

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 1672/DEL/2024 [A.Y. 2012-13]
ITA No. 1671/DEL/2024 [A.Y. 2012-13]

Shri Bijender Kumar
T - 4/202, Unitech Height Appt
Chai 03, Greater Noida
G.B. Nagar Gautam Budh Nagar

Vs.

The Income tax Officer
Noida

PAN - AZUPS 2772 G

(Applicant)

(Respondent)

Assessee By : Shri Raghuraj Singh, Adv

Department By : Shri Kanv Bali, Sr.DR

Date of Hearing : 14.08.2024

Date of Pronouncement : 14.08.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

Both the above captioned separate appeals by the assessee are preferred against the order of the NFAC, Delhi dated 14.02.2022 pertaining to A.Y 2012-13.

2. The assessee has raised the following grounds of appeal:

In Quantum appeal :

1. That the impugned Assessment order passed by the Hon'ble CIT (A) is bad in law, wrong on facts and against the Principal of natural justices hence is unsustainable.

2. That the impugned Assessment order passed by the Ld. AO is wrong, having no base and against the circumstance of the case and no notice was served u/s 148 of the income Tax Act 1961 there was no valid service effected as per Section 282 of the Act read with Order 5 CPC, 1908.

3. That on facts and circumstances of the case and in Law, the assessing officer had erred in assessing the income tax of the appellant at Rs.45,03,655/-, please be deleted.

4. That the Ld. Assessing Officer had erred on facts and circumstances of the case and in law in making an addition on account of cash Deposited of Rs 56,61,750/, being wholly based on conjecture and surmises and being untrue, the same must be deleted.

5. The Submission is not submitted by Assesses regarding cash deposited and The Assessee had received land compensation of compulsory land and deposited cash against cash withdrawal of the

bank account. Therefore, there cannot be any tax of Income tax act 1961.

6. That the Id. Assessing officer has not given proper opportunity of being heard to the appellant and has not provided and confronted the appellant with the material collected behind the back of appellant upon which the assessing officer had relied in making additions. The assessment order is therefore illegal being in violation of the principal of natural justice and unsustainable in law.

7. That the impugned assessment order is arbitrary, illegal, bad in law in violation of rudimentary principal of contemporary jurisprudence.

8. That the provisions of section 271(1) (C) is not justify the case of the applicant.

9. That the impugned Assessment order passed by Ld. Assessing Officer, Noida is a clear cut case of misunderstanding and wrong interpretation of Law.

10. That the appellant crave leave to add, alter, amend, delete or modify any or more of the ground of appeal before or at the time of hearing."

In Penalty appeal :

1. That the impugned Assessment order passed by the Hon'ble CIT (A) is bad in law, wrong on facts and against the Principal of natural justices hence is unsustainable.
 2. That hat Learned Assessing Officer has grossly failed in applying the basic principle of law and justice while framing the Penalty Order u/s 271(1)(c) of the Income Tax Act 1961 without giving sufficient opportunities of being heard.
 3. That Learned Assessing Officer has erred in law as well as on facts in determining the taxable income and Penalty under section 271(1) (c) of the Income Tax Act 1961,
 4. That Learned Assessing Officer has made addition of Rs 56,61,750/- and make penalty of Rs 15,97,040/- as 100% of tax computed under Assessment Proceeding.
 5. That the appellant crave leave to add, alter, amend, delete or modify any or more of the ground of appeal before or at the time of hearing."
3. The representatives of both the sides were heard at length, the case records carefully perused.

4. The ld. counsel for the assessee has filed an application praying for condonation of delay in filing the appeal stating that the assessee is a farmer, uneducated and due to ignorance the assessee was unable to file appeal on time on the genuine belief of the applicability of a particular provision of the Income-tax Act, 1961 [the Act, for short].

5. The ld. DR objected to the condonation of delay.

6. We find that there is a delay of 64 days which stands reasonably explained. Accordingly, we condone this delay and admit the appeal.

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7. Facts on record show that on the basis of AIR information received from CIT(CIB), Kanpur that assessee had deposited Rs. 56,61,750/- in cash in his savings bank account and the assessee has not filed income tax return, verification letter was issued on 11.07.2019.

8. In compliance, the assessee did not furnish reply for the source of investment of cash deposits. Thereafter, notices and questionnaire was issued which were not complied with. There being no compliance, and not availing the numerous opportunities to explain the deposits, the Assessing Officer was left with no choice but to add the unexplained deposit of Rs 56,61,750/- to the income of the assessee. The AO also levied a penalty of Rs 15,97,040/- u/s 271(1)(c) on the assessed income of Rs 56,61,750/-.

9. Aggrieved, the assessee went in appeal before the Id. CIT(A) who confirmed the addition on the ground that the assessee was not able to explain the cash deposit in the bank account. The CIT(A) also sustained the penalty levied u/s 271(1)(c).

10. Now the further aggrieved assessee is in appeal before us on both the quantum as well as the penalty levied.

11. Before us, the Id. counsel for the assessee vehemently stated that the order of the Assessing Officer is ex-parte as the assessee was not communicated the notice issued by the Assessing Officer. The assessee lives in Greater Noida and all the notices were sent on wrong

address at Faridabad. The assessee never received notices either from the Assessing Officer or the ld. CIT(A) and the assessee could not attend the assessment proceedings or the appellate proceedings and prayed for setting aside the matter to the file of the Assessing Officer.

12. Per contra, the ld. DR relied upon the orders of the Assessing Officer.

13. We have heard the rival submissions and have perused the relevant material on record. We find that the assessee has not filed ITR for the instant A.Y 2012-13. The assessee is living in Flat No. T-4/202, Unitech Height Appt, Chao-03, Greater Noida, Budh Nagar UP and the notices were sent to Village Tigaon, Ballabgarh District, Faridabad, Haryana address. We, therefore, find force in the ld AR's argument that the assessee did not get notices. We note that there is denial of the benefit of fair hearing. In that view of the matter, in the interest of justice and fair play, we restore the issue of substantive addition on account of cash deposit to the file of the Assessing Officer to adjudicate the matter de-novo. The Assessing Officer is directed to rehear the appeal after affording a reasonable and adequate opportunity of being heard to the assessee. The assessee is directed to

furnish all necessary details called for by the AO. The ground No 1 to 7 of the assessee against the addition is allowed for statistical purposes.

ITA No. 1671/DEL/2024 [A.Y. 2012-13]

14. The issue in the ITA 1671/ITA/Del/2024 for AY 2012-2013 is levy of penalty u/s 271(1)(c) of Rs 15,97,040/-. As the assessment order for quantum addition has been set aside for de-novo adjudication as above, the legal dictum of 'sublato fundamento, cadit opus', applies i.e., in case the foundation is removed, the super structure falls. Since the foundation [assessment] has been removed, the super structure i.e. penalty must fall. Once the basis of a proceeding is gone, all consequential acts, actions, and orders would fall to the ground automatically. We, therefore hold that the decision of the CIT(A), confirming the penalty cannot be sustained and direct the Assessing Officer to delete the penalty of Rs. 15,97,040/- u/s 271(1)(c) of the Act for A.Y 2012-13. The grounds no 1 to 4 of the assessee is allowed.

15. In the result, the appeal of the assessee in ITA No. 1672 is allowed for statistical purposes and ITA No.1671/DEL/2024 is allowed.

The order is pronounced in the open court on 14.08.2024.

Sd/-
[VIKAS AWASTHY]
JUDICIAL MEMBER

Sd/-
[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 14th August, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi