

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member**

ITA No. 2500/Del/2022
(Assessment Year: 2012-13)

Ajay Singh, C/o. Advocate Kanika Jain, D- 80, LGF, Panchsheel Enclave, New Delhi (Appellant) PAN: AOOPS4561G	Vs. ITO, Ward-1(1), Noida (Respondent)
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Assessee by :	Ms. Kanika Jain, Adv
Revenue by:	Shri Om Parkash, Sr. DR

Date of Hearing	01/05/2023
Date of pronouncement	07/07/2023

ORDER

PER C. M. GARG, J. M.:

1. This is an appeal filed by the assessee against the order of the Id CIT(A), National Faceless Appeal Centre (NFAC) dated 25.08.2022 for AY 2012-13.

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

1. *The assessment order passed by the Ld. Assessing Office ("Ld. AO") under Section 144 r.w.s. 147 of the Act is bad in law and on the facts and circumstances of the case.*

2. *The Ld. AO has erred in law and on the facts and circumstances of the case in making additions under section 69 of Rs. 13,74,500/-.*

3. *The impugned reassessment proceedings are bad in law and liable to be set aside as the same have been conducted in violation of principles of natural justice and by not affording reasonable opportunity to the assessee.*

4. *The impugned reassessment proceedings are bad in law and liable to be set aside as they are premised on complete borrowed satisfaction without any application of mind.*

5. *The impugned reassessment proceedings are bad Included in law and liable to be set aside as they have been above proceeded without obtaining approval of the superior authority under Section 151 of he Act."*
3. The Id counsel of the assessee submitted that the assessee does not want to press ground Nos. 3 and 5 therefore, the same are dismissed as not pressed.
4. Ground Nos. 1 and 6 of assessee are of general in nature which require no specific adjudication.
5. Apropos ground No. 4 the Id counsel submitted that the assessee could receive the copy of reasons for initiation of proceedings u/s 147 of the Act by way of application filed under right to information Act wherein para 2 the AO noted that the assessee has not filed any return of income for AY 2012-13 therefore, the source of cash deposit of Rs. 13,74,500/- remain unexplained. Further, drew my attention towards copy of ITR-V for AY 2012-13 the Id counsel submitted that the assessee filed return of income for AY 2012-13 on 28.08.2012 under e-filing acknowledgement No. XXXX280812, therefore, the very basic premise and course taken by the AO is factually incorrect. The Id counsel also submitted that the Id Sr. DR in its written submission at para 1 has noted that the assessee filed copy of ITR-V dated 28.08.2012 before the AO on 28.03.2019 and the AO passed reassessment order on 14.12.2019 without mentioning the date in the assessment order, therefore, in view of various judgment of the coordinate bench of the Tribunal including judgment of ITAT Delhi bench dated 11.06.2020 in the case of Shri Omvir Singh Vs. ITO in ITA No. 7437/Del/2018 for AY 2009-10 only on this reason that it has been assumed that the AO proceeded to initiate the reassessment proceedings u/s 147 of the Act and to issue notice u/s 148 of the Act on incorrect fact, therefore, he at the time of recording reasons he did not apply his mind to the

material available before him and thus, the entire proceedings the impugned reassessment order may kindly be quashed.

6. Replying to the above Id Sr. DR strongly opposed the contention of the Id counsel of the assessee and vehemently supported the action and impugned reassessment order passed by the AO. However, on being asked by the bench the Id Sr. DR could not show us any plausible cause justifying the noting the incorrect facts in para 2 of the reasons where the AO noted that the assessee has not furnished in ITR for AY 2012-13.

7. On careful consideration of the above submissions and vigilant perusal of the order of the coordinate bench of the Tribunal in the case of Shri Omvir Singh Vs. ITO (supra) I note that in the present case the AO in the reasons recorded noted that the assessee has not filed any return of income for AY 2012-13 whereas, the assessee filed return of income for AY 2012-13 dated 28.08.2012 through e-filing copy of which is available at 9 to 11 of assessee's paper book. Identical issue was placed before Hon'ble Delhi High Court in the case of PCIT Vs. Rmg Polyvinyal (I) Ltd reported as 396 UTR 5(Del) has vehemently relied by the Id counsel of the assessee, wherein, their lordship held that the AO proceeded on the basis that no return of income is available in the AST database of the income tax department and assessee has not file return of income for AY 2004-05 and consequently, has not offered any income for taxation. Hon'ble High Court in such a situation held that the AO deprived himself of opportunity by proceedings on erroneous premises that assessee had not filed a return when in fact it had been. Their lordship further held that such situation no error was committed by the Tribunal in holding that the reopening of assessment was bad in law.

8. Respectfully following the above proposition of Hon'ble Jurisdictional Hon'ble Court of Delhi (supra) I am inclined to hold that

in the present case also the very basis taken by the AO is factually incorrect tht no return has been filed by the assessee thus, I hold that the AO proceeded to initiate reassessment proceedings without application of mind to the relevant material and records and without assuming valid jurisdiction to frame reassessment order. Consequently, the entire reassessment proceedings including the impugned reassessment order deserve to be quashed and I hold so. Accordingly, ground No. 4 of assessee is allowed.

9. Since, in the earlier part of this order I have quashed the entire reassessment proceedings and Ld Representative of both the sides have not placed any submissions on the other grounds of assessee thus, I do not deem it just and proper to adjudicate other grounds of assessee in absence of any submissions.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 07/07/2023.

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 07/07/2023
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi