

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.822/Del/2014	Assessment Year: 2005-06
ITA No.823/Del/2014	Assessment Year: 2006-07
ITA No.3444/Del/2014	Assessment Year: 2007-08

G.S. Saluja, C/o Vipin Jain & Associates, CAs, Flat No. 915, 9 <sup>th</sup> Floor, Indraprakash Building, 21 Barakhamba Road, New Delhi – 1100 01	<b>Vs.</b>	ITO, Ward 23(1), New Delhi.
<b>PAN :AARPS3934L</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	N o n e
Respondent by	Ms. Anupama Singla, Sr. DR

Date of hearing	02.06.2022
Date of pronouncement	10.06.2022

**ORDER**

**PER SAKTIJIT DEY, JUDICIAL MEMBER:**

Aforesaid appeals by the same assessee arise out of three separate orders of learned Commissioner of Income-Tax(Appeals)-28, New Delhi pertaining to assessment years 2005-06, 2006-07 and 2007-08.

2. When these appeals were called for hearing, none appeared on behalf of assessee to represent them. Perusal of record reveals, on several occasions earlier, though, appeals came up for hearing, however, the Bench could not proceed with the hearing mostly due to non-appearance by the assessee. Since, these appeals are pending for more than eight years and there is no response from assessee's side despite issuance of several notices of hearing and uploading of the proceedings in the official website, it has to be presumed that assessee is not interested in pursuing the present appeals.

3. Considering the non-cooperative attitude of assessee in the matter of disposal of these appeals, we proceed to dispose of the appeals ex parte qua the assessee after hearing the learned Departmental Representative and based on material available on record.

**ITA No.822/Del/2014:**

4. Grounds raised by assessee are as under:

1. That on the facts and in the circumstances of the case and in law, the Assessing Officer has erred in determining the Income of the appellant at Rs.27,96,750, as against return filed declaring income of Rs.10,02,113, after making addition of Rs.17,94,639 to the income declared, on wholly illegal and frivolous grounds, untenable in law. It is prayed that Rs.17,94,636 added to the income be directed to be deleted.
2. That the proceedings carried out u/s. 147/148 and the assessment order dated 23.12.2011 framed thereto are inconsistent with the provisions of the statute, are thus illegal and bad in law, and liable to be quashed for reasons that:  
There is no independent application of mind by the Assessing Officer and no reasons to believe that any income chargeable to tax

has escaped assessment, so as to grant jurisdiction to the Assessing Officer to initiate proceedings u/s. 147, and to issue notice u/s. 148 of the Income-Tax Act, 1961.

There is no speaking order passed over ruling the objections filed by the assessee before the assessment order dated 23.12.2011 was framed, a mandatory requirement which the Assessing Officer has failed to meet.

The assessment is made on mere surmise and conjecture, there being no proper application of mind to appreciate and properly understand the facts explained correctly and truly by the assessee, and there being nothing to support the illegal and correct conclusion drawn in the assessment order and addition made to the income declared.

3. There is no basis to determine the income of “AVI Impex” a unit of “Gunjeev Saluja & Others” AOP, at Rs.17,94,639 by applying a rate of 11% of the total receipts/sales, and in taxing the income from “AVI Impex” already taxed in the hands of the AOP again in the hands of the assessee, on wholly illegal and frivolous grounds, untenable in law.
4. The appellant craves leave to be permitted to amend, modify, delete, withdraw agricultural land or any of the grounds above, and/or to add any fresh ground, on or before and /or during the appeal proceedings.”
5. Briefly, the facts are, assessee is a resident individual. Pursuant to a survey conducted at the business premises of M/s. Durga Traders, a proprietary concern of Shri Gunjeev Saluja, it was found that the assessee and other family members as well as group entities are engaged in the business of export of readymade garments to USA, UAE, Russia and Europe. It was found that the family members including the assessee have opened bank account in the names of various entities. It was observed that cheques were issued to various entities

and thereafter cash was withdrawn from the bank account and utilized by some other entities for making cash purchases and other business activities. On the basis of such information, assessment in case of the assessee was reopened under Section 147 of the Act. In course of assessment proceedings, Assessing Officer, based on material found during the survey operation, directed the assessee to explain the source of cash deposits made to the bank account. In response to show-cause-notice issued by the Assessing Officer, assessee submitted that deposits are out of the business receipts. Assessing Officer, however, did not accept the claim of the assessee. By treating the cash deposits as undisclosed profit from business, Assessing Officer added back an amount of Rs.17,94,639 to the income of the assessee.

6. Challenging the addition made, assessee preferred an appeal before learned Commissioner (Appeals). However, assessee was unsuccessful.

7. We have heard learned Departmental Representative and perused the material on record.

8. As could be seen from the material on record, in pursuance to survey conducted in the business premises of assessee, certain incriminating materials were found. In the statement recorded, assessee admitted that he was the proprietor of M/s. AVI Impex. He further admitted that no books of accounts were maintained and the income from proprietary concern was not included in the return. Though, subsequently, assessee changed his stance and stated that

AVI Impex was an Association of Persons (AoP), however, it was not accepted by the department. While deciding assessee's appeal, learned Commissioner (Appeals) has observed as under:

“The claim of the appellant has been duly considered viz-a-viz the evidence brought on record by the Assessing Officer and the investigation carried out in the connected case of Shri Gunjeev Saluja for A.Y. 2007-08. It is seen that despite the claim of the appellant that the AOP was constituted on 01.04.2004, all the documentary evidence filed in the related case of Shri Gunjeet Saluja – the PAN, and the income tax return relating to the existence are dated after the survey wherein evidence relating to the existence of the three concerns – Durga Traders, Eves Trading and AVI Impex was found. The only document in regard to the existence of the AOP is the notarized copy of agreement dated 31.03.2005 which is controversial keeping in view the denial by the notary attesting the alleged document. In the back drop of the statement of the appellant on the date of the survey i.e. on 09.01.2007 accepting the existence of M/s.AVI Impex as his proprietorship concern, the income of which had not been reflected in the income tax return, it can be safely accepted that the creation of the AOP is an afterthought. It has been created with the sole motive of escaping the effects of not showing the income in the income tax return. From the bank records of M/s.AVI Impex it is apparent that the same is the proprietorship concern of the appellant. The income of the concern has therefore been rightly assessed by the Assessing Officer as the appellant's income.

As far as the computation of the profit at 11% of the turnover is concerned, the same is justified as similar gross profit has been reflected by the appellant in the case of the other proprietorship concern i.e. M/s. PayLess International. Further, in this case there is no expense on rent or maintenance of a separate premise, on staff and other indirect expenses related to a trading concern. No evidence has been brought on record to show that the assessee was incurring any direct expense for the purpose of purchasing and selling the garments. Here the gross profit is the net profit. 11% profit on purchase and sale of readymade garments is therefore justified. The addition made by the Assessing Officer is therefore sustained.”

9. From the aforesaid observations of learned Commissioner (Appeals) as well as other material on record, it is evident, the disputed addition was based on certain evidence found during the survey operation.

10. The departmental authorities have held that the material found during the survey operation demonstrated that a part of the profit earned from business has not been disclosed by the assessee. Nothing has been brought on record by assessee to controvert the aforesaid factual finding of the departmental authorities. That being the case, we do not find any valid reason to delete the addition.

11. As regards the issue raised by assessee regarding validity of reopening of assessment, it is evident that based on tangible material found in course of survey operation, Assessing Officer has initiated proceedings under Section 147 of the Act, therefore, we do not find any merit in the grounds raised by the assessee challenging the validity of reopening of assessment under Section 147 of the Act.

**ITA No.823/Del/2014:**

12. Grounds raised by assessee in this appeal are as under:

1. That on the facts and in the circumstances of the case and in law, the Assessing Officer has erred in determining the Income of the appellant at Rs.90,54,910, as against return filed declaring income of Rs.13,35,270, Income as assessed u/s. 143(3) for Rs.14,14,240, after making addition of Rs.76,40,669 to the income declared, on wholly illegal and frivolous grounds, untenable in law. It is prayed that Rs.70,40,669 added to the income be directed to be deleted.

2. That the proceedings carried out u/s. 147/148 and the assessment order dated 23.12.2011 framed thereto are inconsistent with the provisions of the statute, are thus illegal and bad in law, and liable to be quashed for reasons that:

There is no independent application of mind by the Assessing Officer and no reasons to believe that any income chargeable to tax has escaped assessment, so as to grant jurisdiction to the Assessing Officer to initiate proceedings u/s. 147, and to issue notice u/s. 148 of the Income-Tax Act, 1961.

There is no speaking order passed over ruling the objections filed by the assessee before the assessment order dated 23.12.2011 was framed, a mandatory requirement which the Assessing Officer has failed to meet.

The assessment is made on mere surmise and conjecture, there being no proper application of mind to appreciate and properly understand the facts explained correctly and truly by the assessee, and there being nothing to support the illegal and correct conclusion drawn in the assessment order and addition made to the income declared.

3. There is no basis to determine the income of "AVI Impex" a unit of "Gunjeev Saluja & Others" AOP, at Rs.76,40,669 by applying a rate of 8.1% of the total receipts/sales, and in taxing the income from "AVI Impex" already taxed in the hands of the AOP again in the hands of the assessee, on wholly illegal and frivolous grounds, untenable in law.
4. The appellant craves leave to be permitted to amend, modify, delete, withdraw agricultural land or any of the grounds above, and/or to add any fresh ground, on or before and /or during the appeal proceedings."

13. Facts and issues raised in the present appeal are identical to ITA No. 822/Del/2014, decided earlier. The only variation being in the gross profit rate adopted at 8.1%. Therefore, our decision in ITA No.822/Del/2014 would apply mutatis mutandis to this appeal as well as Grounds are dismissed. Appeal is dismissed.

**ITA No.3444/Del/2014:**

14. Grounds raised by the assessee are as under:

“1. a) That there was no failure on the part of the appellant in making compliance of statutory notices issued under sub-section (1) of section 142 and 143(2) of the I.T. Act. The appellant had made proper compliance from time to time in the course of assessment proceedings. On facts and in the circumstances of the case, there was no legal warrant to treat the assessee as being in default warranting assessment under section 144 of I.T. Act.

b) The assessment framed vide order dated 24.12.2009 under section 144(1) read with section 145(3) of I.T. Act deserves to be quashed being void, without jurisdiction and untenable on facts & in law.

2. That on facts and in the circumstances of the case the accounted version based on regular method of accounting and in absence of any error of omission found and detected, coupled with the fact that all the purchases, direct and indirect expenses and also sales were fully vouched and verifiable and supported by documentary evidence, there were fully vouched and verifiable and supported by documentary evidence, there was no legal warrant for rejection of the trading results by the Ld. A.O. and sustained by the Ld. CIT(A).

3. That the authorities below on facts and in law and on the grounds taken and basis adopted went wrong to hold that books of accounts were not maintained and in such manner to enable to deduce the correct profit there from. Rejection of declared turnover was based on grounds being erroneous, arbitrary and untenable on facts and in law.

4. That rejection of the declared turnover and estimate of the same at Rs.40,00,00,000/- deserves to be quashed and the declared turnover deserves to be accepted.

5. That the declared Gross Profit was well supported by method of accounting regularly employed. On facts and in the circumstances of the case there was no legal warrant to reject the declared gross profit of 3.46% and to estimate the Gross profit at 8% thereby determining the Gross Profit at Rs.3,20,00,000/-.

6. That the determination of net profit from the proprietary concern M/s. Payless International at Rs.4,16,01,841/- deserves to be rejected and quashed and the declared net profit deserves to be accepted.

7. That indirect expenses claimed at Rs.95,00,135/- were well supported by proper documentary evidence. On the facts and in the circumstances of the case, there was no warrant to reject the declared expenses and to determine the admissible expenditure at Rs.10,00,000 ( Ten Lac ) as against deduction claimed at Rs.95,00,135/-. The disallowance as sustained deserves to be deleted being illegal, without jurisdiction and untenable on facts and in law.

8. That on facts and in the circumstances of the case there was no legal warrant to hold that there was unexplained capital liable for addition u/s.68 of I.T. Act. The impugned addition of Rs.77,60,269/- deserves to be deleted being illegal, without jurisdiction and untenable on facts and in law.

9. That the appellant did not make any investment over and above the recorded investment warranting any addition. Addition of Rs.70,00,000/- as unexplained investment in purchases and expenditure u/s.69 by the Ld. Assessing Officer and sustained by the Ld. CIT(Appeals) deserves to be quashed being illegal, without jurisdiction and untenable on facts and in law.

10. That the cash found at the time of survey was covered by the recorded figures. On the facts and in the circumstances of the case, there was no warrant to hold that such cash was unexplained u/s 69 of the I.T. Act. The consequent addition of Rs.11,07,500/- deserves to be quashed and cancelled being void, illegal, without jurisdiction and untenable on facts and in law.

11. That there was no unexplained investment in properties liable for addition u/s 69 of I.T. Act as assumed by the authorities below. The addition of Rs.1,05,42,500/- deserves to be quashed and cancelled being void, illegal, without jurisdiction and untenable on facts and in law.

12. That there was no legal warrant to charge interest u/s. 234A/234B/234C & 234D. The levy of interest under the said provisions deserves to be quashed and canceled being void, illegal and without jurisdiction.”

15. In ground Nos. 1, 2 and 3, assessee has basically challenged assumption of jurisdiction under Section 144 of the Income-Tax Act, 1961 and rejection of books of accounts under Section 145(3) of the Act. On careful perusal of the assessment order passed for the impugned assessment year, it is observed that Assessing Officer has made specific allegation that neither assessee complied with the show-cause-notice issued nor furnished the information called for. Therefore, Assessing Officer proceeded to complete the assessment under Section 144 of the Act to the best of his judgment. Since, assessee didn't maintain any books of accounts or produced them before the Assessing Officer, by resorting to section 155(3) of the Act, Assessing Officer rejected the books of accounts. Assessee has not brought on record any material/evidence to controvert the findings of the departmental authorities.

16. In view of the aforesaid, we do not find any merit in the grounds raised. Accordingly, they are dismissed.

17. In rest of the grounds, assessee has contested various additions made by the Assessing Officer and sustained by learned Commissioner (Appeals).

18. As could be seen from the assessment order, due to non-compliance of the query raised by the Assessing Officer and non-furnishing of required information, while completing the assessment, Assessing Officer made the following additions:

- i) Net profit from payless International. Rs.4,16,18,041

ii)	Unexplained capital introduced under Sec.68.	Rs.77,60,269
iii)	Unexplained investment in purchases and expenditure under Sec.69 of the Act.	Rs.70,00,000
iv)	Unexplained cash found at the time of survey under Section 69A.	Rs.11,07,500
v)	Unexplained investment in properties under Section 69 of the Act.	Rs.1,05,42,500

19. Undisputedly, the aforesaid additions made by the Assessing Officer were sustained by learned Commissioner (Appeals), since, assessee failed to furnish any cogent evidence to controvert the findings of the Assessing Officer. The factual position remains materially identical before us as assessee has neither appeared nor furnished any material for enabling us to take a contrary view.

20. In view of the aforesaid, we do not find any valid reason to interfere with the decision of learned Commissioner (Appeals) qua the additions made. Grounds are dismissed.

**21. In the result, the appeal is dismissed.**

**22. To sum up, all the appeals are dismissed.**

***Order pronounced in the open court on 10<sup>th</sup> June, 2022.***

**Sd/-  
( PRADIP KUMAR KEDIA )  
ACCOUNTANT MEMBER**

**Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER**

Dated: 10<sup>th</sup> June, 2022.  
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi