

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

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 7497/DEL/2018
[Assessment Year: 2010-11]**

Girdhari Lal Verma, H.No. 45, Shiva Colony, Hisar, Haryana-125001 PAN:ADHPV4844M	<u>Vs</u>	Income Tax Officer, Ward-2(2), Hisar.
APPELLANT		RESPONDENT
Assessee represented by	Sh. Lalit Mohan, CA	
Department represented by	Sh. Sanjay Kumar, Sr. DR	
Date of hearing	15.11.2022	
Date of pronouncement	15.11.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-2, Gurgaon, dated 24.08.2018, pertaining to the assessment year 2010-11. The assessee has raised following grounds of appeal:

"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(30) 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 order dated 13.1.2017 made u/s 154 of the Act was without jurisdiction and therefore, deserved to be quashed as such.

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 under section 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 also erred both in law and on facts in sustaining an addition of Rs. 2,20,500/- being 50% of opening cash balance of Rs. 4,41,000/- on protective basis in the hands of appellant.*

2.1 *That while sustaining the above addition on protective basis, the learned Commissioner of Income Tax (Appeals) has proceeded on arbitrary assumptions and, presumptions and, overlooked the evidence and, explanation tendered by the appellant. The addition thus sustained on protective basis is based on surmises, conjectures and, suspicion and therefore, untenable.*

3. *That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in confirming an addition of Rs.83168/- on account of alleged unexplained credit entries in bank account on protective basis.*

2. At the outset learned counsel for the assessee submitted that while framing the assessment the Assessing Officer had made impugned addition in the hands of the assessee on protective basis and the substantive addition was made in the hands of Kailash Chander Bansal for the same assessment year. In the case of Kailash Chander Bansal, the matter travelled up to the Tribunal and the coordinate Bench of the Tribunal vide order dated 09.12.2020 in ITA no. 4144/Del/2019, has restored the issue to the file of the learned CIT(Appeals). He prayed that the impugned order may, therefore, be set aside and restored back to the file of learned CIT(Appeals).

3. On the other hand, learned DR opposed the submissions and supported the orders of the authorities below.

4. We have heard rival submissions and perused the material available on record. We find that the coordinate Bench of this Tribunal vide its order dated 9.12.2020 in ITA no. 4144/Del/2019 in the case of Kailash Chander Bansal, in whose hands the addition was

made on substantive basis, has remanded back the matter to the file of learned CIT(Appeals) by observing as under:

“4. We have gone through the record in the light of the submissions made on either side. It could be seen from the record that the appeal of the assessee has been decided ex parte and the grievance of the assessee is that no reasonable opportunity is granted to the assessee to put forth their case. Further, the copy of the order dated 14/1/2020 in ITA No. 4143/del/2019 for the assessment year 2009-10 in assessee's own case shows that the matter for the assessment year 2009-10 was remanded to the file of the Ld. CIT(A) for fresh consideration and to disposed of on merits. Considering these facts and taking into consideration the circumstances reported by the Id. DR on assessee's request for remanding the case, we find it appropriate in the interest of justice that the matter should be remitted back to the file of Id. CIT(A) with the direction to decide the appeal afresh after affording an opportunity to the assessee to put forth their case. Needless to say, the assessee shall prosecute the matter before the Ld. CIT(A) on the date fixed for hearing and it is made clear that no further opportunity.”

5. Since the impugned addition made on substantive basis is under challenge, we, therefore, restore the grounds to the file of the learned CIT(Appeals) for decision afresh after giving adequate opportunity of being heard to the assessee.

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court during the course of hearing on 15th November, 2022.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER
MP

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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