

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

**Before Dr. B. R. R. Kumar, Accountant Member,
Sh. Anubhav Sharma, Judicial Member**

ITA No. 158/Del/2022 : Asstt. Year: 2011-12

ACIT, Circle-2(1)(1), New Delhi	Vs	Rajiv Kumar, Flat No. 403, Dwarka, Sector-6, New Delhi-110075
(APPELLANT)		(RESPONDENT)
PAN No. BKEPK5135P		

**Assessee by : Sh. S. K. Bajpai, CA
Revenue by : Sh. Vizay B. Vasanta, CIT-DR**

Date of Hearing: 09.04.2024	Date of Pronouncement: 28.06.2024
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ORDER

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

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-43, New Delhi dated 29.10.2021.

2. Following grounds have been raised by the Revenue:

"1. On the facts and circumstances of the case Ld. CIT(A) has erred in deleting the addition of Rs. 15,50,00,000/- on the basis of additional evidence submitted by the assessee and without calling for any remand report under Rule 46A.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 8,79,301/- on the basis of additional evidence without conducting a third party verification and without calling for remand report from the assessing officer which is in clear violation of Section 295(2)(mm) of the Income Tax Act, 1961 read with Rule 46A of the Income Tax Rules, 1962.

3. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in allowing penalty u/s 271(1)(b) of the Act without considering the show cause notice u/s

271(1)(b) was issued to the assessee due to his non-cooperative attitude.

4. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in allowing penalty u/s 271(1)(b) of the Act without considering the show cause notice u/s 271(1)(b) was issued to the assessee due to his non-cooperative attitude.

5. Whether on the facts and circumstances of the case, Ld. CIT(A) has erred in allowing the penalty u/s 271(1)(c) of the Act without considering that the assessee has failed to furnish any detail even after availing ample opportunities."

Brief facts of the case:

3. The assessee is a NRI. Based on the TEP was received in ITO ward -43(5), New Delhi alleging that Sh. Rajeev Kumar has entered into a property transactions and paid Rs. 15,50,00,000/- for property, which were later forfeited as the transaction could not materialize and later on returned in cash to the assessee and based on the allegation that the assessee has brought funds from UEA and had also investments in other properties and Delhi and UP, the case of the assessee was reopened u/s 147 and owing to lack of response from the assessee, order u/s 144/148 has been passed by the Assessing Officer determining the total income at Rs.15,50,00,000/- .

4. Aggrieved, the assessee filed appeal before the Id. CIT(A) who deleted the addition. Aggrieved, the assessee filed appeal before the Tribunal.

5. Heard the arguments of both the parties and perused the material available on record.

6. We find that the Id. CIT(A) has deleted the addition as there was no *iota* of evidence with the Income Tax Department that the assessee has incurred expenses of Rs.15,50,00,000/- for the intended purchase of property or the assessee has received back in cash the equivalent amount except the TEP.

7. For the sake of ready reference, the order of the Id. CIT(A) is reproduced as under:

"The AO in his assessment order has stated that a Tax evasion petition was received in ITO Ward-43(5), New Delhi had alleged that Sh. Rajeev Kumar has paid Rs.15,50,00,000/- in respect of property transaction, which were later forfeited as the transaction could not materialize and later the amount was returned in cash to the Appellant. In this regard the Authorized representative of the assessee submitted that Assessee has not given any amount of Rs.15,50,00,000/- during A.Y. 2011-12 to anyone and has also not received any amount in cash. It can also be verified by Appellant's Bank Account (Account no.4082000500008160 with Punjab National Bank, New Delhi, and copy of the same has been provided. Further ITO also has not provided Appellant with any proof regarding payment/receipt of such amount. Therefore such addition of Rs.15,50,00,000/- to income of Appellant is arbitrary and bad in law. Appellant is relying on case of K.P. Varghese vs. The Income Tax Officer DI. 04 September, 1981, in which Supreme Court of India held that "the burden of proving an understatement or concealment of receipt is on the Revenue, which may be discharged by it by establishing facts and circumstances from which reasonable inference can be drawn that the Assessee has not correctly declared or disclosed the consideration received by him and there is understatement or concealment of the consideration in respect of the transfer." The Apex Court also stated that "Income Tax Officer could have no reason to believe that any part of the income of the Assessee had escaped assessment so as to justify notice u/s 148. So keeping in mind the view taken by Supreme Court of India. the ratio in the

case of KP Vargheese vs. CIT being similar & can be applied in the case of the applicant.

After considering the bank statement no such debit and credit entries have been found in the bank statement to justify the addition made by AO of Rs.15,50,00,000/- on account of advance given against the purchase of immovable property and after examination of bank statement its clear that the Appellant has neither paid nor received Rs. 15,50,00,000/- for purchase of any immovable property from the Punjab National Bank during the year under consideration. The Assessing officer has not mentioned or attached any evidence to justify the addition of Rs.15,50,00,000/-. The addition is merely based on TEP received in the office of ITO Ward-43(5) which does not contain any specific details of property purchased, payment details, Bank details or any other corroborative evidence to justify the transaction.

Hence after considering the above factual & legal position and after complete scrutiny of bank accounts it is clear that the assessee has neither paid nor received any amount for purchase/ sale of immovable property. Hence this ground of appeal is allowed."

8. Since, no evidence contra has been brought even before us against the adjudication of Id. CIT(A) by the Revenue, we decline to interfere with the order of the Id. CIT(A).

9. Further, the Revenue has taken up the ground of deleting the addition of Rs. 8,79,301/-. On going through the record and order of the Id. CIT(A), we find that the AO has obtained the bank statement from Punjab National Bank A/c No. 408xxxx160 wherein the assessee has earned interest Rs.49,613/- and credit of Rs.27,000/- and expenses of Rs.8,02,688/- were found by the AO. The Id. CIT(A) held that the interest is not chargeable as the account is an NRE account and hence interest is not taxable. The Id. CIT(A) has held that an amount of

Rs.75,517/- has been paid as LIC premium and the remaining amount was paid on account of his daughters college fee and the sources for the earning and the sources have been the income earned in Dubai as the account deposits in the NRE account are from Dubai. Since, the sources have been proved and the interest is exempt from tax, we decline to interfere with the order of the Id. CIT(A).

10. In the result, the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 28/06/2024.

Sd/-

(Anubhav Sharma)
Judicial Member

Sd/-

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

Dated: 28/06/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR