

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 1666/DEL/2009
Asstt.Yr: 2004-05**

Satish Kumar Jain & Sons (HUF), Vs Income Tax Officer,
2217, Gali Hanuman Prasad, Ward-29(2), New Delhi.
Masjid Khajoor, Delhi-110006.

PAN- AALHS4491L

APPELLANT

RESPONDENT

**Assessee represented by
Department represented by**

**Sh. V.K. Tulsiyan, Adv.
Sh. PradeepGautam, Sr. DR**

**Date of hearing
Date of pronouncement**

**12.09.2022
22.09.2022**

ORDER

PER N.K. CHOUDHRY, JM:

The Assessee has preferred the instant appeal against the order dated 17.02.2009 impugned herein, passed by the Id. Commissioner of Income tax (Appeals)-XXV, New Delhi (in short "Ld. Commissioner") u/s 250(6) of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2004-05.

2. Brief facts relevant for adjudication of the instant appeal are that the Assessee declared an income of Rs. 1,79,394/- by filing its original return of income on dated 10.09.2004, which was processed u/s 143(1) of the Act.

2.1 Lateron, on the basis of an information to the effects that the Assessee had taken a cheque of Rs. 5,51,000/- from one ShriNiraj Jain after paying cash and 5% as commission and deposited the same in his bank account with Dena Bank, Chawri Bazar, Delhi on 24.07.2003. Therefore after causing necessary investigation and recording reasons, the notice u/s 148 dated 23.3.2007 was issued, in response to which, though the Assessee vide letter dated 3.5.2007 had submitted a return and claimed the said amount of Rs. 5,51,000/- as gift received from ShriNiraj Jain, 105, Anand Market, KatraSubhash, ChandniChowk, Delhi-6, however failed to substantiate the said claim .

2.2 On summoning of Mr. Niraj Jainu/s 131 of the Act, the process server reported that Mr. Niraj Jain was not available at the given address. On asking, the Assessee also shown its inability to produce Sh. Niraj Jain.

2.4 Thereafter perusing the bank statement of a/c no. 13613 maintained with Corporation Bank, Kamla Nagar, Delhi, summoned u/s 133(6) of the Act, it was revealed by the AO that ShriNiraj Jain had deposited cash of Rs. 5,51,000/- in his account on 24.07.2003 and on the very same day issued a cheque to the Karta of the Assessee firm, who on the very same deposited the same in its bank account .

2.5 The AO ultimately made the additions of Rs. 5,51,000/- u/s 68 of the Act and Rs. 27,550/- as commission paid on the said transaction @ 5%.

3. The Assessee being aggrieved preferred first appeal before the learned Commissioner.

4. The Ld. Commissioner vide impugned order affirmed the addition of Rs. 5,51,000/- by treating the gift transaction as sham and undisclosed income u/s 68 of the Act.

5. The Assessee being aggrieved challenged the impugned order before the Tribunal.

6. During the appellate proceedings before the Tribunal, the Assessee vide letter dated 20.02.2010 also raised the additional ground of appeal which reads as under:

"Whether the Ld. AO was justified in invoking Sec. 147/148 just on the basis of incomplete information even without fulfilling the conditions attached, which is neither reflected in order nor the additions based thereupon, for making roving enquiries, instead of definite information."

7. Though the Hon'ble Co-ordinate Bench vide order dated 31-07-2017 passed in ITA no. 1666/Del/200, decided the appeal of the Assessee on merit and dismissed the same, however inadvertently failed to adjudicate the additional ground referred to above, therefore the Hon'ble coordinate Bench, vide its order dated 10-09-2021 passed in 111/Del/2018, recalled the said order dated 31-07-2017 of the tribunal but limited to the extent of

adjudication of the additional ground. Hence we are restricted to decide the additional ground only.

8. Heard the parties and perused the material available on record. We observe from the daily orders (Zimni orders) passed by the Hon'ble Coordinate Bench in the instant case specifically the order dated 5.1.2022, the Revenue-Department was asked to produce the assessment record and reasons recorded by the Assessing Officer. Thereafter the case was fixed on 28.03.2022 and 14.06.2022 whereby the learned DR was directed to comply with the order-sheet entry dated 5.1.2022 by adjourning the case to 12.09.2022.

8.1 However, on 12.09.2022 as well, the Revenue Department failed to produce the assessment record. Therefore, considering the peculiar facts and circumstances, as the reasons recorded goes to the root of the case, we deem it appropriate to remit the instant case to the file of the Assessing Officer, with a direction to pass the assessment order afresh by providing the reasons recorded u/s 147 of the Act, appropriate time as provided in the statute and reasonable opportunity of being heard to the Assessee.

8.2 We also clarify that the Assessee shall be at liberty to challenge the assessment proceedings on the basis of reasons recorded or reopening of the case u/s 147/148 of the Act only, and in any case shall not be entitled to contest the same on merit, as the co-ordinate Bench vide order dated 31-07-2017 referred to, has already dealt with merit of the case and decided the case/appeal against the Assessee.

9. In the result, appeal filed by the Assessee stands allowed for statistical purposes, as per the terms stated above.

Order pronounced in open court on 22/09/2022.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI