

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA Nos.2497 & 2498/Del/2022

[Assessment Year : 2010-11]

Tilak Raj Bansal, RU-472, Pitampura, New Delhi-110034. PAN-AHCPB7430L	vs	ITO, Ward-34(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri G.S.Kohli, CA	
Respondent by	Ms. Maimun Alam, Sr.DR	
Date of Hearing	02.02.2023	
Date of Pronouncement	02.02.2023	

ORDER

PER KUL BHARAT, JM :

Both appeals filed by the assessee wherein one appeal is related to quantum proceedings and another appeal is related to penalty proceedings, are directed against the different orders of Ld. CIT(A)-12, New Delhi both dated 11.08.2020 for the assessment years 2010-11. Since identical grounds have been raised, both appeals were taken up together for hearing and are being disposed off by way of consolidated order for the sake of brevity.

ITA No.2497/Del/2022 [Assessment Year : 2010-11] [QUANTUM PROCEEDINGS]

2. First, we take up ITA No. 2497/Del/2022 filed by the assessee pertaining to Assessment Year : 2010-11. The assessee has raised following grounds of appeal:-

1. *“That the assessment framed as well as CIT(Appeal)'s order are unlawful and are against the natural law of justice.*
2. *That since no notice has been served upon the appellant the assessment order as well as appellate order are not justified in the eyes of law.*

- 3(i). *The learned A.O. has not discharged his moral obligation in service of notice as he (A.O) could have find his shifted address from the portal from where the appellant had filed the return of income related to Asstt. year 2015-16 onwards.*
- (ii) *The CIT(Appeal) too has also relied upon the issuance of notice and has not discharged his moral obligation in respect of service of notice.*
4. *That without prejudice to above paragraphs, in an exparte order the A.O. has to apply his mind in determining the income even in an exparte order in view of the well known fact that the entire deposits cannot be income in someone's hand.*
5. *That where there is "in" and "out" of transactions in the bank statement the balance outstanding on any peak date could have considered in determining an income.*
6. *That it was the initial year of the business of the appellant, thus, he did not derived income or to say his income was much below the taxable limit prescribed for the relevant Asstt. year.*
7. *That the appellant craves his right to amend, delete or add any grounds of appeal at or before the time of hearing.”*

3. At the outset, Ld. Counsel for the assessee submitted that the impugned orders have been passed in the absence of the assessee. The assessee was not given adequate opportunities for hearing. He further submitted that this appeal is barred by time. An application seeking condonation of delay has been filed by the assessee. Ld. Counsel for the assessee further reiterated the submissions as made in the written synopsis:-

Sir,

“The learned CIT (Appeal) had confirmed an A.O's order by dismissing it giving the contention that no one has complied with different notices issued by him and had briefed the notice as under.-

S. No.	Date of Notice	Date of Compliance	Remarks
i)	27/06/2019	15/07/2019	Notice received back, thus, it is evident that it was not served upon the appellant.
in	16/08/2019	13/09/2019	.. do ..
iii)	23/09/2019	11/10/2019	.. do ..
iv)	17/10/2019	01/11/2019	Not received.
v)	11/11/2019	26/11/2019	Appellant complied with online dated 25/11/2019 --- seek an adjournment,
vi)	02/12/2019	12/12/2019	Appellant complied with online 12/12/2019 - seek an adjournment.
vii)	24/02/2020	23/03/2020	Not received probably due to lockdown.
viii)	03/08/2020	07/08/2020	Appellant complied with online on 06/08/2020 - seek an adjournment.

The learned CIT (Appeal) has taken and adverse action by citing the cases of Punjab & Haryana High Court (38 Taxman.com 204) where it is held as confirmed by CIT(Appeal).

"When notices were not received back, it raises a presumption of Service u/s 27 of General Clause Act, 1897, it is clear that the appellant has no intention to effectively pursue the appeal".

It rather gives the favour to the appellant where it has been received back as "Unserved" .

Further the CIT (Appeal) through staff members could have telephonic talk as telephone No. given in Form 35, the learned CIT's (Appeal) had failed to do so as nothing is stated in Asstt. order.

In the circumstances, the humble appellant deserves an opportunity to be heard on merits by CIT (Appeal) where he had determined it by confirming the order of A.O.

The A.O. too had passed the order U/s 147/144 for non-compliance of notice.

The learned A.O. had issued the sufficient notices given as under:-

Date	Notice	Hearing Date	Remarks
24/12/2013	U/s 148		
03/02/2014	U/s 142(1)	17/02/2014	No address mentioned when it was sent.
17/02/2014	U /s 271(1)(b)	---	---
23/04/20.14	---	28/04/2014	.. do ..
14/08/2014	U/s 142(1)	25/08/2014	.. do ..
06/01/2015	U/s 142(1)	13/01/2015	.. do ..

19/01/2015	U/s 142(1)	27/01/2015	.. do ..
17/02/2015	U/s 271(1)(b)	23/02/2015	Penalty imposed of Rs.10,000/-
04/03/2015	U/s 142(1)	10/03/2015	No address mentioned in Show cause notice

Order passed on 10/03/2015

Where an income is assessed on total deposits of Rs.39,69,927/- held in Punjab National Bank, Tri Nagar, New Delhi.

The notices were not served upon the appellant due to frequent change in residence. That such frequent change is apparent from the regular returns filed by him as under-

Asstt.year	2016-17	175 C, Shalimar Bagh, Delhi
	2017-18	.. do ..
	2018-19	.. do ..
	2019-20	.. do ..
	2020-21	RU 472, Pitarnpura, Delhi-110034
	2021-22	.. do ..

The copy of ITR's acknowledgement Receipts are enclosed.

The learned A.O. could have gone through from "Income-tax portal" the communication address of assessee from the subsequent year's returns.

That by putting the PAN of the assessee on Net, the learned A.O. could have known the communication address of the assessee from the latest return. But the learned A.O. had failed to do so and further has not stated anywhere where the notices were sent.

The appellant had filed the return of income voluntarily U/s 139 declaring the income of Rs.2,70,720/- and had also deposited the tax as "Self Asstt.". The copy of ITR's receipt is enclosed.

That since no notice was received by the appellant U/s 143(2) within deemed period, therefore, he was confident that an Asstt. has been completed as in the earlier years. He was not aware of the proceedings U/s 148.

The A.O. has admitted in Asstt. order that he got the Bank Statement from Bankers where he found deposit of Rs.39,69,927/-. There is in and out

of transactions in Bank Statement from where it could have well assumed that entire deposits could not be income of the assessee as held by

Madhya Pradesh High Court

CIT vs. Balchand Ajit Kumar

263 ITR 610

"That the total sale could not be regarded as the profit of the assessee. Whether the rate was low or high would depend upon the facts of each case."

Gujarat High Court

C.I. T. vs. President Industries

258 ITR 654

"That the amount of sales could not represent the income of the assessee who had not disclosed the sales. The sales only represented the price received by the seller of the goods; only the realization of the excess over the cost incurred could form part of the profit included in the consideration for the sales."

It is an admitted fact that the entire deposit is related to sale, that the entire receipt of entire sale cannot be income of the assessee

Bombay High Court

in the case of

Principal Commissioner of Income-tax

vs

[akharia Fabric Pvt. Ltd.

4291TR 332

Where they held

"The appellant was not in a position to prove the existence of the suppliers. The suppliers were found to be engaged in providing bogus bills without actual delivery of goods. Moreover few of the suppliers were not regular parties and they were found to have supplied only during the year and there were no supply either in the earlier year or in the subsequent year from such parties. This circumstantial evidence also proves the bogus nature

of the transactions. I am of the firm view that without purchase of materials it was .not possible for the appellant to complete the job work of dyeing. Therefore, the purchase from these parties cannot be added as bogus and what needs to be taxed is the profit element embedded in such transactions.”

The similar decision has also been given by

Gujarat High Court

in the case of

Commissioner of Income-tax vs Simit P. Sheth

3561TR451

"In essence, the Tribunal only estimated the possible profit out of purchases made through non-genuine parties. The estimation of rate of profit return must necessarily vary with the nature of business and no uniform yardstick could be adopted.

It is apparent from the Bank Statement that the balances had always remained less than Rs.1,00,000/- while the assessee himself has declared the income of Rs.2,70,720/-.

That in previous and subsequent years the assessee has been assessed on income of Rs.

<i>Asstt. year</i>	<i>Gross Income</i>	<i>Deduction under Chapter VI</i>	<i>Net Income</i>
<i>2009-10</i>	<i>2,38,150</i>	<i>1,00,000</i>	<i>1,38,450</i>
<i>2012-13</i>	<i>2,78,030</i>	<i>1,06,200</i>	<i>1,71,830</i>
<i>2013-14</i>	<i>2,97,940</i>	<i>1,08,200</i>	<i>1,89,740</i>
<i>2014-15</i>	<i>3,29,234</i>	<i>1,00,664</i>	<i>2,28,570</i>

The appellant is quite eligible to claim the deduction under Chapter VI, thus, for that as an evidence the relevant receipts/ documents are enclosed. It is a statutory deduction, thus, in spite of fresh document, it deserves to be entertained to allow the eligible deduction.

That in view of income of previous years and subsequent years the income assessed is only hardship to the appellant. In the circumstances the case deserves to be set aside for its consideration on merits or keeping in

view the bank statement let it be finalised by applying the rate applicable U/s 44AF of Income Tax Act, 1961.”

4. In respect of the delay, it is stated by the Ld. Counsel for the assessee that notices of hearing were not received by the assessee and due to unprecedented spread of Covid-19 pandemic, it is requested that a lenient view may be taken for condonation of delay in filing the appeal.

5. Ld. Sr. DR opposed this submission.

6. In re-joinder, Ld. Counsel for the assessee contended that the assessee came to know about the factum of the impugned orders when he got the notice u/s 221(1) of the Income Tax Act, 1961 (“the Act”).

7. I have heard Ld. Authorized Representatives of the parties and perused the material available on records. Considering the unprecedented spread of Covid-19 pandemic, I am of the considered view that a lenient view to be adopted in respect of delay in filing the appeal. The assessee has not taken undue advantage for not filing the appeal on time. Therefore, respectfully following the judgment of Hon’ble Supreme Court in the case of *Collector of Land Acquisition vs Mst . Katiji & Ors. 167 ITR 471*, I condone the delay in filing the appeal and admit the appeal for hearing.

8. It is seen from the records that there was no effective representation by the assessee before the authorities below. It is also noticed that Ld.CIT(A) has not decided the issue on merit which is contrary to the provisions of law. I therefore, set aside the impugned order and restore the assessment to the file of AO to make assessment afresh. Thus, grounds raised by the assessee are allowed for statistical purposes.

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

ITA No.2498/Del/2022 [Assessment Year : 2010-11] [PENALTY PROCEEDINGS]

10. Now, we take up ITA No. 2498/Del/2022 filed by the assessee pertaining to Assessment Year : 2010-11. The assessee has raised following grounds of appeal:-

1. *“The penalty order passed by the learned A.O. as well as by the CIT(Appeal) are not justified in the eyes of law.*
2. *The learned A.O. as well as CIT(Appeal) have not discharged their moral obligation in respect of address for service of notice which could have seen in the portal where the appellant was regularly filing the return of income from 2015-16 onwards.*
3. *That the penalty has been imposed due to non-compliance of notices blindly on the quantum's order and has not established anywhere, it is a case of concealment.*
- 4(i) *That the penalty proceedings are quite separate proceedings and could have heard on merits by producing the documents that the income assessed by the A.O. was not justified.*
- (ii) *The appellant reserves their right to file the documents in support of income declared by him as he could not file before the lower authorities due to an ex parte order.*
5. *That where the income has been estimated in arbitrary manner it does not attract the clauses of proviso 271(1)(c) of Income Tax Act, 1961 .*
6. *That the appellant craves his right to amend, delete or add any grounds of appeal at or before the time of hearing.”*

11. Apropos to grounds of appeal, Ld. counsel for the assessee submitted that quantum proceedings were decided *ex-parte* to the assessee. Therefore, there was no occasion to justify/explain the matter before the authorities below. In respect of the delay, Ld. Counsel for the assessee filed an application seeking condonation

of delay and reiterated the submissions as made in ITA No.2497/Del/2022[AY 2010-11].

12. Ld. Sr. DR opposed these submissions.

13. For the reasons recorded in ITA No.2497/Del/2022, delay is condoned in filling the appeal by the assessee.

14. I have heard Ld. Authorized Representatives of the parties and perused the material available on records. In the quantum appeal, I have set aside the assessment order since the very basis of initiating penalty proceedings has been set aside therefore, impugned penalty would not have its leg to stand. Accordingly, the impugned penalty imposed u/s 271(1)(c) of the Act, confirmed by Ld.CIT(A) is hereby, set aside. However, the AO would be at liberty while framing the assessment afresh if he is satisfied that the imposition of penalty u/s 271(1)(c) is warranted under the facts and circumstances of the case. He would be at liberty to levy the penalty afresh u/s 271(1)(c) of the Act in accordance with law. Thus, grounds raised by the assessee are allowed for statistical purposes.

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

16. In the final result, appeal of the assessee in quantum proceedings i.e. **ITA No.2497/Del/2022 [Assessment year 2010-11]** and appeal of the assessee in penalty proceedings i.e **ITA No.2498/Del/2022 [Assessment year 2010-11]** are allowed for statistical purposes.

Order pronounced in the open Court on 02nd February, 2023.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI