

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "SMC", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

	ITA NOS. 2105 & 2106/Del/2023	
	A.YR. : 2010-11	
VIKRANT GOYAT, H.NO. 139/2, GANDHI COLONY, BACKSIDE JAT DHARMSHALA, HANSI, HANSI, HARYANA-125033 (PAN: AKIPG0577E)	VS.	ITO, WARD-5, HISAR, HARYANA
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by : Shri Lalit Mohan, CA  
Respondent by : Shri Sanjay Kumar, Sr. D.R.

Date of hearing : 12.11.2024  
Date of pronouncement : 18.11.2024

**ORDER**

These appeals are filed by the assessee against the separate impugned orders dated 26.05.2023 and 29.5.2023 passed in the quantum appeal as well as in penalty appeal relating to assessment year 2010-11 by the Ld. CIT(A)/NFAC, Delhi.

2. Since both the appeals are inter-connected and relating to the same assessment year i.e. 2010-11, hence, I am disposing off the same by passing this common order.

3. The grounds raised in the Quantum appeal No. 2105/Del/2023 read as under:-

*“On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming following action of the Assessing Officer in:*

- i. Uploading the validity of assessment without jurisdiction.*
- ii. Initiating proceedings u/s. 147 of the Income Tax Act, 1961 and completing assessment u/s. 147 r.w.s. 144 of the Act at an income of Rs. 19,13,290/-;*
- iii. Uploading the validity of assessment without service of notices u/s. 148, 142(1), 143(2) and 144 of the Act.*
- iv. Initiating proceedings u/s. 147 of the Act without there being any reason to believe that income has escaped assessment;*
- v. Passing order u/s. 147 r.w.s. 144 of the Act without providing copy of reasons and without giving opportunity to file the objection;*
- vi. Confirming the addition of Rs. 17,54,000/- on account of cash deposited in bank without affording proper opportunity, without mentioning the section under which section addition has been made, and without passing the speaking order on the grounds of appeal submitted before the CIT(A).*

*The above actions being arbitrary, erroneous, unwarranted and unjust must be quashed with direction for relief.”*

4. The issue in this case is that addition of Rs. 17.54 lacs was made on account of cash deposits in assessee's savings bank account. Ld. CIT(A) has confirmed the said addition.

5. Against the aforesaid action of the Ld. CIT(A), assessee is in appeal before this Tribunal.

6. At the time of hearing, Ld. counsel for the assessee submitted that no notice u/s. 143(2) of the Act has been issued to the assessee. He submitted that due to these reasons assessment is without jurisdiction and void.

6.1 Per contra, Ld. DR could not controvert the aforesaid proposition. By reference to the departmental record, he admitted that copy of notice issued u/s. 143(2) of the Act is not on record. However, he submitted that in the order sheet and dispatch details, a reference u/s. 143(2) of the Act is there.

6.2 I have considered the submissions of both the sides and perused the records. It is admitted by the Department that copy of notice issued u/s. 143(2) is not in the assessment records. This leads to inevitable conclusion that notice u/s. 143(2) of the Act has not been issued to the assessee, which is contrary to law, hence, absence thereof, will denude the assessment of legal jurisdiction. In this view of the matter, I quash the assessment and accordingly, the appeal of the assessee is allowed.

6.3 Since I have already quashed the assessment as aforesaid, the other grounds raised by the assessee have now become academic, hence, the same need not be adjudicated.

7. Now I deal with the penalty appeal No. 2106/Del/2023 wherein following grounds have been raised :-

*“On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming following action of the Assessing Officer in:*

- i. Uploading the validity of penalty order u/s. 271(1)© of the Act, dated 29.5.2023 without jurisdiction.*
- ii. Confirming the penalty of Rs. 4,92,330/- u/s. 271(1)© of the Act, without considering the grounds of appeal and written submissions, submitted before the CIT(A).*
- iii. Confirming the penalty of Rs. 4,92,330/- u/s. 271(1)© of the Act, without satisfaction and without mentioning in the notice by the AO, whether income has been concealed or furnished inaccurate particulars of income.*

*The above action being arbitrary, erroneous, unwarranted and unjust must be quashed with directions for relief.”*

8. As regards the penalty appeal No. 2106/Del/2023 is concerned. This penalty is consequential to the assessment as dealt with by me in ITA No. 2105/Del/2023, as aforesaid. Since I have already quashed the assessment in the quantum appeal as aforesaid, hence, the penalty on the assessment does not survive, therefore, I set aside the orders of the authorities below and direct to delete the penalty in dispute. Resultantly, the penalty appeal no. 2106/Del/2023 is also allowed.

9. In the result, both the Assessee's appeals are allowed.

Order pronounced on 18/11/2024.

Sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

SRBhatnagar

**Copy forwarded to:-**

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

Assistant Registrar