

**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.204/Asr/2023
Assessment Year: 2010-11**

Akshay Kumar S/o Sh. Chajju Ram, H. No. 2/267 Mohalla Mission Road, Distt. Pathankot. [PAN:-AHLPK8458N] (Appellant)	Vs.	ITO-Ward- 6(1), Pathankot. (Respondent)
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Appellant by	Sh.P. N. Arora, Adv.
Respondent by	Sh. S. M. Surendranath, Sr. DR

Date of Hearing	09.11.2023
Date of Pronouncement	22.11.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed 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. 2010-11. The impugned order was emanated from the order of the Id. Income TaxOfficer, Ward-6(1),Pathankot,[in brevity ‘the AO’] order passed u/s 144/147 of the Act.

2. The assessee has taken the following grounds: -

“1. That the Assessment Order passed by the Income Tax Officer, Ward - 6(1), Pathankot dated 31/10/2017 u/s 144/147 of the IT Act, 1961 as well as the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi thereby confirming the order of the Assessing Officer are both against the facts of this case and are untenable under the law.

2. That no reasonable and proper opportunity of being heard was allowed by the Assessing Officer before making the addition of Rs.66,40,500/-. As such the order passed by the AO is bad in the eyes of law and the same is liable to be cancelled. Similarly, the order passed by the worthy CIT(A) thereby confirming the addition made by the AO is also bad in the eyes of law and the same is also liable to be cancelled.

3. That the order dated 13/06/2023 passed by the worthy CIT(A) is illegal and invalid as there is no application of mind. In this case, the appeal was instituted on 04/12/2017 against the order passed by the AO on 31/10/2017. This appeal was fixed several times by the Ld. CIT(A) in person and the written submissions were duly submitted before him during the course

of hearing and the case was also argued physically by my counsel several times.

4. *That later on this appeal was transferred about a lapse of 3 years to the National Faceless Appeal Centre (NFAC), Delhi on 25/09/2020 from the date of institution of this appeal in 04/12/2017. The Ld. CIT(A) NFAC has decided this appeal without consulting the earlier record and written submissions before Ld. CIT(A) at the time of hearing of the appeal which was physically available with the department.*

5. *That it appears from the appellate order that the physical record has not been taken into consideration while deciding the appeal. Thus, grave injustice has been done with the assessee by not considering the written submissions submitted by the assessee at the time of physical hearing and this appeal was decided without consulting the earlier record, though it is a part and parcel of the whole record. As such the order passed by the CIT(A) without considering the whole record is bad in the eyes of law and the same is liable to be cancelled.*

6. *That the Ld. CIT(A) did not appreciate that merely because there were bank deposits will not invoke the provisions of section 148. The case has been reopened on the basis of borrowed satisfaction. As such the reopening is bad in the eyes of law and there was no reason for making the addition*

and the addition confirmed by the. CIT(A) is liable to be deleted.

7. *That the Ld. CIT(A) even otherwise has not decided the case on merits and has not considered the written submissions submitted before CIT(A) in person. This appeal was fixed for hearing i.e. on 21/06/2018 and 14/03/2019 and also at various occasions and the written submissions were also submitted before the then CIT(A). Had the Ld. CIT(A) considered this whole record, the appeal should have been accepted.*

8. *That the Ld. CIT(A) did not appreciate that in this case the returned income was shown at Rs.2,75,137/- by applying the provisions of section 44AD of the IT Act, 1961. As such there was no justification and reason for making the further addition to the returned income. Even the AO while making the addition has not taken the maximum peak of bank. The CIT(A) has miserably failed to appreciate the whole facts of this case as proper record has not been consulted and the ex-parte order passed by the CIT(A) is bad in the eyes of law and the case has not been decided on legal aspects as well as on merits.*

9. *That the CIT(A) has decided the case ex-parte and in a summary manner and confirmed the addition made by the AO without going into the merits of the case. As such the order of the CIT(A) is bad in the eyes of law and the same is liable to be*

cancelled. Alternatively, the addition made is very high & excessive.

10. That any other grounds of appeal which may be argued at the time of hearing of the appeal.”

3. Brief fact of the case is that the Appellant had filed Return of Income for A.Y. 2010-11 declaring total income at Rs. 2,75,140/-. The Department was in possession of the information that the appellant had deposited cash to the tune of Rs. 66,40,500/- in his Saving Bank A/c maintained with HDFC Bank during the F.Y. 2009-10 relevant to impugned A.Y. 2010-11. Based on the information, proceedings u/s. 147 was initiated by issue of Notice u/s. 148 on dated 24.03.2017. The appellant neither complied to notice u/s. 148 nor to the subsequent notices u/s. 142(1) and letters issued from time to time. As the appellant had not complied, the AO proceeded to complete assessment to the best of his judgement and accordingly passed order u/s. 144/147 on 31.10.2017 after making an addition of Rs. 66,40,500/- as income from undisclosed sources to the returned income and assessed total income at Rs. 69,15,640/-. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) has upheld the order of the AO. Being aggrieved, the assessee filed an appeal before us.

4. The ld. AR submitted a written submission and vehemently argued. The ld. AR placed that the assessment order was passed ex parte without considering the submission of the assessee. The ld. AR further placed that the written submission was duly filed on dated 27.08.2019 before the ld. CIT(A) which was not considered by the ld. CIT(A). Copy of the written submission filed before the ld. CIT(A) on 27.08.2019 is annexed in **APB pages 4 to 10**.

4.1 The ld. AR invited our attention in order of the Hon'ble Punjab & Harayana High Court in **Hari Iron Trading Co. Vs. CIT, 263 ITR 0437 (P & H)** and also relied on the order of ITAT Amritsar Bench in case of **Sh. Surinder Kumar Mahajan vs. ITO, Ward-3, Pathankot-VI in ITA No. 534/Asr/2015 date of order 10.10.2022**.

5. The ld. DR vehemently argued and relied on the order of revenue authorities.

6. We heard the rival submission and consider the documents available in the record. On verification of the record, we find that both assessment and appeal were passed *ex-parte*. The assessee agitated the issue related to ex parte order and the appeal order was passed without considering the submission of the assessee. The reasonable opportunity for hearing is denied for the assessee in both the proceedings. Accordingly, we remit back the matter to the file of the ld. AO for de novo assessment. Both the revenue and the counsel of the assessee had not made

any objection for remanding back the issue before the Id. AO. Needless to say, that the AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanation submitted by assessee in its defence shall be admitted by the AO and adjudicated on merits in accordance with law. We order accordingly.

7. In the result, the appeal of the assessee bearing **ITA No. 204/Asr/2023** is allowed for statistical purposes.

Order pronounced in the open court on 22.11.2023

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