

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.2498/Del/2019
[Assessment Year : 2010-11]**

Hitender Pal Singh, C-1481, JJ Colony, Block-C, Tigri Colony, New Delhi-110062. PAN-CICPS4015B	vs	ITO, Ward-31(5), New Delhi.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	11.08.2022	
Date of Pronouncement	17.08.2022	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2010-11 is directed against the order of Ld. CIT(A)-11, New Delhi dated 15.01.2018.

2. The assessee has raised following ground of appeal:-

1. *"The order of CIT (A) is bad in law and on facts.*
2. *The CIT(A) Ld CIT(A) has erred in affirming the jurisdiction of the AO under section 147 of the Income Tax Act, 1961 (Act).*
3. *The CIT(A) has erred in affirming the jurisdiction of AO ignoring that provisions of section 147 in cases where no return has been filed can only be invoked on the basis of some tangible material and reasonable belief to establish escapement of income.*
4. *The Ld CIT(A) has erred in not appreciating the for assessing a person in a routine manner where no return has been filed there is separate provisions of section 142(1), which empowers AO to enquire the matter and direct the assessee to file a Return of Income if his income is above taxable limit.*
5. *The Ld CIT(A) while affirming the jurisdiction of the AO under section 147 has erred in not considering the judgment of Hon'ble*

Bombay High Court in the case of General Electoral Trust 289 CTR 284(Bom).

6. *The CIT(A) has failed to appreciate that it is a case of borrowed satisfaction, in as much as the AO has solely relied on the findings of the investigation wing and has not applied his mind independently to the information received from investigation wing.*
7. *Without prejudice to the above the assumption of jurisdiction of the AO u/s 147 is bad in law as the AO has not followed the procedure of 147 as propounded by the jurisdictional High Court in the case of Sabh Infrastructure reported in 398 ITR 198(Del).*
8. *Without prejudice to the above , the CIT(A) has erred in not appreciating the belief entertained by the AO vis-a-vis alleged escaped assessment has been satisfactorily cleared by the Assessee and no addition on the basis of that belief has been made while concluding the assessment.*
9. *The Ld CIT(A) has erred in not appreciating that once the ground on which the jurisdiction for reopening the assessment has been aborted then no addition dehors the original ground can be made by the AO*
10. *The Ld CIT(A) has erred in affirming the addition of Rs 13,88,500/- made by AO alleging that the assessee has failed to explain the source of credits deposited in bank account.*
11. *Ld CIT(A) has failed to appreciate that the assessee has successfully discharged his burden and the AO has failed to conduct any logical enquiry vis-a-vis making of additions on the basis of surmise and conjectures.*
12. *The CIT (A) has erred in not appreciating that the provisions of section 68 are not applicable where no books of accounts have been maintained by the assessee.*
13. *The CIT (A) has further erred in not appreciating that the AO has neither conducted any enquiries from the relatives of the assessee who have given the amount of unsecured loans to assessee nor ask the assessee to produce them before him.*

14. *The assessee craves leave to add alter modify and ground of appeal at the time of hearing of the appeal.”*

3. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the record that since 30.12.2020, various opportunities were provided to the assessee but the assessee failed to make any representation before this Tribunal. Hence, the appeal of the assessee is taken up for hearing in the absence of the assessee.

4. The only effective ground in this appeal is against the sustaining of addition of Rs.13,88,500/- made on account of source of credits deposited in his bank account.

FACTS OF THE CASE

5. Facts giving rise to the present appeal are that the assessment was re-opened on the basis that the assessee had made huge share transaction of Rs.41,26,57,88/- and also in multiple commodity exchange of Rs.86,94,72,616/-. In response to the notice u/s 148 of the Income tax Act, 1961 [“the Act”], the assessee himself attended the proceedings and filed his return of income declaring income of Rs.84,000/-. The Assessing Officer [“AO”] noticed that as per the total turnover of the assessee from the speculative transaction from all positive [profit] and negative [loss] figures was more than Rs.40,00,000/- and the assessee was required to get his accounts audited as per the provision of section 44AB of the Act. Further, the AO noticed that the assessee had total credit of Rs.13,88,500/- whereas the assessee in income tax return, has declared salary of Rs.84,000/- only. Therefore, the AO made addition of Rs.13,88,500/- and assessed the income of the assessee at Rs.14,72,500/-.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, dismissed the appeal of the assessee.

6. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

7. Ld. Sr. DR appearing on behalf of the Revenue, vehemently supported the orders of the authorities below and submitted that the assessee failed to substantiate his claim.

8. I have heard the contention of Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. I find that Ld.CIT(A) has decided the issue by observing as under:-

6.4.2. "On careful examination-of appellant's submission and the facts on record, it is seen that appellant claims to have received Rs.5,60,000/- in cash from Saroj Kumari and Naveen. However, appellant has not submitted any confirmation or any other communication to establish that he had received the amount of Rs.4,00,000/- from Smt. Saroj Kumari and Rs. 1,60,000/- from Naveen Pal. Appellant had filed the bank statement of Sh. Naveen Pal and Smt. Saroj Kumari. From the perusal of the bank account of Sh. Naveen Pal it is seen that he is getting salary out of which small withdrawals have been made. The bank account of Sh. Naveen Pal never had the balance to support appellant's claim that he had received Rs. 1,60,000 in cash from Sh. Naveen Pal. Regarding the cheque receipt of Rs.98,000/-, it is seen that no confirmation of Sh. Naveen Pal has been submitted by appellant regarding the claim that amount was invested on his behalf and the amount of Rs.98,000/- was received to compensate loss on his part. Similarly, in the case of Saroj Kumari, no confirmation regarding the cash receipt of Rs.4,00,000/- has been submitted that money has been

received from her. From the perusal of bank account of Smt. Saroj Kumari it is seen that there were various cash deposits in her account, however, no detail regarding the fact whether she has filed her ITR has been submitted. Further, it is seen that appellant has claimed to have received Rs.2,65,000/- from Sh. Sushil Kumar and Rs.4,20,000/- from Sh. Davindra Kumar. The appellant has not submitted any document including confirmation to establish the creditworthiness of the various parties and also the genuineness of transaction. Therefore, appellant has not established the identity and creditworthiness of the creditors neither genuineness of the transaction has been proved. As such, onus on the appellant has not been discharged. Appellant has also not submitted any detail of the claim that Rs.47,500/- was withdrawn from bank and again re-deposited in his bank account. As a result, ground no. 6 & 7 are dismissed.

6.5 Ground no. 8 pertains to that fresh issues have been taken without approval of the competent authority. Appellant has submitted that no fresh issue can be taken which is subject matter of reopening of the case u/s 147. It has been submitted that the case has been reopened u/s 147 on the basis of NMS information that assessee had made share and commodity transaction worth Rs.41,26,57,886/- and during the course of scrutiny, it has been found that he has incurred a loss of Rs.4,931/-, Rs. 12,03,717/- and Rs.1,26,907/- in capital market. Further, & Option and multi-commodity market and therefore, there is no escapement of income. Further it has been submitted that no addition can be made on ground if the ground on which reassessment notice has been issued has not determined escaped income. I have carefully considered the submissions of appellant. On perusal of the facts of appellant's case it is seen that AO has examined the case of appellant and on the basis of reasons recorded an addition of Rs. 13,88,500/- was made by AO. It is evident that the deposits were utilized to undertake transaction in share and Future & Options and commodity. Further, it is to be noted that it is not the case of appellant that he had filed

his return earlier and assessment order u/s 143(3) was passed in his case. In fact, appellant has not filed any ITR prior to the issue of notice u/s 148 of the Act. Therefore, the judgment relied on by appellant are not applicable to the facts of his case. Hon'ble Supreme Court in the case of Sun Engineering Works Pvt. Ltd. 198 ITR 297 (SC) have held that AO can bring to tax any income which has escaped assessment and not only items which led to issuance of notice u/s 148. Further, it is not a case of appellant that matters had reached finality in the original assessment. Moreover, in view of Explanation 3 to section 147 AO is competent to bring to tax any income which was escaped assessment. Therefore, there is no basis in the claim of appellant, accordingly ground no.8 is dismissed.

6.6 *Ground no. 3(b) pertains to not setting off the loss of Rs.13,35,555/- against the income of assessee determined by AO. It is seen that appellant had not filed his original return of income u/s 139(1) claiming the loss within the due date prescribed. Therefore, the claim of appellant has no justification. Accordingly, Ground no. 3(b) is dismissed.”*

9. The above finding on fact is not rebutted by the assessee by placing any material evidence in support of his contention. Therefore, I do not see any interference in the finding of Ld.CIT(A), the same is hereby confirmed. Thus, grounds raised by the assessee are dismissed.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 17th August, 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