

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 425/Del/2022
Asstt. Year: 2006-07

Shri Shyam Sunder Jindal, 12-A, Green Avenue, Sector-D, Pocket-III, Vasant Kunj, Delhi – 110 070 PAN AAGPJ0184N	Vs.	ACIT, Central Circle-30, New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Rohit Jain, Advocate Ms. Deepashree Rao, Advocate Shri Shivam Gupta, Advocate
Department by:	Shri Dharamvir Singh, CIT-DR
Date of Hearing:	01.04.2024
Date of pronouncement:	03.05.2024

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 11.01.2022 of the Ld. Commissioner of Income Tax (Appeals)-30, New Delhi (**"CIT(A)"**) pertaining to Assessment year (**"AY"**) 2006-07.

2. The assessee has raised the following grounds:-

"1. That the Commissioner of Income Tax (Appeals)-30 [CIT(A)] erred on facts and in law in not holding that the assessment order dated 31.12.2018, passed under section 254 r.w.s. 153A/143(3) of the Income-tax Act, 1961 ('the Act') is beyond jurisdiction, bad in law and void-ab-initio.

1.1. That the CIT(A) erred in not appreciating that the impugned order dated 31.12.2018, having been passed in blatant violation of directions/

decision of the Income Tax Appellate Tribunal ('ITAT') vide its order dated 10.04.2017, is illegal and bad in law.

- 1.2. That the CIT(A) failed to appreciate that the assessing officer had exceeded his jurisdiction in traversing beyond the mandate of the Tribunal and failed to bring on record authentic information/documents in the form of original documents received from Swiss Authorities, corroborating the existence of the alleged foreign bank account in HSBC, Geneva, which was clearly violative of the specific direction of the Tribunal.*
- 1.3. That the CIT(A) failed to appreciate that the assessing officer proceeded to merely repeat the addition made in the original assessment order on the basis of the very same unauthentic/ undated/unsigned loose papers, which was held to be not proper/ sufficient in the first round by the Tribunal to make any addition, and also being contrary to the specific mandate/ direction of the Tribunal.*
- 1.4. That the CIT(A) erred in holding that the purported information received from the French Authorities under the Double Taxation Avoidance Convention (DTAC) was verified and authentic, without appreciating that the French Authorities had no locus standi in the matter and the alleged information, if any, could not have been shared in terms of Article 26 of the India-France DTAC.*
- 1.5. That the CIT(A) erred in confirming the addition made by the assessing officer, despite categorically acknowledging the fact that "authentic" information from Swiss Authorities was, as a matter of fact, never received and reliance was being placed merely on photocopies of certain documents, which, too, remained unverified/unauthenticated till date.*
- 1.6. That the CIT(A) erred in not appreciating that the assessing officer completely failed in bringing on record any authentic document/information to corroborate the allegation that the appellant held any foreign bank account with HSBC, Geneva.*
- 1.7. That the CIT(A) failed to appreciate that the entire addition of Rs.69,07,414 was made on suspicion and surmises, de-hors any incriminating material found/seized during the course of search at the premises of the appellant.*
- 1.8. That the CIT(A) erred in not appreciating that the initial assessment order dated 27.02.2015, passed under section 153A was barred by limitation as prescribed in section 153B(1)(viii) of the Act.*

- 1.9. *That the CIT(A) erred in summarily dismissing the appeal of the appellant, without considering the detailed submissions and arguments made during the course of appellate proceedings.*

Without prejudice:

2. *That the CIT(A) erred in confirming the addition of Rs. 69,07,414 (US\$ 155923.57 @Rs.44.30), being the alleged peak balance in some alleged account of HSBC Bank, Geneva made by the assessing officer (by erroneously treating some loose unauthentic sheets as bank statement) alleging that the so-called bank account belongs to the appellant and the amounts appearing therein represented its undisclosed/unexplained income.*

- 2.1. *That the CIT(A) erred in drawing adverse inference on the basis of some general/ vague particulars appearing in some unsigned/ undated/ unauthenticated loose photocopied sheets of papers, allegedly received illegally from French authorities, not appreciating that the same does not constitute evidence in the eyes of law.*

- 2.2. *That the CIT(A) failed to appreciate that (a) the assessing officer erroneously treated some loose unauthentic sheets as bank statement of a foreign bank account; (b) the above alleged foreign bank account did not belong to the appellant; (c) none of the deposits, as alleged, related to the appellant; and (d) no transaction was made by the appellant, and the above addition made in the hands of the appellant is without any evidence or basis.”*

3. This is the second round of the quantum proceedings.

4. Briefly stated, in the first round, the assessment for AY 2006-07 was completed on 27.02.2015 on total income of Rs. 76,13,144/- under section 153A/143(3) of the Income Tax Act, 1961 **(the “Act”)** including therein addition of Rs. 69,07,414/- on account of peak balance maintained by the assessee with HSBC Bank, Geneva. The assessee challenged the said addition before the Ld. CIT(A) who vide order dated 24.08.2016 dismissed the assessee’s appeal. The assessee filed second appeal before the Tribunal against the said order of the Ld. CIT(A). The Tribunal vide its order dated 10.04.2017 in ITA No. 5448/Del/2016 set aside the case to the Ld.

Assessing Officer (“AO”) to adjudicate the matter afresh. The assessee preferred further appeal against the aforesaid order of the Tribunal before the Hon’ble Delhi High Court who vide order dated 13.12.2023 in ITA No. 612/2017 quashed the assessment on the ground that no incriminating material was found during the course of search carried out on the assessee and further that the Revenue was unable to place on record any reliable material to establish that the assessee was indeed the owner of alleged foreign bank account in HSBC Bank, Geneva. The relevant observations of the Hon’ble Delhi High Court are contained at pages 54 to 61 of the assessee’s Compilation.

5. The second round of the proceedings commenced with the Ld. AO’s action to give effect to the order (supra) of the Tribunal which culminated in completion of fresh assessment on 31.12.2018 under section 254/153(A)/143(3) of the Act on total income of Rs. 76,13,140/- including therein addition of Rs. 69,07,414/- as made in assessment order passed by the Ld. AO on 27.02.2015. This was challenged before the Ld. CIT(A) but without success. This has brought the assessee again in the second round before the Tribunal.

6. We have heard the Ld. Representative of the parties and perused the records. As stated earlier, against the order dated 10.04.2017 of the Tribunal in first round in ITA No. 5448/Del/2016 the assessee had filed appeal before the Hon’ble Delhi High Court who quashed the said Tribunal’s order vide order dated 13.12.2023 observing as under:-

“15.1 The absence of incriminating material has persuaded us to take this view. As indicated hereinabove, no incriminating material, even according to the respondent/revenue, was found during the search

15.2 Furthermore, the material on which the respondent/revenue relied on was not of a quality that would persuade us to hold that the stand taken by the appellant/assessee, which is, that he did not maintain an account with the Geneva branch of HSBC Bank, was incorrect.

16. *Given the conclusion that we have arrived at and the position of law enunciated in the judgments referred to hereinabove, i.e., Kabul Chawla and Abhishar Buildwell P. Ltd., that a completed assessment can be reopened only if incriminating material is found during the course of search under Section 132 of the Income-tax Act, 1961, the question of law is answered in favour of the appellant/assessee and against the respondent/revenue.*

16. *The appeal is thus, disposed of, as indicated above. The impugned order dated 10.04.2017 passed by the Tribunal is set aside.*

16.1 *Consequently, the impugned addition shall stand deleted." (emphasis supplied)"*

7. It is therefore manifest that the original assessment order made in the first round stands quashed by the Hon'ble Delhi High Court vide its order (supra). Therefore, the orders of Ld. AO/CIT(A) do not have any legs to stand. Accordingly, the orders of Ld. AO/CIT(A) made by them in the second round of proceedings are hereby quashed as a consequence.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 3rd May, 2024.

**Sd/-
(G.S. PANNU)
VICE PRESIDENT**

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 03/05/2024

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi