

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI
BEFORE
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 3399/Del/2024, A.Y.2014-15)

BKR Capital Private Limited 10174/1A, Gurudwara Road, Karol Bagh, New Delhi PAN : AAACM2405J	Vs.	ITO Ward-4(1) C.R. Building I.P. Estate New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Paritosh Jain, Adv
Respondent by	Shri Virendra Singh, Sr. DR

Date of Hearing	24/10/2024
Date of Pronouncement	05/11/2024

ORDER

PER YOGESH KUMAR U.S., JM :

This appeal is filed by the Assessee against the order of Ld.CIT (A)/National Faceless Appeal Centre ["NFAC" for short], dated 01/06/2024 for the Assessment Year 2014-15.

2. The grounds of Appeal are as under: -

"1. That on the facts and circumstances of the case, the appellate order passed by the learned Commissioner of Income Tax (Appeals) (hereinafter referred as "CIT(A)"), is bad both in the eyes of law and on facts.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in not adjudicating and dismissing the appeal for non-prosecution by passing appellate order on 01.06.2024 without considering the fact that the appellant has duly sought

adjournment on scheduled dates for preparation of written submission and paper book, which is gross violation of principle of natural justice.

3. That on the facts and in the circumstances of the case, assessment made u/s 147 is liable to be quashed being proceedings u/s 147 of the Act initiated without having cogent or tangible material which suggest escapement of income by relying upon information uploaded on Insight portal without providing copies of the same and also without making any independent enquiry and judicious application of mind. which is sine qua non for assumption of jurisdiction u/s 147 of the Act.

4. That on the facts and in the circumstances of the case, the reopening of assessment proceeding u/s 147 of the Act is bad in law and is liable to be quashed being proceedings u/s 147 of the Act initiated merely on the basis of bald, un- substantiated information pushed on Insight portal which does not suggest any escapement of income in the case of appellant.

5. That on the facts and in the circumstances of the appellant case, the Ld. CIT erred both in law and facts in confirming arbitrary addition of Rs 4,46,00,000/- u/s 68 of the Act on account of unexplained credit made by the Ld. AO without appreciating the documentary evidences filed by the appellant during the course of assessment proceedings to prove, identity & creditworthiness of lenders and genuineness of transaction of loan taken during the year under consideration.

6. That on the facts and in the circumstances of the appellant case, the Ld. CIT erred both in law and facts in confirming arbitrary addition of Rs 4,46,00,000/- u/s 68 of the Act without appreciating the fact that loan received during the year is only 3,46,00,000/- out of which substantial amount was repaid during the same financial year i.e. 2013-14.

7. That on the facts and in the circumstances of the case, the Ld. CIT erred both in law and facts in confirming arbitrary addition of Rs 4,46,00,000/- u/s 68 of the Act made by Ld. AO without providing copy of relied upon statement of Shri Joginder Pal Gupta and without affording an opportunity of cross-examination of said deponent, which is gross violation of principle of natural justice.

8. *That on the facts and in the circumstances of the case, the Ld. CIT erred both in law and facts in confirming arbitrary addition of Rs 4,46,00,000/- u/s 68 of the Act made by Ld. AO without appreciating the fact that only basis of making addition is statement of Joginder Pal Gupta recorded on oath u/s 132(4) of the Act on 23.12.2019 which was duly retracted by him by filing letter dated 18.08.2021 with the Income Tax Department.*

9. *Without prejudice to the above grounds of appeal, the assessment framed u/s 147 of the Act on the basis of search & seizure operation carried out in the case of third party is without jurisdiction, bad in law and is liable to be quashed being jurisdiction to assess cases with respect to search in the case of third party lies under section 153C of the Act only*

10. *That the grounds of appeal are independent and without prejudice to each other.*

11. *The appellant craves leave to add, amend or alter any of the grounds of appeal.”*

3. Brief facts of the case are that, the Assessee filed its return declaring the income of the Assessee at Rs. 1,45,170/- for Assessment Year 2014-15. An assessment order came to be passed u/s 147 of the Income Tax Act, 1961 ('Act' for short) vide order dated 27/03/2022 by computing the income of the Assessee at Rs. 4,56,37,170/- by making an addition of Rs. 4,46,00,000/- u/s 68 of the Act and Rs. 8,92,000/- on account of commission. Aggrieved by the assessment order dated 27/03/2022, the Assessee preferred an Appeal before the CIT(A) and the Ld. CIT(A) vide order dated 01/06/2024, dismissed the Appeal filed by the Assessee. As against

the order of the CIT(A), the Assessee preferred the present appeal on the Grounds mentioned above.

4. The Ld. Counsel for the Assessee submitted that the order impugned of the CIT(A) has been passed in violation of principles of natural justice. Further submitted that, though the Assessee has sought for an adjournment, the Ld. CIT(A) dismissed the Appeal for non-prosecution which is erroneous, thus sought for allowing the Appeal.

5. Per contra, the Ld. Departmental Representative relied on the orders of the Lower Authorities.

6. We have heard both the parties and perused the material available on record. As could be seen from the order of the CIT(A), the impugned order has been passed ex-parte and proceeded to pass the order of dismissal on the ground that the Assessee has not complied with the final notice. Considering the fact that the Assessee has sought for adjournment which has been declined by Ld. CIT(A) and the Assessee has not been heard before passing the order impugned, we deem it fit to restore the matter to the file of the Ld. CIT(A) with a direction to the CIT(A) to provide opportunity of being heard to the Assessee and pass the order in accordance with law. The Assessee is also directed to co-operate with the proceedings before the CIT(A).

7. In the result, the Appeal of the Assessee is partly allowed for statistical purpose.

Order pronounced in open Court on November, 2024

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 05/11/2024

R.N, Sr. PS

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI