

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1037/Del/2021  
[Assessment Year : 2010-11]**

Shri Prayag Singh, H.No.91, Indra Colony, Jaisalmer, Rajasthan-345001. <b>PAN-ARDPS5313G</b>	vs	ACIT, Circle-65(1), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	S/Shri Piyush Kumar Kamal & D.K.Gandhi, Advocates	
<b>Respondent by</b>	Shri Sanjay Nargas, Sr.DR	
<b>Date of Hearing</b>	14.02.2023	
<b>Date of Pronouncement</b>	17.02.2023	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee for the assessment year 2010-11 is directed against the order of Ld. CIT(A)-21, New Delhi dated 23.08.2018.

2. The assessee has raised following grounds of appeal:-

1. *“That the learned Commissioner of Income Tax (Appeals)-21, New Delhi has erred both in law and, on facts in upholding the determination of income made by the learned Assistant Commissioner of Income Tax, Circle-65(1), New Delhi of the appellant at Rs. 8,49,910/- as against declared income of Rs. 5,73,062/- by the appellant in an order of assessment dated 29.12.2017 u/s 147/144 of the Act.*
2. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that since the notice and order of assessment was not served on the appellant and, as such there was sufficient cause for not causing appearance. Accordingly the order so made is contrary to the principles of natural justice.*

- 2.2. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that non appearance of the appellant on the date of hearing was neither intentional nor deliberate and is not a case where applicant is not interested in prosecuting its appeal.*
- 2.3. *That even otherwise. an order passed in li mini without effectively disposing of the grounds raised by the appellant company is in infraction of section 250(6) of the Act and as such, order so made is otherwise too illegal. invalid and a vitiated order.*
3. *That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/144 of the Act without appreciating that the same were without jurisdiction and hence deserved to be quashed as such.*
  - 3.1. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no specific relevant, reliable and tangible material on record to form a "reason to believe" that income of the appellant had escaped assessment and in view thereof the proceedings initiated are illegal, untenable and therefore unsustainable.*
  - 3.2. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that reasons recorded mechanically without application of mind do not constitute valid reasons to believe for assumption of jurisdiction u/s 147 of the Act.*
  - 3.3. *That 111 absence of any valid approval obtained under section 151 of the Act, initiation of proceedings u/s 147 of the Act and assessment framed u/s 147/143(3) of the Act are invalid and deserve to be quashed as such.*
4. *That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding a addition of sum of Rs.2,76,844/- representing pension income form Army and, declared in return of income alongwith income received from M/s. Aviation*

*Research Centre after consolidation in total taxable income received in the year under consideration claimed by the appellant and held as not claimed by the appellant and held as not claimed pension as exempt come.*

- 4.1. *That while upholding the above addition, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the factual substratum of the case, statutory provisions of law and as such, addition so upheld is highly misconceived, totally arbitrary, wholly unjustified and therefore, unsustainable.*
- 4.2. *That various other adverse findings recorded in the impugned order are also factually incorrect, contrary to record and untenable.*
5. *That both the authorities below have framed the impugned order without granting sufficient proper opportunity to the appellant company and therefore the same are contrary to principle of natural justice and hence vitiated.*
6. *That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding the levy of interest of under section 234A and u/s 234B of the Act which are not leviable on the facts and circumstances of the case of the appellant company.*

*It is therefore prayed that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) deserves to be quashed as such. It is also prayed that addition made and sustained alongwith interest levied may kindly be deleted and appeal of the appellant and refund claimed by appellant alongwith interest be allowed.”*

3. Facts giving rise to the present appeal are that in this case, the assessee filed return of income declaring total income of Rs.5,73,062/- on 14.07.2010. The Assessing Officer (“AO”) was having information regarding receipt of pension amounting to Rs.2,76,844/- which was not disclosed in the return of income of the assessee. The case of the assessee was therefore, re-opened u/s 147 of the

Income Tax Act, 1961 (“the Act”) and in respect of statutory notice, no one attended the assessment proceedings on behalf of the assessee. Therefore, the AO made addition of Rs.2,76,844/- and assessed the income of the assessee at Rs.8,49,910/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, partly allowed the appeal and allowed the tax deducted at source.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Apropos to Grounds of appeal, Ld. Counsel for the assessee submitted that the assessee was not served notice issued for re-opening of the assessment. The AO had not provided sufficient opportunity to the assessee. Ld. Counsel for the assessee submitted that the assessee being a Government Servant, has been posted to one place to other place. He contended that Form No.16 was duly filed alongwith return of income where pension is duly reflected in that form which has been taken into account in the return of income. Ld. Counsel for the assessee drew my attention to the acknowledgement issued by the Department.

7. Ld. Sr. DR relied upon the orders of the authorities below and strongly supported the assessment order.

8. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. It is an admitted fact that the assessee was not served notice issued u/s 148 of the Act. Moreover, from the return of income, it is clear that the assessee had

duly disclosed the income. However, the AO did not grant deduction u/s 80C of the Act to the assessee. Looking to the totality of the fact, the impugned addition is hereby, deleted and the order of the authorities below is hereby set aside. Thus, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 17<sup>th</sup> 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