

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 5538/DEL/2019
[Assessment Year: 2008-09]

Lhundub Dorji Lama, M-167, Second Floor, Jagatram Park, Laxmi Nagar, Delhi-110092 PAN- ACNPL7280L	<u>Vs</u>	Income Tax Officer, Ward-36(1), new Delhi.
APPELLANT		RESPONDENT
Assessee represented by	None	
Department represented by	Sh. S.L. Anuragi, Sr. DR	
Date of hearing	02.01.2023	
Date of pronouncement	09.01.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-19, New Delhi, dated 10.04.2019, pertaining to the assessment year 2008-09. The assessee has raised following grounds of appeal:

“1. That the order of learned CIT(A) sustaining the order of the learned Assessing Officer is bad in law and on facts and is liable to be set aside.

2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. Assessing officer of making addition of Rs. 27,04,931/- u/s 68 of the Income Tax Act, 1961 by treating the cash deposited in the bank as undisclosed income.*
 3. *That orders passed by Ld AO and Ld CIT(A) are bad in law being founded on the reasons which are solely based on information of cash deposit in the bank account of the appellant which cannot confer valid jurisdiction u/s 148 of the Act to initiate the reopening proceedings and accordingly notice issued u/s 148 and all subsequent proceedings including orders of Ld AO and Ld CIT(A) are void ab initio.*
 4. *That orders passed by Ld AO and Ld CIT(A) are bad in law since notice u/s 148 was admittedly not served on appellant in accordance with law and as stated by CIT(A) service was made at the address of appellant available with banking authorities, said purported service cannot give valid jurisdiction to the Ld AO to pass order u/s 147/144, accordingly notice issued u/s 148 and all subsequent proceedings including orders of Ld AO and Ld CIT(A) are void ab initio.*
 5. *That Ld CIT(A) seriously erred in confirming the arbitrary and unlawful addition of Rs. 27,04,931/- without appreciating that Section 68 of the Act cannot apply to bank statement etc which makes the addition as bad in law.*
 6. *That orders passed by learned CIT(A) and learned Assessing Officer are against the principles of natural justice.*
 7. *That the appellant craves the leave to add, amend, modify, delete any of the grounds of appeal before or at the time of hearing and all the above grounds are without prejudice to each other.”*
2. Apropos to the grounds of appeal the facts giving rise to the present appeal are that case of the assessee was selected for scrutiny assessment on the basis of AIR information that the assessee had deposited huge cash to the extent of Rs.

27,04,931/- at various intervals in his saving bank account maintained with ICICI Bank Ltd. and Axis Bank during F.Y. 2007-08, relevant for the assessment year 2008-09. The AO observed that the assessee had not filed any return for A.Y. 2008-09. The AO completed the assessment u/s 147/144 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") at an income of Rs. 27,04,931/- by adding the aforesaid sum to the income of the assessee as unexplained cash credit u/s 68 of the Act. Aggrieved against it the assessee preferred appeal before the learned CIT(Appeals), who dismissed the appeal by confirming the action of the Assessing Officer. Aggrieved the assessee is in appeal before this Tribunal.

3. At the time of hearing no one attended the proceedings on behalf of the assessee. It is transpired from the record that since 18.01.2021 no one is attending the proceedings on behalf of the assessee. Notices of hearing sent to the assessee at the address furnished in form no. 36 have been returned unserved with the postal remark "Incomplete address". The correct address, if any, has not been furnished by the assessee. Therefore, the appeal was taken up for hearing in the absence of the assessee and is being decided after hearing the learned DR and on the basis of material available on record.

4. The learned DR supported the orders of the authorities below.

5. I have heard the learned Departmental Representative and perused the material available on record. Considering the fact that in this case at the assessment

stage there was no effective representation on behalf of the assessee, in order to subserve the interest of natural justice, I set aside the orders of the authorities below and restore the matter to the file of the Assessing officer to frame the assessment afresh, after affording reasonable opportunity to the assessee to represent his case.

6. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in open court on 9th January, 2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**