

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D": NEW DELHI**

**BEFORE  
SHRI G.S. PANNU, HON'BLE PRESIDENT  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 2609/Del/2022  
Asstt. Year: 2012-13

Jatinder Kumar Ahuja Apartment 508, Abraj AI Lulu Silver Tower Building No. 1803 Road No. 5133 Block No. 351 Seef, Kingdom of Bahrain PAN AGOPA4593Q	Vs.	DCIT, International Taxation Circle, Gurugram.
(Appellant)		(Respondent)

Assessee by:	Shri Sameer Kapoor, CA
Department by:	Shri Sanjay Kumar, Sr. DR
Date of Hearing:	01.05.2023
Date of pronouncement:	26.05. 2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 31.08.2022 of the Ld. Commissioner of Income Tax (Appeals) - 43, New Delhi (**"CIT(A)"**) for Assessment Year (**"AY"**) 2012-13.

2. The solitary ground of appeal taken by the assessee is that:

*"Ld. CIT(A) has erred in confirming addition of Rs. 12,30,000/- made by the Ld. AO by invoking the provisions of section 68."*

3. Briefly stated, the assessee is a non-resident individual. He did not file his return for the AY 2012-13. On the basis of information available with the Department that he had deposited cash of Rs. 12,30,000/- with ICICI Bank Ltd. during the previous year relevant to the AY 2012-13, notice under section 148 of the Income Tax Act, 1961 (**the "Act"**) was issued on

30.03.2019 which was duly served upon the assessee. The assessee did not respond. The Ld. Assessing Officer ("**AO**") issued notice under section 142(1) of the Act on 05.09.2019 which also remained uncomplished with. On receipt of the case from ITO Ward-2, Ambala on 09.10.2019 by the Ld. DCIT (International Taxation, Circle, Gurugram) show cause notice under section 142(1) was sent on 05.12.2019. Since no reply was received from the assessee, the Ld. AO completed the assessment ex-parte under section 144 r.w. section 147 of the Act on total income of Rs. 12,30,000/-. The said amount represented the unexplained cash deposit in the bank which the Ld. AO added under section 68 of the Act.

4. The assessee filed appeal before the Ld. CIT(A). It was stated by the assessee that he is non-resident working in Middle East. At the time the assessment was made he was not in the country. Due to his absence in India, ex-parte assessment has been made. During the appellate proceedings, a declaration of the assessee's wife was filed stating therein that the amount deposited was in lieu of the property sold by her. The sale consideration was received in cash which was deposited in bank account jointly operated by her and her husband. An application under Rule 46A of Income Tax Rules, 1962 ("**Rules**") was also submitted with a request to admit the additional evidence. The Ld. CIT(A) called for the remand report. In the remand report the Ld. AO objected to admittance of additional evidence and submitted that source of cash has not been explained. In the light of the remand report, the Ld. CIT(A) dismissed the appeal of the assessee.

5. Aggrieved, the assessee is before the Tribunal.

6. We have heard the Ld. Representative of the parties and perused the records. It is undisputed fact that the nature and source of the impugned cash deposit of Rs. 12,30,000/- in the bank account was not explained during the assessment proceedings resulting in the ex-parte addition to the income of the assessee. However, during appellate proceedings, the assessee made an application under Rule 46A of the Rules for admission of additional

evidence and to file a rejoinder to the remand report, if any, received from the Ld. AO. The additional evidence consisted of copy of extracts of bank statement; copy of registered Bayanama of property sold by the wife of the assessee substantiating receipt of cash on sale of property; declaration by wife of the assessee; employment leaving certificate from Indian employer w.e.f. 14.02.2008 and employment joining certificate from UAE employer w.e.f 19.02.2008. The Ld. AR filed Paper Book containing the above pieces of evidence before us. On being asked, the Ld. AO submitted remand report saying that the assessee has failed to satisfy the conditions laid down under Rule 46A of the Rules without assigning any reason whatsoever as to why he reached at the above said conclusion. The Ld. CIT(A) also overlooked the request of the assessee to allow him an opportunity to file a rejoinder to the remand report submitted by the Ld. AO. This is in violation of the principles of natural justice.

7. On the facts and in the circumstances of the case set out above, we are of the considered view that in the interest of justice and fair play the matter requires to be restored to the file of the Ld. CIT(A) to admit and consider the additional evidence filed by the assessee before him and to decide the appeal afresh after allowing adequate opportunity of hearing to both the parties. We order accordingly.

8. In the result, the appeal is treated as allowed for statistical purposes.

**Order pronounced in the open court on 26<sup>th</sup> May, 2023.**

**sd/-**  
**(G.S. PANNU)**  
**PRESIDENT**

**sd/-**  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

Dated: 26/05/2023

**Veena**

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)

5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	