non-receipt of notice, the assessee could not appear before the Assessing Officer. Further, no notice u/s 143(2) was issued. It is also his submission that given an opportunity, the assessee is in a position to substantiate with evidence to the satisfaction of the Assessing Officer regarding the source towards purchase of the house property. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore this issue to the file of the Assessing Officer with a direction to give 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 Assessing Officer and substantiate his case without seeking any adjournment under any pretext, failing which the Assessing Officer is at liberty to pass appropriate order as per law. I hold and direct

accordingly. The grounds raised by the assessee are allowed for statistical purpose.

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

Order was pronounced in the open court on 13th December, 2021.

Sd/-
[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated: 13/12/2021

Shekhar,

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi