

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.166/Asr/2023  
Assessment Year: 2012-13**

|   |            |   |
|---|------------|---|
| Rakesh Kumar<br>H.No. 150/3, Dharampur<br>Colony, Batala, Gurdaspur.<br>[PAN: BENPK0601K]<br><b>(Appellant)</b> | <b>Vs.</b> | Income Tax Officer,<br>Ward-2, Batala.<br><br><b>(Respondent)</b> |
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|----------------------|------------------------------------|
| <b>Appellant by</b>  | <b>Sh. Nipun Khanna, CA.</b>       |
| <b>Respondent by</b> | <b>Sh. Ravinder Mittal, Sr. DR</b> |

|                              |                   |
|------------------------------|-------------------|
| <b>Date of Hearing</b>       | <b>22.08.2023</b> |
| <b>Date of Pronouncement</b> | <b>25.08.2023</b> |

**ORDER**

**Per:Anikesh Banerjee, J.M.:**

The instant of appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi [in brevity the 'CIT (A)'] order passed u/s 250of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2012-13.The impugned order was emanated from the order of ITO, Ward -2, Batala, [in brevity the AO] order passed u/s 144of the Act.

2. The assessee has raised the following grounds:

- “1. That the order of Ld. Commissioner of Income Tax (Appeals) and Assessing officer is illegal, arbitrary and this ground of appeal pervades other grounds of appeal too.*
- 2. That the assessment made u/s 144 is bad in law and liable to be quashed because notice u/s 143 (2) was not served on the assessee term which was mandatory required to be issued.*
- 3. That the worthy CI T(Appeals) and Assessing Officer erred on law and facts by issuing order u/s 144 against proceedings-initiated u/s 148 without providing reasons recorded which is mandatory required as per law.*
- 4. That the worthy CIT (Appeals) and Assessing Officer erred on law and facts by passing order u/s 144 without looking into the facts and source of cash deposits.*
- 5. That the worthy CIT (Appeals) and Assessing Officer had assessed income without application of mind by only looking at the credit side of Bank A/c and without giving benefit of cash withdrawal and calculation of peak credit.*
- 6. The appellant craves liberty to add, to alter, to modify, to amend or delete / withdraw any of the grounds of appeal at the time of on or before the hearing of appeal.”*

3. Brief fact of the case is that the assessee has challenged the jurisdiction of the assessment related to non-issuance of notice u/s 143(2) of the Act. The assessee's case was reopened u/s 148 and the assessment was completed u/s 144/147. But the issue related non-issuance of notice U/s 143(2) was never be challenged before the assessing authority nor before the Id. CIT(A). The assessment was completed with addition amount of Rs. 41,83,800/- on account of deposited cash in Saving Bank a/c in UCO Bank related to F.Y. 2011-12. The entire cash deposit was added back as unexplained cash deposit u/s 69A of the Act. Aggrieved assessee filed an appeal before the Id. CIT(A) but remained unsuccessful. Being aggrieved assessee filed an appeal before us.

4. The Id. counsel for the assessee started argument about the jurisdiction of the assessing authority for completion of assessment without issuing notice u/s 143(2) and prayed for quashing the assessment order which is itself bad in law.

5. The Id. DR vehemently argued and first pointed out that the same ground was never be taken before the any of the revenue authorities. The relevant grounds which were taken before the CIT(A) is reproduced as below:

*“3. GROUNDS OF APPEAL: The grounds raised by the appellant are as given below:*

*“1) That the Ld. Assessing officer has erred in opening the case u/s 148 of the act merely on account of cash deposited in UCO Bank*

*account no. 09190110009314. Hence the notice issued u/s 148 of the act is bad in law and against the facts.*

*2) That the order passed by Id. AO u/s 144 date d 10-12-2019 is bad in law. unjustified, illegal and against the facts.*

*3) That no proper opportunity has been given to the assessee before passing the order u/s 144 of the act as no notice was ever reached to the assessee. Hence the order passed u/s 144 of the act is illegal, unjust and without the facts*

*4) That the Ld. AO has erred in making an addition of Rs. 41,83,800 on account of cash deposited in UCO Bank account no. 09190110009314.*

*5) That the Ld. AO has erred in treating an amount of Rs. 41,83,800 as income of the assessee u/s 69A of the act without giving any opportunity to assessee to explain the sources.*

*6) That while passing the order the principle of natural justice has not been followed by Ld. A O.*

*7) That the appellant craves leave to add or amend any grounds of appeal before the appeal is finally heard or disposed off. ”*

5.1 The ld. DR further argued and invited our attention in assessment order page 2 para 1 which is reproduced as below:

*“A show cause notice was issued to the assessee vide No. ITBA/AST/F/ 147(SCN)/2019 20/1021458633(1) dated 02.12.2019 for explanation / source of cash deposited amounting to Rs. 41,83,800/- in your account maintained with UCO Bank Limited during the F.Y.*

*2011-12 relevant to A.Y 2012-13 and the case for hearing on 06.12.2019. But again on the fixed date of hearing i.e. 06 12.2019, the assessee neither made any submission nor any documents uploaded online in his case*

*Details of the opportunities given to assessee during the assessment proceeding is as under:*

| Sr. No. : Date of issue of Notice | Details of the notice. | Date of Hearing | Remarks        |
|-----------------------------------|------------------------|-----------------|----------------|
| 1. j 22.03.2019                   | Notice u/s 148         | 21.04.2019      | Non Compliance |
| 2. 12.07.2019                     | Notice u/s 142(1)      | 29.07.2019      | Non compliance |
| 3. ! 01.10.2019                   | Notice u/s 142(1)      | 07.10.2019      | Non compliance |
| 4. 30.10.2019                     | Penalty Notice         | 05.11 2019      | Non compliance |
| 5 . 02.12.2012                    | Show Cause Notice      | 06.12.2019      | Non compliance |

*Form the above tabular facts, it is established that the assessee has given sufficient time to make his submission m his case and prove the genuineness of cash deposit, but assessee failed to take all the above opportunities in his case. The non-compliance by the assessee to statutory notices clearly show that reasonable, speaking and fullest natural justice has been followed by the Assessing Officer, but it is the assessee, who has not availed any chances for the reasons best known to him. The law casts a statutory obligation on the assessee to prove by independent evidence regarding the source of the cash deposited.”*

6. We heard the rival submission and considered the documents available in the record. The assessee challenged the jurisdiction of the assessing authority for completion of assessment without issuing the notice u/s 143(2) of the Act. Further the issue was never be challenged before any of the revenue authorities. Even the

assessee had not been filed any return, in persuasion of notice under section 148. The Id. DR was unable to produce any contrary fact against the submission of assessee. We find that the issue was freshly agitated before the bench. We remit back the matter to the file of the Id. CIT(A) for further adjudication of the legal issue as agitated by the assessee freshly before the bench. The bench is not interfering on merit of the issue as the Id. CIT(A) should not be influenced by observation of the bench. Both the Id. DR & Id. AR have not made any objection about the direction of the bench. Needless to say, the assessee should get the reasonable opportunity of hearing in set aside proceeding.

7. In the result, the appeal bearing **ITA No. 166/Asr/2023** is allowed for statistical purposes.

**Order pronounced in the open court on 25.08.2023**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order