

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1961/Del/2021  
[Assessment Year : 2011-12]**

Mangal Singh, 126, Kanyawada Khaira Village, South West, Delhi-110043. <b>PAN-ATWPS1441A</b>	vs	ITO, Ward-66(3), Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri R.K.Mehra, CA	
<b>Respondent by</b>	Shri Om Parkash, Sr.DR	
<b>Date of Hearing</b>	17.08.2022	
<b>Date of Pronouncement</b>	31.08.2022	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee for the assessment year 2011-12 is directed against the order of Ld. CIT(A), National Faceless Appeal Centre ("NFAC"), Delhi dated 31.10.2021.

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

1. *"That on the facts and in the circumstances of the petitioner's case, the learned CIT(A) erred in law and on facts, in upholding the order of the learned assessing officer in wrongly assuming jurisdiction under section 148 of the Income tax Act, 1961 and in also completing the assessment under section 144 of the said Act.*
2. *That on the facts and in the circumstances of the petitioner's case, the learned CIT(A) erred in law and on facts in completely ignoring the fact that a) first two notices issued under section 143(2) both on 01-11-2018 for initiating the assessment proceedings and after that b) various notices issued under section 142(1), all these notices wherever sent by post were sent on some unknown address of Ambala not related to the petitioner at all. Even the show cause*

issued on 11-12-2018 was wrongly sent on some unknown Ambala address.

3. *The learned CIT(A) further erred in law in failing to appreciate that the notice issued under section 143(2) and/or under section 142(1) having been sent/showing wrong address should have made these notices nullity in law ab initio and any service of such invalid notices by any means should have invalidated<sup>7</sup> the assessment order framed under section 144 of the Act as illegal and also bad in law.*
4. *That on the facts and in the circumstances of the petitioner's case, the learned CIT(A) erred in law and on facts that the petitioner having pointed out certain misstatements made by the learned assessing officer in Assessment Order as well as in the Remand Report which are not borne out of the assessment records especially that the very first notice issued under section 143(2) on 01-11-2018 which has been stated to have been sent at Najafgarh address as per the assessment order is incorrect in view of the fact that, that was actually sent at some unknown Ambala address thus misleading the process of assessment with mala fide intentions and ulterior motives.*
5. *That on the facts and in the circumstances of the petitioner's case, the learned CIT(A) erred in law and on facts that how the learned assessing officer could have with due diligence and 360- degree verification of profile of the petitioner came to the conclusion that some unknown Ambala address is in fact related to the petitioner. This shows non application of mind by the learned assessing officer at the threshold itself, which the learned CIT(A) failed to take notice of.*
6. *That on the facts and in the circumstances of the petitioner's case, the learned CIT(A) erred in law and on facts in arbitrarily applying the provisions contained in section 69A of the Income tax Act, 1961 and exceeding his mandate in law and specially to circumvent that such cash credits were not found in the books of account of the petitioner.*

7. *That on the facts and in the circumstances of the petitioner's case, the learned CIT(A) erred in law and on facts in upholding the order of the learned assessing officer, in confirming the additions of Rs.1043000 allegedly on the ground of unexplained cash deposited in the bank without considering the explanation of the petitioner as to its source and wrongly applying the provisions contained in section 68 of the Act.”*

### **FACTS OF THE CASE**

3. Facts giving rise to the present appeal are that the Assessing Officer [“AO”] was having information regarding deposit a sum of Rs.10,00,000/- in the Saving Bank Account of the assessee held with Punjab National bank, Najafgarh, New Delhi. The case of the assessee was re-opened u/s 147 of the Income Tax Act, 1961 [“the Act”]. Thereafter, a notice u/s 148 of the Act was issued to the assessee. The AO noticed that in response to the notice issued to the assessee, there was no representation on behalf of the assessee. Therefore, he proceeded to frame the assessment u/s 147 r.w.s. 143(3) of the Act vide order dated 20.12.2018. Thereby, he made addition of Rs.13,402/- on account of income from other sources, being the interest earned on the bank deposits. Further, the AO made addition of Rs.10,43,000/- as unexplained cash deposits. Thus, the AO assessed the income of the assessee at Rs.13,34,790/- against the declared income of Rs.2,78,384/-.

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. Apropos to grounds of appeal, Ld. Counsel for the assessee submitted that Ld.CIT(A) failed to appreciate the facts that the AO recorded the contradictory facts. The assessee was not provided sufficient opportunities to represent his case for re-opening of the assessment, was not in accordance with law. It was stated before the lower authorities that the account being joint with the wife of the assessee hence, the entire amount should not have been attributed.

7. On the contrary, Ld. Sr. DR opposed the submissions and supported the orders of the authorities below.

8. I have heard Ld. Authorized representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Before the AO, there was no representation on behalf of the assessee. It is recorded by the AO that various opportunities were given to the assessee. There is no dispute with regard to the fact that the lower authorities have made addition on the basis that the assessee could not explain the source of cash deposits. It was stated before the lower authorities that the account was jointly held with wife of the assessee hence, the entire amount could not have been attributed. Looking to the totality of the facts of the present case, I am of the considered view that the assessee ought to have been given a proper hearing by the lower authorities to explain the source of cash deposits. It was stated by the assessee that the bank account in which the cash was deposited amounting to Rs.10,00,000/- was jointly held with wife of the assessee. Admittedly the AO did not issue any notice to other joint holder of the account i.e. spouse of the assessee. Therefore, in my considered view the assessment was re-opened without application of mind. Moreover, Ld.CIT(A) also did not

verify the correctness of the claim of the assessee. Under these facts, the impugned addition made by re-opening of the assessment, is not justified. Hence, the impugned addition is hereby, deleted. Thus, grounds raised by the assessee in this appeal are allowed.

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

Order pronounced in the open Court on 31<sup>st</sup> 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