

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1806/DEL/2023
Assessment Year: 2011-12

Piyush Sanawar, Railway Road, Deoband, Saharanpur-247554 PAN- AFYPS4031A	<u>Vs</u>	Income-tax Officer, Ward-3(3)4, Deoband.
APPELLANT		RESPONDENT
Assessee represented by	Shri Raghav Sharma, CA and Ms. Neha Gupta, Adv.	
Department represented by	Shri Om Parkash, Sr. DR	
Date of hearing	07.08.2023	
Date of pronouncement	07.08.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 08.05.2023, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

“1. The Ld. CIT(A) has grossly erred on facts and in law in dismissing the appeal without affording proper opportunity of being heard and without deciding the appeal on merit

2. That the Ld. CIT(A) has grossly erred on facts and in law in not appreciating that the addition made by the Ld. AO is not as per the reasons recorded for reopening the assessment U/s 148

3. *That the learned CIT(A) has grossly erred in law in confirming an addition of Rs. 1,39,200/- on account of disallowance of interest on proportionate basis as the assessee is having own interest bearing funds also.*

4. *That the Ld. CIT (A) has erred on facts and in law in confirming the addition without considering the evidences submitted by the appellant or pointing any defect/shortcoming in the evidences.*

5. *That the assessee craves leave to amend, modify and /or alter grounds and/or to adduce and rely up on such further evidence and/or withdraw any of ground or documents as may be required at any time before and during the time of hearing.”*

2. Facts of the case are that for A.Y. 2011-12, originally the assessee filed his return on 27.09.2011, declaring total income at Rs. 6,81,593/-. The assessment was completed u/s 143(3) of the Income-tax Act, 1961 (the “Act”) on 25.03.2014, at Rs. 7,21,780/-. Thereafter, the case of the assessee was reopened u/s 147 of the Act, after obtaining prior approval from the Pr. CIT on the ground that as per information available on record the assessee had shown investment of Rs. 11,50,000/- in balance sheet as on 31.03.2011 but no interest income had been declared; further assessee had debited X-ray expenses at Rs. 77,020/-, but no income had been declared. In reopening proceedings the AO completed the assessment u/s 143(3)/147 of the Act on 26.12.2018 at a total income of Rs. 8,60,980/- by adding Rs. 1,39,200/- on account of proportionate interest @ 12% on investments, to the assessed income of Rs. 7,21,780/- u/s 143(3) dated 25.03.2014. Aggrieved against it the assessee preferred appeal before the learned CIT(Appeals)

who upheld the action of the AO and dismissed the appeal of the assessee. Now the assessee is in appeal before this Tribunal.

3. I have heard learned representatives of the parties and perused the material available on record. From the order of learned CIT(Appeals) it reveals that there was no representation on behalf of the assessee and the learned CIT(Appeals) dismissed the assessee's appeal, inter alia, by observing as under:

“Grounds 1 to 3: During the appeal proceedings, no documentary evidences have been submitted by the assessee to verify his claim in spite of multiple opportunities being provided by this office as stated above. Therefore, the appeal is decided on the basis of verified documentary evidences available on record.

In view of the above, order of AO is upheld and the grounds are noted as dismissed.

Ground 4: The charging of interest is consequential in nature, Since, the main grounds of appeal are dismissed above, this ground is also noted as dismissed.

Ground 5: The Ground being general in nature, does not require adjudication.

In the result, the appeal is noted as dismissed.”

3.1. Apparently, the learned CIT(Appeals) has dismissed the assessee's appeal simply by relying on the order of the AO and has not passed a speaking order in arriving at his conclusion. In my considered view such an order cannot stand in the eye of law. Therefore, in order to subserve the interest of natural justice and to be fair to both the parties I set aside the order of learned CIT(Appeals) and restore the

matter back to the file of the learned CIT(Appeals) with direction to decide the matter afresh, in accordance with law, of course, after affording reasonable opportunity of being heard to the assessee. Grounds of appeal are allowed for statistical purposes.

6. Appeal of the assessee is allowed for statistical purposes only.

Order pronounced in open court on 7th August, 2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI