

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F": DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA.No.1135/Del./2022
Assessment Year 2017-18

Raj Singh, 2563/64, Bhagat Singh Gali, Chuna Mandi, New Delhi 110055 PAN AAMPPS8004B	vs.	Income Tax Officer Ward 62(4), Dr.S.P Mukherjee Marg Civic Centre, New Delhi 110002.
(Appellant)		(Respondent)

For Assessee :	Shri Maynk Kouts, Advocate
For Revenue :	Shri A K Arora, Sr DR

Date of Hearing :	12.12.2022
Date of Pronouncement :	04.01.2023

ORDER

PER ANIL CHATURVEDI, A.M. :

This appeal filed by the assessee is directed against the Order of the Ld. CIT(A), Delhi, dated 30.12.2019 in Appeal No.Delhi-20/10884/2019-20 relating to the A.Y. 2017-18.

2. The relevant facts as culled from the material on records are as under :

2.1. Assessee is an individual A.O. has noted that assessee had deposited substantial cash in his bank account during the financial year 2016-17, the deposits aggregating to Rs. 46,25,000/-but had not filed the return of income for A.Y. 2017-18, neither u/s. 139 of the Act nor in response to notice u/s. 142(1) of the Act. A.O. also noted that various opportunities was granted to the assessee to substantiate the cash deposits but in the absence of any reply, A.O. in the assessment order passed u/s. 144 dated 30.12.2019 in order no. Delhi-20/10884/2019-20, considered the aggregate cash deposited in the bank account to be unexplained money and made its additions u/s. 69 of the Act and assessed it to tax u/s 115BBE of the Act and determined the total income at Rs. 2,57,25,590/- .

2.2. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 24.03.2022 Appeal No. Delhi-20/10884/2019-20, dismissed the appeal of the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the assessee is now in appeal and has raised the following grounds:-

1. *The Ld. Assessing Officer Ward 62(4), has erred in law and on facts in concluding the Assessment Proceedings Us 144 of the Income Tax Act, 1961 and assess the Total Income of Rs. 2,57,25,590/- without affording opportunity to the Assessee.*

2. *The Ld. Assessing Officer Ward 62(4), has further failed to appreciate the submission made during the Assessment proceedings and preferred to pass "Best Judgement Orders U/s 144" of the Income Tax Act, 1961.*

3. *The Ld. Assessing Officer Ward 62(4), erred in law in invoking the provision of Section 69 A read with Section 115BBE of the Income Tax Act 1961 and determining an amount of Rs1,20,35,371/- and considering the same for tax.*

4. *The Ld. Assessing Officer Ward 62(4), has further failed to appreciate the submissions made and arbitrary making the addition of Rs84,22,326/- on account of duty-draw back.*

5. *The Ld. Assessing Officer Ward 62(4), has further failed to appreciate the submissions made and arbitrary making the addition of Rs84,22,326/- on account of duty-draw back.*

6. *That the NFAC also failed to grant opportunity to the Assessee and thereafter arbitrary dismissing the appeal.*

7. The order of the CIT (A) and AO are bad in law and against the facts of the case.

4. Before us at the outset the Ld. AR submitted that though the assessee has raised various grounds but the grievance of the assessee is with respect to the additions made by A.O. and upheld by the Ld. CIT(A). He pointing to the order of Ld. CIT(A) submitted that he has passed an ex-parte order and not in merits. He further submitted that the assessee could not appear before A.O. as the notice of hearing was not received by the assessee. He therefore prayed that the matter may be remitted back to the lower authorities and assessee being given a chance to represent his case.

5. Ld. DR on the other hand strongly opposed the prayer of the assessee seeking second innings. He supported the order of the Ld. CIT(A).

6. We have heard the rival submission and perused the material on record. We find that A.O. has determined the total income of Rs. 2,57,25,590/- in the assessment

framed u/s. 144 of the Act. We further find that Ld. CIT(A) also has by cryptic and non-speaking order dismissed the appeal of the assessee and has not decided the issue on merits. Sub Section (6) of Section 250 of the I. T. Act mandates the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by deciding the appeal without considering the issue of merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no party should be condemned unheard.

7. Before us, it is Ld. AR submissions that the notices of the hearing which is stated to have been issued by the A.O. were not received by the assessee. The aforesaid factual contention of the Ld. AR has not been controverted by Revenue by bringing any material on record.

8. In view of the aforesaid facts, we set aside the order of CIT(A) dated 31.10.2017 and restore the issue back to the file of AO for re-adjudication of the issues. Needless to state that AO shall grant adequate opportunity of hearing to both the assessee. Assessee is also directed to promptly furnish all the required detail called for by the authorities. In view of our decision to restore the issue to AO, we are not adjudicating on merits the other grounds raised by assessee. Thus the grounds of assessee are allowed for statistical purposes.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 04.01.2023.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Delhi, Dated 04th January, 2023

NV/-

Copy to

1.	The appellant
2.	The respondent

3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.