

**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. 1442/Del/2022
Asstt. Year: 2007-08

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 29.04.2022 of the Ld. Commissioner of Income Tax (Appeals), New Delhi ("**CIT(A)**") pertaining to Assessment Year ("**AY**") 2007-08.

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 20.04.2021, 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 adjudicating the appeal in undue haste, without affording opportunity of personal hearing to the appellant.*
- 1.2 *That the CIT(A) erred in not appreciating that the impugned order dated 20.04.2021, having been passed in blatant violation of directions/ decision of the Income Tax Appellate Tribunal ('ITAT') vide its order dated 03.09.2019, is illegal and bad in law.*
- 1.3 *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.*
- 1.4 *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.*
- 1.5 *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.*
- 1.6 *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.*
- 1.7 *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.*
- 1.8 *That the CIT(A) failed to appreciate that the entire addition of Rs.37,675 was made on suspicion and surmises, de-hors any incriminating material found/seized during the course of search at the premises of the appellant.*
- 1.9 *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 and*

consequently, the impugned order is illegal, bad in law and liable to be quashed.

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

Without prejudice:

2. *That the CIT(A) erred in confirming the addition of Rs. 37,675 (US\$ 817.24@46.10), being the alleged difference in 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.*
 - 2.3. *That the CIT(A) failed to appreciate that the primary onus of establishing that the appellant had made any deposits in a foreign bank account was on the assessing officer and not the appellant.*
3. *That the CIT(A) erred confirming the levy of interest under sections 234A and 234B of the Act.”*
3. This is the second round of quantum appeal proceedings.
4. Briefly stated, assessment in the first round was completed under section 153A/143(3) of the Income Tax Act, 1961 (**the “Act”**) for AY 2007-08 on 27.02.2015 on total income of Rs. 14,40,786/- including therein addition of Rs. 37,675/- on account of peak balance maintained by the assessee with HSBC Bank, Geneva, not disclosed in the return. Appeal filed

by the assessee against the said addition before the Ld. CIT(A) was not successful. The assessee went in second appeal thereagainst before the Tribunal. Vide its order dated 03.09.2019 in ITA No. 5449/Del/2016 the Tribunal set aside the matter and restored it to the file of the Ld. Assessing Officer (**“AO”**) for fresh adjudication.

5. The second round to give effect to the order (supra) of the Tribunal commenced with issue/service of notice dated 22.12.2020 under section 142(1) of the Act. The Ld. AO completed the assessment on 20.04.2021 on the originally assessed income of Rs. 14,40,786/- repeating therein the aforesaid addition of Rs. 37,675/- originally made. The appeal filed before the Ld. CIT(A) challenging the addition of Rs. 37,675/- stands dismissed vide CIT(A)'s order dated 29.04.2022 in Appeal No. 10002/2006-07. Aggrieved thereby, the assessee is in appeal before the Tribunal and all the grounds relate thereto.

6. The Ld. AR submitted that identical addition was made in the first round in AY 2006-07 which was confirmed by the Ld. CIT(A) but when the matter was taken before the Tribunal, the issue was restored back to the file of the Ld. AO with direction to him to adjudicate the matter afresh. in AY 2007-08 in the same manner as in the AY 2006-07. The Ld. AR pointed out that against the said direction of the Tribunal, the assessee filed further appeal in AY 2006-07 before the Hon'ble Delhi High Court. The appeal of the assessee has since been decided vide order dated 13.12.2023 in ITA No. 612/2017 whereby the Hon'ble High Court quashed the assessment order. A copy thereof is placed at pages 54-61 of the assessee's Compilation. The Ld. AR urged that similar addition made by the Ld. AO and confirmed by the Ld. CIT(A) in AY 2007-08 in second round deserves to be quashed following the decision (supra) of the Hon'ble Delhi High Court.

7. The Ld. CIT-DR had nothing to say but to support the order of the Ld. AO/CIT(A).

8. We have considered the submission of the parties and perused the records. We find that the contention of the Ld. AR cannot be brushed aside. Perusal of the decision (supra) of the Hon'ble Delhi High Court reveals that the original assessment proceedings framed under section 153A for AY 2006-07 have been quashed by the Hon'ble Court on the basis that no incriminating material was found during the course of search carried out on the assessee and that Revenue could not place on record any reliable material to establish that the assessee was indeed the owner of alleged foreign bank account in HSBC Bank, Geneva. It is pertinent to quote below the observations of the Hon'ble Delhi Court in the decision (supra) in assessee's own case for AY 2006-07.

“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 Abhisar 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.”

9. Since similar addition has been made by the Ld. AO in second round in AY 2007-08 as well and has been confirmed by the Ld. CIT(A), we hold that the decision (supra) of the Hon'ble Delhi High Court pertaining to AY

2006-07 applies squarely to the case of the assessee in respect of similar addition made/confirmed by the Ld. AO/CIT(A) in AY 2007-08. Consequently, following the decision (supra) of the Hon'ble Delhi High Court, the impugned addition is hereby deleted.

10. In the result, the appeal of the assessee stands 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