

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 711/DEL/2020
Assessment Year: 2011-12

Dinesh Dahiya, 952, BS House to Main Chouraha, Brijwasan, New Delhi-110061	<u>Vs</u>	Income-tax Officer, Ward-61(1), New Delhi
PAN- AIUPD1994L		
APPELLANT		RESPONDENT
Assessee by		Sh. Dinesh Dahiya (Assessee)
Department by		Sh. Om Parkash, Sr. DR
Date of hearing		04.12.2023
Date of pronouncement		12.12.2023

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-20, New Delhi, dated 29.11.2019, pertaining to the assessment year 2011-12. Revised grounds of appeal filed by the assessee are as under:

- “1. *The proceedings initiated by the AO were barred by limitation*
2. *The AO has initiated the proceedings without having jurisdiction.*

3. *The assessment order passed by the AO is based merely on the change of opinion.*
 4. *Failed to provide the reasonable attention and proper opportunity of hearing which is rendering the appellate order opposed to norms of natural justice.*
 5. *Failed to consider the records which were available for adjudication i.e. lose in commodity, cash deposit in 29 different transactions, 21 cash withdrawals etc.*
 6. *Failed to consider the records pertaining to the Assessment order and adjudicate the order which has already been decided by the AO after examining the documents provided by the assessee. The rectification is still pending for the same.*
 7. *Failed to appreciate the settled position of law that the cash withdrawal is one of the source of the cash deposit.*
 8. *Failed to consider the settled law that cash deposits in saving account does not constitute the income which has escaped assessment. However, the appellant has explained the Rs. 9,10,200/- as per Date-wise cash flow chart of the appellant and same is enclosed which shows a peak negative balance of Rs. 1,41,685/-. At best, this amount remains unexplained. which is below Rs. 1,60,000/- being the threshold of taxable limits for A.Y. 2011-12.”*
2. At the outset learned counsel for the assessee has brought to my notice the decision of the Hon’ble Delhi High Court dated 01.09.2023 rendered in ITA No. 440/2023, wherein the Hon’ble High Court has remanded the appeal before this Tribunal for de novo examination in the backdrop of the finding of the AO in para 5 of the assessment order.
3. The assessee appeared in person and argued that the authorities below have failed to appreciate the facts in right perspective. He contended that the facts were not correctly verified by the Assessing Officer and the learned CIT(Appeals). He

further submitted that even otherwise also the assessment is purely based upon change of opinion which cannot be sustained in the eyes of law.

4. I have heard learned DR and the assessee in person. Apropos to the grounds of appeal, the contention of the assessee, qua legal grounds, is that reopening of assessment by the Revenue is bad on account of the fact - firstly, the reopening is barred by time; secondly, there is change of opinion of the Assessing Authority; and thirdly, proceedings were dropped by the Assessing Authority previously. He submitted that the assessment was reopened on the basis of large share transaction entered into by the assessee but the AO made addition on the basis of unexplained cash deposits. Further, it is contended that since there was loss the AO ought to have allowed set off of loss.

5. On the other hand, learned DR supported the orders of authorities below.

6. It is transpired from the record that the learned CIT(A) sustained the addition qua cash deposits, however directed the AO for adopting the profit rate @ 5%. I am in agreement with the assessee that the AO did not make any addition in respect of share transactions. Therefore, the finding of learned CIT(A) on this issue was not called for, hence set aside. The ground of assessee's appeal is allowed

7. Now coming to the issue of validity of re-opening of assessment, undisputedly, the assessee has not filed any ITR for the year under appeal. Therefore, the reopening of assessment was valid on account of the fact of non-filing of income-tax return, cash deposited by the assessee and huge share transactions. The AO was justified in re-opening of the assessment.

7.1 Another objection is that re-opening of assessment is barred by time. It is stated that notice u/s 148 was issued on 27.03.2018. It is the case of the assessee

that notice was issued beyond six years, hence, clearly barred by time. As per section 149(b) of the Act, as it stood then, the maximum time prescribed for issuance of notice u/s 148 of the Act was six years from the end of the relevant assessment year. Therefore, six years in this case would be reckoned from 1st April, 2012 and six years will end on 1st April 2018. Hence, the notice so issued is well within time. Therefore, this ground of assessee's appeal is dismissed.

8. Now coming to objection regarding no application of mind and change of opinion, it is stated that the AO had earlier dropped the proceedings. As per the assessee he had received two notices dated 12.07.2012 and 12.06.2013. Copy of same are enclosed at paper book pages 4 and 6. A bare perusal of same makes it clear that these were non- statutory letters, seeking reason for non-filing of income-tax return. The assessee has not placed any statutory notice issued prior to issuance of notice u/s 148 of the Act dated 27.03.2018 in respect of any assessment or reassessment proceedings relating to the year under appeal. In the absence of such material the objection of the assessee cannot be sustained. The ground raised by the assessee in this regard is rejected.

9. With regard to cash deposited into the bank account of the assessee it is submitted on behalf of the assessee that the cash was deposited out of withdrawals from the bank account. A copy of bank statement is enclosed with paper book. As per the bank statement there are cash withdrawals and deposits by the assessee. The AO ought to have given set off of withdrawal made by the assessee. I, therefore, direct the AO to give set off of withdrawal made before deposits of money by the assessee. The ground of appeal qua addition on account of cash deposited in the bank is allowed in the terms indicated hereinbefore.

10. The assessee has also prayed for allowing claim of loss in respect of share transactions. The AO would verify the claim of the assessee and decide the issue in accordance with law.

11. Appeal of the assessee is partly allowed.

Order pronounced in open court on 12.12.2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**