

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

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 765/DEL/2024
Assessment year: 2011-12**

Davinder Kumar Yadav, C/o N.C. Garg, CA, Mal Godam Road, Rohtak-124001. PAN: ADVPY 8094 J	<u>Vs</u>	Income Tax Officer, Ward-1, Rewari.
APPELLANT		RESPONDENT
Assessee represented by	Shri Lalit Mohan, CA	
Department represented by	Shri Vivek Kumar Upadhyay, Sr. DR	
Date of hearing	01.07.2024	
Date of pronouncement	05.07.2024	

ORDER

PER SAKTIJIT DEY, VP:

This is an appeal, by the assessee, against order dated 11.01.2024 passed by National Faceless Appeal Centre (NFAC), Delhi pertaining to assessment year 2011-12.

2. Though, multiple grounds have been raised by the assessee in the memorandum of appeal, however, basic grievance of the assessee is against ex

parte disposal of the appeal by the First Appellate Authority without considering the submissions made and evidences furnished by the assessee.

3. We have considered rival submissions and perused the material on record. Briefly, the facts are, the assessee is a resident individual. Based on certain information received, indicating that income assessable to tax in the assessment year under disputed has escaped assessment, the Assessing Officer initiated proceedings u/s 147 of the Income Tax Act, 1961 (the "Act"). In response to the notice issued u/s 148 of the Act, the assessee filed his return of income on 24.08.2018 declaring income at Rs. 1,04,460/-. In course of assessment proceedings, the Assessing Officer noticed that in the year under consideration the assessee had deposited cash amounting to Rs. 45,00,000/- in his account maintained with Gurgaon Gramin Bank. He, therefore, called upon the assessee to explain the source of such cash deposit. Alleging that the assessee could not furnish proper explanation regarding the source of cash deposit, the Assessing Officer added back the amount of Rs. 45,00,000/-. Further, he found that during the year under consideration the assessee along with another person, namely, Shri Naresh Kumar had purchased land for a consideration of Rs. 1,20,00,000/-. The said land has been sold by the assessee after plotting. However, sale consideration has not been disclosed in the return of income. He further noticed that in course of assessment proceedings of one Shri Gopi Chand, who has purchased a plot of land

sold by the assessee, it was found that the cost of land sold was Rs. 2,25,000/- per marla. Based upon these information the Assessing Officer computed the sale consideration of the total plot at Rs. 1,30,50,000/-. In this context he noticed that after reducing the cost of acquisition the total profit derived from sale of land was Rs. 28,26,128/-, which, according to Assessing Officer, had to be treated as income of the assessee from business. Besides the above, he found that in the year under consideration the assessee had received an amount of Rs. 1,61,40,000/- from one Shri Tarun and Rs. 38,60,000/- from Shri Arun through cheque. He, therefore, called upon the assessee to explain as to why the total amount of 2,00,00,000/- should not be treated as unexplained cash credit of the assessee. Though, the assessee furnished his explanation objecting to the proposed additions, however, the Assessing Officer remained unconvinced. Ultimately he made total addition of Rs. 2,98,71,128/-. Though, the assessee contested the aforesaid additions by filing an appeal before the First Appellate Authority, however, the additions were confirmed.

4. Before us it is specific plea of the assessee that before the First Appellate Authority the assessee had furnished a detailed submission with all documentary evidences explaining the source of the amount received, which has been added by the Assessing Officer. He submitted that without considering the submissions made and evidences furnished, the First Appellate Authority has sustained the

additions. Thus, he submitted that the issues raised in the appeal should be restored back to the Assessing Officer for de novo adjudication after considering the submissions made and evidences furnished by the assessee.

5. Learned Departmental Representative, though, supported the order of the First Appellate Authority, however, he submitted that issue can be restored back to the Assessing Officer.

6. We have considered rival submissions. We find that various additions have been made by the Assessing Officer primarily due to lack of evidences. However, it is the specific pleading of the assessee before us that in course of proceedings before the First Appellate Authority the assessee had not only furnished detailed submissions, but has also furnished various supporting evidences. In this context he has drawn our attention to the submissions filed before the First Appellate Authority placed at pages 10-14 of the paper book along with documentary evidences including confirmations, bank statements, assessment orders of the creditors etc., placed at pages 15 to 34 of the paper book. On a perusal of the impugned order of the First Appellate Authority it is observed that assessee's appeal was disposed of ex parte alleging that the assessee did not comply with the notices of hearing issued from time to time. He has further stated that the assessee has not filed any written submissions, whereas, it is the case of the assessee that not only detailed written submissions were filed before learned First Appellate

Authority, but all supporting evidences were also furnished. Be that as it may, fact remains that written submissions along with evidences stated to have been filed before the First Appellate Authority have not at all been examined. Since the submissions of the assessee and evidences qua the additions are available on record before us and admittedly, have not been examined either by the Assessing Officer or by the First Appellate Authority, we are of the view that they require examination keeping in view the quantum of addition made by the Assessing Officer. Therefore, we are inclined to restore all the issues raised by the assessee in the present appeal to the file of the Assessing Officer for de novo adjudication. Grounds are allowed for statistical purposes.

7. In the result, appeal is allowed for statistical purposes.

Order pronounced in open court on 05.07.2024.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Dated:05.07.2024.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR

