

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA Nos.7382/Del/2018 & 7163/Del/2019

[Assessment Year : 2010-11]

Vijendar Sharma, 3159, Fatek Nanak Chand, 2 nd Floor, Charkhe Walan, Delhi-110006. PAN-BFUPS2317J	vs	ITO, Ward-46(3), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Abhishek Mathur, Adv.	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	11.08.2022	
Date of Pronouncement	31.08.2022	

ORDER

PER KUL BHARAT, JM :

Both these appeals filed by the assessee for the assessment year 2010-11 are directed against the order of Ld. CIT(A)-16, New Delhi dated 29.08.2018 and 25.06.2018 respectively wherein **ITA No.7382/Del/2018** is filed against the proceedings in quantum and **ITA No.7163/Del/2019** is filed against the penalty. Since identical grounds have been raised, both appeals were taken up together for hearing and are being disposed off by way of consolidated order for the sake of brevity.

ITA No.7382/Del/2018 [Assessment Year : 2010-11]

2. First we take up the assessee's appeal in **ITA No. 7382/Del/2018** pertaining to **Assessment Year 2010-11**. The assessee has raised following grounds of appeal:-

1. *"That the order passed by the Ld. CIT (A) u/s 250(6) was incorrect, bad in law and have been passed without considering the submissions of the appellant.*

2. *That Ld. CIT (A) erred in upholding the assessment orders which have been wrongly and illegally framed u/s 144 r.w.s 147 of the Income Tax Act 1961. That the assessee has duly filed return of income for the year under consideration. That the assessment has been reopened u/s 148 on wrong assumptions that the assessee had not filed the return of Income for the said AY 2010-11.*
3. *That the Ld. CIT (A) has erred both in law and on facts in his order by not going in to the issue of surrendering the previous PAN. That the previous PAN was surrendered by the assessee via letter to the Assessing officer.*
4. *That the Ld. CIT (A) has erred both in law and on facts by not going into the merit of the case. That the assessee is engaged in trading business and the amount was deposited in the assessee's account. However, CIT(A) erred in law by not invoking the provisions of section 44AF.*
5. *The appellant craves leave to add, alter, amend or vary any of the above grounds during the pendency of the appeal.”*

FACTS OF THE CASE

3. Brief facts of the case are that the Assessing Officer [“AO”] recorded that the assessee has not filed any return of income for AY 2010-11 and as per CIT/AIR information received through AST regarding cash deposited by the assessee amounting to Rs.31,89,840/-. Therefore, the AO re-opened the assessment u/s 147A of the Income Tax Act, 1961 [“the Act”] and issued notice u/s 148 of the Act. It is further recorded by the AO that despite service of notice, no one attended the proceedings therefore, he proceeded to frame the assessment u/s 144 r.w.s 147 of the Act vide order dated 28.05.2018. Thereby, the AO made addition of the entire cash deposited amounting to Rs.1,34,00,899/- as the income of the assessee.

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

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

6. At the outset, Ld. Counsel for the assessee submitted that the re-opening of the assessment is *ex-facie*, illegal and unjustified. He contended that the AO has wrongly stated that the assessee has not filed return of income. He drew my attention to the Paper Book to buttress the contention that the return was duly filed by the assessee therefore, there was complete non-application of mind by the authorities below and further the notice u/s 148 of the Act was received by the assessee. Even the reasons recorded by the AO were not supplied to the assessee. Ld. Counsel for the assessee further contended that for AY 2011-12 also, the assessment was re-opened on the basis of cash deposited in the bank account of the assessee. However, the income was assessed at Rs.4,67,460/- by the AO. He further contended that the facts are identical in the year under consideration. Therefore, the re-opening itself is bad in law hence, deserves to be quashed.

7. On the contrary, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below. He contended that the assessee was grossly negligent and did not appear before the AO and furnished requisite evidences. Ld.CIT(A) therefore, was justified in sustaining the addition. He thus supported the impugned order.

8. I have heard the contentions of Ld. Authorized representatives of the parties and perused the material available on record and gone through the

orders of the authorities below. Ld.CIT(A) has decided the issue by observing as under:-

FINDINGS:

5. *“The only issue involved in this case is addition of Rs.34,00,899/- as deposit in the bank account of the appellant. The AO treated the deposit as unexplained and added as income from undisclosed sources. The assessment is completed u/s 144 r.w.s. 147 of the Act. In appeal the Ld. AR objected the reopening on the basis that the AO has wrongly written in the assessment order that the appellant has not filed return of income. In appeal the Ld. AR submitted the copy of the return of income for A.Y. 2010-11 declaring the income of Rs.1,58,210/-. The return is filed under PAN: BFUPS2317J on 24.03.2011. However, the assessment is completed in the PAN: AWJPS1941H. However the address and name of the appellant in the assessment order as well as return of income is same. When these facts were asked from the Ld. AR, he stated that both the PAN are of the appellant and new PAN is allotted due to modification applied by the appellant himself. It is further submitted that the earlier PAN which is appearing in the assessment order has been surrendered by way of letter to the AO.*

5.1. *I have examined the finding of the AO and submission of the appellant. The information regarding bank account in ICICI Bank with the PAN: AWJPS1941H, is received by the AO and the case was reopened after following due procedure. It is not in dispute that this PAN and account belongs to the appellant. Now the appellant filed the copy of the return of income in which business income of Rs.1,58,210/- by applying section 44AF against the total receipt of Rs.13,22,635/-, is filed, Although the return of income is filed under different PAN i.e. BFUPS2317J. No material fact is brought to the knowledge of either AO or at the appellate stage that the receipt shown in the return of income is coming from the bank account considered by the AO while making assessment. Even in the return of income bank account i.e. in ICICI Bank is not mentioned. These facts further strengthened the finding of the AO that the said bank account in ICICI account is an undisclosed account. The appellant has filed return*

for A.Y. 2010-11 by way of E-filing. However, the AO could not track it because it is under different PAN. Therefore the argument of the Ld. AR that the AO is incorrect in finding that the appellant has not filed return of income, is not fair. How can AO locate the return when the assessee is having two PAN. Hence the argument of the appellant on this ground is rejected. On the basis of submission made and the finding of the AO it can be concluded that the bank account in ICICI BANK on which assessment is made, is an undisclosed account and the turnover shown by the appellant in the return of income has no relation with the credit entries in the ICICI Bank account. This fact of having two PAN was not brought to knowledge of the AO. Therefore the finding of the AO in assessment order is correct. The Ld. AR's argument regarding initiation of the proceeding u/s 147 on the basis that no independent reason recorded by the AO, does not carry much weight in view of the various decisions by the Hon'ble Court. The AO was in possession of definite information of cash deposit in the bank account of appellant at the time of recording reason for reopening of the case u/s 147 and on this basis the case of the appellant is considered for reopening u/s 147 of the Act. Therefore this ground of appeal is dismissed.

5.2. *In view of the above facts and discussion, I am of the view that AO has correctly added the credit entries in the undisclosed account of the appellant, to the income of the appellant. I do not see any reason to interfere in the order of the AO. Hence the ground of appeal is also dismissed.”*

9. From the above finding of Ld.CIT(A), it is clear that despite the fact that the assessee had filed return of income for the year under consideration by way of e-filing. The AO recorded wrongly that no ITR was filed by the assessee. It is well-settled that reasons for re-opening of the assessment is the foundation of assumption of jurisdiction for re-opening of the assessment u/s 147 of the Act. It is also well-settled that any undisputed fact which goes to prove the reasons for re-opening of the assessment is incorrect, the re-opening of assessment fails the test of law hence, deserves to be quashed. In the present case, it is

not disputed by the Revenue that the assessee had filed its return of income through e-mode under different PAN. However, the AO has re-opened the assessment on the ground that the assessee did not file any return of income. It reflects non-application of mind and the assessment was re-opened without verifying the records. Moreover, it is also not disputed that for the AY 2011-12 also, the assessee had re-opened the assessment and assessed the income of the assessee at Rs.4,67,460/-. However, the information before the Assessing Authority was regarding cash deposited by the assessee amounting to Rs.47,75,745/-. Therefore, the re-opening of the assessment by the Assessing Authority and treating the entire cash deposits as the income of the assessee, is contrary to the records of the authority itself. Hence, I hereby quash the impugned assessment being illegal and unjustified and delete the addition. Thus, grounds raised by the assessee are allowed.

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

ITA No.7163/Del/2019 [Assessment Year : 2010-11]

11. Now, I take up the assessee's appeal in **ITA No. 7163/Del/2019** pertaining to **Assessment Year 2010-11** is filed against the penalty proceedings. The assessee has raised following grounds of appeal:-

1. *“That the order passed by the Ld. CIT (A) u/s 271(l)(c) was incorrect, bad in law and void ab initio.*
2. *Whether the Ld CIT (A) was justified in upholding the penalty proceeding initiated by the AO of Rs. 9,24,270/- u/s 271(1)(c) of the Income Tax Act, 1961 when assessee duly filed his return declaring his income from a different PAN.*
3. *That the order passed by the Ld. CIT (A) upholding the penalty order passed by the AO is not justified as assessee never intended*

to conceal the facts and never failed to file his correct return of Income.

4. *The appellant craves leave to add, alter, amend or vary any of the above grounds during the pendency of the appeal.”*

12. As in the quantum appeal in ITA No.7382/Del/2018 pertaining to AY 2010-11, the impugned assessment order which is the foundation of the impugned penalty, has been quashed being bad in law. Therefore, the penalty arises out of such assessment would also not survive, I hold accordingly. Hence, the impugned penalty is hereby, deleted and the grounds raised by the assessee are allowed.

13. In the result, the appeal of the assessee is allowed.

14. In the final result, both appeals of the assessee in **ITA No.7382/Del/2018** and **ITA No.7163/Del/2019** are allowed.

Order pronounced in the open Court on 31st 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