

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA Nos. 8379 & 8380/DEL/2019**

**Assessment Year: 2010-11**

Manmohan Singh, A-752, DDA Colony, Choukhandi, Tilak Nagar, New Delhi. PAN- BGIPS9661L	<u>Vs</u>	Income Tax Officer, Ward-45(4), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	<b>Sh. Manish Uppal, CA</b>	
<b>Respondent by</b>	<b>Sh. Om Prakash, Sr. DR</b>	
<b>Date of hearing</b>	<b>18.01.2022</b>	
<b>Date of pronouncement</b>	<b>31.01.2022</b>	

**ORDER**

**PER KUL BHARAT, JM:**

These appeals, by the assessee, pertaining to the assessment year 2010-11 in quantum and penalty proceedings respectively are directed against separate orders of learned CIT(A) dated 27.08.2019.

2. First we take up the assessee’s appeal in quantum proceedings in ITA no. 8379/Del/2019. The assessee has raised following grounds of appeal:

“1. It is contended that the Ld. CIT(A) has erred in confirming addition of Rs. 15,67,190/-.

2. It is contended that the Ld. CIT(A) has not appreciated the violation of principles of natural justice of not giving proper opportunity to file the information before the AO.

3. *It is contended that the Ld. CIT(A) has erred in not accepting the additional evidence filed by the assessee under Rule 46A thus depriving the assessee of an adjudication on merits of the case.*

4. *It is contended that the cash deposit of Rs. 17,04,250/- in the bank account is the cash deposited by the customers directly into the bank account in the normal course of trading in fabrics by the assessee.*

5. *Your appellant craves leave to add, alter, amend or withdraw any ground at the time of hearing.”*

3. Ground no. 1 is general in nature and needs no separate adjudication. Ground no. 2 is regarding non providing opportunity and ground no. 3 is against not accepting additional evidence.

4. The facts giving rise to the present appeal are that the Assessing officer received information at the Annual Information Return, as filed by the bank, that the assessee had deposited cash amount of Rs. 17,04,250/- during the year under consideration. A notice u/s 148 of the Income-tax Act, 1961 (hereinafter referred to as “the Act”), was issued. Since there was no representation before the Assessing Officer, the Assessing Officer made best judgment assessment u/s 144 of the Act and added Rs. 15,67,190/-. Aggrieved against this, the assessee preferred appeal before the learned CIT(Appeals), who, after considering the material dismissed the appeal.

5. It is the contention of the assessee that the assessee was prevented by sufficient cause for not filing the documents filed before the learned CIT(Appeals)

in the form of additional evidence. The learned CIT(Appeals) was not justified in rejecting the application and not allowing the assessee to support his claim.

6. On the contrary learned Sr. DR opposed the submissions and supported the orders passed by the authorities below. He contended that the assessee was thoroughly negligent and did not file any evidence before the Assessing Officer. He submitted that the assessee did not appear before the Assessing Officer despite having been given sufficient opportunity.

7. I have considered the rival submissions, perused the material on record and gone through the orders of the authorities below. I find that the Assessing Officer made addition by observing as under:

*“In response to the above show cause notice issued dated 14.12.2017 fixing the case for 20.12.2017, till date the assessee has not appeared nor any written submission has been filed by the assessee and also did not furnish the details as called for. From the above facts it is clear that the assessee did not cooperate with the department in furnishing basic documents and other details/information. The undersigned has left with no other option but to complete best judgement assessment u/s 144 of the I T Act on the basis of information/material available on record. The assessee has filed his income tax return of the A.Y. 2010-11 on 04.08.2010 declaring taxable income of Rs. 1,37,060/-, hence, in absence of any submission, the cash deposited of the balance amount of Rs. 15,67,190/- (Rs. 17,04,250 - Rs. 1,37,060) is treated as undisclosed cash deposits and added to the income of the assessee as unexplained cash credits u/s 68 of the IT Act. Since I have also reason to believe and satisfied that the assessee has concealed the particulars of his income for the A.Y. 2010-11, hence, penalty proceedings u/s 271(1 )(c) of the IT Act is being initiated separately.”*

8. Further, on appeal to the learned CIT(Appeals), the assessee had filed an application under Rule 46A of the Income-tax Rules, 1962 but the same was rejected by observing as under:

*“During the course of appellate proceedings, the AR of the appellant has tried to explain that the appellant was engaged in the business of 'fabric'. The AR of the appellant has even submitted a copy of handmade trading account and P&L account. The AR of the appellant has filed an application under Rule 46A by stating that the appellant was prevented by sufficient cause to produce the documents at assessment stage. The contention of the AR is not tenable, as it is seen from the order of the AO that multiple opportunities were granted at the assessment stage but the assessee never responded. It is even mention on page 1 of the order of the AO that notice u/s 142(1) dated 06.12.2017 was also personally served upon the assessee by the Ward inspector. However, the assessee never attended the proceedings. The AO had to even issued penalty notice u/s 271(l)(b). Therefore, the additional evidences filed by the AR are rejected.*

*As far as the addition on merits is concerned, it is seen that the AO, after considering the total credits made by the assessee, found the total credits including the cash deposits at Rs. 17,04,250/- in PNB, Tilak Nagar. Instead of making the addition of full amount, to be fair to the assessee, the AO reduced the Return Income of Rs. 1,37,060/-. The AO made the total addition of Rs. 15,67,190/- (1704250-137069). Therefore on those facts, I have no reason to interfere with the findings of the AO and provide any further relief to appellant in respect of additions made by AO. Accordingly, addition of Rs. 15,67,190/- made by AO, is hereby upheld. Grounds of appeal taken by appellant are dismissed.”*

9. I have given my thoughtful consideration to the facts and the material available on record. It is seen from the record that the Assessing officer has passed an ex parte order. Under the facts I deem it proper and in the interest of principles of natural justice, more over, it would sub serve the interest of substantial justice, if the assessee is given an opportunity to represent his case before the assessing

authority. I, therefore, set aside the impugned order and restore the assessment to the file of the Assessing officer to make assessment k afresh after giving due opportunity to the assessee. The grounds raised in this appeal are allowed for statistical purposes.

10. Appeal is allowed for statistical purposes.

11. Now coming to ITA no. 8380/Del/2019, the assessee has raised following grounds of appeal:

- “1. It is contended that the Ld. CIT(A) has erred in confirming penalty U/s 271(1)(c) of Rs. 4,27,733/-.*
- 2. It is contended that the Ld. CIT(A) has not appreciated the violation of principles of natural justice of not giving proper opportunity to file the information before the AO.*
- 3. It is contended that the CIT(A) has not appreciated the reasonable cause and the complete absence of mens rea while confirming the levy of penalty U/s 271(1)(c).*
- 4. Your appellant craves leave to add, alter, amend or withdraw any ground at the time of hearing.”*

12. As I have set aside the impugned order in quantum proceedings and restore the assessment to the file of the Assessing Officer for making assessment afresh, the impugned order in the present appeal is also set aside and the issue of penalty is restored to the file of the Assessing Officer to decide the same after passing the assessment order. The assessee will be at liberty to make his submissions before

the assessing authority. The grounds raised in this appeal are allowed for statistical purposes.

13. Appeal is allowed for statistical purposes.

14. In the result, both the appeals preferred by the assessee are allowed for statistical purposes.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*Madan PalVerma\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**