

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "SMC", KOLKATA**

BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

**ITA No.842/Kol/2023
Assessment Year: 2013-14**

Nitu Singh 137, Chakpara Ramkrishna Colony, Ideal Club, Bhattanagar, Howrah-711203. PAN: BADPS2548K	Vs.	ITO, Ward-37(2), Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Palash Chottpadhyay, AR
Respondent by : Shri Pravash Roy, Adl. CIT-DR.

Date of Hearing : 05.10.2023

Date of Pronouncement : 12.10.2023

ORDER

PER RAJESH KUMAR, ACCOUNTANT MEMBER:

The present appeal has been preferred by the assessee against the order dated 30.05.2023 passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') by the National Faceless Appeal Centre (hereinafter referred as the 'CIT(A)') relevant to A.Y 2013-14.

2. At the outset, the Id. Counsel for the assessee pointed out a delay of 15 days in filing of the appeal which is attributable to the fact that the ex parte order passed by the CIT(A) was served on the ex-tax consultant's email, despite the correct email mentioned in Form no.35. The Id. AR submitted that the assessee came to know about the passing of the order by CIT(A) on 30.05.2023 only when the Assessing Officer issued notice u/s 271(1)(c) of the Act on 26.06.2023. Thereafter, the assessee tried her best to procure the

appellate order and hand over to the Chartered Accountant who has taken sometime for preparation of appeal documents and finally the appeal was filed on 14.08.2023 and thus the delay of 15 days in filing the appeal. The ld. AR submitted that the assessee is not responsible for the reasons attributable to the late filing of appeal nor the assessee is benefitted by late filing of appeal in any manner whatsoever. The ld. AR, therefore, prayed that the delay of 15 days may kindly be condoned and the appeal may kindly be admitted for adjudication.

3. The ld. DR, on the other hand, has strongly opposed the admission of appeal on the ground that there is a delay of 15 days which the assessee has not explained satisfactorily and therefore, the same kindly be dismissed.

4. After hearing the rival parties and perused the materials on record. The delay in filing of the appeal is only because of the fact that the appellate order passed by the CIT(A) was sent to the ex-tax consultant's email id. etaxationashif6@gmail.com. We have examined the Form no.35 and find merit in the contention of the assessee. Accordingly, the assessee cannot be held responsible for the delay which was not attributable to the assessee and accordingly, we are inclined to admit the appeal for adjudication by condoning the delay.

5. The assessee has raised two effective issues for us. One that the order passed by the Assessing Officer is invalid and without jurisdiction as the addition made by the Assessing Officer is not in respect of reasons recorded and therefore, the order passed u/s 143(3) r.w.s 147 of the Act dated 19.12.2017 is invalid and has to be quashed and secondly, the CIT(A) has not granted opportunity of hearing before passing of the order.

6. The facts in brief are that the return of income was filed on 29.03.2014 declaring a total income of Rs.1,82,650/-. The case of the assessee was reopened u/s 147 of the Act by recording reasons to believe u/s 148(2) of the Act after receipt of information from ITO(I&CI)-3, Kolkata vide letter dated 29.02.2016 that the assessee has not filed a copy of acknowledgement of IT return filed on 29.03.2014 as is apparent from AST software. During the course of verification, the Assessing Officer found that she maintained two bank accounts with UBI, Sealdah Branch and SBI Surya Sen Street Branch. She had deposited Rs.1,67,66,292/- during the F.Y 2012-13 in the above-said accounts, therefore, the income has escaped assessment to the tune of Rs.1,67,66,292/- and thus the Assessing Officer recorded the reasons to believe that the assessee's income chargeable to tax has escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts. In the course of reopening of assessment proceedings u/s 147 of the Act, the Assessing Officer accepted the issue which was subject matter to the reasons recorded u/s 148(2) of the Act, however, made addition in respect of amount deposited in UBI, Sealdah Branch account no.0069050026734 amounting to Rs.10,66,750/- in the assessment framed u/s 147/143(3) of the Act dated 19.12.2017 which was also dismissed by the CIT(A).

7. After hearing the rival parties and perused the materials on record, we note that the case of the assessee was reopened u/s 147 by issuing notice u/s 148 on 22.03.2017 after obtaining approval from the competent authority. Thereafter, during the course of assessment proceedings u/s 147 of the Act, the Assessing Officer accepted the plea of the assessee in respect of escapement of income of Rs.1,67,66,292/- which was treated to be escapement of

assessment within the meaning of proviso to section 147 of the Act on account of deposits of the said amount in two bank accounts namely UBI, Sealdah Branch SB A/c No.0069010289043 and SBI Surya Sen Street Branch SB A/c No.30106310396, however, made addition in respect of another undisclosed bank account held with the UBI, Sealdah Branch, A/c No.0069050026734 of Rs.10,66,750/. Undisputedly the assessment framed by the Assessing Officer is not sustainable in view of the fact that no addition can be made to the income of the assessee which comes to the notice of the Assessing Officer during the assessment proceedings in terms of Explanation 3 to section 147 of the Act, if the Assessing Officer has accepted the plea of the assessee of not having concealed any income which was subject matter of the reasons recorded u/s 148(2) of the Act. The case of the assessee finds force by several decisions as discussed below:

- a) in the case of Ranbaxy Laboratory Ltd Vs CIT (2011) 336 ITR 136(Delhi)
- b) CIT Vs Software Consultants (2012) 241 ITR 240 (Delhi)
- c) CIT Vs M/S Jet Airways (I) Ltd (2011) 331 ITR 236 (Bom)

In all the above decisions, the Hon'ble Courts have held that no addition can be made in respect of any other item of income if the AO does not make any additions for those items which are recorded in the reasons recorded u/s 148(2) of the Act. In the instant case also the AO has not made any addition in respect of cash deposited into two banks which are covered in the reasons recorded and therefore the AO has no jurisdiction to make any other addition in terms of Explanation 3 to section 147 of the Act. Consequently the addition

made by the AO is directed to be deleted. The appeal of the assessee is allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 12.10.2023.

**Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER**

Kolkata, Dated: 12.10.2023.
RS

Copy to: The Appellant
The Respondent
The CIT, Concerned, Kolkata
The CIT (A) Concerned, Kolkata
The DR Concerned Bench

//True copy//

By order

Assistant Registrar, Kolkata Benches