

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No. 2939/Del/2022
Assessment Year: 2011-12

Kapil Kharbanda, A-252, Jhilmil Colony, New Delhi-1100 95	Vs.	ITO, Ward-55(5), Delhi
PAN :AOCPK8719E		
(Appellant)		(Respondent)

Appellant by	Shri Sushil Wadhwa, CA
Respondent by	Shri Anil Kumar Sharma, Sr. DR

Date of hearing	09.02.2023
Date of pronouncement	17.02.2023

ORDER

This is an appeal by the assessee against order dated 28.10.2022 passed by National Faceless Appeal Centre (National Faceless Appeal Centre (NFAC)), Delhi pertaining to assessment year 2011-12.

2. The dispute in the present appeal is confined to an addition of Rs.2,68,819 on account of cash deposited in the bank account.

3. Briefly, the facts are, in course of assessment proceedings under Section 147/143(3) of the Income-Tax Act,1961 for assessment year 2010-11, the Assessing Officer found that in financial year 2009-10, the assessee had purchased an immovable property at Village Bhadwal, Taluk Kajrat, Distt. Raigarh, Maharashtra and payments were subsequently made aggregating to Rs.41,65,600. Since, part of such payment was made in the impugned assessment year, the Assessing Officer called upon the assessee to explain the source of investment. In response, assessee submitted that investment was made in property availing loan from two parties M/s. Balajee Infrashine Pvt. Ltd. and M/s. Mukesh Kumar & Sons, HUF. As alleged by the Assessing Officer, though, notice under Section 133(6) of the Act were issued to the concerned parties seeking confirmation of loan, however, no information was received. Alleging that genuineness of loan and creditworthiness of the parties in respect of loan of Rs.32,65,500 remained unexplained, the Assessing Officer reopened the assessment under Section 147 of the Act. In response to notice issued under Section 148 of the Act, the assessee filed his return of income on 13.12.2018 declaring income of Rs.4,03,160.

4. Ultimately, the Assessing Officer completed the assessment by adding an amount of Rs.5,68,819, being cash deposited in account maintained with ICICI bank. Assessee contested the aforesaid addition in appeal before the learned Commissioner (Appeals).

5. After considering the submissions of the assessee, learned Commissioner (Appeals) granted partial relief by restricting the addition to Rs.2,68,819.

6. Before me, learned counsel appearing for the assessee, submitted that the addition made by the Assessing Officer is totally different from the income for escapement of which the assessment was reopened under Section 147 of the Act. Thus, he submitted, the addition cannot be sustained. In support, he relied upon the following decisions:

- i) CIT vs. Jet Airways (India) Pvt. Ltd. 195 Taxmann 117; &
- ii) Ranbaxy Laboratories Ltd. Vs.CIT (2011) 336 ITR 136 (Del.) – (2011) 242 ITR 117.

7. Learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

8. I have considered rival submissions and perused the material available on record.

9. From the reasons recorded to reopen the assessment under Section 147 of the Act, a copy of which is placed in the paper book, it is observed that assessment was reopened alleging that loan availed of Rs.32,65,500 is non-genuine, hence, has escaped assessment. However, while completing the assessment, the Assessing Officer has not added the loan amount.

10. On the contrary, he has added the cash deposited in the account held with ICICI bank by treating it as unexplained. This, in my view, is inconsistent.

11. Now, it is fairly well settled that while making assessment under Section 147 of the Act, the Assessing Officer has power to make addition of any other item of income which comes to his notice in course of the assessment proceedings along with the item of income for which assessment was reopened.

12. In other words, without making addition of the escaped income, no other addition can be made. Whereas, in the facts of the present appeal, the Assessing Officer without making addition of the loan

availed for escapement of which the assessment was reopened has added a completely different item of income, being cash deposited in the bank account. Therefore, the addition made is unsustainable. Accordingly, I direct the Assessing Officer to delete the addition.

13. In the result, the appeal is allowed.

Order pronounced in the open court on 17th February, 2023.

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 17th February, 2023.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi