

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.5241/Del/2019
Assessment Year: 2010-11

Raj Kumar,
24, Vivek Vihar, Railway Phatak,
Rajguru Market,
Hisar.

Vs. ITO,
Ward-2,
Hisar.

PAN: BDWPK3986K

(Appellant)

(Respondent)

Assessee by	:	Shri Lalit Mohan, Advocate
Revenue by	:	Shri Anil Kumar Sharma, Sr. DR
Date of Hearing	:	23.08.2022
Date of Pronouncement	:	25.08.2022

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 21.02.2019 of the CIT(A), Hisar, relating to Assessment Year 2010-11.

2. The grounds of appeal raised by the assessee read as under:-

“1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/143(3) of the Act without appreciating that the same were without jurisdiction and hence deserved to be quashed as such.

1.1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no specific relevant, reliable and

tangible material on record to form a “reason to believe” that income of the appellant had escaped assessment and in view thereof the proceedings initiated are illegal, untenable and therefore unsustainable.

1.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that reasons recorded mechanically without application of mind do not constitute valid reasons to believe for assumption of jurisdiction u/s 147 of the Act.

1.3 That in absence of any valid approval obtained under section 151 of the Act, initiation of proceedings u/s 147 of the Act and assessment framed u/s 147/143(3) of the Act are invalid and deserve to be quashed as such.

2. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in disposing off the appeal ex-parte without granting any fair opportunity of being heard to the appellant.

2.1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was reasonable cause for the appellant for not causing appearance on the dates fixed for hearing and as such disposal of the appeal without granting fair, meaningful and proper opportunity is untenable.

2.2. That even otherwise, an order passed in limine without effectively disposing of the grounds raised by the appellant is in infraction of section 250(6) of the Act and as such, order so made is otherwise too illegal, invalid and a vitiated order.

3. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in confirming an addition of Rs. 1,00,000/- on account of alleged unexplained credit entries in bank account on protective basis.

4. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming an addition of Rs. 60,00,000/- representing cash received from Sh. Kailash Bansal in joint account on protective basis

5. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding the levy of interest

u/s 234B of the Act which are not leviable on the facts of the appellant.

Prayer: It is therefore prayed that, it be held that order disposing of the appeal ex parte by the learned Commissioner of Income Tax (Appeals) be set aside. It is further prayed that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) deserves to be quashed as such. It is also prayed that, additions made and sustained along with interest levied may kindly be deleted and, appeal of the appellant be allowed.”

3. We have heard the arguments of both the sides. The ld. Sr. DR, in all fairness, did not dispute the contention of the ld. Counsel of the assessee that substantive addition was made in the hands of joint account holder Shri Kailash Chand Bansal and the Tribunal by order dated 09.12.2020 in ITA No.4144/Del/2019 for same AY 2010-11 has restored the matter for re-adjudication to the file of CIT(A). Therefore, in view of the above noted position, present appeal which arose due to protective addition in the hands of the present assessee also deserve to be restored to the file of the ld.CIT(A) for proper adjudication by the first appellate authority. The ld. Sr. DR did not raise any objection and also added that if it is found just, proper and necessary to restore this matter related to protective addition, to be decided afresh along with other appeal of Shri Kailash Chand Bansal, related to same addition on substantive basis, then, the Department has no objection to that.

4. In view of the above submissions and keeping in view the grounds of the assessee in the present appeal, this appeal is also restored to the file of the

ld.CIT(A) to the first appellate stage for a fresh adjudication after allowing due opportunity of being heard to the assessee.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 25.08.2022.

Sd/-

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

(C.M. GARG)
JUDICIAL MEMBER

Dated: 25th August, 2022.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi