

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA Nos.1900 to 1903/Del/2023
[Assessment Years : 2009-10 & 2010-11]**

Devender Mavi, Flat No.602, Omex NRI City Omega Two GH 2 Puteen Green Tower Two, Greater Noida GBN, Greater Noida, Uttar Pradesh-201307. PAN-AXNPD7178E	vs	ITO, Ward-1(2), Ghaziabad.
APPELLANT		RESPONDENT
Appellant by	Shri Raghuraj Singh, Advocate	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	09.08.2023	
Date of Pronouncement	17.08.2023	

ORDER

PER KUL BHARAT, JM :

All four appeals filed by the assessee, two in quantum proceedings in **ITA No.1900 & 1903/Del/2023** against the order of Ld.CIT(A), National Faceless Appeal Centre, Delhi (“NFAC”) dated 28.04.2023 for the **Assessment Years 2009-10 & 2010-11** and another two in penalty proceedings in **ITA Nos. 1901 & 1902/Del/2023** against the order of Ld.CIT(A), NFAC, Delhi dated 28.04.2023 for the **Assessment Years 2009-10 & 2010-11**. These four appeals are taken up together for hearing and are being disposed off by way of consolidated order for the sake of brevity.

ITA No.1900/Del/2023 [Assessment Year : 2009-10]

2. First, I take assessee’s appeal in quantum proceedings wherein assessee has raised following grounds of appeal:-

1. *“That the impugned Assessment order passed by the Hon'ble CIT (A) is bad in law, wrong on facts and against the Principal of natural justices hence is unsustainable.*
2. *That the impugned Assessment order passed by the Hon'ble CIT (A) is wrong, having no base and against the circumstance of the case.*
3. *That on facts and circumstances of the case and in Law, the assessing officer had erred in assessing the income tax of the appellant at Rs. 13,07,710, please be deleted.*
4. *That the Ld. Assessing Officer had erred on facts and circumstances of the case and in law in making an addition on account of cash Deposit by the Assessee of Rs. 22,50,000.00, being wholly based on conjecture and surmises and being untrue, the same must be deleted.*
5. *That on facts and circumstances of the case and in Law, That The addition made by the A.O. is devoid of any merits and is away from the factual matrix. The Submission is not made by the Assessee. The Assesses had not deposited cash of Rs 22.50 Lac during AY 2009-10 The Reason to believe is incorrect. The reassessment proceedings were initiated against the appellant assessee by issue of notice u/s 148 of the Act by recording reason that the assessee had deposited for Rs 22.50 but as per reading of Bank Statement it is incorrect Therefore, the recorded reason is wrong and assessment order is invalid there cannot be any tax liability of Income tax act 1961. Therefore, there cannot be any tax liability and the said cash deposited explained as u/s 68 of Income tax act 1961.*
6. *That the impugned assessment order is arbitrary, illegal, bad in law in violation of rudimentary principal of contemporary jurisprudence.*
7. *That the provisions of section 271(1) (C) is not justify the case of the applicant.*

8. *That the impugned Assessment order passed by Ld. Assessing Officer, Noida is a clear cut case of misunderstanding and wrong interpretation of Law.*
9. *That the appellant crave leave to add, alter, amend, delete or modify any or more of the ground of appeal before or at the time of hearing.”*

3. Briefly stated facts are that the case of the assessee was re-opened for assessment u/s 147 of the Income Tax Act, 1961 (“the Act”) on the basis of AIR information received regarding cash deposited by the assessee in his saving bank account amounting to INR 22,50,000/-. Notice u/s 148 of the Act was issued to the assessee and the same was not complied. Thereafter, other statutory notice u/s 144 of the Act, was issued to the assessee, remained uncomplied on behalf of the assessee. Lastly, notice u/s 144 of the Act was issued to the assessee. The assessee failed to file any documentary evidences to explain the source of cash deposits. Hence, the Assessing Officer (“AO”) treated the cash deposit of INR 22,50,000/- as unexplained credit and assessed the income of the assessee at INR 22,50,000/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the addition and dismissed the appeal.

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

6. At the outset, Ld. Counsel for the assessee submitted that the assessee was not given reasonable opportunities to represent his case by the lower authorities. He further reiterated the submissions as made in the written

submissions. For the sake of clarity, the relevant contents of the written submissions are reproduced as under:-

Ground No.1

“The Assessee hereby submits before your honor as under- The Assessee did not get a opportunity to submit his reply during the assessment of AY 2009-10 and first appeal, the notices received on online mail and the Assessee could not received them due to this The Assessee could not filled his reply in time. the impugned Assessment order passed by the Ld AO and Hon'ble CIT (A) is bad in law, wrong on facts and against the Principal of natural justices hence is unsustainable.

Ground Nos. 2:-

Without prejudice to the above, Assessee had deposited of Rs. 22.50 Lac / Cash as a business gross receipt. The Assessee is doing business of Brick supplier in retails and received cash against supply of brick and also a partner in his father's firm, the Assessee had sold brick in retail, received cash and deposited the same in his account. The Assessee father firm's name is M/s D.B.F. Bick Company and running from 2004-05 and paid sales tax etc of firm. The assessee account number was 21220100000513 in the Bank of Baroda. The same account for used for business purpose. Bank account is self explanatory.

Cash Flow Chart of Bank of India: *Cash Deposit and cash withdrawal are explained as under.*

DATE	Cash Withdrawal	Deposit	Balance	Remarks if any
10/11/08		600000	(+) 600000	Business Receipt of brick supply
22/12/08		500000	(+) 1100000	Business Receipt of brick supply
03/01/09			(+) 1700000	Business Receipt of brick supply
24/03/09	500000		(+) 1200000	Cash Withdrawal
31.03.09 Total	500000/Cash withdrawal	17.00 Lacs Cash Deposited		

Since the cash received is part of the business receipt and the Assessee could not explain his side at any stage, so he should get a opportunity to explain his side, due to the impugned Assessment order passed by the

Hon'ble CIT (A) is wrong, having no base and against the circumstance of the case.

Ground Nos. 3 & 4

The Bank Statement is self explanatory. All the required document with evidence is enclosed for your kind reference. In view on facts and circumstances of the case and in Law, the assessing officer had erred in assessing the income tax of the appellant at Rs. 13,07,710, please be deleted.

From all the forgoing submissions, details, information, pertinent facts and circumstances of the case as explained above, it is fully evident from records beyond any doubts that the Assessment order is liable to be quashed. Therefore the impugned additions made by the Id. AO are completely unwarranted, arbitrary, unjustified, unlawful and uncalled for and the same deserves to be deleted in full.

Prayer:- *Sir, in view of the totality of the above facts, circumstances and legal position as explained above, it is prayed before your honour to kindly give relief to the appellant by quashed impugned assessment order dated 25.11.2016, passed u/s 144 to Id, AO for reassessment of the Income Tax Act, 1961, and accordingly the impugned additions of Rs.22,50,000/- made for the captioned assessment year, be kindly deleted in full by allowing the present appeal and oblige. Request you to kindly allow the same and oblige.*

Respectfully Submitted.”

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 and gone through the orders of the authorities below. The contention of the assessee in respect of the source of cash deposits is that the assessee is engaged in the business of bricks supplier in retails and

the amount was received as a gross business receipt. Therefore, in my considered view, the assessee has some explanation which lower authorities sought to have verified. Therefore, looking to the facts of the present case, I deem it proper to set aside the impugned order and restore the assessment to the file of AO to decide it afresh after verifying the facts as narrated by the assessee. 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.

ITA No.1903/Del/2023 [Assessment Year : 2010-11]

10. Now, I take assessee's appeal in quantum proceedings wherein the assessee has raised following grounds of appeal:-

1. *“That the impugned Assessment order passed by the Hon'ble CIT (A) is bad in law, wrong on facts and against the Principal of natural justices hence is unsustainable.*
2. *That the impugned Assessment order passed by the Hon'ble CIT (A) is wrong, having no base and against the circumstance of the case.*
3. *That on facts and circumstances of the case and in Law, the assessing officer had erred in assessing the income tax of the appellant at Rs.25,09,570, please be deleted.*
4. *That the Ld. Assessing Officer had erred on facts and circumstances of the case and in law in making an addition on account of cash Deposit by the Assessee of Rs. 32,00,000.00, being wholly based on conjecture and surmises and being untrue, the same must be deleted.*

5. *That on facts and circumstances of the case and in Law, That The addition made by the A.O. is devoid of any merits and is away from the factual matrix. The Submission is not made by the Assessee. The Assesses had deposited cash of Rs 32 Lac during AY 2010-11 against the Assessee had sold Brick in retail, received cash and deposited the same in his account. Therefore, there cannot be any tax liability and the said cash deposited explained as u/s 68 of Income tax act 1961.*
6. *That the impugned assessment order is arbitrary, illegal, bad in law in violation of rudimentary principal of contemporary jurisprudence.*
7. *That the provisions of section 271(1) (C) is not justify the case of the applicant.*
8. *That the impugned Assessment order passed by Ld. Assessing Officer, Noida is a clear cut case of misunderstanding and wrong interpretation of Law.*
9. *That the appellant crave leave to add, alter, amend, delete or modify any or more of the ground of appeal before or at the time of hearing.”*

11. I have heard Ld. Authorized representatives of the parties and perused the material available on record. I find that the facts and issues are similar and identical to the **ITA No.1900/Del/2023 [AY 2009-10]**. Ld. Representatives of the parties have adopted the same arguments in respect of grounds of appeal. Therefore, for the same reasoning, I hereby set aside the impugned order and restore the assessment to the file of AO to decide it afresh after verifying the facts as narrated by the assessee. Thus, grounds raised by the assessee are allowed for statistical purposes.

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

ITA No.1901/Del/2023 [Assessment Year : 2009-10]

13. Now, I take assessee's appeal in penalty proceedings wherein the assessee has raised following grounds of appeal:-

1. *“That the impugned Assessment order passed by the Hon'ble CIT (A) is bad in law, wrong on facts and against the Principal of natural justices hence is unsustainable.*
2. *That the impugned Assessment order passed by the Hon'ble CIT (A) is wrong, having no base and against the circumstance of the case.*
3. *That Learned Assessing Officer has grossly failed in applying the basic principle of law and justice while framing the Penalty Order u/s 271(1)(c) of the Income Tax Act 1961 without giving sufficient opportunities of being heard.*
4. *That Learned Assessing Officer has erred in law as well as on facts in determining the taxable income and Penalty under section 271(1) (c) of the Income Tax Act 1961.*
5. *That on facts and circumstances of the case and in Law, That The addition made by the A.O. is one-sided order, in addition to this, the quantum appeal is still pending and is in appeal, so it is not in the interest of justice to impose penalty without disposing of the quantum appeal. Therefore, there cannot be any tax penalty/liability and the said cash deposited explained as u/s 68 of Income tax act 1961.*
6. *That the impugned penalty order is arbitrary, illegal, bad in law in violation of rudimentary principal of contemporary jurisprudence.*
7. *That the provisions of section 271(1) (C) is not justify the case of the applicant.*
8. *That the impugned Assessment order passed by Ld. Assessing Officer, Noida is a clear cut case of misunderstanding and wrong interpretation of Law.*

9. *That the appellant crave leave to add, alter, amend, delete or modify any or more of the ground of appeal before or at the time of hearing.”*

14. Briefly stated facts of the case are that the case of the assessee was re-opened for assessment u/s 147 of the Income Tax Act, 1961 (“the Act”) on the basis of AIR information received regarding cash deposited by the assessee in his saving bank account amounting to INR 22,50,000/-. Notice u/s 148 of the Act was issued to the assessee and the same was not complied. Thereafter, notice dated 25.11.2016 u/s 271(1)(c) of the Act was issued to the assessee, fixing for 09.12.2016 but there was neither any compliance on behalf of the assessee nor anyone attended on behalf of the assessee. The assessee did not furnish any explanation to explain the source of cash deposits. Hence, the Assessing Officer (“AO”) treated the cash deposit of INR 22,50,000/- as unexplained cash credit and assessed the income of the assessee at INR 22,50,000/-. Thereafter, considering the facts and circumstances of the case, the AO imposed a penalty u/s 271(1)(c) of the Act amounting to INR 6,57,140/- upon the assessee.

15. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal of the assessee.

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

17. I have heard Ld. Authorized Representatives of the parties and perused the material available on record. In quantum proceedings in ITA No.1900/Del/2023 [Assessment Year 2009-10], I have restored the assessment to the file of AO for decision afresh. Therefore, the impugned order is set aside

and the issue is hereby, restored to the file of AO for deciding it afresh. Grounds raised by the assessee are thus, allowed for statistical purposes.

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

ITA No.1902/Del/2023 [Assessment Year : 2010-11]

19. Now, I take assessee's appeal in penalty proceedings wherein the assessee has raised following grounds of appeal:-

1. *“That the impugned Assessment order passed by the Hon'ble CIT (A) is bad in law, wrong on facts and against the Principal of natural justices hence is unsustainable.*
2. *That the impugned Assessment order passed by the Hon'ble CIT (A) is wrong, having no base and against the circumstance of the case.*
3. *That Learned Assessing Officer has grossly failed in applying the basic principle of law and justice while framing the Penalty Order u/s 271(1)(c) of the Income Tax Act 1961 without giving sufficient opportunities of being heard.*
4. *That Learned Assessing Officer has erred in law as well as on facts in determining the taxable income and Penalty under section 271(1)(c) of the Income Tax Act 1961.*
5. *That on facts and circumstances of the case and in Law, That The addition made by the A.O. is one-sided order, in addition to this, the quantum appeal is still pending and is in appeal, so it is not in the interest of justice to impose penalty without disposing of the quantum appeal. Therefore, there cannot be any tax penalty/liability and the said cash deposited explained as u/s 68 of Income tax act 1961.*
6. *That the impugned penalty order is arbitrary, illegal, bad in law in violation of rudimentary principal of contemporary jurisprudence.*

7. *That the provisions of section 271(1) (C) is not justify the case of the applicant.*
8. *That the impugned Assessment order passed by Ld. Assessing Officer, Noida is a clear cut case of misunderstanding and wrong interpretation of Law.*
9. *That the appellant crave leave to add, alter, amend, delete or modify any or more of the ground of appeal before or at the time of hearing.”*

20. I have heard Ld. Authorized representatives of the parties and perused the material available on record. I find that the facts and issues are similar and identical to the **ITA No.1901/Del/2023 [AY 2009-10]**. Ld. Representatives of the parties have adopted the same arguments in respect of grounds of appeal. Therefore, for the same reasoning, I hereby, set aside the impugned order and restore the issue to the file of AO for decision afresh. Grounds raised by the assessee are thus, allowed for statistical purposes.

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

22. In the final result, appeals filed by the assessee in quantum proceedings in **ITA Nos. 1900 & 1903/Del/2023 [Assessment Year 2009-10 & 2010-11]** are allowed for statistical purposes and appeals filed by the assessee in penalty proceedings in **ITA Nos. 1901 & 1902/Del/2023 [Assessment Years 2009-10 & 2010-11]** are also allowed for statistical purposes.

Order pronounced in the open Court on 17th August, 2023.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
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