

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

SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.413/Del/2022
Assessment Year: 2012-13

Balwan S/o. Shri Ram Sarup, VPO Raja Kheri, Distt. Panipat (Hr.) PIN: 132103	Vs.	ITO, Ward-3, Panipat
PAN :BTLPB3594B		
(Appellant)		(Respondent)

Appellant by	Shri J.B. Sharma, Adv.
Respondent by	Shri Om Parkash, Sr. DR

Date of hearing	24.08.2022
Date of pronouncement	24.08.2022

ORDER

This is an appeal by the assessee against order dated 18.10.20219 of learned Commissioner of Income-Tax (Appeals)-32, New Delhi pertaining to assessment year 2012-13.

2. The assessee has filed revised grounds of appeal as under:
 1. That the assessment order u/s 147/148 is wrong, arbitrary and bad in the eyes of law.
 2. That the notice issued u/s. 148 of IT Act, 1961 in the case of appellant is without jurisdiction. Mere cash/amount deposited into bank cannot be a base for reopening the case

u/s 148 of I T Act, 1961 as held by Hon'ble ITAT Delhi in case of Mahavir Parsad, Narnaul vs. ITO Rewari, ITA no.924/Del/2015 A Y 2007-08.

3. That no copy of reasons recorded by the Ld. A O supplied to the appellant before completion of assessment proceedings.
4. That the amount deposited into bank by the appellant is not a concealed income in the preview of sec 147 of I T Act, 1968. The bank pass book is not the books of accounts maintained by the appellant.
5. That the Ld A O has not issued show-cause-notice before the assessment completed on dt. 14.11.2019 u/s.144/147 of I T Act, 1961.
6. That the ld CIT A, NFC, Delhi has erred in law in not considering the legal grounds raised by the appellant regarding the validity of notice issued u/s. 148. Hence the order of the ld CIT A is bad in the eyes of law and against the natural justice.
7. That the ld CIT A NFC, Delhi has erred in law not providing the proper opportunity of being heard to the appellant. The ld CIT A, NFAC, Delhi has not issued show-cause/notice to the appellant before dismissing the appeal of the appellant. The appellant was not given proper opportunity of being heard and to explain his version by the ld CIT A, NFAC, Delhi which is against the natural justice.
8. That on the facts and circumstances of the case, both the lower authorities have erred in making/confirming the addition of Rs.2505000/- in the income of appellant. The amount of Rs.2505000 deposited by the appellant into his bank was from the advance taken by the appellant against

the Ag land from the persons and from his saving of Ag income. Both the lower authorities has wrongly considered the advance taken by the appellant as loan. Moreover, the appellant submitted documents ie Affidavits from the persons giving the advance to the appellant, copies of J Forms, Copies of Jamabandi of Ag land held by the persons giving the advance to the appellant. The appellant has discharged his onus by submitting the Affidavits, Copies of J forms, Copies of Jamabandi of Ag land of the persons giving the advance to the appellant. It is wrong to say that the appellant not produced the persons before the Id A O. Although, the appellant himself took the above persons before the Id A O on the fixed date ie 30.10.2019 for the verification, but the Id A O not attended the persons. The appellant hereby undertake and ready to present the persons, if the court deems necessary for the case.

9. That the appellant request to accept the appeal, quash the orders of both the lower authorities, delete the addition made/confirmed by Ld AO /CIT (A) NFAC, Delhi & Oblige.
10. That the appellant craves to add, forego, amend, vary, delete any of the grounds of appeal before disposal of this appeal.”

3. Briefly, the facts are, the assessee is a resident individual. Upon receiving information that during the year under consideration, assessee had deposited cash amounting to Rs.25,05,000 in savings bank account maintained with Punjab National Bank, Panipat, the

assessing officer reopened the assessment under Section 147 of the Act.

4. In course of assessment proceedings, when the assessing officer called upon the assessee to explain the source of such cash deposits, assessee submitted that he has availed loan from two persons viz., Shri Balbir Singh and Shri Mahabir Singh. In support of such claim, assessee has furnished copies of cash flow, jamabandi and affidavits of the lenders. However, the assessing officer called upon assessee to produce both the lenders for examination and to file affidavits to prove repayment of loan. As observed by the assessing officer, assessee was unable to produce the lenders for examination. Even, summons issued to both the lenders remained uncomplied. Thus, ultimately, the assessing officer concluded that the source of cash deposited in the bank account remained unexplained. Accordingly, he added back the amount of Rs.25,05,000 to the income of assessee. Though, assessee contested the aforesaid addition before the first appellate authority, however, he was unsuccessful.

5. Before me, learned counsel for the assessee submitted that assessee has furnished various documentary evidences to prove loan

availed from two lenders. He submitted, the date on which assessee brought the lenders for examination, the assessing officer was not available. Therefore, the lenders could not be examined. He submitted, only for the reason that the lenders were not produced for examination, assessee's statement that the source of cash deposits were out of loan availed has been disbelieved. He submitted, given an opportunity, assessee is ready and willing to produce the lenders for examination before the assessing officer. Thus, he submitted, the issue can be restored back to the assessing officer.

6. Learned Departmental Representative, though, relied upon the observations of the assessing officer and learned Commissioner (Appeals), however, he submitted that an opportunity can be granted to assessee to produce the lenders before the assessing officer.

7. I have considered rival submissions and perused the material on record.

8. The limited submission made by learned counsel for the assessee before me is to the effect that adequate opportunity was not given by the departmental authorities to produce the lenders for examination. The learned counsel has submitted before me that assessee is ready

and willing to produce the lenders to support his claim that the cash deposits in the bank account were out of the loans availed.

9. Keeping in view the aforesaid submission of the learned counsel for the assessee, I am inclined to restore the issue to the file of the assessing officer for providing an opportunity to the assessee to produce the concerned lenders before the assessing officer for examination. The assessee is also at liberty to furnish any other corroborative evidences before the assessing officer to explain the source of cash deposits made in the bank account. Grounds are allowed for statistical purposes.

10. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 24th August, 2022.

**(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 24th August, 2022.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	24.08.2022
2.	Date on which the draft of order is placed before the Dictating Member:	24.08.2022
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	24.08.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	24.08.2022
6.	Date on which the final order received after having been singed/pronounced by the Members:	26.08.2022
7.	Date on which the final order is uploaded on the website of ITAT:	31.08.2022
8.	Date on which the file goes to the Bench Clerk	31.08.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	