

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

ITA No.42/DEL/2021

[Assessment Year: 2014-15]

Rajiv Kumar Khurana, C-3, Khasra No.755, IIIrd Floor, Sair Bhawan Hall, Delhi-110084	Vs	ITO, Ward-36(6), Civic Centre, J.L. Nehru Marg, Delhi-110006
PAN-ANFPK9817K		
Assessee		Revenue

Assessee by	Sh. Dishant Sethi, Adv. Sh. Shyam Sunder, Adv. & Sh. Jitin Singhal, Adv.
Revenue by	Ms. Sapna Bhatia, CIT-DR

Date of Hearing	30.11.2023
Date of Pronouncement	05.12.2023

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of the ld. CIT (Appeals)-13, New Delhi dated 31.08.2020 for the assessment year 2014-15.

2. The grounds of appeal raised by the assessee reads as under:-

1. That the C.I.T.(A) has grossly failed to appreciate that No proper, reasonable & sufficient opportunity of being heard was provided to the appellant in utter disregard to the judgments in the cases of principles of natural justice.

2. That the C.I.T.(A) has grossly failed to appreciate that the assessment was completed on the non-est return and explanation about cash deposit in bank account by the assessee was never sought.

3. That Ld. C.I.T.(A) has grossly erred in not asking for the remand report on the return filed on 20.12.2019 vide

E-Filing acknowledge number 275120610201219 before the day of assessment.

4. That the C.I.T. (A) was not legally correct and justified in confirming the addition of Rs. 2,10,000/- in bank deposits u/s 68 as undisclosed income from the undisclosed sources, specially when return filed u/s 44AD declaring income from "business" in utter disregard to the judgments.

5. That the C.I.T.(A) has badly failed to appreciate that the bank deposit of Rs.2,00,000/- in Kotak Mahindra Bank and Rs. 10,000/ in Axis Bank were in the normal course of business.

6. The C.I.T.(A) has grossly failed to appreciate that invoking of section 153A and the resultant assessment in the absence of any incriminating material unearthed during search relevant to this year were in utter disregard to various judgments of the higher courts.

7. That the C.I.T.(A) has grossly failed to appreciate that huge interest has also been charged arbitrarily on the tax illegally imposed.”

3. At the outset, in this case, the ld. Counsel for the assessee submitted that the assessment has been framed u/s 153A of the Act pursuant to a search. However, he submitted that no addition in this case has been done by referring to seized material found during the search. For this purpose, he submitted that said assessment order itself contains the remark of the Assessing Officer is as under:-

“Office Note: Since, there is no seized material relating to this assessment year. Besides, as per Bank Accounts of the assessee, a sum of Rs.71/- only has been credited as interest. Besides, a sum of Rs 2,00,000/- and Rs. 10,000/- only have been deposited by the assessee into his Bank Account. I have no other basis to make addition for this year except as discussed in the body of the order.”

4. Per Contra, the Ld. DR could not controvert that the addition in this case is without any seized material during the search.

5. We note that in this case, the addition made by the AO by observing as under:-

“From the Bank Statements received from the Kangra Co-operative Bank Ltd., Kotak Mahindra Bank and Axis Bank for the previous year relevant to this assessment year it transpires that :-

The Assessee has deposited a sum of Rs 2,00,000/- with the Kotak Mahindra Bank during the period 01.04.2013 to 31.03.2014. As no source of this deposit has been explained by the assessee, this sum of Rs 2,00,000/- is being added to the declared income of the Assessee as per provision of Section 68 of the IT Act.

(Addition: Rs. 2,00,000/-)

The Assessee has deposited a sum of Rs 10,000/- with the the Axis Bank during the period 01.04.2013 to 31.03.2014. As no source of this deposit has been explained by the assessee, this sum of Rs 10,000/- is being added to the declared income of the Assessee as per provision of Section 68 of the IT Act.

(Addition: Rs. 10,000/-)

Since the assessee has concealed particulars of his income for this assessment year, penalty proceeding U/s 271(1)(c) of the IT Act are being initiated separately.

As the assessee had not complied with the notices issued to him U/s 153A of the IT Act and U/s 142(1) of the IT Act, Penalty proceeding are being issued U/s 271(1)(b) of the IT Act are being initiated separately.

With these remarks, taxable income of the assessee for this assessment year is computed as under:

INCOME FROM BUSINESS;

Taxable Income n: declared in the return of income Rs2,50,430/-

Add: -

Addition U/s 68 of the IT Act as discussed above Rs 2,10,000/-
(Rs 2,00,000/-+Rs10,000/-)

INCOME FROM OTHER SOURCES:

Bank Interest accrued from Axis Bank Rs.21/-

Bank Interest accrued from Kangra Coop. Bank Rs.71

Rs.92/-

Less Exempted U/s 80TTA of the IT Act Rs.92/- NIL

Taxable Income Rs 4,60,430/-

6. Against the above order, the assessee appealed before the Ld. CIT(A).

7. The Ld. CIT(A) has confirmed the addition.

8. Against the above order of the Ld. CIT(A), the assessee is in appeal before us.

9. We have heard both the parties and perused the records. As mentioned in earlier paras of this order, this assessment is pursuant to notice u/s 153A of the Act. We note that the additions are not based upon any incriminating material found during search. Ld. DR also could not dispute this proposition. As per the decision of the Hon'ble Supreme Court in the case of PCIT vs Abhisar Buildwell Pvt. Ltd. (2023) SCC Online SC 481, no addition can be made the assessment framed u/s 153A *dehors* incriminating material found during the search. Since, the AO himself admitted that the addition is made *dehors* any seized incriminating material during the search, respectfully following the precedent of Hon'ble Apex Court, we set-aside the order of the Ld. CIT(A) and decide the issue in favour of the assessee.

10. In the result, this appeal of the assessee stands allowed.

Order pronounced in the open court on 05th December, 2023.

Sd/-
[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Delhi; 05.12.2023.

Shekhar,

Copy forwarded to:

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi