

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.9183/Del/2019
Assessment Year: 2011-12

Sh. Satya Dev Yadav, Flat No. 12, Shri Awas Society, Sec-18B, Delhi	Vs.	Income Tax Officer, Ward-3, Rewari
PAN :AALPY0685Q		
(Appellant)		(Respondent)

Appellant by	Sh. Sanjay Ishar, CA
Respondent by	Sh. Om Parkash, Sr. DR

Date of hearing	19.07.2022
Date of pronouncement	11.08.2022

ORDER

This is an appeal by the assessee against order dated 12.09.2019 of learned Commissioner of Income Tax (Appeals), Rohtak, pertaining to assessment year 2011-12.

2. Registry has notified a delay of 58 days in filing the appeal. The assessee has filed an application seeking condonation of delay supported by affidavit, stating that the delay in filing the appeal was due to time consumed for appointing a new counsel.

3. Having considering rival submissions on the issue, I am satisfied that the delay in filing the appeal was due to reasonable

cause. Accordingly, I condone the delay and admit the appeal for adjudication on merits.

4. Effective grounds raised by the assessee are as under:

1. *On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income-tax (Appeals)' erred in rejecting that addition u/s 147 can be made when nothing new has come to the knowledge of the assessee. The Hon'ble CIT(A) has not considered that here the addition by the Ld. AO is an ad-hoc addition.*
2. *On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income-tax (Appeals)' erred in partly allowing the addition made by Ld. AO of Rs.951852/- by Rs.317284/- which clearly show that the issue is debatable and addition is ad-hoc.*
3. *On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income-tax (Appeals)' erred in rejecting that if addition has not been made on account of reopening u/s 148 an ad-hoc addition can be made by the Ld. AO. Even the case law on which the Hon'ble CIT(A) is relying does not discuss about an ad-hoc addition.*
4. *On the facts and in the circumstances of the case and in law the Hon'ble Commissioner of Income-tax (Appeals)' erred in partly allowing the appeal without considering that the assessee has to pay 81% interest u/s 234B for an ad-hoc addition not for something which came to the knowledge of the Ld. AO after the filing of the return of income.*
5. *The Appellant prays that the addition/ disallowance of Rs.634568/- after providing due appeal affect recalculated in respect of issues mentioned in ground 1 to 3 be deleted.*

5. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, the assessee has filed his return of income on 01.10.2011 declaring income of Rs.5,07,970. Subsequently, the Assessing Officer received information that the assessee, in the year under consideration, has deposited cash

amounting to Rs.15,76,200/- in two bank accounts. Based on such information, the Assessing Officer formed a belief that the income chargeable to tax has escaped assessment. Accordingly, he initiated proceeding for reopening of assessment under section 147 of the Act by issuing a notice under section 148 of the Act. In course of re-assessment proceeding, the Assessing Officer called upon the assessee to furnish the details of other expenses amounting to Rs.31,72,840/- and establish the genuineness of such expenditure. In response to the query raised by the Assessing Officer, the assessee furnished its reply. However, stating that the assessee was unable to fully establish the genuineness of the expenditure claimed through supporting evidence, the Assessing Officer disallowed 30% out of the expenditure claimed, which worked out to Rs.9,51,852/-.

6. Against the assessment order so passed, the assessee preferred an appeal before learned Commissioner (Appeals). After considering the submissions of the assessee, learned Commissioner (Appeals) granted partial relief by restricting the disallowance to 20% of the expenses claimed.

7. Before me, learned counsel appearing for the assessee submitted, though, the Assessing Officer has reopened the

assessment for assessing cash deposits made in the bank account, however, without making any addition of the said amount, he has made a completely different addition by disallowing a part of expenditure claimed by the assessee. Thus, he submitted, the addition made cannot be sustained. In support of such contention he relied upon the following decision:

1. *CIT Vs. Jet Airways (I) Ltd., 331 ITR 236 (Bom.)*
2. *CIT Vs. Mohmed Juned Dadani (2013) 355 ITR 172 (Guj.)*
3. *Ranbaxy Laboratories Ltd. Vs. CIT [2011] 336 ITR 136*

8. Learned Departmental Representative relied upon the observations of learned Commissioner (Appeals).

9. I have considered rival submissions and perused the materials on record. From a reading of the assessment order, it is evident, the reason for which the Assessing Officer reopened the assessment under section 147 of the Act is, the alleged cash deposits amounting to Rs.15,76,200/- made in the bank account. Thus, it is quite obvious, the escaped income which was sought to be assessed by the Assessing Officer while reopening the assessment under section 147 of the Act is the cash deposit made into the bank account. However, on a careful scrutiny of the assessment order, I do not find any discussion made by the

Assessing Officer on the issue on which the assessment was reopened under section 147 of the Act.

10. On the contrary, the Assessing Officer has picked up the other expenses claimed by the assessee amounting to Rs. 31,72,840/- for scrutiny and has disallowed 30% of such expenses on purely ad-hoc basis, which was reduced to 20% by learned Commission (Appeals).

11. Therefore, the question which arises for consideration is, without assessing the income for which the assessment was reopened, can the Assessing Officer make any other addition. The answer to the aforesaid question certainly has to be in negative. In case of *CIT Vs. Jet Airways (I) Ltd. (supra)*, the Hon'ble Bombay High Court, while dealing with an identical issue, has held that without assessing the income for which the assessment was reopened, the Assessing Officer cannot assess any other item of income. Other decisions cited by learned counsel for the assessee expressed similar view.

12. Thus, respectfully following the ratio laid down in the aforesaid judicial precedents, I hold that the addition made by the Assessing Officer and part of which was sustained by learned

Commissioner (Appeals) is unsustainable. Accordingly, I direct the Assessing Officer to delete the addition.

13. In the result, the appeal is allowed, as indicated above.

Order pronounced in the open court on 11th August, 2022

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 11th August, 2022.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi