

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.1934/Del/2023

निर्धारणवर्ष/Assessment Year: 2012-13

Ajay Singh, B-1, Kalindi Colony, New Delhi.	बनाम Vs.	ACIT Circle 28(1), E-2, Block, Dr. SPM Mukharjee Civic Centre, New Delhi.
PAN No.ABJPS9222J		
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

निर्धारितिकीओरसे / Assessee by	Shri Sanjeev Kapoor, CA
राजस्वकीओरसे / Revenue by	Shri Sanjay Kumar, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	24.01.2025
उद्घोषणाकीतारीख/ Pronouncement on	07.02.2025

आदेश /ORDER

This appeal is filed by the assessee against the order of the Ld. CIT(Appeals)-NFAC, Delhi dated 02.05.2023 for the AY 2012-13 in sustaining the addition made by the Assessing Officer u/s 68 of the Act. The assessee has raised the following grounds: -

1. "That the order u/s 250 of the Income Tax Act, 1961 dated 02.05.2023 is bad in law and on the facts of the case.
2. That no return was filed in response to notice u/s 148 and the treatment of return filed u/s 139(1) as compliance of notice u/s 148 of the Income Tax Act, 1961 was bad in law. The assessee had to file a fresh return after issue of notice u/s 148 of the Income Tax Act, 1961.

3. *That in the absence of Income Tax return assessment could be made u/s 144 of the Income Tax Act, 1961 and not u/s 147/143(3) of the Income Tax Act, 1961.*
4. *That the assessee submitted the statements of account of Krishan Bans Bahadur. The receipt and payment of Rs.10,00,000/- were made through banking channels. No effort was made by the Assessing Officer confirm the transaction with the concerned bank.*
5. *That the confirmation of statement along with the copy of PAN Card and address of PAN India Motor (P) Ltd. in support of receipt of Rs.15,00,000/- was also submitted. The credit represented the refund of amounts due from PAN India Motor (P) Ltd. The Ld. Assessing Officer has himself admitted that loan of Rs.70,25,04,002/- and Rs.12,15,00,000/- were given to PAN India Motor (P) Ltd. during the year 2009-10 and 2010-11 respectively.*
6. *That the assessee has provided the source of credit by providing the identity of the lender, bank account details, PAN, address etc. and has thereby discharged the obligation cast u/s 68 of the Income Tax Act.*
7. *That the addition, if any, had to be made in the hands of lender if he/it has deposited money in his/its bank account without any explanation regarding the source of the same.*
8. *That the addition of the following amounts u/s 68 of the Income Tax Act, 1961 are unjust and arbitrary:*
 - a) *Advance from Krishan Bans Bahadur 10,00,000/-*
 - b) *Refund from PAN India Motor (P) Ltd. 15,00,000/-*
9. *That the assessee craves leave to add, amend or withdraw any ground of appeal at the time or before the hearing of appeal.”*

2. Ld. Counsel for the assessee submitted that the assessment in this case was reopened based on the report of the Investigation Wing and no independent enquiry was made by the Assessing Officer to come to a belief that there is escapement of income in the case of the assessee. Therefore, the Ld. Counsel for the assessee submits that in the absence of independent enquiry made by the Assessing Officer an assessment cannot be reopened simply based on report of the Investigation Wing for the reason that the Investigation Wing report is nothing but borrowed satisfaction. Reliance was placed on the decision of the Delhi High Court in the case of PCIT Vs. Meenakshi Overseas Pvt. Ltd. (395 ITR 677). Reliance was also placed on the decision of the Delhi High Court in the case of PCIT Vs. G&G Pharma India Ltd. (384 ITR 147), CIT Vs. Sfil Stock Broking Ltd. (324 ITR 285) (Del.), Sarthak Securities Company Pvt. Ltd. Vs. ITO (329 ITR 110) (Del.), Signature Hotels Pvt. Ltd. Vs. ITO (338 ITR 51) (Del.) and CIT Vs. Insecticides (India) Ltd. (357 ITR 330) (Del.).

3. Ld. Counsel for the assessee further referring to page 31 of the Paper Book submits that for the AY 2012-13 the assessee filed return declaring income from other sources at Rs.6,10,072/- and exempt income u/s 10 being dividend from shares at Rs.15,26,571/-.

Therefore, the observation of the Assessing Officer in the reasons that the assessee has shown income from other sources only at Rs.6,10,072/- and therefore the assessee does not justify the credit entries of Rs.25 lakhs in the bank account. Ld. Counsel further referring to the return filed for the AY 2011-12 by the assessee which is placed at page 61 & 62 of the Paper Book, submits that the assessee returned exempt income of Rs.16,11,63,260/- being capital gains and dividend from shares as exempt u/s 10 and therefore the assessee has sufficient sources to justify the credit entries made in his bank account to the extent of Rs.25 lakhs.

4. Ld. Counsel further submits that the assessee during the assessment year under consideration received Rs.10 lakhs from Krishan Bans Bahadur who is a friend of the assessee. Ld. Counsel submits that Krishan Bans Bahadur had passed away and therefore confirmation could not be filed by the assessee. However, the assessee has submitted bank statements of Krishan Bans Bahadur which reflected the transactions through banking channels and also the loan was repaid by the assessee through banking channels as could be seen from the bank statements of the assessee which are all placed at pages 56 to 59. Ld. Counsel for the assessee further submits that the assessee received loan of Rs. 15 lakhs from PAN

India Motors Pvt. Ltd. which is an Associate Company through banking channels and the assessee filed confirmation from the creditor, PAN details and bank statements of the creditor which clearly show that the transactions were through banking channels. Therefore, the Ld. Counsel submits that even on merits the addition cannot be sustained.

5. Ld. DR strongly supported the orders of the authorities below.

6. Heard rival contentions. On perusal of the reasons for reopening of assessment suggest that the assessment was reopened by the Assessing Officer based on the information received from the office of Assistant Director of Income Tax (Inv.) in the case of the assessee. The report of the Assistant Director of Income Tax (Inv.) on which the Assessing Officer relied on suggest that summons were issued to the assessee and also to one Shri Manpreet Singh Chadha for personal deposition and Shri Manpreet Singh Chadha appeared in person and filed information. However, the assessee did not appear in person and therefore the assessee did not explain the credits appearing in the bank accounts. The Assessing Officer based on such report and also observing that in the return filed for the AY 2012-13 by the assessee showing income from other sources at only Rs.6,10,072/-, was of the view that he has reason to believe that

income had escaped assessment for the AY 2012-13 in respect of the credit entries to the extent of Rs.25 lakhs. The Assessing Officer except relying on the report of the ADIT (Inv.) and by misreading the income reported by the assessee in the Income tax return filed for the AY 2012-13 that only Rs.6,10,072/- was declared under other sources ignoring the fact that the assessee had reported exempt income of Rs.15,26,571/- which was shown by assessee in the return and without making any attempt to make even preliminary enquiries to find out whether the contents of the report of the ADIT and also the income shown in return filed by the assessee for the AY 2012-13 are true or not, he believed that the income to the extent of Rs.25 lakhs had escaped assessment. It is observed that even in the Investigation report it has been mentioned that the returned income for the FY 2011-12 relevant to AY 2012-13 was declared by the assessee is Rs.4,95,070/- ignoring the fact that the assessee had reported exempt income to the extent of Rs.16,11,63,260/- in the return. Therefore, in my opinion the Assessing Officer by simply relying on the report of the ADIT and without making any further enquiries to ascertain the facts in this case the Assessing Officer was of the view that income has escaped assessment.

7. In the case of PCIT Vs. Meenakshi Overseas Pvt. Ltd. the Hon'ble Jurisdictional High Court held that mere reproduction of Investigation report in reasons recorded initiation of reassessment proceedings u/s 148 is illegal in the absence of link between tangible material and formation of belief that income has escaped assessment. The Hon'ble High Court in this case held that the crucial link between information made available to the Assessing Officer and the formation of belief was absent. The reasons to believe recorded were not reasons but only conclusions and a reproduction of the conclusion in the Investigation Report received from the ADIT (Inv.). The Hon'ble High Court held that it was a borrowed satisfaction.

8. In the case on hand also the Assessing Officer merely reproduced the report of ADIT (Inv.) and came to the conclusion that income had escaped assessment. To justify this action he also noted that in the return filed by the assessee for the AY 2012-13 the assessee has reported income from other sources only to the extent of Rs.6,10,072/-. However, the return filed by the assessee clearly show that apart from income from other sources of Rs.6,10,072/- the assessee had exempt income of Rs.15,26,571/- which was completely ignored by the Assessing Officer.

9. The ratio of the decision of the Hon'ble Jurisdictional High Court in the case of PCIT Vs. Meenakshi Overseas Pvt. Ltd. (supra) squarely applies to the facts of the assessee's case. Respectfully following the said decision, I hold that the reopening of assessment in this case merely based on report of the ADIT (Inv.) without making any independent enquiry by the Assessing Officer is nothing but borrowed satisfaction and therefore the reassessment made by the Assessing Officer u/s 143(3) r.w.s. 147 for the AY 2012-13 is bad in law and the same is hereby quashed.

10. Even on merits also the creditor's bank statements and the confirmation, PAN details, etc. show that all these transactions were made through banking channels and the assessee had repaid the credits through banking channels. Therefore, the credits in the bank cannot be assessed as unexplained credits.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 07/02/2025

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 07.02.2025

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi