

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.3002/Del/2019
[Assessment Year : 2010-11]**

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| Vikas Surana, C/o-Amanchand Shanti Lal, Parakh Bhura Chowk, Ward No.-1, Nokha, Bikaner, Rajasthan-334803. PAN-BGQPS6485L | vs | DCIT, Central Circle-05, New Delhi. |
| APPELLANT | | RESPONDENT |
| Appellant by | None | |
| Respondent by | Shri Vivek Vardhan, Sr.DR | |
| Date of Hearing | 09.04.2024 | |
| Date of Pronouncement | 24.04.2024 | |

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A)-24, New Delhi dated 30.01.2019 for the assessment year 2010-11. The assessee has raised following grounds of appeal:-

1. *"The Ld. CIT(A) grossly erred both on facts and in law in confirming the order of Ld AO making an addition of Rs. 4,35,77,531/- to income returned by the appellant.*
2. *The Ld. CIT(A) grossly erred in law in confirming the order of Ld AO even when no show-cause was issued by it to the appellant on proposed additions and thus violated the principles of natural justice.*
3. *The Ld CIT(A) grossly erred in law in confirming the order of Ld. AO who invoked the provisions of section 68 and section 69 to the facts of appellant.*

4. *The Ld CIT(A) erred in ignoring the fact that none of the accounts with brokers pertains to appellant and that it was not confronted with any evidence as to opening and operation of such accounts by the appellant and still proceeded to make addition u/s 69 amounting to Rs. 3,98,95,000/- to the income of appellant.*
5. *The Ld CIT(A) erred in confirming the order of Ld. AO by treating Axis bank a/c no. 22610200012096 as the appellant's bank account by holding that the same was operated by it and thereby confirming addition of net credits of Rs. 33,82,472/- to the returned income of appellant.*
6. *The Ld CIT(A) grossly erred in law by ignoring the fact that appellant was not confronted with evidence as to opening and operation of Axis bank account number 22610200012096 and still confirming addition of net credits of Rs. 33,82,472/- to the returned income of appellant.*
7. *The Ld CIT(A) erred on facts in confirming the addition of Rs. 3,00,059/- credited in HDFC saving bank account when the same has already been taken in return of income filed by the appellant.”*

2. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the records that after filing the appeal, there was no representation on behalf of the assessee. Various notices were issued to the assessee by the Registry. Notices sent to the address furnished by the assessee in Form No.36, have been returned back unserved by the Postal Authority with remark “left”. The assessee has not provided any other address. Therefore, the notices directed to be served through Ld. DR and as per the letter dated 23.02.2023, it has been intimated that the notice of hearing was duly served upon the assessee. Even after service of the notice, no one has attended the hearing on behalf of the assessee. A letter dated 09.02.2024 is also placed on

record, addressed to the Assistant Registrar, ITAT Delhi Benches intimating about the service of notice. The notice of hearing has been received by one Shri Ganesh Mal Surana, uncle of the assessee. We therefore, under these facts, proceeded *ex-parte* to the assessee and adjudicate the appeal on the basis of material available on record.

3. Facts in brief of the case are that it is recorded by the lower authorities that in this case, no return of income was filed for the Assessment Year under consideration. Therefore, the case of the assessee was re-opened u/s 147 of the Income Tax Act, 1961 ("the Act") on the basis of information obtained from NCDEX regarding various transactions. The Assessing Officer ("AO") issued notice u/s 148 of the Act and same was duly served upon the assessee. In response to the notice, Ld. Authorized Representative ("AR") of the assessee filed his "Power of Attorney" before the AO. It is noted by the AO that the assessee failed to explain the transactions despite various opportunities have been provided. The return of income in response to the notice issued u/s 148 of the Act, was filed at fag end of the Assessment Year. Therefore, the AO made addition of INR 3,98,95,000/- as unexplained investment by the assessee in the commodities. Further, the AO made addition of INR 33,82,472/- in respect of unexplained cash credits in the bank account of the assessee. The AO further made addition of INR 3,00,059/- in respect of credit entry in Account No.02871930004764 maintained with HDFC Bank, Ashok Vihar Branch. Further, The AO assessed the income of the assessee at INR 4,37,27,590/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the addition and dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Ld. Sr. DR for the Revenue relied upon the orders of the authorities below and contended that the assessee failed to substantiate the source of investment and credits found in his bank account.

7. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. **Ground Nos. 1 to 4** raised by the assessee are inter-related and are against the sustaining of addition of INR 3,98,95,000/-. Ld.CIT(A) after considering the submissions of the assessee, has decided the issue by observing as under:-

5.2.2. "During the appellate proceedings the AR of the appellant has simply reiterated that the appellant did not have any knowledge of opening or operation of the commodity accounts with the aforesaid brokers. The AO in his remand report has confirmed that perusal of evidence on record reveals that the appellant was confronted with the information received from M/s Haryana Comtrade Pvt. Ltd., M/s Religare Commodities Ltd and M/s Trustline Commodities Pvt. Ltd. The response of the appellant received during the assessment proceedings has also been examined. It is seen that during assessment proceedings, the appellant plainly denied having operated the said accounts without submitting any documentary

evidence in his support. The appellant has pointed out differences in signature of the appellant in KYC documents. However, photograph and identity proof submitted belong to the appellant. The contentions of the appellant are not tenable as no remedial action has been initiated by the appellant if he believed that some forgery has been committed on him. Sufficient time has elapsed since the KYC documents were confronted to him. This proved that the accounts belong to the appellant. The appellant has merely submitted an affidavit that statement of accounts of the above mentioned brokers do not belong to him. Such affidavit has no evidentiary value in front of documentary evidences received from the above brokers.

5.2.3. In view of the above, considering the findings of the AO in the assessment order and the remand report I find that the appellant has not been able to substantiate either in the assessment proceedings or remand proceedings and not even in course of appellate proceedings that the transactions in commodities have not been done by him and the transactions do not belong to him, It is highly surprising that the appellant has not taken any remedial action if he believes that some forgery has been committed on him. The appellant has relied on just his own affidavit and simply ignored the documentary evidences obtained by the AO and confronted to him. Simple denial of the transactions through affidavit cannot help the appellant as the AO has collected enough documentary evidences to prove that the said transactions were actually done by him through the aforesaid three brokers. The appellant has simply reiterated that the documents relied upon by the AO were not confronted but the AO in his remand report has confirmed that the appellant was confronted with the information received from M/s Haryana Comtrade Pvt. Ltd., M/s Religare Commodities Ltd and M/s Trustline Commodities Pvt. Ltd. When the information was confronted to the appellant by the AO the onus shifts to the appellant to prove that the commodity transactions were

not done by him. Thus, I hold that the action of the AO in making addition of Rs.3,98,95,000/- on account of unexplained investment u/s 69 of the Act was fully justified as the source of payments remained unexplained. Therefore, the addition of Rs.3,98,95,000/- on account of unexplained investment u/s 69 of the Act made by the AO is confirmed. Accordingly, Ground Nos. 1, 2 & 3 are dismissed.”

8. In respect of the transactions in question, it is the case of the assessee that he had not transacted any commodities and documents submitted to the brokers and bank are forged. Admittedly, the assessee did not take any action against such forgery. Moreover, other evidences in the form of KYC, photograph etc. proved that the assessee had infact transacted these transactions. Thus, the finding of Ld.CIT(A) in this regard is not controverted by the assessee by placing any contrary material before us. We therefore, do not see any good reason to disturb the findings of Ld.CIT(A), the same is hereby rejected.

9. Ground Nos. **5 & 6** raised by the assessee against the addition of credit of INR 33,82,472/-

10. The finding of Ld.CIT(A) on this issue reads as under:-

5.3.2. “During the assessment proceedings as well as appellate proceedings the appellant denied transactions reported in Axis Bank Account number 226010200012096. The appellant stated that the said bank account was never operated/maintained by the appellant. In this connection I agree with the observations of the AO in his remand report that mere statement that some account was not operated by the appellant is not acceptable in view of the fact that KYC documents received from the bank clearly establish that the

account belongs to the appellant. The appellant has not been able to produce anything to the contrary. The appellant has not approached the banking authorities/ ombudsman or Economic Offences Wing, in case he wished to prove that some fraud has been committed upon him. Inaction on this aspect proves that the appellant has accepted the fact that the said account belongs to him which in fact belong to him only. The appellant has not approached any authority to collect information/ documents to counter the findings of the AO. Thus, I hold that the action of the AO in making addition of Rs. 33,82,472/- on account of unexplained credit u/s 68 of the Act was fully justified as the source of source of credit remained unexplained. Therefore, the addition of Rs. 33.82.472/- on account of unexplained credit u/s 68 of the Ac made by the AO is confirmed. Accordingly Ground Nos. 4 & 5 are dismissed.”

11. On this issue as well, the contention of the assessee before the lower authorities was that the account did not belong to him and he had not made any transaction in Account No.226010200012096 maintained with Axis Bank. The assessee has not brought any contrary material suggesting that he had taken steps by filing police complaints etc. but no such material is placed before us. Therefore, the finding of Ld.CIT(A) cannot be disturbed.

12. **Ground No.7** raised by the assessee is against the sustaining of addition of INR 3,00,059/- credit entry in the saving bank account of the assessee held with HDFC Bank Ltd.

13. The Ld.CIT(A) has given a finding on fact in para 5.4 of the impugned order. For the sake of clarity, para 5.4 is reproduced as under:-

5.4. “Ground No. 6 relates to the addition of Rs. 3,00,059/- credited in HDFC Bank Account No. 02871930004764 as unexplained credit

u/s 68 of the Act. In the said account of the appellant, the AO noticed total credits of Rs 3,00,059/- during A.Y. 2010-11. As the appellant did not provide any explanation regarding credit entries in this bank account, total of all credits entries of Rs 3,00,059/- was added to the income of the appellant as unexplained credit u/s 68 of the Act. During the appellate proceedings the AR of the appellant has contended that the appellant had properly accounted for all its receipts appearing in this account and, on such receipts have disclosed its income u/s 44AD of the Act. The AR has also argued that the addition of entire receipts of Rs. 3,00,059/- amounts to double taxation and gross violation of legal principles. However, there was no attempt on the part of the AR of the appellant to explain the source of credit entries of Rs. 3,00,059/- in the said bank account. Simple assertion of the appellant of proper accounting of all receipts appearing in the account and disclosure of income u/s 44AD of the Act cannot explain the source of credit entries of Rs. 3,00,059/- in the said bank account. The onus is on the appellant to explain source of credit entry of Rs. 3,00,059/- in the said bank account. As the appellant has utterly failed to explain the source of credit entries in the said bank account, the action of the AO in making addition of Rs. 3,00,059/- u/s 68 of the Act on account of unexplained credit is fully justified and therefore, the addition of Rs. 3,00,059/- made by the AO on this account is confirmed. Thus Ground No. 6 of appeal is dismissed.”

14. The contention of the assessee before Ld.CIT(A) was that he had accounted for these credits as he had disclosed income u/s 44AD of the Act. There is no dispute to the fact that the assessee had disclosed income u/s 44AD of the Act. However, the assessee failed to explain the source of credit entry in his bank account. The contention of the assessee is that these are the cash sales by the assessee. Admittedly, the assessee did not file any

documents in response to the notice issued u/s 148 of the Act. As per the AO, no return was filed by the assessee. Therefore, looking to the totality of the facts, the assessee ought to have explained the source of cash credits with supporting evidences. Therefore, in the light of the above, we do not interfere in the finding of Ld.CIT(A), the same is hereby rejected. Ground No.7 raised by the assessee is accordingly, dismissed.

15. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 24th April, 2024.

Sd/-

Sd/-

**(M.BALAGANESH)
ACCOUNTANT MEMBER**

**(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