

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' : NEW DELHI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.2408/DEL/2023
(Assessment Year: 2012-13)**

Bajrang Lal Muhal,
973/B, Shalimar Garden Extn. 1,
Sahibabad,
Ghaziabad – 201 005 (Uttar Pradesh).

**(PAN : AOMPM4148M)
(APPELLANT)**

vs.

ITO, Ward 2(1)(5),
Ghaziabad.

(RESPONDENT)

ASSESSEE BY : Shri Deepak Upadhyay, CA
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 08.07.2024
Date of Order : 11.07.2024

ORDER

This appeal by the assessee is directed against the order of the ld. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 10.06.2023 for the assessment year 2012-13.

2. Grounds of appeal taken by the assessee read as under :-

“1. The assessment order passed by ld. Assessing Officer is bad in law.

2. The assessing officer (AO) has erred in making addition of Rs.10,19,548/- as unexplained investment without considering the fact, circumstances and materials available on record.

3. Hon’ble CIT (A) has erred in confirming the assessment order passed by Assessing Officer without considering the fact, circumstances and material available on record.”

3. At the outset, it is noted that there is a delay of 15 days in filing the appeal. The delay is attributable due to the health problem of the legal

counsel. Upon careful consideration and hearing both the parties, I condone the delay in filing the appeal.

4. In this case, in an order under section 144 of the Income-tax Act, 1961 (for short 'the Act'), the AO passed the following order :-

“ Notice under section 148 of the Income Tax Act, 1961 was issued to the assessee on 28.03.2019 as the assessee failed to explain the source of credit card payments of Rs. 10,19,548/- in response to notice issued u/s 133(6) dated 02.01.2019. But no compliance of notice under section 148 has been made by the assessee. Subsequently, a notice under section 142(1) dated 07.08.2019 was issued fixing compliance on 16.08.2019 which also remained un-complied with. However, on 13.09.2019, Sh. Amit Jain, Advocate filed a letter along his POA stating that the assessee works for a Transporter TCI Co. which belongs to Haryana and take care of transporters UP Border, Ghaziabad Office. The assessee deposit the cash amount in the account to refill the petro and bear the running expenses of the truck on behalf of the Co. But, no evidence regarding his employment with the said company or company's cash book or company's confirmation in this regard has been filed. The assessee has also not filed the return of income for the AY. 2012-13. Under the circumstances, notice under section 142(1) read with section 144 was issued on 23.11.2019 fixing hearing on 02.12.2019, but on the date fixed neither the assessee attended nor furnished any supportive evidence for his contention raised.

2. Under the circumstances, the assessment is being completed on the basis of facts and material available on record. Since, the assessee failed to furnish any explanation with regard to source of credit card payments, in as much as failed to furnish return of income in response to notice under section 148, the credit card payments as per detailed below totaling to Rs.10,19,548/- are held unexplained investment by the assessee and added to the income of the assessee under section 69 of the I.T. Act, 1961.

S.No.	Payment made.	Name of the Bank
1.	Rs.2,03,757/-	SBI Cards and Payments Services Pvt. Ltd.
2.	Rs.5,18,619/-	HDFC Bank
3.	Rs.2,97,192/-	Standard Chartered Bank

3. Assessment is accordingly completed on total income of Rs. 10,19,5501- in round figure u/s 147/144 of the Income Tax Act, 1961. Issue notice of demand and challan. Charge Interest u/s 234A and 234B. Penalty notice u/s 271(1)(c) for concealing the particulars of income is being issued separately.”

5. Upon assessee's appeal, ld. CIT (A) upheld the order of the AO.

6. Against the above order, assessee has filed appeal before the ITAT, I have heard both the parties and perused the records.

7. Ld. Counsel for the assessee submitted that the assessee is an employee in a transport company. Assessee needs to spend for the expenditure on behalf of the transport company through his credit card which is afterwards reimbursed. He submitted that assessee could not present the case before the AO and presentation before the ld. CIT (A) was also not appropriate. He prayed that in the interest of justice, an opportunity may be granted to the assessee before the AO to canvass the case properly.

8. Ld. DR for the Revenue did not have any serious objection to this proposition.

9. Accordingly, in the interest of justice, I remit the issue to the file of AO. AO shall consider the issue afresh and pass appropriate order after giving the assessee an opportunity of being heard.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 11th day of July, 2024.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 11th day of July, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**