

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.3621/DEL/2023
(Assessment Year: 2012-13)**

Lala Ram Goyal,
B-68, Budh Nagar, Inderpuri,
Delhi – 110 012.

vs.

ITO, Ward 50 (5),
New Delhi.

(PAN : AAFPF4344J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Anil Jain, CA
Shri Sharveshwar Singh, Advocate
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 31.01.2024
Date of Order : 02.02.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 20.09.2023 for the assessment year 2012-13.

2. The assessee has taken the following grounds of appeal :-

“1. That on the facts and circumstances of the case and the provision of law, the Ld. CIT(A) has failed to appreciate the facts that the assessment order passed u/s 147 r.w.s 143(3) is illegal and bad in law.

2. That on the facts and circumstances of the case and the provision of law, the initiation of proceeding u/s 147 of the Income Tax Act is illegal and bad in law and thus the assessment made requires to be quashed.

3. That on the facts and circumstances of the case and the provision of law, the approval of the higher authorities obtained u/s 151 by the Ld. AO is illegal and bad in law and thus the assessment made requires to be quashed.

4. That on the facts and circumstances of the case and the provision of law, the Ld. CIT(A) has failed to appreciate the facts that no proper opportunity has been provided to the assessee.

5. That on the facts and circumstances of the case and the provision of law, the Ld. CIT(A) has erred in making the addition of Rs. of entire receipt in his bank account as well as current account of his proprietorship concern of Rs.9,21,190/- as unexplained money u/s 69A.

6. That on the facts and the circumstances of the case and the provision of law the initiation of the penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 is illegal and bad in law.

7. That on the facts and the circumstances of the case and the provision of law, the interest charged by the Ld. AO u/s 234B is illegal and without prejudice it is excessive.”

3. Although the assessee has raised many grounds, Id. Counsel for the assessee has also pressed the additional ground which goes to the root of the case. The said ground reads as under:-

“That on the facts and circumstances of the case and provision of law, the Ld. CIT (A) has failed to appreciate that the Ld. AO has no jurisdiction to reassess issues other than the issues in respect of which reopening proceeding was initiated, specially when no addition has been made on the basis of issues mentioned in the reasons for reopening of the assessment.”

4. Brief facts of the case are that the assessee filed his return of income for the year under consideration on 30.08.2012 declaring an income of Rs. 2,01,546/-. On the basis of information available in the departmental system regarding the financial transaction of the assessee for the year under consideration, the case was reopened by issuance of a notice u/s 148 of the Act on 30.03.2019, after recording reasons and procuring approval from the appropriate authority for the purpose. No compliance to this notice was

made. Thereafter, the Assessing Officer issued various notices from time to time, details of which have been mentioned in the body of the assessment order itself. Some of the notices were responded to. However, details asked by the Assessing Officer was never furnished. The assessee had shown a gross receipt of Rs. 11,21,850/- from the retail trade of garments and had offered an income of Rs.2,01,546/- from that trade u/s 44AD of the Act. The Assessing Officer noted that the entries in his bank accounts were not in commensurate with his gross receipt. He asked for the details of existence of business and relevant documents in support of the same. However, these details were never provided. Finally a show cause notice dated 22.08.2019 was issued which was also not responded by the assessee. Hence the Assessing Officer held the amount of gross receipt reduced by the income shown to be unexplained money and added to the total income of the assessee. Thus, the total income of the assessee was assessed at Rs.11,21,850/-.

5. Upon assessee's appeal, in this regard, ld. CIT (A) noted that hearing notices to the assessee have not been complied with, hence citing various decisions, ld. CIT (A) dismissed the appeal for non-prosecution. Ld. CIT (A) held that in absence of any response from the assessee, he found no reason for any change in the order of AO.

6. Against this order, assessee has filed appeal before me. I have heard both the parties and perused the records.

7. Upon careful consideration, I find that ld. CIT (A) has virtually dismissed the appeal for non-prosecution. Section 251 of the Income-tax Act, 1961 (for short 'the Act') does not empower the ld. CIT (A) to pass such order. Hence, in the interest of justice, I remit the issue to the file of ld. CIT (A). Ld. CIT (A) shall consider the issue afresh including the additional ground taken before me after giving adequate opportunity of being heard to the assessee.

8. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on this 2nd day of February, 2024.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 2nd day of February, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A).
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**