

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC-2” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 623/DEL/2014**

**[Assessment Year: 2006-07**

Sumit Kumar Bagra, C/o M/s Vaishali Creation, B-12, Hathi Khana, Azad Market, 1 <sup>st</sup> Floor, New Delhi-110006. PAN- AFSAB5419C	<u>Vs</u>	Income-tax Officer, Ward-39(1), New Delhi
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	<b>None</b>	
<b>Respondent by</b>	<b>Sh. Om Prakash, Sr. DR</b>	
<b>Date of hearing</b>	<b>04.01.2022</b>	
<b>Date of pronouncement</b>	<b>22.03.2022</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-XXVIII, New Delhi, dated 29.11.2013, pertaining to the assessment year 2006-07. The assessee has raised following grounds of appeal:

*“1. Ld CIT (A)-XXVIII New Delhi has erred in issuing enhancement notice and disposing off the same against the assessee without giving adequate opportunity of being heard.*

*2. Ld CIT(A)-XXVIII New Delhi has erred in enhancing the income of the appellant by an amount of Rs.44,65,738/- purely on the assumption that the appellant could not prove the genuineness of purchases of this amount ignoring the fact that in the process she has disallowed entire purchases of the appellant.*

3. *Ld CIT(A)-XXVIII New Delhi has erred in conforming disallowance of Rs.3,92,725/- on account of Job Work charges on the presumed failure of the assessee to prove genuineness of the transaction.*

4. *Ld CIT (A)-XXVIII New Delhi has erred in enhancing income by Rs.850000/- on account of deposit in the bank account by ignoring all the explanation given by the appellant and treating the same as unexplained cash credit in the bank account without even mentioning why the enhancement was being made and also giving adequate opportunity to being heard to the appellant.*

5. *Ld CIT (A)-XXVIII New Delhi has erred in enhancing the income by Rs. 105849/- without giving adequate opportunity of being heard to the assessee.*

6. *Ld CIT (A)-XXVIII New Delhi has erred in initiating penalty under section 271 of the Income Tax Act, 1961."*

2. Facts, in brief, are that in this case return of income was filed on 31.10.2006 declaring an income of Rs. 1,47,370/-. The case was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income-tax Act, 1961, was framed vide order dated 24.12.2008. The Assessing Officer observed that the assessee is a proprietor of M/s Vaishali Creation and is in the business of trading and manufacturing of saris. The Assessing officer noticed that the assessee, during the year, had made purchases in cash with various parties amounting to Rs. 44,35,738/-. Therefore, the Assessing officer called upon the assessee to explain the same. The Assessing Officer invoking the provisions of Section 40A(3) of the Act, made disallowance of 20% of the purchases made in cash amounting to Rs. 8,93,147/-. Further, he disallowed the job work charges made in cash of Rs.

3,92,725/- and also made addition of Rs. 1,15,230/- on account of difference in opening and closing stock. Hence, the Assessing Officer assessed income at R. 14,42,625/- against the declared income of Rs. 1,47,370/-.

3. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who, after considering the submissions dismissed the appeal and further enhanced the income by Rs. 44,65,738/-, Rs. 1,05,849/- and Rs. 8,50,000/-. Aggrieved against this, the assessee is in appeal before the Tribunal.

4. Ground no. 1 to 4 are against enhancement of the income and sustaining the addition without giving adequate opportunity of being heard to the assessee.

5. No one appeared on behalf of the assessee. It is seen from the record that notices sent on the address furnished with the Registry are returned with remark "left without address". The assessee did not provide any address to the Registry. Therefore, the appeal is taken up for hearing in the absence of the assessee.

6. Learned DR submitted that sufficient opportunity was granted to the assessee by the learned CIT(Appeals). The assessee chose not to appear. He submitted that the assessee has been thoroughly negligent in his conduct. He submitted that impugned order is well reasoned and justified. He contended that the assessee grossly failed to file supporting evidences regarding purchases and cash deposited in the bank account.

7. I have heard the learned Sr. DR, perused the material available on record.

The learned CIT(Appeals) decided the issues by observing as under:

*5.5 As per records the appellant was asked to file evidence that the payee insisted on payment in cash when the bank was closed. The appellant was also asked to give evidence of source of cash deposited. The case was adjourned to 24.03.2010. No compliance was made on this date. Fresh notice were issued fixing the case for 17.01.2011, 02.02.2011, 03.06.2011, 10.6.2011, 09.08.2011, 26.12.2011. On 26.12.2011 the case was adjourned on request to 24.01.2012, but no compliance was made on this date. Fresh notice was issued fixing the case for 25.10.2012. Again no compliance was made an no adjournment application was received. The case was refixed for 30.09.2013 vide notice dated 10.09.2013. On this an adjournment application was received vide which the case was adjourned to 08.10.2013. However, again no compliance was made on 08.10.2013. A final notice was then sent on 18.10.2013 fixing the case for 28.10.2013. No adjournment application was received on 28.10.2013 and no compliance was made. It is apparent from the conduct of the appellant that he is no longer interested in pursuing the appeal or in filing the details asked for by my predecessor. The issues under appeal are therefore being decided on the basis of submissions filed till date after considering the facts brought out in the assessment order and the submissions of the appellant as well as the remand report.*

*1. Addition of Rs.8.93.147/- under section 40A(3)*

*As per the assessment order the assessee had made all purchases in credit and payment had been made in cash as under:*

<i>Serial No.</i>	<i>Name of the person</i>	<i>Amount</i>
<i>1.</i>	<i>Megh Raj Sharma</i>	<i>10,92,100/-</i>
<i>2.</i>	<i>Nand Kumar Srivastava</i>	<i>8,30,088/-</i>
<i>3.</i>	<i>R K Enterprises</i>	<i>7,51,100/-</i>
<i>4.</i>	<i>A K Enterprises</i>	<i>7,60,200/-</i>
<i>5</i>	<i>Mehak Textile</i>	<i>10,32,250/-</i>
	<i>Total</i>	<i>44,65,738</i>

*Notice under section 133(6) were sent by the Assessing Officer to the above parties were received back as not known. The assessee thus failed to prove the genuineness of the purchase made from the above parties. Even during the appellate proceeding the appellant failed to show that the purchases as above are genuine. An enhancement notice was therefore issued to the appellant on 20.11.2013 to show cause why the addition of Rs.8,93,147/- made by the Assessing Officer under section 40A(3) be enhanced to Rs.44,65,738/- by disallowing the entire purchases made from the above parties. For this purpose the case was fixed for 27.11.2013. No compliance was made by the appellant. It was ascertained from the Speed Post tracking system that the notice had been served on the appellant on 22.11.2013. The appellant has failed to prove the genuineness of the purchases made from the above parties, the purchases to the extent of Rs.44,65,738/- are treated as bogus. The addition made by the Assessing Officer is therefore enhanced to Rs.44,65,738/-. Penalty under section 271(1)(c) for bogus purchases is initiated separately for filing inaccurate particulars of the income.*

*Without prejudice to above, the payments in respect of the above purchases has been shown to have been made in cash. The Assessing Officer has accordingly made an addition of Rs.8,93,147/- under section 40A(3). The appellant has claimed that the payment was made in cash, except in two circumstances, on account of there being a bank holiday or bank being closed on account of a holiday. Accordingly, the appellant has claimed that the provisions of Rule 6DD are applicable. However, as per Rule 6DD(j), the exception is only available wherein the payment was required to be made on a day the banks were closed. Since no evidence of any such exigency or emergency has been filed by the appellant except a lame excuse that the payment was made in cash on account of delay in clearing the accounts, the claim of the appellant cannot be accepted. The addition under section 40A(3) is sustained as the payments in respect of purchases have been shown in cash.*

*2. Addition of Rs.3,92,725/- toward job work charges. An addition of Rs.3,92,725/- has been made by the Assessing Officer on account of payment of job work charges in cash and without filing any confirmations from the 5 parties to whom the alleged payment was made. In the remand report dated 19.01.2010, the Assessing Officer has reported that the contention of the assessee that the Assessing Officer did not ask for confirmation in respect of*

*the 5 parties appears to be correct from record. However, the perusal of the order and reply of the appellant shows that he has been unable to prove the genuineness of the payments even during the appellate proceedings. No details in regard to the payment made to the fabricators have been brought on record by the appellant. The addition made by the Assessing Officer is therefore confirmed.*

*3. Difference in Opening and Closing Stock. The Assessing Officer has made an addition of Rs.1,15,230/- on account of difference in opening and closing stock. The Assessing Officer vide letter dated 12.11.2009 has acknowledged that there is inadvertent mistake in making this addition. The addition is therefore deleted.*

*4. Addition on account of deposit in Saving Bank Account. The Assessing Officer has raised a query in this regard and the appellant had failed to provide evidence in regard to deposit of Rs.7,00,000/- in his bank account. Vide order sheet entry dated 17.02.2010 the appellant was again required to explain the source of Rs.7,00,000/- deposited in the saving bank account of Shri S.K.Bagra in cash. He claimed in your letter dated NIL filed on 15.03.2010 that the same is substantiated from the cash withdrawn from his personal account. However no such is apparent from the documents annexed with the submissions. The appellant did not appear in response to various opportunities provided to it. Vide letter/enhancement notice dated 20.11.2013, the appellant was asked to explain that the bank account of M/s.Vaishali Creation shows deposit of Rs.3,50,000/- and Rs.5,00,000/- on 17.03.2006, from where Rs.6,00,000/- has been transferred to his personal account and there are withdrawals of cash of Rs.24,000/- each on 17.03.2006 and 18.03.2006. The transferred amount has been deposited in the personal account from where Rs. 7,00,000/- has been withdrawn in cash. However, as there was no apparent source of the amount of Rs. 8,50,000/- deposited in the bank account, he was required to explain why his income should not be enhanced by Rs.8,50,000/- as income from undisclosed sources. No reply to the enhancement notice was received. The income of the appellant is therefore enhanced by Rs.8,50,000/- on account of unexplained cash credits in the bank account. Penalty proceeding under section 271(1)(c) are initiated separately for filing inaccurate particulars of the income.*

*5. Addition of Income as per the return of income. The appellant has declared Rs. 1,05,849/- In the income tax return. This income was however not included in the assessment order. Enhancement notice dated 20.11.2013 was therefore issued to the appellant to explain why his income should not be enhanced by Rs. 1,05,849/-. No reply to the enhancement notice was received. The income of the appellant is therefore enhanced by Rs.1,05,849/- {6}. in the result, the appeal is dismissed and enhanced.”*

8. It is seen from the record that the assessee was given sufficient opportunity to file supporting evidences but he grossly failed to do so. Even before this Tribunal no representation is made. Under these facts and in the absence of any supporting evidences, I do not see any reason to interfere into the finding of learned CIT(Appeals). The same is hereby affirmed. Grounds raised in this appeal are hereby dismissed.

9. Appeal of the assessee is dismissed.

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

**Dated: 22/03/2022.**

**\*MP\***

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI