

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 1071/DEL/2024 [A.Y 2012-13]

Pawan Kumar Rekhan Vs.
2658, Naya Bazaar, New Delhi
Delhi -110006

The Income-tax Officer
Ward - 36(4)
New Delhi

PAN: AADPR3788H

(Applicant)

(Respondent)

Assessee By : None
Department By : Ms Anupama Singhla, Sr. DR

Date of Hearing : 14.10.2024
Date of Pronouncement : 14.10.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the National Faceless Appeal Centre (hereinafter referred as NFAC), Delhi dated 23.01.2024 pertaining to A.Y 2012-13.

2. The grievances of the assessee are read as under:

1. *That the Learned Assessing Officer has erred both in law and on facts in initiating the proceedings and the Learned Commissioner of Income (Appeals), NFAC in upholding the proceedings under section 147 of the Act without appreciating and adjudicating, that the same were without jurisdiction and hence deserved to be quashed as such.*

1.1. *That Learned Assessing Officer has erred both in law and on facts in issuing two defective notices under section 148 of the Act suffering from jurisdictional infirmities and the Learned Commissioner of Income (Appeals), NFAC erred both in law and on facts in without adjudicating upholding, both the defective notices as valid is illegal, perverse, and bad in law and same deserves to be quashed.*

1.2. *That the Learned Assessing Officer has erred both in law and on facts in supplying the reasons recorded for reopening of assessment proceedings after issuing final show cause notice, despite of the fact that the assessee has made repeated requests for supply of reasons at different stages of assessment proceedings and the Learned Commissioner of Income Tax (Appeals), NFAC has erred both in law and on facts in not adjudicating the fact that supply of reasons recorded after issue of final show cause notice.*

1.3 *That the Learned Assessing Officer has erred both in law and on facts in recording incorrect facts while forming reasons to belief and reporting incorrect facts while obtaining the approval of higher authorities for reopening of assessment proceedings and the Learned Commissioner of Income Tax (Appeals), NFAC has erred both in law and on facts in not adjudicating that the assessment had been reopened by recording incorrect facts and reporting incorrect facts while obtaining the approval of higher authorities for reopening of assessment proceedings.*

1.4 *That the Learned Assessing Officer has erred both in law and on facts in reopening of assessment proceedings in absence of any valid approval obtained under section 151 of the Act, thus initiation of proceedings under section 147 of the act and assessment framed under section 147/144 of the Act are invalid and deserve to be quashed as such and the Learned Commissioner of Income Tax (Appeals), NFAC has erred both in law and on facts in not adjudicating the upholding of reopening of assessment proceedings.*

1.5. *That the Learned Assessing Officer has erred both in law and on facts in mechanical reopening of assessment without clarity on the nature of transaction and on borrowed satisfaction and Learned Commissioner of Income Tax (Appeals), NFAC has erred both in law and on facts in not adjudicating that the reopening of assessment is without clarity of the transaction and on borrowed satisfaction.*

1.6. *That the Learned Assessing Officer has erred both in law and on facts in not invoking the first proviso to section 147 despite of the fact that assessment for the AY 2012-13 has already been made under section 143(3) of the Act and Commissioner of Income Tax (Appeals), NFAC has erred both in law and on facts in not adjudicating that the reopening of assessment under section 147 is without invoking the first proviso to section 147 despite the that assessment for the AY 2012-13 has already been made L section 143(3) of the Act.*

2. *The Learned Assessing Officer has erred both in law and on facts in assessing the assessee under section 144 of the Income Tax Act, 1961 and the Learned Commissioner of Income Tax (Appeals), NFAC erred both in law and on facts in upholding the assessment under 144 of the Act.*

3. *That the Learned Assessing Officer has erred both in law and on facts in adding Rs 51,97,826.00 as unexplained credit under section 68 of the Act based on unclear nature of transaction and Learned*

Commissioner of Income Tax (Appeals), NFAC has also erred both in law and on facts in not adjudicating the addition for Rs 51,97,826.00 made under section 68 of the Act.

4. That, the Learned Commissioner of Income Tax (Appeals), NFAC has erred both in law and on facts in not granting and opportunity to make oral submissions through personal hearing despite of the fact that grant of personal hearing was requested in the submissions filed before Learned Commissioner of Income Tax (Appeals).

5. That the Learned Commissioner of Income Tax (Appeals), NFAC has erred both in law and on facts in failing to appreciate the written submissions furnished by the appellant and overlooking the judicial pronouncements relied upon by the appellant.

6. The assessee has craved its indulgence to alter, amend, delete or to make any additional grounds of appeal at the time of hearing of appeal.

Prayer

It is therefore, prayed that, it be held that assessment made by the Learned Assessing Officer and sustained by the Learned Commissioner of Income Tax (Appeals), NFAC deserves to be quashed as such. It be further held that additions made and sustained by the Learned Commissioner of Income Tax (Appeals), NFAC be deleted and appeal of the appellant be allowed.

3. Briefly stated, the facts of the case are that the assessee is an individual. Return of income was filed u/s 139(1) at a total income of Rs. 2,74,568/-. There was a survey u/s 133A in the case of Ashok Kumar Gupta wherein it was found that the assessee, as a proprietor of M/s Delhi Agro India, had taken accommodation entries of Rs 51,97,826/-. The assessing officer, after obtaining prior approval of the competent authority, issued notice u/s 148.

4. In response, the assessee filed the return declaring the same income. The Assessing Officer, in absence of any compliance from the assessee, ultimately concluded that the transaction of Rs 51,97,826/- remains as unexplained credit u/s 68 of the I T Act and assessed the income at Rs 54,72,394/- u/s 144/147. Penalty proceedings were

separately initiated u/s 271(1)(c) of the Act on account of addition u/s 68 of the Act.

5. Aggrieved, the assessee went in appeal before the Id. CIT(A). The appeal was subsequently migrated to NAFC which also dismissed the appeal.

6. Now the further aggrieved assessee is in appeal before us.

7. Before us, none appeared on behalf of the assessee. The Id. DR on the other hand, relied upon the orders of the authorities below.

8. We have heard the rival submissions and have perused the relevant material on record. None has appeared for the assessee when the case was called for hearing nor any request is received for adjournment. There appears to be no justification to adjourn the matter and hence the matter is decided on the basis of materials on record.

9. On going through the material before us and submissions of Ld. DR, we find that the assessee has raised a ground No.4 that the assessee was not given an opportunity of personal hearing though the same was requested vide submissions. We find that the NAFC has mentioned the fact that when notices were issued, the assessee had responded and uploaded submissions. We find that the submissions have not been judicially discussed and has been rejected by merely

stating that the assessee has failed to substantiate the claim with any material documentary.

10. Therefore, we are of the considered view that the NAFC, having coterminous powers of the AO, should have asked specific documentary evidences to satisfy itself. Furthermore, as the assessee was seeking an opportunity of personal hearing, NAFC, following the principle of natural justice, should have asked the assessee as to what documentary evidences would have substantiated the claim further.

11. In the light of the aforesaid, we are inclined to sustain ground No.4. We also find that the assessee has raised the jurisdiction issue in respect of legality and validity of notice u/s 147 and reassessment u/s 147 in its ground no 1 to 1.6. We find that the NFAC has not judicially dealt with these jurisdictional issues. As we have allowed ground no 4 of the appeal, we are of the considered opinion that in the interest of justice and fair play, the issue, on merits, should be restored to the file of the NFAC. The NFAC is also directed to adjudicate on the issue of legality and validity of reassessment made u/s 147. The assessee is directed to furnish the documents as well as material evidence for verification and the NFAC is directed to examine the same and decide the issue as per the provisions of law after affording reasonable and

sufficient opportunity of being heard to the assessee. The appeal of the assessee, accordingly, is allowed for statistical purposes.

12. In the result, the appeal of the assessee in ITA No. 1071/DEL/2024 is allowed for statistical purposes.

The order is pronounced in the open court on 14.10.2024.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

Sd/-
[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 14th OCTOBER, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	