

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

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.2288/Del./2018
(ASSESSMENT YEAR : 2009-10)**

Arif Khan,
C/o RRA Taxindia,
D-28, South Extension,
New Delhi – 110 049.

vs.

ITO, Ward 3 (1),
Bulandshahr.

(PAN : BZRPK4412K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rakesh Gupta, Advocate
Shri Somil Agarwal, Advocate
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 07.11.2022
Date of Order : 17.11.2022

ORDER

This appeal by the assessee is directed against the order of the Id.

CIT (Appeals), Aligarh dated 27.02.2018 for the assessment year 2009-10.

2. The grounds of appeal read as under :-

“1.(a) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed u/s 144/147 and that too without assuming jurisdiction as per law and without complying with mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.

l(b) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed u/s 144/147 and that too without recording valid reasons as envisaged under the law and has further erred in passing the impugned reassessment order and that too without obtaining valid sanction/approval U/S 151 and the reasons recorded are also not valid in the eyes of law.

l(c) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed u/s 144/147 and that too without providing the copy of reasons recorded and not seeking & disposing objections of the assessee with respect to reopening of the assessment and further erred in not complying with entire procedure and conditions prescribed under the law for reopening of the assessment and framing of reassessment order.

l(d) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed u/s 144/147 merely on the basis of enquiry letter issued before the issuance of notice u/s 148 and more particularly when no proceedings are pending.

l(e) That in any case and in any view of the matter, action of Ld. CIT(A) in not quashing the impugned reassessment order u/s 144/147, is bad in law and against the facts and circumstances of the case.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned ex-parte order passed by Ld. AO u/s 144/147 and without giving proper opportunity of hearing as prescribed under the law.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleted the addition of Rs.14,80,000/- fully as made by Ld. AO and has further erred in sustaining the same to the extent of Rs.14,30,000/- on account of cash deposit and that too by recording incorrect facts and findings and without observing the principles of natural justice.

4. That in any case and in any view of the matter, action of Ld. CIT(A) in sustaining the action of Ld. AO in making addition of Rs.14,30,000/- on account of cash deposits, is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in rejecting the additional evidences filed by the assessee under rule 46A of Income Tax Rules.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest U/S 234A, 234B and 234C of the Income tax Act, 1961.”

3. Brief facts of the case are that in this case, there was AIR information that assessee has made cash deposit of Rs.14,80,000/- in his

saving bank account for the FY 2008-09. Assessee was asked to furnish source of cash deposit in the said bank account. AO noted that assessee had not made any compliance. Finally, a last notice was given to the assessee. However, no reply was received. Hence, AO made an inference that this was undisclosed income of the assessee, hence added an amount of Rs.14,80,000/- to the income of the assessee.

4. Before the Id. CIT (A), assessee submitted certain additional evidences which were remanded to the AO. AO's submission was that assessee had already been provided sufficient opportunity. Ld. CIT (A) rejected the additional evidences. In the submission, assessee has given names of various persons from whom assessee has received the amount. However, doubting the creditworthiness of those persons, Id. CIT (A) gave an ad hoc relief of Rs.50,000/- and sustained rest of the addition.

5. Against this order, assessee filed an appeal before the ITAT. We have heard both the parties and perused the records.

6. Ld. Counsel of the assessee pleaded that assessee had not been properly represented before the Revenue authorities, hence the case could not be properly canvassed. He also submitted a chart computing the peak credit and submitted that there were series of deposits and withdrawals and peak credit only comes to Rs.2,48,300/-. Ld. Counsel of the assessee pleaded that since assessee has not been properly represented before the

authorities below, the issue may be remanded to the AO to decide afresh in the light of the submissions made by the assessee. Ld. DR for the Revenue did not have any objection to the same. Accordingly, in the interest of justice, we remand the issue to the file of AO. The AO is directed to consider the issue afresh after considering the additional evidences filed by the assessee. Needless to add, assessee should be granted adequate opportunity of being heard.

7. In the result, the appeals filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on this 17th day of November, 2022.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 17th day of November, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A), Aligarh.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**