

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

ITA Nos.3742 & 3743/Del/2024
[Assessment Year : 2012-13]

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| Siddharth Sharma, 2119,Sector-16A, Vasundhara, Ghaziabad, Uttar Pradesh-201012. PAN-BERPS9882J | vs | ITO, Ward-2(3), Ghaziabad. |
| APPELLANT | | RESPONDENT |
| Appellant by | Shri Sunil Kumar Tyagi, CA | |
| Respondent by | Shri Sahil Kumar Bansal, Sr. DR | |
| Date of Hearing | 03.12.2024 | |
| Date of Pronouncement | 05.12.2024 | |

ORDER

PER RENU JAUHRI, AM :

Both the appeals filed by the assessee are directed against the orders of Ld.CIT(A), National Faceless Appeal Centre, Delhi dated 19.06.2024 and 25.06.2024 pertaining to quantum and penalty orders for Assessment Year (“AY”) 2012-13 respectively. Since similar grounds have been raised, both appeals of the assessee are taken up together for hearing and are being decided by way of this consolidated order for the sake of brevity.

ITA No.3742/Del/2024 [Assessment Year : 2012-13]

2. Firstly, we take up the appeal of the assessee for the AY 2012-13 i.e. **ITA No.3742/Del/2024** as a lead case. The assessee has raised following grounds in this appeal:-

01. *“That the impugned action of the Id. CIT(A) of disposing-off the appeal ex-parte without hearing the assessee, is absolutely arbitrary, unlawful, perverse. unjustified and bad in law and also*

against the principle of natural justice. ignoring the fact that the appellant filed adjournment application on 18th June. 2024, which was neither rejected nor disposed-of by the Id. CIT(A) and he straightforward passed the ex-parte order on early morning of 19th June, 2024. coupled with the fact that earlier notices if any were not received.

02. *That on the facts and circumstances of the case and in law, the Id. CIT(A) erred in not considering the merits of the case and passing the impugned order in most mechanical manner without giving any findings and adjudicating the matter and he mechanically confirmed the impugned additions aggregating to Rs. 86,04,875/- which are absolutely arbitrary, unwarranted, unjustified, perverse, bad in law.*
03. *That on the facts and circumstances of the case and in law, the authorities below erred in making impugned additions aggregating to Rs. 86,04,875/- which are absolutely arbitrary, unwarranted, unjustified, perverse, bad in law and against the rudimentary principles of contemporary jurisprudence and the returned income deserves to be accepted as such and various observations made in the orders are either factually incorrect or not relevant on the facts and circumstances of this case.*
04. *That on the facts and circumstances of the case and in law, the authorities below erred in making the impugned addition in respect of cash deposits in banks on various dates aggregating to Rs. 27,61,000/- as income from other sources, which is absolutely arbitrary, perverse, unlawful, unjustified, unwarranted and is based on mere surmises and conjectures, ignoring the pertinent facts on records that the Assessee had ample cash withdrawals from his bank accounts preceding the date of such deposits and has all cogent source and documentary evidences of such deposits. The purported observation of the Id. AO that withdrawals in cash from banks were allegedly used against losses of multi exchange transactions is based on mere supposition, surmises, conjectures*

and imagination of the Id. AO, without any iota of enquiry made by him and without any iota of any contrary material brought by him on records in this regard and therefore the impugned additions, being completely arbitrary, unwarranted, unlawful and baseless, are liable to be quashed and deleted.

05. *That on the facts and circumstances of the case and in law, the authorities below erred in making the impugned addition in respect of Cheques deposits in banks on various dates aggregating to Rs. 37,75,000/-; as income from other sources, is arbitrary, perverse, unlawful, unwarranted and is based on mere surmises and conjectures, ignoring the pertinent facts on records that all such cheque deposits were out of genuine transactions happened through banking channel and through account payee cheques and also that the identity and credit-worthiness of the persons from whom the same were taken are duly established, who are regular income-tax Assessee and thereby the legal obligation/burden at the part of the assessee in this regard stood duly discharged and all such additions were made by the Id. AO in most subjective and mechanical manner without any iota of enquiry made by him and without any iota of any contrary material brought by him on records in this regard and therefore the impugned additions, being completely arbitrary, unwarranted, unlawful and baseless, are liable to be quashed and deleted.*
06. *That on the facts and circumstances of the case and in law, the authorities below erred in making the impugned addition in respect of long term capital gains, purportedly computed at Rs. 20,68,875/-, which is absolutely arbitrary, perverse, unlawful, unjustified, unwarranted and against the established facts on records, being the documentary evidence relating to purchase of residential house by the Assessee within the stipulated time prescribed in law making him eligible to deduction u/s 54. The purported observation of the Id. AO that name of the Assessee in the said immovable property was*

mentioned just to avoid inheritance as per Hindu Law, is irrelevant, enigmatic, based on mere imagination of the Id. AO, coupled with the fact that in computation, he added the same as income from other sources and the impugned additions, being completely unwarranted and baseless, are liable to be quashed and deleted.

07. *Without prejudice to the above ground, the impugned disallowance of the indexed cost of improvement of Rs. 11,93,686/- is made in most arbitrary and mechanical manner, ignoring the facts and explanation of the Assessee that the same are duly supported with cogent documentary evidences and the same do not deserve to be looked with any disfavor and therefore the impugned disallowance so made, being completely arbitrary, unwarranted and without any basis, are also liable to be quashed and deleted and computation and deduction as claimed by the Assessee in return deserves to be accepted as such.*
 08. *That on the facts and circumstances of the case and in law, the impugned additions are unwarranted and uncalled-for, as evident from subsequent proceedings and order under section 147, wherein returned income has been accepted and thereby as per settled tenets of law, no such additions subsist.*
 09. *That the direction in the impugned order for levy of interest u/s 234B, 234C And 234D, is made in most mechanical manner without any iota of any discussion of facts and circumstances warranting the same and such interest is liable to be deleted.*
 10. *That all the above grounds are independent grounds, which are without prejudice to one another.*
 11. *The Appellant reserves its right to add, amend, modify, supplement, delete, alter or withdraw any ground of appeal at any time during the course of appellate proceedings.”*
3. Briefly stated, facts of the case are that the assessee filed return of declaring income of INR 3,68,566/- on 28.03.2013. The case was selected for

scrutiny. The assessee had shown income from salary as well as income from transaction on multi-commodity exchange and had also shown NIL Long Term Capital Gains in respect of property sold during the year. The assessment was finalized at an income of INR 89,73,441/- after making various additions on account of unexplained deposits in bank accounts as well as recomputation of capital gains.

4. Aggrieved with the order of Ld. Assessing Officer (“Ld.AO”), the assessee preferred appeal before the Ld.CIT(A). Vide order dated 19.06.2024, the assessee’s appeal was dismissed *ex-parte*. It has been stated in the appellate order that three opportunities were provided to the assessee. However, no reply or request for adjournment was filed in response to these notices and therefore, appeal was dismissed *ex-parte*.

5. Aggrieved with the order of Ld.CIT(A), the assessee is in appeal before us.

6. Ld.AR has filed a written submission stating that the assessee had duly filed adjournment application on medical grounds seeking adjournment of hearing till 03.07.2024 before Ld.CIT(A). However, an *ex-parte* order was passed on the very next day without either rejecting the adjournment application or allowing any further opportunity. A copy of the screenshot of the Income Tax portal showing submission of adjournment request on 18.06.2024 has also been filed.

7. Ld. Sr. DR for the Revenue supported the orders of authorities below.

8. We have considered the rival submissions. As no effective opportunity has been provided to the assessee, we deem it proper to restore the matter back to the file of Ld.CIT(A) for fresh adjudication on merits after giving a

reasonable opportunity of being heard to the assessee. The assessee is also directed to make requisite compliance before Ld.CIT(A). Appeal is, therefore, allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

ITA No.3743/Del/2024 [Assessment Year : 2012-13]

10. The assessee has raised following grounds in this appeal against levy of penalty u/s 271(1)(c) of the Act:-

01. *“That the impugned action of the Id. CIT(A) of disposing-off the appeal ex- parte without hearing the assessee, is absolutely arbitrary, unlawful, perverse. unjustified and bad in law and also against the principle of natural justice. ignoring the fact that the hearing notice dates if any as cited in order were not received by the assessee.*
02. *That on the facts and circumstances of the case and in law, the Id. CIT(A) erred in not considering the merits of the case and passing the impugned order in most mechanical manner without giving any findings and adjudicating the matter and he mechanically confirmed the impugned penalty of Rs. 26,01,000/- which are absolutely arbitrary, unwarranted, unjustified, perverse, bad in law, coupled with the fact that impugned addition on quantum have not attained finality and are subject to adjudication by higher appellate authority.*
03. *That on the facts and in the circumstances of the case, the impugned penalty order is null and void because the same is passed ex-parte by Id. AO without giving any opportunity of being heard to the assessee and the same therefore is not only against the specific*

provisions of law but also against the principle of natural justice and is liable to be quashed.

04. *That on the facts and in the circumstances of the case, the impugned penalty order is null and void because there was no allegation in the assessment order; wherein the Id. AO has neither stated that assessee has concealed any income nor stated that assessee has furnished any inaccurate particulars of income and therefore in the absence of any allegation in the assessment order, penalty order so passed is void and without authority of law.*
05. *That on the facts and in the circumstances of the case, the Id. AO passed the impugned penalty order without any specific allegation, findings or material and the same is levied mechanically without application of mind and without establishing and proving any charge against the assessee, onus whereof was on the Id. AO, and therefore the same is against the doctrine of contemporary jurisprudence and settled legal principles.*
06. *That on the facts and in the circumstances of the case, the Id. AO neither dealt with the matter independently nor had given any findings of his own and by merely referring the order of CIT-A, levied the penalty in most mechanical and automatic manner without bringing any material on records to prove his allegations, coupled with the fact that the order of CIT-A was passed ex-parte and the same can not be made basis of levying any penalty on the assessee and therefore the impugned order is liable to be quashed.*
07. *That the assessee hereby categorically denies of having any concealment of income or furnishing any inaccurate particulars of income and mere reference to ex-parte of order of CIT-A does not make any basis of levying such penalty and that the facts and circumstances of the case do not warrant to levy any penalty on the assessee and the same is therefore liable to be deleted.*

08. *That the impugned additions made in quantum assessment are sub-judiced before the higher appellate authority, which is pending adjudication and thus the facts have not yet attained finality and therefore the Id. AO was not justified in levying penalty without finality of facts whereas the law specifically permits so to Id. AO to decide penalty after order of Honourable Tribunal and therefore impugned penalty is liable to be deleted.*
 09. *That without prejudice to above, the impugned additions in case of quantum assessment were made on technical reasons due to misconception of facts. which are under appeal before the higher appellate authority, and the same were neither found false nor were found bogus or frivolous and therefore, at any rate without prejudice, the penalty so levied is against the settled principle of law held by the Honourable Supreme Court and is liable to be deleted.*
 10. *That on the facts and in the circumstances of the case and without prejudice to all above grounds, the penalty order is untenable in law because the same is passed without recording any satisfaction by the Id. AO while passing impugned penalty order, which is a prerequisite and mandatory requirement of law and thus the impugned order is passed liable to be quashed.*
 11. *That all the above grounds are independent grounds, which are without prejudice to one another.*
 12. *The Appellant reserves its right to add, amend, modify, supplement, delete, alter or withdraw any ground of appeal at any time during the course of appellate proceedings.”*
11. We have considered the assessee's and Revenue's submissions and perused the material available on record. Facts in this case are similar as in ITA No.3742/Del/2024 [AY 2012-13] since it relates to levy of penalty on the same addition involved in quantum appeal. This appeal has also been dismissed *ex-parte* by Ld.CIT(A). Hence, decision in **ITA No.3742/Del/2024**

[AY 2012-13] would apply *Mutatis Mutandis* in this appeal filed by the assessee as well.

12. In the result, the appeal of the assessee is allowed for statistical purposes. In the final result, both appeals of the assessee in **ITA Nos. 3742/Del/2024 & 3743/Del/2024 for AY 2012-13** are allowed for statistical purposes.

Order pronounced in the open Court on 05th December, 2024.

Sd/-

**(VIKAS AWASTHY)
JUDICIAL MEMBER**

Sd/-

**(RENU JAUHRI)
ACCOUNTANT MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI