

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

**BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1982/Del/2023
(ASSESSMENT YEAR 2010-11)**

Arvind Pandey C-204, Sishpal Vihar Raheja Vihar Complex, Sec-49 Sohna Road Gurgaon-122001 Haryana PAN-AIUPP1981D	Vs.	Income Tax Officer Ward-1(2) Gurgaon
(Appellant)		(Respondent)

Assessee by	Shri Shivam Gupta, CA
Respondent by	Shri Om Prakash, Sr. DR
Date of Hearing	26/06/2024
Date of Pronouncement	24/07/2024

ORDER

PER S.RIFAUR RAHMAN, AM:

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 10/05/2023 for Assessment Year 2010-11.
2. The brief facts of the case are, based on the information received by the Assessing Officer that assessee has made cash

deposit of Rs.23,00,000/- in his Saving Bank Account with State Bank of Patiala. From the ITD data base, the Assessing Officer found that assessee has not filed his return of income for Assessment Year 2010-11. A letter dated 04/09/2014 was issued to the assessee to explain the nature and source of cash deposit in his bank account. It was observed that assessee has not filed his return of income for the impugned Assessment Year and it is a failure on the part of the assessee to disclose his income. Accordingly, he came to the conclusion that there is escapement of income. Accordingly, notice was issued u/s 148 of the Income Tax Act, 1961 ('the Act' for short).

3. Further, the Assessing Officer observed that the assessee is a salaried employee and as per the information available with the Department, assessee has deposited cash of Rs.23,00,000/- in his Saving Bank Account and notice u/s 148 dated 25/03/2017 was sent to assessee's email dated 22/06/2017. In response, the assessee requested the Assessing Officer to transfer his case record to Hyderabad as he has shifted to Hyderabad. Accordingly,

the case record was transferred to Hyderabad to the present ITO, Ward-12(3), Hyderabad. Several notices were issued to the assessee and there is no response from the assessee side. Accordingly, the assessment was completed u/s 144 of the Act after issue of notice u/s 144 to the assessee. Since, no response, the cash deposit made by the assessee during the year was added to the income of the assessee.

4. Aggrieved with the above order, the assessee preferred an appeal before the NFAC, Delhi and filed the ground of appeal and statement of facts. After considering the statement of facts submitted by the assessee, the Ld. CIT(A) observed that the assessee has received cash against sale of plot. The Ld. CIT(A) observed that two issues are involved in this case, first no computation of capital gain/loss was reported by the assessee and second, section 269SS of the Act was inserted by the Finance Act, 2017, therefore, receipt of cash to the tune of Rs.23,00,000/- cannot be accepted. He observed that in grounds of appeal, the assessee has submitted that fresh evidence will be submitted for consideration under Rule 46A of the IT Rules, however, nothing

was submitted. Since, no response from assessee for various notices of hearing, the Ld. CIT(A) dismissed the appeal filed by the assessee.

5. Aggrieved with the above order, the assessee is in appeal before us raising the following grounds of appeal:-

“1. That the CIT(A) NFAC was not justified in dismissing the appeal under the maxim Vigilantibus ennon dormientibus jura suveniunt without affording assessee with sufficient and reasonable opportunity.

2. That the ld. CIT(A) while disposing the appeal has failed to consider the written submissions filed by the appellant on 18/11/2019 thus denying the assessee natural justice.

3. That the proceeding u/s 147/146 have been wrongly initiated by the AO and hence are bad.

4. That the order passed by the AO Hyderabad is bad as the AO Hyderabad was ceased of the jurisdiction after request for transfer of case to ITO Gurgaon was made by the assessee on 11/12/2017.

5. That the AO was not justified in making an addition of Rs.23,00,000/- deposited in cash in bank account, without appreciating the facts and submissions of the case.

6. That the assessee is not hit by provisions of section 269ST of 2017 as observed by CIT(A).

7. That the order passed by the Ld. CIT(A) as well as the AO is against law and facts of the case.

8. The appellant craves for leave to add and amend the grounds of appeal during the course of the appellant proceedings.”

6. At the time of hearing, the Ld. AR submitted that assessee does not prefer to press the ground Nos.1 to 4. The Ld. AR

submitted on merit that assessee has sold a property on 16/11/2009 and made cash deposit on 27/11/2009. He submitted that assessee has source for making deposit to the extent of Rs.18,00,000/- and balance of Rs.5,00,000/- out of cash withdrawal from its bank account. Since, assessee has not appeared before the lower authorities, accordingly, he prayed that assessee may be given an opportunity to submit the relevant information before the AO. Accordingly, he prayed that the issue may be remitted back to the AO to verify the relevant document and information with the assessee.

7. On the other hand, the Ld. DR submitted that assessee has not utilized the various opportunities given by the lower authorities and objected to grant of another opportunities to the assessee.

8. Considered the rival submissions and material placed on record, I observed that assessee has made a cash deposit of Rs.23,00,000/- in his bank account and not filed any return of income and also not responded to various notices issued by the Assessing Officer and also the Ld. CIT(A). It is gross failure on the

part of the assessee not to pursue to case before the lower authorities. For the sake of justice, I am inclined to impose cost of Rs.5,000/- and I direct accordingly to deposit the same in the PM Care Fund. For the sake of complete justice, I am inclined to remit this issue back to the file of the Jurisdictional Assessing Officer to verify the claim of the assessee as per law after giving proper opportunity of being heard to the assessee. Accordingly, the appeal filed by the assessee is allowed for statistical purposes.

9. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced on 24th July, 2024.

Sd/-

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 24/07/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI