

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 81/Kol/2023
Assessment Year: 2013-14

Sudip Jaiswal 123/2/H/76, A.P.C Road Manicktala Kolkata - 700006 [PAN : AJUP]3752B]	Vs	Income Tax Officer, Ward-37(1), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Smt. Swati Baid, A/R
Revenue by :	Shri P.P. Barman, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 11/05/2023
घोषणा की तारीख /Date of Pronouncement: 09/06/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the CIT(A)"), passed u/s 250 of the Income-tax Act, 1961 (hereinafter the 'Act'), dated 03/01/2023 for the Assessment Year 2013-14.

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

"1. For that the assessment is bad in law since notice u/s 143(2) was never issued by the Ld. AO when the assessee duly filed the return u/s 148, when the original return was filed in accordance with law, the AO was not correct in not accepting the return since the same was filed in paper form and further the Ld CIT(A) should not have refused to accept the contention by making a new issue that the letter was not filed within the due date for filing of the return when there is no provision that the return filed beyond the time allowed u/s 148 is invalid.

2. For that the order of the Ld CIT(A) in rejecting the contention of the appellant that the proceedings-initiated u/s 147 by the AO was without application of mind, simply accepting the information without

any further enquiry and therefore the initiation of the proceedings as well as the assessment itself is bad in law and is liable to be annulled.

3. *For that the Ld CIT(A) erred in confirming the assessment when the same was completed without providing a reasonable opportunity of being heard.*

4. *For that the Ld CIT(A) erred in confirming the assessment when the same was initiated on the basis of a mechanical satisfaction.*

5. *For that the CIT(A) erred in confirming the entire addition made by the AO when it was undisputed that the assessee was carrying on business and the receipts were on account of sales, only the profit element on the receipts could have been added.*

6 *For that even otherwise the addition was not valid and is liable to be deleted."*

3. Brief facts of the case are that the assessee is an individual and declared income of Rs. 1,92,840/- in the return for the Assessment Year 2013-14 filed on 28/03/2014. Credible information was received from ITO (Inv.) Unit-2, Kolkata about huge credits in two proprietorship concern of the assessee, namely, Laxmi Trading Co. and Ganapati Traders. Information was also received that Rs.67,17,925/- and Rs.56,69,791/- having been credited in two separate bank accounts held with HDFC Bank, Manicktala Branch in the name of two sole proprietorship concern as referred above. Based on this information, case of the assessee was reopened by issuance of notice u/s 148 of the Act. The assessee filed manual return, even though it was required to file the return on the Income-tax portal and, therefore, the return manually filed was not accepted. During the course of assessment proceedings, the assessee did not file any details as a result of which the ld. Assessing Officer completed the assessment u/s

147/144/144B of the Act and made addition u/s 69A of the Act at Rs. 1,23,87,716/- and assessed income at Rs.1,25,80,556/-.

3.1. Aggrieved the assessee preferred appeal before the Id. CIT(A) raising various legal grounds as well as the grounds on merits but failed to succeed on any of the legal ground and so far as the merits of the case for non-compliance in not filing the necessary details, the Id. CIT(A) confirmed the additions made by the Id. Assessing Officer.

4. Aggrieved, the assessee is now in appeal before this Tribunal.

5. The Id. Counsel for the assessee vehemently argued referring to the detailed submissions filed before the Id. CIT(A) stating that reopening proceedings were not valid and further on merits it was submitted that all the alleged credits are part of the regular business receipts duly shown in the income tax returns.

5.1. On the other hand, the Id. D/R vehemently argued supporting the detailed findings of the Id. CIT(A).

6. We have heard rival contentions and perused the material available on record.

7. Through Ground No. 1, the assessee has contended that the assessment proceedings are invalid as the notice u/s 143(2) of the Act was not issued. We, however, fail to find merit in this ground and after going through the records as well as the finding of the Id. CIT(A), we notice that the assessee was required to file the income-tax return online in compliance to the notice u/s 148 of the Act. However, the assessee did not file the return online and opted to file a manual return which was not in accordance to the Income-tax Act, Rules & Regulations. Since the assessee filed the return manually, it was not

possible for the revenue authorities to replicate the return on the system and the same was communicated to the assessee vide letter dt. 31/07/2021, but the assessee did not comply to the said letter and did not file any return online. The requirement of notice u/s 143(2) of the Act comes into effect only when the assessee has filed the return in compliance to the notice u/s 148 of the Act and to carry out the scrutiny proceedings. Id. Assessing Officer should issue notice u/s 143(2) of the Act since it is a statutory requirement. However, as in the instant case, the assessee has not filed the return as required under the Income-tax Act on the online portal and the manual return filed by the assessee is no return in terms of the Income Tax Rules, 1962, the Id. Assessing Officer was not required to issue any notice u/s 143(2) of the Act. Thus, Ground No. 1 raised by the assessee is dismissed.

8. Ground No. 2 is raised contending that the proceedings initiated u/s 147 of the Act are without application of mind and simply accepting the information without any further enquiry. There is no merit in this ground of the assessee because once the reasons were issued to the assessee sufficient opportunity was provided to establish the source of credits in the bank account stated in the information received from the Investigation unit. There was no mechanism for the income tax authorities to examine the fact that the alleged two bank accounts have been disclosed in the regular books of accounts and the credits appearing therein have not be taken into the books for the purpose of calculating the income. Under these given facts and circumstances, the reopening proceedings were initiated with proper application of mind and the Id. CIT(A) has rightly held so confirming

that the reassessment proceedings are valid. Thus, we find no infirmity in the order of the Id. CIT(A) and uphold the same. Accordingly, Ground No. 2 of the assessee is dismissed.

9. As regards Ground Nos. 3, 4 & 5 are concerned, through which it is mainly contended that the assessee was not provided reasonable opportunity of being heard, we notice that the assessee has been contending before the Id. First Appellate Authority that the alleged credits in the bank accounts of the two sole proprietorship concern are business receipts and the Id. Assessing Officer ought to have estimated the net profit on the difference between the turnover on which the net profit was declared and the total amount deposited in the bank account. We, however, note that the assessee has not filed the financial statement of the sole proprietorship concerns as to whether they have been disclosed in the return of income. No details have been filed about the nature of business being carried out in these two proprietorship concerns and what is the profit being offered in the regular income tax return of such type of receipts. All through the proceedings before the lower authorities and before us, no specific details have been filed except copy of bank statement which does not indicate communication relevant for arriving at the income of the assessee.

10. However, we in the interest of justice and being fair to both the parties deem it fit to restore the issue of merits to the Id. CIT(A), before whom, the assessee shall file all the supporting documents to establish that the alleged credits in the two bank accounts are business receipts, all the other entries in the bank account other than credits are also to

be explained as to whether they are for purchasing the goods. Details of regular books of accounts and nature of business being carried out are also to be filed. The ld. CIT(A) if needed can send these details to the Assessing Officer calling for a remand report and then can decide in accordance with law, considering the settled judicial pronouncements. Accordingly, Ground Nos. 3,4 & 5, are allowed for statistical purposes.

11. Ground No. 6 is general in nature.

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

Order pronounced in the Court on 9th June, 2023 at Kolkata

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 09/06/2023

Sd/-

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata