

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

**Before Sh. Kul Bharat, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 325/Del/2024 : Asstt. Year : 2012-13**

**&**

**SA No. 47/Del/2024 : Asstt. Year : 2012-13**

Gaurav Dhanrajgir Verma, R-5/120, Flat No. G-1, Hind Chowk, Raj Nagar, Ghaziabad-201002	Vs.	Income Tax Officer, Ward-1(2), Ghaziabad-245101
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AFWPV5751Q</b>		

**Assessee by : Sh. C. S. Aggarwal, Sr. Adv. &  
Sh. Uma Shankar, Adv.**

**Revenue by : Sh. Vivek K. Upadhyay, Sr. DR**

**Date of Hearing: 11.03.2024**

**Date of Pronouncement: 10.05.2024**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal and the Stay Application has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 17.01.2024.

2. Following grounds have been raised by the assessee in this appeal:

*"1. That the learned CIT(A) has erred both on facts and in law in confirming the order of assessment, despite the fact that the assessment made was without jurisdiction.*

*2. That the learned CIT(A) has erred in confirming the initiation of proceedings u/s 147 of the Income Tax Act in the absence of any material for a reason to believe that, there has been an escapement of income. The initiation of proceedings without satisfying the pre-conditions is untenable both on facts or in law. The learned CIT(A) ought to have thus annulled such an assessment.*

3. That the learned CIT(A) has failed to appreciate that the assessment had been made by the AO without providing to the assessee a fair and reasonable opportunity of being heard. That infact, no show cause notice had been issued by the AO before framing the impugned assessment proposing to make the addition of Rs. 1,92,51,000/-.

4. That the learned CIT(A) has failed to comprehend that from June 2019 to 08.10.2019, the assessee was at Ranchi for the treatment of his father and as such in the circumstances of the case, he ought to have held that the assessee had not been given a fair and proper opportunity of being heard and the assessment has been made in haste which is liable to be struck down.

5. That the learned CIT(A) has failed to comprehend that the income of the assessee had to be computed by invoking the provisions of section 44AD of the Act and as such the income computed by the AO was highly arbitrary and wholly unjustified.

6. That the learned CIT(A) has further failed to appreciate that the addition made by the AO on the facts and circumstances of the case was totally untenable. In fact, despite the fact the assessee had led satisfactory evidences before the learned CIT(A) {as is evident from his appellate order in para 5.1 (Pg. 7)}, he ought to have deleted the additions made by the AO of Rs. 1,08,78,000/- and of Rs. 83,73,000/- which aggregated to Rs. 1,92,51,000/-.

7. That the learned CIT(A) has further failed to appreciate that the learned AO out of the total credits aggregating to Rs. 2,44,08,000/-, on the same very material since was satisfied with the credits aggregating to Rs. 52,08,000/-. The learned CIT(A) ought to have held that, the AO was not justified in making the addition of Rs. 1,92,51,000/-as unexplained. The learned AO could not have taken two different stands, when he accepted the credits in part on the same very material.

8. The learned CIT(A) has erred both on facts and in law in failing to comprehend the circumstances under which the assessee was unable to furnish supporting documents in support that the credits were fully explained and there was no undisclosed investment made warranting the addition made of the sums credited in the bank account.

9. That the learned CIT(A) has further erred in failing to appreciate the application made before him under Rule 46A was not merely an application under rule 46A(b) of Income Tax Rules but was an application made under Rule 46A and also did satisfy the conditions of clauses (b) and (c) of Rule 46A of the Income Tax Rules.

*10. The learned CIT(A) in any case ought to have exercised his powers under Rule 46A(4) and ought to have admitted the supporting evidences furnished by the assessee.*

*11. That the learned CIT(A) has failed to appreciate that Rule 46A of Income Tax Rules is only an aid to enable the CIT(A) to arrive at the truth of the matter in the appeal and is not intended for shut-out evidence which is relevant for purpose of deciding an appeal in a fair and just manner. (See Suresh Kumar Gupta vs. ITO, 14 TTJ 470 (Del.))*

*12. That the learned CIT(A) has failed to appreciate that in the circumstances of the case, the AO ought to have in any case issued the notices u/s 131 of the Act before having made the assessment and representing credits through account payee cheques in the bank account as per the mandate of the High Court of Allahabad in the case of Nathu Ram Premchand vs. CIT, reported in 49 ITR 561."*

3. The Assessing Officer made addition of Rs.1.92 Cr. u/s 68 of the Income Tax Act, 1961 owing to non-compliance and non-furnishing of the details. Aggrieved, the assessee filed appeal before the Id. CIT(A) who dismissed the appeal of the assessee. While dismissing the appeal, the Id. CIT(A) held as under:

*"On appraisal of these details, I find that apart from the period when Appellant's father was admitted in Bangalore in April 2018, there is nothing to show that his father was either admitted in any hospital or was severely ill which required day to day care by the Appellant. It is very common in India that the son takes care of his ageing parents and tries to spend maximum time with them and take care of them. This does not, however, mean that the son stops doing his day to day activities, inter alia, going to office/carrying out the business activities. It is further observed that the AO has reopened the assessment by sending notice u/s 148 of the Act on 28/03/2019 and the assessment order has been passed on 7/10/2019. The Appellant has not furnished even a single medical certificate*

*showing that his father was admitted in any hospital during this period. Taking day to day care of one's ageing parents cannot be a ground for non-compliance to the proceedings initiated under the IT Act. In any case, AR of the Appellant has attended before the AO and was aware of details required to be submitted. The Appellant could have provided the details to the AR. All these details seem to be within the possession of the Appellant himself e.g. bank statements books of accounts, confirmation from the company in which Appellant is a director. Some of these details were required to be obtained from Appellant's close relatives and there was no reason why these could not have been obtained in time. In view of the same, I hold that the Appellant has not been able to establish that he was prevented from sufficient cause to furnish these details in the course of assessment proceedings. Thus, I hold that the Appellant is not covered under Rule 46A(1)(b). I further find that the Appellant is also not covered under the remaining other three limbs of Rule 46A(1). In view of the same, I decline to admit the additional evidences under Rule 46A(1) of the IT Rules."*

4. On going through the record, we find that the assessee was prevented by sufficient cause to furnish the evidences during the assessment proceedings. Hence, the matter is remanded to the file of the Assessing Officer to consider all the evidences and adjudicate the case on merits of the issue *de-novo*.

5. Since, the appeal of the assessee stands adjourned, the Stay Application of the assessee is dismissed as infructuous.

6. In the result, the appeal of the assessee is allowed for statistical purpose and the Stay Application of the assessee is dismissed.

Order Pronounced in the Open Court on 10/05/2024.

Sd/-

**(Kul Bharat)**  
**Judicial Member**

**Dated: 10/05/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**