

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No. 2576/Del/2019
(Assessment Year : 2010-11)

Bijender Singh 16, Near Hanuman Mandir, Kulak Par, Palla, North West, Delhi-110 036 PAN : BMZPS 8450 C (APPELLANT)	Vs.	ITO Ward – 38(1) New Delhi (RESPONDENT)
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Assessee by	Shri Bijender Singh, Assessee in person
Revenue by	Shri Zahid Parvez, Sr. D.R.

Date of hearing:	30.05.2022
Date of Pronouncement:	30.05.2022

ORDER

PER ANIL CHATURVEDI, AM :

The present appeal filed by the assessee is directed against the order dated 22.02.2019 of the Commissioner of Income Tax (Appeals)-13, New Delhi relating to Assessment Year 2010-11.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is an individual. AO noted that assessee had made cash deposits aggregating to Rs.61,16,180/- in the bank account during the F.Y. 2009-10 relevant to A.Y. 2010-11. Accordingly notice u/s 148 of the Act was issued on 27.03.2017 which was served on the assessee. AO has noted that thereafter notices issued u/s 143(2) and 142(1) of the Act which were served on assessee had remained un-complied. AO thereafter passed order u/s 144 r.w.s 147 of the Act vide order dated 01.12.2017 and determined the total income at Rs.61,16,180/- *inter alia* by treating the aggregate cash deposits of Rs.61,16,180/- as unexplained income from undisclosed source.

4. Aggrieved by the order of AO, Assessee carried the matter before CIT(A) who vide order dated 22.02.2019 in Appeal No.185/17-18 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

1. *“Because the order is contrary to law and on facts of the case.*
2. *Because very initiation of proceedings u/s 147 and issuance of notice 148 are bad in law and invalid.*
3. *Because the completion of assessment order u/s 144/147 of IT Act, are bad in law as well as on facts and is liable to be annulled.*
4. *Because no proper notices were issued for compliance nor adequate opportunity of hearing was given.*
5. *Because the addition made u/s 69C/68 of the Act in a sum 61,61,180/- is erroneous and arbitrary and must be quashed.*
6. *Because the Ld. AO erred and acted arbitrarily in placing reliance on AIR data.*
7. *Because the Ld Assessing Officer erred in not considering the bank statement and without any basis arbitrarily made an addition of whole of amount.*

8. *The assessee craves leave to add/alter any on grounds of appeal on or before the date of final hearing.”*

5. On the date of hearing, the assessee appeared in person.

6. Before us, assessee submitted that due to some personal difficulties, assessee was not able to appear before the AO and therefore, the AO passed order without considering the submissions of assessee. He further submitted that to represent his case before CIT(A), assessee had given the details to his Chartered Accountant but due to the accident of the Chartered Accountant, he did not appear before CIT(A) and CIT(A) upheld the order of AO. Before us, the assessee therefore submitted that one more opportunity be granted to assessee to plead his case and further he undertakes to appear before the authorities and furnish all the required details to support his contentions.

7. Learned DR on the other hand objected to the request made by AR seeking second innings. He further submitted that no material has been placed by the assessee to demonstrate that the CA of the assessee had met with accident and therefore could not appear before CIT(A). He further submitted that before AO also none appeared before AO.

8. We have heard the rival submissions and perused the material available on record. Before us, it is the contention of the assessee that the due to the accident of the Chartered Accountant

there is no appearance before CIT(A). The perusal of CIT(A) order reveals that CIT(A) has passed an *ex parte* order without deciding the issue on merits. Sub Section (6) of Section 250 of I. T. Act mandate the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by dismissing the appeal without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no parties should be condemned unheard. In view of these facts, we set aside the impugned order of CIT(A) dated 22.02.2019 and restore the issue to the file of AO for re-adjudication of the issues after granting sufficient opportunity of hearing to the assessee. Assessee is also directed to furnish the details called for by the authorities. In view of our decision to restore the issue to AO, we are not adjudicating on merits the grounds raised by the assessee. **Thus the ground of assessee is allowed for statistical purposes.**

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

Order pronounced in the open court on 30.05.2022

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

*Date:- 30.05.2022
PY**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	30.05.2022
Date on which the typed draft is placed before the dictating Member	30.05.2022
Date on which the approved draft comes to the Sr.PS/PS	30.05.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	30.05.2022
Date on which the fair order comes back to the Sr. PS/ PS	30.05.2022
Date on which the final order is uploaded on the website of ITAT	30.05.2022
Date on which the file goes to the Bench Clerk	30.05.2022
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	