

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.2041/Del/2023
[Assessment Year : 2012-13]**

Sachin Kumar, C/o-P Kumar Jain & Co., 210, Durga Tower, A-13, RDC, Raj Nagar, Ghaziabad, Uttar Pradesh-201001 PAN-ASBPK3946N	vs	ITO, Ward-2(2)(4), Ghaziabad.
APPELLANT		RESPONDENT
Appellant by	Shri Anurag Jain, CA	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	25.09.2023	
Date of Pronouncement	27.09.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2012-13 is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre ("NFAC"), Delhi dated 23.05.2023.

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

1. *"The order of the Ld. AO is bad in law and on facts of the case.*
2. *The notice issued u/s 148 of the Act is beyond jurisdiction being without any valid reason to believe and/or satisfaction of Ld. A.O. or of the superior authority to conduct roving enquiries merely on the basis of AIR.*
3. *Proper opportunity of being heard has not been provided to the appellant. No notice was received by the appellant.*
4. *Without prejudice and in alternative the Ld. A.O. grossly erred in treating Rs.1400000/- as undisclosed income u/s 69 of IT Act,*

1961. He has ignored the fact the appellant withdrawn the cash on various dates during the year which was later on deposited in the bank account. Proper opportunity of being heard not provided to the appellant hence it is liable to be remanded back.

5. *The appellant craves leave to add or amend any ground of appeal at the time of hearing.”*

3. Facts giving rise to the present appeal are that the case of the assessee was re-opened u/s 147 of the Income Tax Act, 1961 (“the Act”) on the basis that the Assessing Officer (“AO”) has an information regarding cash deposited by the assessee in his bank account. The AO issued statutory notice u/s 148 of the Act thereafter, notice u/s 142(1) of the Act was issued to the assessee. However, there was no representation on behalf of the assessee. Therefore, the AO proceeded to frame the assessment u/s 144 r.w.s 147 of the Act vide order dated 18.11.2019 and assessed the income of the assessee at INR 14,00,000/-. Thus, the AO treated the entire cash deposits as unexplained income of the assessee.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the addition and 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. Apropos to grounds of appeal, Ld. Counsel for the assessee submitted that firstly, notice u/s 148 of the Act is issued beyond jurisdiction. The

assessee has not provided adequate opportunity of being heard by the assessing authority.

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 seen from the records that there was no effective representation on behalf of the assessee before the lower authorities. Therefore, to sub-serve the principle of natural justice, the impugned order is hereby, set aside and the assessment is restored to the AO to frame it afresh after giving adequate opportunity of being heard to the assessee. Grounds raised by the assessee are accordingly, 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 27th September, 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