

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.1586/Del/2020
[Assessment Year : 2011-12]**

Gyan Chand Sharma, H.No.436, Adarsh Colony, Palwal, Haryana. PAN-BHGPS2052E	vs	ITO, Ward-1(3), Faridabad.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Ms. Maimun Alam, Sr.DR	
Date of Hearing	02.02.2023	
Date of Pronouncement	17.02.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2011-12 is directed against the order of Ld. CIT(A), Faridabad dated 27.11.2019. The assessee has raised following grounds of appeal:-

1. *“Because the action is under challenge on facts & law since the findings recorded qua appeal dismissal of appeal is in violation to the principles of natural & substantial justice for a decision in accordance with law.*
2. *Because the action is under challenge on facts & law for making addition of Rs. 19,00,000/- as unexplained cash deposited u/s 68 on the basis of assessment order u/s 143(3)/147 of the Income Tax Act for the AY 2011-12.*
3. *Because the action is under challenge on facts & law since CIT(A) has no power to go beyond the matter arising out of the proceedings before the AO more particularly when the separate provisions for eventuality are provided under the Income-tax Act, 1961.*

4. *Because the action for enhancement of addition of Rs. 19,00,000/- is being challenged on facts and law as none specific show cause notice issued by CIT(A) for enhancement of income.*
5. *Because the action for enhancement of addition of Rs.19,00,000/- is being challenged on facts and law by making addition u/s 68 by treating deemed income of the appellant as assessee as not explained the source of income overlooking that assessee has already shown the said amount as job work of making truck body in the name of "Sharma Truck Body Repair".*
6. *Because the action is under challenge on facts & law, the Ld. AO has erred in arbitrarily reopening the assessment u/ s 147 of the Act, and there is no application of mind while recording the reason for reopening the assessment u/s 147 which is without jurisdiction and contrary to the facts and provision of law hence liable to be quashed as void.*
7. *For any consequential relief and/ or legal claim arising out of this appeal and for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee.”*

2. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the record that no one has been attending the proceedings since 29.08.2022. Despite various opportunities of hearing provided to the assessee, no one attended the proceedings on behalf of the assessee. On the date fixed for hearing i.e. 02.02.2023, no one attended the proceedings on behalf of the assessee. The notices sent through speed post were returned back unserved by the Postal Authority. The assessee has not provided any current address to the Registry. Therefore, the appeal is taken up for hearing in the absence of the assessee and is being disposed off on the basis of material available on record.

3. It is seen from the record that the assessee has filed an application seeking condonation of delay in filing the appeal and an affidavit in support of the application is also filed by the assessee. It is stated in the affidavit that due to spread of Covid-19 pandemic, the appeal could not be filed on time. The impugned order was passed on 17.11.2019 and the order was served on 18.02.2020 to the assessee. However, the appeal was filed belatedly by the assessee on 11.09.2020.

4. Ld. Sr. DR appeared on behalf of the Revenue, opposed these submissions and submitted that there is no reasonable cause for condoning the delay in filing the appeal by the assessee. She submitted that the assessee has been negligent throughout and did not avail opportunities granted by the Assessing Authority. Even before this Tribunal also, the assessee did not approach on time. Therefore, she prayed that the appeal be dismissed on account of limitation.

5. I have heard Ld. Sr. DR and perused the material available on record. Considering the fact that the whole country has witnessed the unprecedented spread of Covid-19 pandemic therefore, I condone the delay in filing the appeal by the assessee and the appeal is admitted for hearing.

6. The effective **Ground Nos. 1 to 5** raised by the assessee in this appeal against the sustaining of addition of Rs.19,00,000/- and **Ground No.6** raised by the assessee is against the validity of re-opening of the assessment.

7. Facts giving rise to the present appeal are that the assessee filed his return of income of Rs.1,82,680/-. The return was processed u/s 143(1) of the

Income Tax Act, 1961 (“the Act”). The Assessing Officer (“AO”) was having AIR information regarding the deposit of cash by the assessee in his saving bank account maintained with Bank of Baroda of Rs.26,87,000/-. Therefore the case was re-opened for assessment u//s 147 of the Act. In response to the statutory notices, Shri Pankaj Goyal, CA attended the proceedings on behalf of the assessee. The assessee was asked to explain the basis of huge cash deposited in his bank account. However, the assessee could not file the requisite details. Thus, the AO made addition of Rs.19,00,000/- and assessed the income of the assessee at Rs.1,82,680/-.

8. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who sustained the addition and dismissed the appeal of the assessee.

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

10. Apropos to Ground Nos.1 to 5, Ld. Sr. DR supported the orders of the authorities below. She submitted that the assessee grossly failed to explain the source of cash deposits. She further submitted that the source of cash deposits of assessee claimed by way of additional evidence regarding cash in hand. However, no supporting evidence was furnished regarding creditworthiness of persons. Ld. Sr. DR took me through the impugned order and also pointed out that the Remand Report was sought by Ld.CIT(A) during appellate proceedings. She further heavily relied upon the Remand Report, submitted by the Assessing Authority. She submitted that in the absence of supporting evidence, Ld.CIT(A) was justified in sustaining the impugned addition.

11. I have heard Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. I find that Ld.CIT(A) has given a finding on fact in para 12 of his order by observing as under:-

12. *“It is noted from the record that the appellant had made cash deposits of Rs.10 lacs on 25.10.2010, Rs.10,59,000/- on 29.01.20.11 in his bank account maintained with Bank of Baroda. During the assessment proceedings, the source of the same was explained from past savings (opening cash in hand as on 01.04.2010 for Rs.20,14,500/-) and business receipts of the year under consideration. During the appellate proceedings, the appellant changed his explanation and has explained that Smt. Rajwati, his wife had sold her land situated in Palwal to Smt. Raj Kumar and received cash advance of Rs.12,70,000/- on 25.01.2011. Ongoing through the registered sale deed in respect of the said transaction, it is noted that the registered sale deed has been executed on 15.02.2011 in which the sale consideration has been mentioned at Rs.9,50,000/-. Further, it has been certified by the joint registration authority, Palwal that amount of Rs.9,50,000/- in cash has been exchanged between the purchaser and seller in front of him on 15.02.2011. Thus, the explanation furnished by the appellant that he had received cash of Rs. 11 lacs from his wife on 25.01.2011 has been found manipulated and against the facts. Further, the appellant has furnished a receipt from Shri Ved Ram Sharma in which it has been stated that he had paid Rs. 10 lacs to the appellant on 24.10.2010 for the fabrication of truck bodies on his behalf. It is, however, noted that the said receipt could not be substantiated as the appellant had failed to furnish copy of any invoice in respect of such fabrication work, and particulars of the vehicle for which such fabrication was made were not made available. The whole explanation has been found without any corroborating and verifiable evidence. It is relevant to note that the*

explanation furnished regarding the source of cash deposits in the assessment proceedings and appellate proceedings has been found contradictory to each other. Thus, the explanation furnished by the appellant in this respect lacks bonafide. The appellant could not explain source of cash in hand of Rs.20,14,150/- as on 01.04.2010. The onus was on the appellant to explain source and nature of cash deposit made in his bank account during the year. The explanation was furnished has been found unsatisfactory. In the circumstances, it is held that the AO was justified in making addition of Rs.19,00,000/-, the same is hereby confirmed u/s 69A of the Act. Thus, Grounds No.1 to 4 of the appeal are dismissed.”

12. Looking to the explanation offered by the assessee before the authorities below, I am of the considered view that the assessee ought to have been given opportunity for furnishing the confirmation from his wife and other persons who gave advance to the assessee. The AO could have secured their attendance for recording their statement and confirming the same to the assessee before making the impugned addition. Therefore, to sub-serve the interest of substantial justice, I hereby set aside the findings of the authorities below on the issue of impugned addition. The issue is restored to the file of AO for decision afresh. Needless to say that the AO would give reasonable opportunity of being heard to the assessee. The AO would further verify the factum of amount of Rs.11,00,000/- received from his wife and Rs.10,00,000/- from Shri Ved Ram Sharma and decide the issue in accordance with law. Thus, Ground Nos. 1 to 5 raised by the assessee are allowed for statistical purposes.

13. **Ground No.6** raised by the assessee is against the legality of re-opening of the assessment. It is stated that there was no application of mind while recording the reasons for re-opening.

14. Ld. Sr. DR drew my attention to the finding of AO wherein she has categorically stated that an amount of Rs.26,87,000/- was deposited in the saving bank account by the assessee. Therefore, in the absence of any supporting evidence regarding source of such deposit, the AO was justified in re-opening the assessment and making addition out of cash deposits which was not explained and proved with the supporting evidences.

15. I have heard Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. Ld.CIT(A) has decided the issue by observing as under:-

14. *“The facts of the case and material available on record have been gone through. It is noted that the appellant had maintained a saving bank account with Bank of Baroda in which there were cash deposits of Rs.22,87,000/- during the year under consideration. The AO required the appellant to explain source of such cash deposits vide letter dated 06.03.2018 u/s 133(6), which remained un-complied with. Thus, in the absence of compliance of letter sent by the AO u/s 133(6), the source and nature of such cash deposits in the said bank account remained unexplained. Such unexplained cash deposits were thus in the nature of income of the appellant. Such income had not been disclosed in the return of income filed u/s 139 of the Act. The AO after considering the above information and facts of the case recorded reasons to believe u/s 147 of the Act. 15. It is noted from the record that the AO in this case has recorded detailed reasons u/s 147 of the Act by inferring that the income*

chargeable to tax has escaped assessment. The AO has gone through the return of income furnished by the appellant u/s 139 of the Act and considered the particulars of the income as reflected in the return of income in the light of above observations. On the basis of these facts, the AO came to" the belief that income chargeable to tax on account unexplained cash deposits have escaped assessment. Thus, it is noted that there was live link between the information in possession of the AO and belief made that income chargeable to tax has escaped assessment. The reasons recorded by AO have not been found recorded on the basis of suspicion. At the stage of formation of belief u/s 147 of the Act, it is necessary to have existence of reasons to believe that income has escaped assessment, their sufficiency cannot be examined at that stage. Clearly in this case the AO was having tangible material to draw such inference. Reliance is placed upon the decision of Hon'ble Supreme Court in the case of RAYMOND WOLLEN MILLS LTD. Vs. ITO 2361TR 34 (SC) and ACIT VS. RAJESH JHAVERI STOCK BROKERS (P) LTD. 291 ITR 500 (SC), PHOOL CHAND BAJRANG LAL AND ANOTHER VS. ITO & ANOTHER 203 ITR 456 (SC) and Hon'ble Madras High Court in the case of STERLITE INDUSTRIES (INDIA) LTD. v ASSISTANT COMMISSIONER OF INCOME-TAX AND ANOTHER [2008] 302 ITR 275 (MAD.). The Pr.CIT has gone through the entire material on record and has applied her mind before giving approval u/s 151 of the Act.

16. *In view of the facts and discussion as above, it is held that there is no infirmity in the reasons recorded by the AO u/s 147 of the Act and notice issued u/s 148 of the Act. The same are held as valid. Thus, Ground of Appeal No.5 and 6 are dismissed."*

16. The above observation of Ld.CIT(A) is not rebutted by the assessee by placing any contrary evidence. In the absence of such evidence, I do not see

any reason to interfere in the finding of Ld.CIT(A), the same is hereby, affirmed.
Thus, Ground No.6 raised by the assessee is dismissed.

17. **Ground No.7** raised by the assessee is general in nature, needs no separate adjudication.

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

Order pronounced in the open Court on 17th 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