

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.1478/Del/2023
[Assessment Year : 2011-12]**

Omvir Mehta, B-133, Mehta Niwas, Opp. Sec-4, Surya Vihar, Gurgaon, Haryana-122001. PAN-AMDPM0018K	vs	ITO, Ward-3(2), Gurgaon.
APPELLANT		RESPONDENT
Appellant by	Shri I.P.Bansal, Adv.	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	19.07.2023	
Date of Pronouncement	25.07.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld. CIT(A), National faceless Appeal Centre ("NFAC"), Delhi dated 17.02.2023 for the assessment year 2011-12.

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

1. *"That under the facts and circumstances of the case Commissioner of Income Tax (Appeals) (CIT(A)) has erred in fact and in law in dismissing appeal filed by the assessee on the ground that the assessee is not effectively perusing his appeal and has failed to respond to various notices and has wrongly placed reliance on the decisions which are not applicable to the powers of deciding appeal by CIT(A). The authority of CIT(A) lacks such power as while deciding the appeal, irrespective of the fact that whether or not assessee has pursued his appeal, a speaking decision has to be made in respect of each and every ground taken in the grounds of appeal.*
2. *That under the facts and circumstances of the case Ld. CIT(A) has failed to appreciate that the assessment order was an ex-parte order*

passed u/s 144 r.w.s 147 of the Act whereby at the fag end of the limitation period of six years reassessment proceedings were initiated against the assessee, therefore, examination of the validity of reassessment proceedings was required to be decided on the basis of several grounds of appeal taken before CIT(A) to contest the validity of reassessment proceedings which will go to the root of the matter as the mode of determining the assessable income by way of reassessment proceedings is not a general mode of assessment and power to initiate reassessment proceedings is safe guarded by several steps which are required to be established to be taken by the department if the such validity is challenged.

- 3. That the enablement of the communication window as communicated by notice dated 01-11-2022 cannot be considered as a notice without setting out the date of submitting the response, therefore, cannot be taken in to consideration as a non-compliance by the Ld. CIT(A).*
- 4. That under the facts and circumstances of the case the reassessment order passed by the Ld. AO is invalid on the grounds inter-alia including the following grounds: -*
 - a) there was no valid material on record to enable the department to form reason to believe which is pre-requirement for valid initiation of re-assessment proceedings.*
 - b) while recording reasons the A.O. did not apply his own mind to the so called material relied upon to form reason to believe as required by section 147 of the Act.*
 - c) there is no valid and proper sanction obtained as mandated in Section 151 of the Act.*
 - d) there is no valid service of notice u/s 148 as the assessment order speaks only regarding generation of notice u/s 148 through ITBA on 21-03-2018.*
 - e) that under the fact and circumstance of the case and in law, the assessment framed u/s 144 r. w.s. 147 of the Act is bad in*

law as the same has been framed in violation of principles of natural justice as no opportunity was provided to the assessee while framing the assessment more particularly u/s 144 of the Act.

5. *That under the facts and circumstances of the case the addition of Rs. 23,14,311/- made by the AO and sustained by the Ld. CIT(A) is vitiated in law and could not be made in the facts and circumstances of the case and is liable to be deleted.*
 6. *That under the facts and circumstances of the case the addition of Rs. 1,60,962/- made by the AO and sustained by the Ld. CIT(A) is vitiated in law and could not be made in the facts and circumstances of the case and is liable to be deleted.*
 7. *That under the facts and circumstances of the case, ld. AO has erred in law as much as in fact in levying interest under section 234A and 234B of the Act. That there is no mentioned of charging of interest in the body of the assessment order and it is charged only in the computation of tax sheet.*
 8. *That under the facts and circumstances of the case. Ld. AO has erred in law as much as in fact in initiating penalty u/s 271(1)(c) of the Act for both of the abovementioned additions.*
 9. *That under the facts and circumstances of the case, Ld. AO has erred in law as much as in fact in initiating penalty u/s 271(1)(b) of the Act for both of the abovementioned additions.*
 10. *That appellant craves to leave, alter, amend or modify the grounds of appeal before or during the hearing of the appeal.*
 11. *That each ground is independent and without prejudice to each other.”*
3. Briefly stated facts are that the case of the assessee was re-opened on the basis of cash deposited in the bank account of the assessee. In response to the statutory notices, there was no representation on behalf of the assessee.

Therefore, the assessment was concluded *ex-parte* to the assessee by invoking the provision of section 144 of the Income tax Act, 1961 (“the Act”). Thereby, the AO made addition of the entire cash deposited in the bank account of the assessee during the year and assessed income of the assessee at INR 24,75,272/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal of the assessee. Before Ld.CIT(A) also, there was no representation on behalf of the assessee.

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

6. Ld. Counsel for the assessee submitted that both the authorities have passed *ex-parte* order. He contended that no reasonable opportunity was given to the assessee. Further, he relied upon the grounds of appeal and submitted that in the interest of principle of natural justice, the impugned order may be set aside and the issue be restored to the file of AO.

7. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

8. I have heard Ld. Authorized Representatives of the parties and perused the material available on record. It is not in dispute that there was no effective representation on behalf of the assessee before the lower authorities. Therefore, the assessment was concluded u/s 144 of the Act and the appellate order was passed *ex-parte* to the assessee. Considering the facts available on record, I am of the considered view that the assessee ought to have been given adequate

opportunity by lower authorities. Therefore, to sub-serve the principles of natural justice, the impugned order is hereby, set aside and the assessment is restored to the file of the AO for making assessment afresh after providing adequate opportunity of being heard to the assessee. The assessee would not seek adjournment without reasonable cause. Thus, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 25th July, 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