

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

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No. 5579/DEL/2019 A.Y. 2009-10

&

ITA No. 5580/DEL/2019 A.Y. 2010-11

Gurcharan Singh, G-131, Vikaspuri, Delhi-110018. PAN- ATNPS9241F	<u>Vs</u>	ACIT, Circle-47(1), New Delhi.
APPELLANT		RESPONDENT
Assessee represented by	None	
Department represented by	Shri Amit Katoch, Sr. DR	
Date of hearing	30.08.2023	
Date of pronouncement	30.08.2023	

ORDER

PER KUL BHARAT, JM:

The captioned appeals, preferred by the assessee, are directed against separate orders of even date i.e. 08.03.2019, passed by the learned Commissioner of Income-tax (Appeals)-16, New Delhi pertaining to the A.Y. 2009-10 and 2010-11 respectively. Both the appeals were heard together and are being disposed of by this common order for the sake of convenience.

At the time of hearing no one attended the proceedings on behalf of the assessee. The notices of hearing sent to the assessee by the Registry through speed post have been returned. The assessee has not provided the current address to the Registry. Therefore, the appeals are taken up for hearing ex parte to the assessee. The assessee has raised following grounds of appeal:

ITA No. 5579/Del/2019 (A.Y. 2009-10):

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite the fact that the reopening by the AO and consequent reassessment without complying with the statutory conditions prescribed under Section 147 read with Section 148 of the Act is bad in law.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO ignoring the fact that the AO has erred both on facts and in law in making reassessment under Section 147 of the Act as the reasons recorded for reopening the assessment does not meet the requirements of Section 147 of the Act.

4. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the reassessment proceedings initiated under section 148 are bad in law as there is no live nexus between the reasons recorded and the belief formed by the AO.

5. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the reopening despite the fact that the same is made only on a difference of opinion, which amounts to

review of order not permissible under the law.

6. *On the facts and circumstances of the case learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite that reopening of the assessment u/s 148 without obtaining valid approval as provided u/s 151 of the Act.*

7. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order passed by the AO rejecting the contention of the assessee that the same is bad in law as the same has been made on the basis of material collected at the back of the assessee without giving assessee an opportunity to rebut the same in violation of provisions of the Act.*

8. *On the facts and circumstances of the case the Ld. CIT(A) has erred both on facts and in law in confirming the action of the AO despite that the order passed by the AO is without assumption of valid jurisdiction.*

9 (i) *On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs. 24,06,661/- made by AO on account of cash received from M/s Varun Impextreating the same as unexplained credits under Section 68 of the Act.*

(ii) *That the above said addition has been confirmed despite the fact that alleged cash payments were received against the sales made during the year which has already been taken as income by crediting the sales account in the books of the assessee.*

(iii) *That the said addition has been confirmed rejecting the detailed explanation and evidences brought on record by the assessee.*

(iv) *That the above additions has been confirmed despite the fact that the alleged amounts have already been added to the income of the assessee and thus the action of the AO will leads to double taxation in the hands of the assessee.*

10. (i) *On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs. 2,16,14,618/- made by AO on account of cash received from M/s Meet Exports treating the same as unexplained credits under Section 68 of the*

Act.

(ii) *That the above said addition has been confirmed despite the fact that alleged cash payments were received against the sales made during the year which has already been taken as income by crediting the sales account in the books of the assessee.*

(iii) *That the said addition has been confirmed rejecting the detailed explanation and evidences brought on record by the assessee.*

(iv) *That the above additions has been confirmed despite the fact that the alleged amounts have already been added to the income of the assessee and thus the action of the AO will leads to double taxation in the hands of the assessee.*

11. *On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the action of the AO merely relying on the report of the investigation wing and without application of his own mind.*

12. *The appellant craves leave to add, amend or alter any of the grounds of appeal.”*

ITA No. 5580/Del/2019 (A.Y. 2010-11):

“1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*

2. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite the fact that the reopening by the AO and consequent reassessment without complying with the statutory conditions prescribed under Section 147 read with Section 148 of the Act is bad in law.*

3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO ignoring the fact that the AO has erred both on facts and in law in making reassessment under Section 147 of the Act as the reasons recorded for reopening the assessment does not meet the requirements of Section 147 of*

the Act.

4. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the reassessment proceedings initiated under section 148 are bad in law as there is no live nexus between the reasons recorded and the belief formed by the AO.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition despite the fact that information received on the basis of which reasons were recorded by the AO pertains to AY 2009-10 whereas the case is reopened for A.Y. 2010-11.*

6. *On the facts and circumstances of the case learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite that reopening of the assessment u/s 148 without obtaining approval as provided u/s 151 of the Act.*

7. *On the facts and circumstances of the case the Ld. CIT(A) has erred both on facts and in law in confirming the action of the AO despite that the order passed by the AO is without assumption of valid jurisdiction.*

8. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order passed by the AO rejecting the contention of the assessee that the same is bad in law as the same has been made on the basis of material collected at the back of the assessee without giving assessee an opportunity to rebut the same in violation of provisions of the Act.*

9. (i) *On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs. 72,91,350/- made by AO on account of cash received from M/s Meet Exports treating the same as unexplained credits under Section 68 of the Act.*

(ii) *That the above said addition has been confirmed despite the fact that alleged cash payments were received against the sales made during the year which has already been taken as income by crediting the sales account in the books of the assessee.*

iii) That the said addition has been confirmed rejecting the detailed explanation and evidences brought on record by the assessee.

(iv) That the above additions has been confirmed despite the fact that the alleged amounts have already been added to the income of the assessee and thus the action of the AO will leads to double taxation in the hands of the assessee.

10. On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the action of the AO merely relying on the report of the investigation wing and without application of his own mind.

11. The appellant craves leave to add, amend or alter any of the grounds of appeal.”

2. First we take up ITA No. 5579/Del/2019 for A.Y. 2009-10. Facts, in brief, are that for A.Y. 2009-10 the assessee filed its return of income on 30.09.2009 declaring income of Rs. 17,54,510/-. The case of the assessee was reopened u/s 147 of the Act on the basis of information received by the AO regarding large cash transaction in the bank account of the assessee maintained with Punjab & Sind Bank and HDFC Bank. In response to the notices, the assessee stated that the deposits were out of the sales of goods with M/s Varun Impex and M/s Meet Exports. However, the assessee could not get confirmations from the parties. Therefore, an amount of Rs. 2,40,21,279/- was added to the income of the assessee and the AO assessed income at Rs. 2,67,37,170/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who also sustained the addition. Aggrieved. Now the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal learned DR supported the orders of the authorities below and contended that the assessee failed to support his claim with requisite confirmation.
4. We have heard learned DR and perused the material available on record. We find that the learned CIT(Appeals) has given a finding of fact in his order. Relevant contents of the same are reproduced below:

“Discussion & Decision

The facts of the case, the submissions of the AR and the finding of the AO were examined. There is no disputing the fact that cash of Rs 24,06,661/- was received from M/s Varun Impex and cash of Rs. 2,16,14,618/- from M/s Meet Exports. The appellant has claimed that this receipt of cash was in lieu of sale proceeds. During- the course of assessment proceedings, the appellant was required to produce the said parties along with their books of accounts to prove the genuineness of the transactions. However, the appellant failed to do so. The appellant was given a final opportunity to produce the parties, M/s Meet Exports and M/s Varun Impex with supporting documents and prove the genuineness of the transactions. In response to the show cause notice, the AO has recorded a finding of fact that the appellant claimed he had sold worth Rs. 1,09,06,061/- to M/S Varun Impex (Surat) and also sold goods worth Rs. 2,74,39,003/- to M/S Meet Exports and that the payment from them was realized in cash as well as cheque as per confirmation already filed. He has stated that the case relates to FY 2008-09, i.e., seven years old and the party M/S Varun Impex (Surat) might have shifted to some other place or may have closed business. He has also claimed that the said cash payment is against the sales which has already been taken as income by crediting the sales accounts in the profit & loss accounts. With regard to receipt of cash from M/s Meet Exports (Delhi), he has stated that he has filed their confirmation and copy of their profit & loss account and balance sheet for the relevant assessment year. However, he has stated that as regards production of M/s Meet Exports, the proprietor Sh. Attar Singh met an accident and is confined to home and accountant was out of country,

Further, the appellant claimed that as copies of balance sheets of the said entities has been filed, his onus stands discharged. The AO recorded a categorical finding that:

The assessee has neither been able to produce these 2 parties with supporting documents or has not even furnished the cash books of these entities to establish that the cash given to the assessee was available in their cash books on the dates of transaction.

During the assessment proceedings, the AO had also instituted independent inquiries. The inspector of Circle 47(1) was deputed to locate the entity M/S Meet Exports at the address as per the confirmation furnished by the assessee (646, 1st Floor, Gaii Ghanteshwar, Katra Neel, Chandni Chowk, Delhi 110006) and serve the summons u/s 131 to attend this office with the supporting documents for transactions with the assessee. However, as per the inspector report, the said notice could not be served upon the said person since he was not available/traceable at the given address.

Also since the address of the entity M/s Varun Impex (3-GH, Amar Park, GhodDod Roadk, Surat) was outside Delhi, a commission u/s 131(1)(d) of IT Act, 1961 was issued to ADIT, Investigation - 1, Surat to obtain the requisite details of the entity M/S Varun Impex. However, in this regard, the report is as under:

In order to verify the transactions entered into by M/S Varun Impex as reported ii the commission, summons dated 23.11.2016 were issued. The service of tht aforesaid summons was attempted by the inspector of tnis office. During tht course of visit, the premises located at 3-GH, Amar Park, Ghod Dod Road, Surat was found dosed. On being enquired about the same, the watchman of the building informed that Fiat No. 3-GH of the building always remains closed and no business activity is earned therefrom. He further stated that a Varun Agarwal visits him on frequent intervals to collect the notices/other communications being made to M/S Varun Impex, 3-GH, Amar Park. On being asked to evince out the address and contact number of Shri Varun Agarwai, he expresses unawareness regarding the same. In the above circumstances, the service of summons was made through affixture on the entrance door of 3-GH, Amar Park in presence of two witness and subsequently, the panchnama of the same was drawn. The subject entity 'was required

to submit its compliance before the undersigned on 25.11.2016 but neither anyone attended nor filed any written submission. In lack of subsistence of the enquiry concerned, the genuineness of the transactions entered into by M/s Varun Impex remains examined.

From the above enumeration of facts, it is clear that the inquiries instituted by the AO to verify the genuineness of the transactions with M/s Meet Export and M/s Varun Impex established that these entities did not exist. However, the appellant was given an opportunity to produce the parties but the appellant failed to do so.

In the light of the above, I hold that the AO has rightly made an addition on account of unexplained credits/cash of Rs 24,06,661/- received from M/s Varun Impex and of Rs. 2,16,14,618/- from M/s Meet Exports purportedly in lieu of sale. I draw strength from the unambiguous provisions of Section 114(g) of the Indian Evidence Act clearly states as under:

Section 114(g) in The Indian Evidence Act; 1872

(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

The Apex Court in the case of Keshav Mills & Co (56 ITR, 365) has held that:

Parties must lead evidence before the ITO i.e. at the assessment stage.

Before I sign off it would be appropriate to refer to the provisions of Section 68. Section 68 very clearly and unequivocally states that if an assessee is unable to explain a credit entry in the books of account of the assessee, to the satisfaction of the Assessing Officer, the AO can invoke the provisions of section 68 and make an addition in this regard.

There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash/credit received during the accounting year, the Income Tax Officer is entitled to draw the inference that the receipts are of an assessable nature. "Govindarajulu Mudaliar 34 ITR 807 (SC)

In the case of Independent Media (P.) Ltd 210 TAXMAN 14 (Dehi)(20i2) that came up before the Hon'ble High Court, Delhi.

c/e are unable to uphold the view of the Tribunal that it is incumbent

upon the Assessing Officer, on the facts and circumstances of the case, to establish with the help of material on record that the share monies had come or emanated from the assessee's coffers. Section 58 Of the Act casts no such burden upon the Assessing Officer. This aspect has been considered more than 50 years back by the Supreme Court in the case of A Govindarajula Mudaiiar I/. CIT [1958] 34 ITR 807 where precisely the same argument was advanced before the Supreme Court On behalf of assessee. The argument was rejected by the Court. "

The Apex Court in the case of Sumati Dayai Vs CIT (SC) 214 ITR SOI & Sreelekha Banerjee & Ors. Vs CIT (SC) 49 ITR 112

Where any sum is found credited in the books of the assessee for any previous year it may be charged to income tax as the income of the assessee for that previous year if the explanation offered by assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory.

Result

Grounds of appeal 7, 8 and 9 are dismissed.”

5. The above finding of fact is not rebutted by the assessee by placing any contrary material on record. We, therefore, do not see any reason to disturb the finding of learned CIT(Appeals) and the same is hereby affirmed. Grounds of appeal are rejected and the appeal of the assessee is dismissed.

Now coming to ITA no. 5580/Del/2019 for A.Y. 2010-11, we find that the facts are identical to A.Y. 2009-10. Learned DR also adopted the same arguments. In ITA no. 5579/Del/2019 we have decided the issue by observing as under:

“5. The above finding of fact is not rebutted by the assessee by placing any contrary material on record. We, therefore, do not see any reason to

disturb the finding of learned CIT(Appeals) and the same is hereby affirmed. Grounds of appeal are rejected and the appeal of the assessee is dismissed.”

For the same reasons herein also the grounds raised by the assessee are dismissed.

Appeal of the assessee is dismissed.

In the result, assessee's appeals being ITA Nos. 5579/Del/2019 and 5580/Del/2019 stand dismissed.

Order pronounced in open court on 30th August, 2023.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

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