

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

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.1764/Del/2020
[Assessment Year : 2008-09]**

Gunjan Gupta, WZ/2, Bal Udyaan Road, Uttam Nagar, New Delhi-110059. PAN-ADWPG4841Q	vs	ITO, Ward-1(2), Ghaziabad.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Sanjiv Mahajan, Sr.DR	
Date of Hearing	24.01.2022	
Date of Pronouncement	18.02.2022	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2008-09 is directed against the order of Ld. CIT(A), Ghaziabad dated 26.08.2020. The assessee has raised following grounds of appeal:-

- 1) *“That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not holding the proceedings under section 148 of The Income Tax Act, 1961 to be illegal ab initio on account of the learned Assessing Officer having erred in law in wrongly assuming jurisdiction under section 148 of the Income tax Act, 1961 for reopening of impugned assessment without*

there being application of mind and moreover making a wrong statement in the approval note that the appellant did not file any return of income, which is contrary to the fact of filing the return of income on date as mentioned in the impugned assessment order that the appellant did not file any return of income, which also constituted misrepresentation of facts and non application of mind.

2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not holding the proceedings under section 148 of The Income Tax Act, 1961 to be illegal ab initio on account of the learned Assessing Officer having erred in law in not serving notice u/s 148 of The Income Tax Act 1961 (which was returned back undelivered), and thereafter not fulfilling the mandate of law by not properly serving the notice u/s 148 of The Income Tax Act 1961 by Affixture mode, without complying the laid down principles of law in that regard.*
3. *Having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not holding the proceedings under section 148 of The Income Tax Act, 1961 to be illegal on account of the learned Assessing Officer having erred in law in not fulfilling the mandate of law by not properly serving the notice u/s 142(1) of The Income Tax Act, 1961 as per law, thus defying the principles of natural justice.*

4. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not holding the assessment order under section 144 of The Income Tax Act, 1961 to be illegal on account of the learned Assessing Officer having erred in law in not making best judgment assessment under Section 144 as per the established principles of law and making the assessment arbitrarily and capriciously without exercising his judgment reasonably and also without serving any show cause notice in that regard.*
5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the addition of RS.7,01,500/- fully as made by Ld. AO on account of cash deposits in Bank and that too without any basis, material and evidences available on record. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the additions/disallowance and passing the impugned assessment order being contrary to law and facts and without considering the principles of natural justice and the same is not sustainable on various legal and factual grounds.*
6. *That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of the Ld. AO in charging interest u/s 234B of the Income Tax Act, 1961.*

7. *That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of the Ld. AO in charging interest u/s 234C of the Income Tax Act, 1961.*

8. *That the appellant craves to leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

2. At the time of hearing, no one appeared on behalf of the assessee before us despite various opportunities were given to the assessee. The notice sent through speed post was returned by the Postal authority with remark “left”. The assessee has not furnished any new address to the Registry. Therefore, the appeal was taken up for hearing in the absence of the assessee and being disposed off on the basis of material available on record.

FACTS OF THE CASE

3. Facts giving rise to the present appeal are that the return was filed by the assessee disclosing income of Rs.1,97,450/- on 12.03.2009. Thereafter, the case was re-opened for assessment u/s 147 of the Income Tax Act, 1961 (“the Act”) after obtaining necessary approval on the basis of AIR information received that the assessee deposited cash of Rs.11,41,500/- in saving bank account

during the year. Thereafter, the notice sent through Speed post which was received back undelivered. Thereafter, a copy of the same was served upon the assessee through affixture by the ITI on 27.04.2015. Again a notice u/s 142(1) of the Act dated 28.04.2015 issued for compliance on 21.05.2015 and sent through speed post. In response to such notices, neither the assessee attended the proceedings nor any written replies/submissions were received. Thus, it is apparent that the assessee is deliberately avoiding compliance to the statutory notices issued by this office from this time to time and has not filed requisite details inspite of ample opportunity provided as above.

4. Ground Nos. 1 to 4 of assessee's appeal are against the re-opening of the assessment and framing assessment u/s 144 of the Act by the Assessing Officer. The contentions of the assessee regarding Ground Nos. 1 to 4 are that the Assessing Officer only had information regarding cash deposits. This information could not be sufficient to form reason to believe for re-opening of the case u/s 147 of the Act. Moreover, in the case he would have perused the saving bank account and could have easily verified that there was cash withdrawals from time to time to justify the cash deposits.

5. Ld.Sr.DR opposed these submissions of the assessee and supported the orders of authorities below. He submitted that the AO was within the power to verify the source of such deposits by re-opening of the assessment.

6. I have heard the Ld.Sr.DR and perused the material available on record and gone through the orders of the authorities below. I see no infirmity into the order of Assessing Officer for re-opening of the case on the basis that there was cash deposits in the saving account of the assessee. It was incumbent upon the AO to verify the source of such deposits. Therefore, I find no merit in Ground Nos.1 to 4 of the assessee's appeal. Thus, Ground Nos.1 to 4 of assessee's appeal are dismissed.

7. Ground No.5 of assessee's appeal is against the sustaining the addition of Rs.7,01,500/-made by the AO on account of cash deposits.

8. Ld. Sr. DR supported the orders of the authorities below and submitted that the AO has rightly made addition in respect of the cash deposits as the assessee did not furnish any explanation before the assessing authority and a remand report was called by the Ld.CIT(A).

9. I have heard the Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. I find that before Ld.CIT(A), the assessee had filed explanation regarding credit entries into the bank account of the assessee. For the sake of clarity, the same is reproduced hereunder:-

Date	Particulars	Withdrawal from Bank/Source of cash (Rs.)	Deposit in Bank (Rs.)	Source of cash deposited
01.04.2007	Opening Balance	110210		
20.04.2007	Union Bank of India		10000	Opening balance
07.05.2007	GARG MEDICOS	74000		Withdrawal from Bank
07.05.2007	Union Bank of India		74000	Deposited from withdrawal from M/s. Garg Medicos
07.05.2007	GARG MEDICOS	186000		Withdrawal from Bank
07.05.2007	Union Bank of India		168000	Deposited from withdrawal from M/s. Garg Medicos (Also verified by the AO in his remand report)
04.06.2007	Union Bank of India	700000		Withdrawal from Bank
12.06.2007	Union Bank of India		30000	Rs.2,75,000 deposited from withdrawal of Rs.7,00,000/- from Bank
12.06.2007	Union Bank of India		190000	
19.06.2007	Union Bank of India		5000	
30.06.2007	Union Bank of India		10000	
09.07.2007	Union Bank of India		20000	
20.07.2007	Union Bank of India		20000	
07.08.2007	Union Bank of India	200000		
31.08.2007	Union Bank of India	340000		Withdrawal from Bank
08.09.2007	Union Bank of India		40000	Rs.6,16,500 deposited from withdrawals of Rs.7,00,000, Rs.2,00,000 and Rs.3,40,000 from
01.10.2007	Union Bank of India		20000	
05.10.2007	Union Bank of India		16000	
10.10.2007	Union Bank of India		35000	
22.10.2007	Union Bank of India		9500	
01.11.2007	Union Bank of India		30000	
03.11.2007	Union Bank of India		10000	
05.11.2007	Union Bank of India		5000	
12.11.2007	Union Bank of India		40000	
20.11.2007	Union Bank of India		10000	
30.11.2007	Union Bank of India		30000	
04.12.2007	Union Bank of India		15000	
10.12.2007	Union Bank of India		40000	
24.12.2007	Union Bank of India		10000	
01.01.2008	Union Bank of India		20000	
07.01.2008	Union Bank of India		22000	

10.01.2008	Union Bank of India		30000	Bank.
21.01.2008	Union Bank of India		10000	
01.02.2008	Union Bank of India		18000	
04.02.2008	Union Bank of India		22000	
11.02.2008	Union Bank of India		40000	
18.02.2008	Union Bank of India		5000	
20.02.2008	Union Bank of India		10000	
01.03.2008	Union Bank of India		9500	
01.03.2008	Union Bank of India		500	
07.03.2008	Union Bank of India		5000	
10.03.2008	Union Bank of India		3000	
10.03.2008	Union Bank of India		33000	
24.03.2008	Union Bank of India		7000	
26.03.2008	Union Bank of India		71000	
	Total(A)	1590210	1141500	

Deposits through Banking Channel

Date	Particulars	Deposit Amount (Rs.)	Verification/Evidence submitted
12.04.2007	Rent from Flat in Parkview Apartments (1/2)	5700	Verified in Remand Report
08.05.2007	Rent from Flat in Parkview Apartments (1/2)	5700	Verified in Remand Report
21.05.2007	GARG MEDICOS	40000	Audited Balance Sheet and Capital Account of M/s Garg Medicos
01.06.2007	Religare Loan (Shuchi Gupta)	200000	Verified in Remand Report
01.06.2007	GARG MEDICOS	300000	Audited Balance Sheet and Capital Account of M/s Garg Medicos
01.06.2007	Religare Loan (Gunjan Gupta)	200000	Verified in Remand Report
08.06.2007	Rent from Flat in Parkview Apartments (1/2)	5700	Verified in Remand Report
13.06.2007	Closure of Loan 703200043	8391	Bank Statement
04.07.2007	Gunjan Gupta Capital A/c	388	D/W UBI (Bank charge reversed)
06.07.2007	Rent from Flat in Parkview Apartments (1/2)	5700	Verified in Remand Report
12.07.2007	HSNC Personal Loan	345785	Verified in Remand Report
04.08.2007	Standard Chartered Personal Loan	488784	Verified in Remand Report
06.08.2007	Saving Bank Intt.	78	Bank Statement
08.08.2007	Rent from Flat in Parkview Apartments (1/2)	5700	Verified in Remand Report
30.08.2007	Citibank Personal Loan	150000	Verified in Remand Report
30.08.2007	Citibank Personal Loan	150000	Verified in Remand Report
30.08.2007	Citibank Personal Loan	40635	Verified in Remand Report
11.09.2007	Rent from Flat in Parkview Apartments (1/2)	5700	Verified in Remand Report
08.10.2007	Rent from Flat in Parkview Apartments (1/2)	5700	Verified in Remand Report
08.11.2007	Rent from Flat in Parkview	6200	Verified in Remand Report

	<i>Apartments (1/2)</i>		
07.12.2007	<i>Rent from Flat in Parkview Apartments (1/2)</i>	6200	<i>Verified in Remand Report</i>
08.01.2008	<i>Rent from Flat in Parkview Apartments (1/2)</i>	6200	<i>Verified in Remand Report</i>
08.02.2008	<i>Saving Bank Intt.</i>	148	<i>Bank Statement</i>
08.02.2008	<i>Rent from Flat in Parkview Apartments (1/2)</i>	6200	<i>Verified in Remand Report</i>
07.03.2008	<i>GARG MEDICOS</i>	2000	
08.03.2008	<i>Rent from Flat in Parkview Apartments (1/2)</i>	6200	<i>Verified in Remand Report</i>
	Total (B)	2015089	

Grant total (A+B)-11,41,500 + 20,15,089=31,56,589

As such all the credits in the Bank during the year of Rs.31,56,589 is fully explained and verifiable from the evidence adduced in our application under 46A of the Income Tax Rules, 1962.

As such it is prayed that on the basis of our above submissions and our earlier submissions dated 20.07.2020, the assessment order may be quashed.”

10. However, Ld.CIT(A) partly allowed the appeal of the assessee by holding as under:-

8.4 “Ground nos. 5 to 7: The appellant has challenged the best judgment assessment under section 144, viz a viz, the addition of the cash deposited of Rs.11,41,500/- and credits in bank of Rs.20,15,089/-. The appellant has tried to explain the source of the cash deposits from opening balance, from his partnership firm M/s Garg Medicos and from re-deposit of cash withdrawn from the bank account during the year. The appellant has also filed the cash book of M/s Garg Medicos along with his rejoinder dated 19.08.2020. I have gone through the remand report of The AO, rejoinder of the appellant and the various evidences filed by the appellant and it is observed that the cash

deposit of Rs.10,000/- on 20.04.2001 from opening balance of cash in hand is valid. Besides, Rs.74,000/- and Rs.1,66,000/- deposited on 7.5.2007 has been claimed from Garg Medicos in which he is partner and the same is substantiated by the return of income, audited balance sheet, capital account and cash book of M/s Garg Medicos submitted by the appellant. Also, cash deposit of Rs. 1,90,000/- on 12.06.2007 has been verified by the AO from out of cash withdrawals of Rs. 1,00,000/-. As such I find that the source of cash deposit of Rs.4,40,000/- in the bank account stands explained, while the contention of appellant that the cash has been re-deposited from cash withdrawals during the year is not tenable. I also do not find force in the appellant's claim that the source of cash deposit is the business income of the assessee."

11. The basis of sustaining of addition of Rs.7,01,500/- was that the assessee could not place any supporting evidence regarding deposits of the amount so withdrawn from the bank account. I am of the considered view that this observation of Ld.CIT(A) is fallacious as the AO has not brought any evidence on record that the amount withdrawn from the saving bank account was utilized elsewhere by the assessee. Therefore, in the absence of such finding by the Assessing Officer, Ld.CIT(A) was not justified in sustain such addition. I therefore, direct the AO to delete this addition. Thus, Ground No.5 of assessee's appeal is allowed.

12. Ground Nos. 6 and 7 are against the levy of interest u/s 234B & 234C of the Act. The levy of interest u/s 234B & 234C of the Act being consequential in nature, I hold accordingly. Thus, Ground Nos. 6 & 7 of assessee's appeal are dismissed.

13. Ground No.8 is general in nature, needs no separate adjudication.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 18th February, 2022.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI