

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI J.S. REDDY, ACCOUNTANT MEMBER

I.T.A. No. 2181/Del/2013
A.Y. : 2007-08

Shri Ashok Kumar,
C/o. M/s RRA TAXINDIA
D-28, South Extn., Part-I,
New Delhi – 49
(PAN: AQXPK9095N)
(Appellant)

vs. Income Tax Officer,
Ward-25(4),
New Delhi

(Respondent)

Assessee by : Sh. Somil Agarwal, Ad. & Abhishek
Anand, Adv.
Department by : Sh. K.K. Jaiswal, DR

Date of Hearing: 28-01-2016
Date of Order : 09-02-2016

ORDER

PER H.S. SIDHU, JM

This appeal by the Assessee is directed against the Order of the Ld. Commissioner of Income Tax (Appeals)-XVIII, New Delhi dated 11.12.2012 pertaining to assessment year 2007-08 on the following grounds:-

- “1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in passing an ex-parte assessment order U/S 144 of Income Tax Act, 1961 and that too without giving show cause notice as per law and without giving adequate opportunity of hearing.
2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld.

AO in passing an ex-parte assessment order and that too without serving the mandatory notice U/S 143(2) of Income Tax Act, 1961.

3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.12,33,000/- on account of cash deposited U/S 68 of Income Tax Act, 1961 that too without considering the submissions of the assessee and, evidences filed by the assessee.*
4. *That in any case and in any view of the matter, impugned addition and impugned assessment order are bad in law, illegal, unjustified, barred by limitation, contrary to facts & law and based upon recording of incorrect facts and finding, without giving adequate opportunity of hearing, in violation of principles of natural justice and the same deserves to be quashed.*
5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B and 234C of Income Tax Act, 1961.*
6. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

2. The facts narrated by the Revenue Authorities are not disputed by both the parties, hence, the same are not being repeated here for the sake of convenience.

3. At the time of hearing Ld. Counsel of the Assessee stated that the Ld. CIT(A) was erred in not reversing the action of the Assessing Officer in passing an ex-parte assessment order u/s. 144 of the I.T. Act, 1961 and that too without giving show cause notice as per law and without giving adequate

opportunity of hearing. He further stated that Ld. CIT(A) has also erred in confirming the action of the AO in passing an exparte assessment order and that too without serving the mandatory notice u/s. 143(2) of the I.T. Act, 1961. He further stated that the Ld. CIT(A) has again erred in confirming the action of the AO in making the addition of Rs. 12,33,000/- on account of cash deposited u/s. 68 of the I.T. Act, 1961 that too without considering the submissions of the assessee and evidences filed by the assessee. In view of the above, he requested that the issue in dispute may be set aside to the file of the AO for fresh consideration with the directions to give full opportunity of being heard to the assessee and consider the submission and the evidences filed by the assessee and decide the issue in dispute afresh.

4. On the contrary, Ld. DR opposed the aforesaid request of the Ld. Counsel of the Assessee. He relied upon the orders of the authorities below and requested that the same may be upheld.

5. We have heard both the parties and perused the relevant records available with us. We find that Ld. CIT(A) has adjudicated the issue as under:-

“4.2 I have carefully considered the assessment order, submissions, remand report, and rejoinder thereof. The facts of the case as per assessment order are that information was received through AIR that the assessee had deposited cash amount of Rs. 12,33,000/- in his account with Corporation Bank, Mundka, New Delhi. The AO issued various notices and also served the notice through affixture on the last known address of the assessee. Notices were also sent to the new address of the assessee but the same also remained uncomplished with. No compliance was there even to penalty notice issued under section 271(1)(b). The AO then per force framed assessment under section 144 by making addition of Rs. 12,33,000/-i.e. the cash deposited in the bank account.

During appellate proceedings, the appellant moved an application under Rule 46A and filed additional evidence i.e. an affidavit, as per which the income tax return was filed at the address of the bank. Later the notices were received but the Counsel did not attend the income tax proceedings. Along with the affidavit, the appellant filed a copy of the bank account and a copy of cash account along with Balance Sheet and Profit and Loss Account. These documents were sent to the AO, who in his remand report submitted that appellant was not entitled to file additional evidence under Rule 46A as there was no sufficient cause which prevented him from producing the evidence. In his rejoinder to the remand report, the appellant claimed that he had withdrawn cash of Rs. 20,66,000/- from his bank account and had only deposited Rs. 12,33,000/-, therefore, no addition was called for. The appellant further claimed that he had received unsecured loan in his individual capacity from his brother Vindeshwar Saw and cousin brother Shri Jagdish Saw, who by occupation are farmers.

The claim of the appellant made vide different letters is clearly contradictory. The appellant had claimed in his earlier letter, while moving application under rule 46A, that the Bank account reflected entries on account of business transactions and cash deposited and withdrawn were on account of payment from and to suppliers. However, while filing reply to the remand report, the appellant has taken a different stand and has claimed that he had received unsecured loan from his brother and cousin, who are agriculturists and therefore, loan has been received in cash. These facts show that the claim of the appellant about the source of cash deposited in his bank

account is entirely a cooked up story and not based upon any irrefutable evidence. The claim of the appellant therefore, cannot be accepted. The same has rightly been treated as undisclosed income by the Assessing Officer. The addition is, thus, confirmed.

In the result, the appeal of the appellant is dismissed.”

5.1 After going through the assessment order, finding of the Ld. CIT(A) as aforesaid, grounds of appeal raised by the Assessee in his Appeal before us, we are of the view that assessee has throughout made the contention that AO has passed an ex-parte assessment order u/s. 144 of the Income Tax Act, 1961 and that too without giving show cause notice as per law and without giving adequate opportunity of hearing. It was also the contention of the assessee that AO has made the addition in dispute that too without considering the submissions of the assessee and evidences filed by the Assessee. We also find that assessee before the Ld. CIT(A) has filed an application under Rule 46A and filed additional evidence i.e. an affidavit, as per which the income tax return was filed at the address of the bank. Later the notices were received but the Counsel did not attend the income tax proceedings. Along with the affidavit, the assessee filed a copy of the bank account and a copy of cash account along with Balance Sheet and Profit and Loss Account. These documents were sent to the AO, who in his remand report submitted that assessee was not entitled to file additional evidence under Rule 46A as there was no sufficient cause which prevented him from producing the evidence.

5.2 From the reading of the finding of the Ld. CIT(A), as aforesaid, it has been observed that Ld. CIT(A) has neither accepted the additional evidences nor rejected the same and not accepted the claim of the assessee and upheld the addition made by the AO, which is not sustainable in the eyes of law.

6. In the background of the aforesaid discussions and in the interest of natural justice, the issue in dispute is set aside to the file of the AO to decide

the same afresh, under the law, after giving full opportunity to the assessee of being heard. The AO is also directed to consider the submissions and evidences, if any, to be submitted by the Assessee, afresh and decide the issue in dispute in accordance with law. However, the Assessee is also directed to produce all the submissions and evidences to the AO, so that he may consider the same, as per rules.

7. In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the Open Court on 09/2/2016.

Sd/-

**[J.S. REDDY]
ACCOUNTANT MEMBER**

Date: 09-02-2016

“SRBHATNAGAR”

Copy forwarded to: -

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

TRUE COPY

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

By Order,

Assistant Registrar