

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 3010/Del/2022
Assessment Year: 2011-12**

Shivani Gupta, Rag and
Associates, Chartered
Accountants, 209, Jagdamba
Tower, 13 Preet Vihar
Commercial Complex, New Delhi.
PAN: BKGPS1460R
(Appellant)

Versus Income-tax Officer,
Ward 2(3), Ghaziabad.

(Respondent)

**ITA No. 729/Del/2023
Assessment Year: 2012-13**

Shivani Gupta, Rag and
Associates, Chartered
Accountants, 209, Jagdamba
Tower, 13 Preet Vihar
Commercial Complex, New Delhi.
(Appellant)

Versus Income-tax Officer,
Ward 2(2)(4), Ghaziabad.

(Respondent)

Assessee by : Sh. Raghuvendra, Advocate
Revenue by : Sh. Anuj Garg, Sr. DR

Date of hearing : 28.11.2023
Date of pronouncement: 28.11.2023

ORDER**PER SAKTIJIT DEY, VICE-PRESIDENT**

Captioned appeals by the assessee arise out of two separate orders passed by National Faceless Appeal Centre (NFAC), Delhi pertaining to assessment years 2011-12 and 2012-13.

ITA No. 3010/Del/2022 (A.Y. 2011-12):

2. At the time of hearing, learned counsel appearing for the assessee did not press grounds Nos. 1, 5 and 6. In ground Nos. 2 to 4, the assessee has challenged the addition of Rs.4,19,54,054/-.

3. Briefly, the facts relating to this issue are, the assessee is a resident individual. The Assessing Officer received information from the Assistant Director, Income-tax (Investigation) to the effect that in the year under consideration, there are credit entries aggregating to Rs.18,02,28,344/- in the bank account of the assessee standing in the name of two proprietary concerns, M/s. Laxmi Narayan Sales Corporation and Laxmi Narayan Steel Trading Company. Based on such information, assessment for the year under consideration was

reopened under section 147 of the Income-tax Act, 1961. In course of assessment proceedings, the Assessing Officer examined the subject bank accounts and found that credit entries in the said bank accounts aggregated to Rs.52,57,41,804/-. In absence of books of accounts and supporting documents, the Assessing Officer proceeded to estimate net profit of 8% on the credit entries of Rs.52,57,41,804/- by treating them as turnover of the assessee. In this process, he made an addition of Rs.4,19,54,054/-. The assessee contested the aforesaid addition before learned first appellate authority. However, the addition made was confirmed.

4. Before us, learned counsel appearing for the assessee submitted that the credit entries appearing in the concerned bank accounts would be around Rs.9.00 crores and not the figure adopted by the Assessing Officer. He further submitted that the net profit rate applied by the Assessing Officer at 8% is not correct, as the assessee has sufficient evidence to establish that the rate of net profit would be much lesser.

5. Learned Departmental Representative relied upon the observations of the Assessing Officer and first appellate authority.

6. We have considered rival submission and perused materials on record. As regards the contention of the learned counsel for the assessee that the net profit rate adopted by the departmental authorities at 8% is inappropriate, as the assessee had sufficient supporting evidence for expenses, we are not convinced. It is observed, before the Assessing Officer the assessee has not furnished the books of accounts or any other details. The facts remained identical before the first appellate authority and even before us. On a query from the Bench, learned counsel appearing for the assessee submitted that assessee's accounts are not audited. In such circumstances, in our view, the Assessing Officer was justified in applying the net profit rate of 8%. However, assessee's contention that the credit entries appearing in the bank accounts would work out to about 9.00 crores as against the amount of Rs.52.00 crores odd, requires consideration. Therefore, we are inclined to restore the issue to the Assessing Officer with the direction to examine the bank account and apply the net profit rate of 8% on the actual amount of credit entries appearing in the said bank accounts. Needless to mention, the assessee shall be provided due and reasonable

opportunity of being heard in the matter. Grounds are allowed for statistical purposes.

ITA No. 729/Del/2023 (A.Y. 2012-13):

7. Before we proceed to deal with this appeal, it is necessary to mention that there is delay of 215 days in filing the appeal. The assessee has filed affidavit to support the application for condonation of delay. After perusal of the contents of the said application and affidavit, we are convinced that the delay in filing the appeal is due to reasonable cause. Accordingly, we proceed to admit the appeal and decide it on merits after condoning the delay.

8. Briefly, the facts are, based on AIR information, the Assessing Officer found that in the year under consideration, the assessee had purchased an immovable property for an amount of Rs.38,80,000/-. Additionally, there are credit entries in assessee's bank account aggregating to Rs.4,37,59,990/-. Based on such information, the Assessing Officer proceeded to reopen the assessment under section 147 of the Act. As alleged by the Assessing Officer, the assessee did not comply with the statutory notices issued under section 142(1) and

148 of the Act. Thus, in absence of any explanation or details furnished by the assessee to explain the source of investment in property and the credit entries appearing in the bank account, the Assessing Officer treated them as unexplained investment and added back to the income of the assessee. Though, the assessee contested the aforesaid addition before the first appellate authority, however, the addition was confirmed.

9. Before us, learned counsel appearing for the assessee submitted that due to various health issues of the assessee, proper compliance could not be made before the departmental authorities. Thus, he submitted, given an opportunity, the assessee will be furnishing necessary evidence to prove the source of investment in the property and explain the credit entries in the bank account.

10. Though, learned Departmental Representative submitted that the assessee has failed to avail the opportunities granted to her by the departmental authorities, however, he submitted, the issues can be re-examined by the Assessing Officer.

11. Having considered rival submissions and perused materials on record, we find that the assessee has not properly complied with the queries raised by the Assessing Officer in course of assessment proceedings. Even, before first appellate authority also, no compliance has been made. However, it appears from the materials on record that at the relevant point of time, the assessee was facing certain health issues. Thus, that could have prevented the assessee from making necessary compliance. Considering the above, we are inclined to set aside the impugned order of the first appellate authority and restore the issues to the file of the Assessing Officer for fresh adjudication after providing due and reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

12. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the open court on 28/11/2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 28.11.2023