

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.69/Del/2021
[Assessment Year : 2010-11]**

Rahul Nagpal, T-23A, Phase-III, DLF City, Block-T, Lane-23, Gurgaon, Haryana-122002. PAN-ACXPN8596P	vs	ITO, Ward-3(4), Gurgaon.
APPELLANT		RESPONDENT
Appellant by	Shri Lalit Mohan, CA	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	13.12.2023	
Date of Pronouncement	20.12.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A)-1, Gurgaon dated 28.02.2019 for the assessment year 2010-11. The assessee has raised following concise grounds of appeal:-

1. *"That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/143(3) of the Act without appreciating that the same were without jurisdiction and hence deserved to be quashed as such.*
2. *That That the learned Commissioner of Income Tax (Appeals) has erred both in law and, on facts in sustaining and enhancing the addition of Rs. 9,45,500/- on account of cash deposit in joint bank of appellant and his wife.*

2.1 *That the learned Commissioner of Income Tax has erred both in law and, on facts in enhancing addition from Rs. 3,01,000 to 9,45,500/- u/s 251 of the Act.”*

2. Apart from that the assessee has also taken following additional grounds of appeal:-

1. *"That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/143(3) of the Act without appreciating that the same were without jurisdiction and hence deserved to be quashed as such.*

1.1 *That the learned Commissioner of Income Tax (Appeal) has failed to appreciate that there was no tangible material on record to form a "reason to believe" that income of the appellant had escaped assessment and in view thereof the proceedings initiated are illegal, untenable and therefore unsustainable.*

1.2 *That mere information alone without any independent inquiries by the learned Assessing Officer could neither in law nor on fact constitute reasons to believe that income of the assessee has escaped assessment u/s 147 of the Act.*

1.3 *That initiation of proceedings was mechanical and without any application of mind much less independent application of mind, therefore the notice issued u/s 148 of the Act was an invalid notice and assumption u/s 147 of the Act was without jurisdiction.*

1.4 *That in absence of any valid approval obtained under section 151 of the Act, initiation of proceedings u/s 147 of the Act and assessment framed u/s 147/143(3) of the Act are invalid and deserve to be quashed as such.*

2. *That the learned Commissioner of Income Tax (Appeals)-14, New Delhi has erred both in law and, on facts in enhancing addition from Rs. 3,01,000 to 9,45,500/- u/s 251 of the Act.*
3. *That That the learned Commissioner of Income Tax (Appeals)-14, New Delhi has erred both in law and, on facts in sustaining and enhancing the addition of Rs. 9,45,500/- on account of cash deposit in joint bank of appellant and his wife.”*

3. The present appeal filed by the assessee is barred by time. An application dated 27.01.2023, seeking condonation of delay of 645 days has been filed by the assessee.

4. Ld. Counsel for the assessee submitted that the impugned order came to the notice of the assessee when he filed an application to avail the benefit of “Vivad se Vishwas Scheme, 2019” in January, 2021. Thereafter, the assessee filed an application for supplying the certified copy on 20.01.2021. He drew my attention to the application for supply of certified copy dated 20.01.2021 is also enclosed with the application. Ld. Counsel for the assessee submitted that for the bonafide reasons, there was a delay in filing the appeal in time. The assessee is not benefited by the delay. On the contrary, if the delay is not condoned, there would be a gross miscarriage of justice as the assessee has a very good case on merit.

5. Ld.Sr.DR for the Revenue opposed these submissions and submitted that the assessee had been negligent for not pursuing the matter. Further, non-receipt of the impugned order is merely a bald assertion.

6. I have heard the contentions of both the parties and perused the material available on record. Considering the factum of the impugned order when the assessee had applied for “Vivad se Vishwas Scheme, 2019” and also in the light of the binding precedent in this regard by Hon’ble Supreme Court in ***Suo Motu Writ Petition (Civil) No.3 of 2020 regarding “Cognizance For Extension Of Limitation”***, vide order dated **23.02.2020**, had extended the period of limitation of filing of appeals till further orders. Therefore, in view of the order of Hon’ble Supreme Court, the delay of 645 days in filing the appeal is condoned and the appeal filed by the assessee is taken up for hearing.

7. Firstly, I take additional grounds raised by the assessee. By way of additional grounds, the assessee has challenged the validity of re-opening of the assessment. The validity has been challenged **firstly**, on account of the assessee merely proceeded on the basis of certain information without making independent inquiry and **secondly**, there was no valid approval u/s 151 of the Income Tax Act, 1961 (“the Act”).

8. Apropos to additional grounds, Ld. Counsel for the assessee vehemently argued that the basis of re-opening of assessment is based upon certain information regarding multiple transactions was carried out in the bank account No.10021000002659 maintained with HDFC Bank Ltd., Gurugram. As per the reasons recorded, Ld. Counsel for the assessee submitted that the bank accounts pertaining to M/s. Trident Sales Corporation and M/s Rudraksh Laminates Pvt.Ltd. wherefrom the credit entries obtained, as per the Assessing Officer, were doubtful. Therefore, on that basis, assessment was re-opened. He contended

that the AO did not carry out any independent inquiry in this regard but proceeded to re-open the assessment. Further, he contended that there is no valid approval by the Competent Authority. He drew my attention to the Pages 15 to 18 of the Paper Book filed by the assessee.

9. On the other hand, Ld. Sr. DR for the Revenue opposed the submissions of the assessee and supported the orders of the authorities below. He submitted that the grounds are ill-founded and are not based upon the facts. He contended that the law envisages about the information which satisfies the Assessing Authority that certain income has escaped assessment and requires to be examined. He further contended that Ld.Pr.CIT, Gurgaon has given a valid approval dated 20.03.2017.

10. I have heard the contentions of both the parties and perused the material available on record. So far the question of validity of re-opening of the assessment is concerned, I am of the considered view that the Assessing Authority was having sufficient information which was enough for the AO for seeking re-opening of the assessment. So far the validity of the approval is concerned, Ld.Pr.CIT has considered the reasons forwarded to him by the Assessing Authority and has duly given his approval. Hence, the additional grounds raised by the assessee are dismissed.

11. Now, coming to the concise grounds raised by the assessee, related to the merit of the additions.

12. **Ground No.1** raised by the assessee is also part of the additional ground raised by the assessee. Hence, no separate adjudication is required.

13. **Ground Nos.2 & 2.1** raised by the assessee are against the enhancements of addition of INR 3,01,000/- and INR 9,45,500/-.

14. Ld. Counsel for the assessee submitted that the AO had made addition of INR 3,01,000/- as a peak credit. He therefore, added the entire amount of INR 9,45,500/-. Ld. Counsel for the assessee submitted that Ld.CIT(A) failed to appreciate the fact that the AO making the addition of INR 3,01,000/- as a peak credit. Considering the bank statement of the assessee, Ld.CIT(A) was not justified.

15. On the other hand, Ld.Sr.DR for the Revenue opposed the submissions and supported the orders of the authorities below.

16. I have heard the contentions of both the parties and perused the material available on record. I find that the AO had made addition by applying peak credit but Ld.CIT(A) enhanced the same on the basis that there was no withdrawals by the assessee. But the Ld. Counsel for the assessee has pointed out that there was withdrawal and the assessee was maintaining two bank accounts. Therefore, it cannot be construed that the assessee was not able to explain the cash deposits in his bank account. Considering the fact that the Assessing Authority has considered the withdrawals as well and applied peak credit. In my considered view, Ld.CIT(A) without pointing out the bank statement and other material, erred in sustaining the addition.

17. Furthermore, the Lower Authorities failed to appreciate that the account in question was jointly held by the assessee and his wife therefore, such joint account could not have been subjected to the addition in a single hand hence,

addition cannot be sustained. Grounds raised by the assessee are accordingly, allowed and the AO is directed to delete the addition.

18. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 20th December, 2023.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI