

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 974/DEL/2024**  
**Assessment Year: 2012-13**

Birender Pal Bhatia, 1415, Sector-14, Faridabad.  PAN- AIWPB 7252 K	<u>Vs</u>	Income-tax Officer, (OSD)-1, Faridabad.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	<b>Shri Ashish Bansal, Adv.</b>	
<b>Respondent by</b>	<b>Shri Sanjay Kumar, Sr. DR</b>	
<b>Date of hearing</b>	<b>12.08.2024</b>	
<b>Date of pronouncement</b>	22.08.2024	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned CIT(Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 10.08.2023, pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:

*“1.1. BECAUSE the learned CIT(A) has erred in law and on facts in summarily dismissing the appeal by holding that the appellant remained non compliant despite service of several notices and is not interested in prosecuting the appeal.*

*1.2. BECAUSE various notices as issued by the learned CIT(A) could not complied on account of the fact that the appellant's previous counsel who was looking after the Income tax matters as also was in possession of login*

*id and password of the Income Tax Portal, did not inform the appellant about issue of such notices and as such, there was no mala fide on part of the appellant,*

*1.3. BECAUSE the non compliance, if any, was due to the reasons beyond control of the appellant and therefore, the same ought not to have been adversely viewed by the CIT(A).*

*2.1. BECAUSE the learned CIT(A) has erred in law and on facts in sustaining the addition of Rs. 13,78,000.00 as unexplained cash deposits in bank accounts.*

*2.2. BECAUSE the source of cash deposits was withdrawals from the bank accounts itself and therefore, the addition of Rs. 13,78,000.00 is wholly unwarranted and unjustified.*

*2.3. BECAUSE complete details with regard to the source of cash deposits of Rs. 13,78,000.00 was furnished during the course of assessment proceedings and the addition was made on the grounds which are wholly extraneous and unjustified.*

*3.1. BECAUSE the learned CIT(A) has erred in law and on facts in sustaining the addition of Rs. 1,47,718.00 being loss incurred on purchase of shares.*

*3.2. BECAUSE the reasons adduced for making the addition of Rs. 1,47,718.00 are not at all tenable.*

*4. BECAUSE the learned CIT(A) has erred in law and on facts in sustaining the addition of Rs. 37,206.00 to the total income of the appellant.*

*5. BECAUSE the order appealed against is contrary to the facts, law and the principles of natural justice to the extent above.”*

2. Facts, in brief, are that for A.Y. 2012-13 the assessee filed his return of income declaring income of Rs. 6,23,892/- and was processed at the same figure. Subsequently, on the basis of AIR information for F.Y. 2011-12 to the effect that assessee had cash deposits of Rs. 18,46,000/- in his bank account the case was reopened u/s 147 of the Income-tax Act, 1961 (the “Act”) and notice u/s 148 was

issued requiring the assessee to file his return of income. In response to notice u/s 148 the assessee filed return declaring the same income as originally filed. Rejecting the explanations furnished by the assessee in response to statutory notices issued, the Assessing Officer completed the assessment u/s 143(3)/147 of the Act at a total income of Rs. 21,86,814/- as against returned income of Rs. 6,23,890/-, by adding –

- (i) Rs. 1,47,718/- shown as loss incurred on purchase of shares;
- (ii) Rs. 37,206/- being difference in P&L a/c and computation of income;  
and
- (iii) Rs. 13,78,000/- on account of unexplained cash deposits in his bank account.

2.1 Aggrieved against it the assessee preferred appeal before the learned CIT(Appeals), who dismissed the appeal and upheld the action of Assessing Officer. Aggrieved against it the assessee is in appeal before this Tribunal.

3. At the outset learned counsel for the assessee submitted that learned CIT(Appeals) has dismissed assessee's appeal in limine, ex parte to the assessee, and without going into the merits of the case. He prayed that order of learned CIT(Appeals) may be set aside and matter may be restored to his file for fresh decision after affording reasonable opportunity of being heard to the assessee.

4. On the other hand learned DR supported the orders of authorities below.

5. I have heard rival submissions and perused the material available on record. A perusal of order passed by learned CIT(Appeals) would reveal that he has dismissed assessee's appeal, inter alia, by observing as under:

*“5.5 Based on the above it appears that the assessee is not keen on pursuing the appeal. Accordingly given that this office has not received any information or document so as to make a judgment based on merits this office is left with no option but to dismiss this appeal. Accordingly the appeal of the assessee stands dismissed”*

5.1 Since the learned First Appellate Authority has dismissed assessee’s appeal, in limine, without going into the merits of the case, to sub serve the interests of natural justice I hereby set aside the order of learned CIT(Appeals) and restore the matter back to the file of learned CIT(Appeals) to decide appeal on merit after affording adequate opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

6. Assessee’s appeal is allowed for statistical purposes.

pronounced in open court on 22<sup>nd</sup> August, 2024.

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI