

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE SMC BENCH, INDORE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.160/Ind/2024
(Assessment Year: 2011-12)

Shafqat Ullah Farooqui, A-24, Housing Board Colony, Kohi-E-Fiza, Bhopal	vs.	CIT(A), NFAC, Delhi
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AABPF0615K		
Assessee by	Shri Govind Rinwa, AR	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	25.02.2025	
Date of Pronouncement	28.02.2025	

ORDER

This appeal by the assessee is directed against the order dated 23.01.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi for A.Y.2011-12 which is arising from the assessment order u/s 147 r.w.s. 144 of the Act dated 5.12.2018 framed by Assessing Officer 4(4), Bhopal.

2. Assessee has raised following grounds of appeal:

"1. That the notice u/s 148 dated 26/03/2018 was served to the appellant on 02/08/2018 be held to be invalid and bad in law. The said notice and the consequent assessment order u/s 144 r.w.s. 147 be therefore be quashed.

2. That the assessment order made without complying with the provisions of section 143(2) be held to be bad in law and be quashed.

3. That the income assessed at Rs.30,74,000/- by the learned AO and upheld by CIT(A) be held to be bad, unjustified and exorbitant on the facts and in the circumstances of the case.

4. In the alternative and without prejudice to the grounds stated above the assessment of total income at Rs.30,74,000/- be held to be high and excessive and be reduced.

5. The appellant craves leave to add amend or alter and Ground of Appeal before or during the course of appellate proceedings".

3. The assessee has filed this appeal. Facts of the case in brief are that the assessee is an individual and has not furnished return of income for Assessment Year 2011-12. Based on the information about the alleged cash deposit of Rs.30,74,000/- in the bank account of the assessee i.e. SBI, Indore notice u/s 148 of the Act was issued on 26.03.2018 after recording reasons and getting prior approval from PCIT-2, Bhopal. The assessee raised objections regarding the limitation period within which the notice is to be served and also stated that the address on the notice has been wrongly mentioned as A-53 Housing Board Colony, Kohi-E-Fiza,

Bhopal in place of A-24, Housing Board Colony, Kohi-E-Fiza, Bhopal. Ld. A.O disposed off the objections stating that the reopening was reported within 6 years under the relevant assessment year. Thereafter notice u/s 142(1) of the Act was also issued but the assessee did not filed any return in compliance to the notices u/s 148 of the Act nor replied to the questionnaire issued u/s 142(1) of the Act as a result Ld. A.O completed the assessment making addition of Rs.30,74,000/- and assessed the income accordingly. Aggrieved assessee preferred appeal before Ld. CIT(A) but failed to succeed on both the legal and grounds on merits. Now the assessee is in appeal before this Tribunal raising legal grounds challenging the validity of assessment proceedings and also stating that the assessee deserves to succeed on merits as the source of cash deposit is from the withdrawal made from bank.

4. On the other hand Ld. Departmental Representative supported the order of the lower authorities and stated that the matter may be restored to the jurisdictional A.O for carrying out the assessment proceedings afresh.

5. I have heard rival contentions and perused the records placed before me. So far as the legal issue raised in Ground No. 1 & 2 challenging the validity of notices issued u/s 148 of the Act and also not issuing notices u/s 143(2) of the Act, I notice that so far as Ground No.2 is concerned no notice u/s 143(2) of the Act has to be issued after the assessee furnishes the return of income but the instant case neither the assessee has furnished regular return of income nor has filed any return in compliance to the notice issued u/s 148 of the Act. Therefore Ground No.2 raised by the assessee is dismissed. Finding of Ld. CIT(A) needs no interference.

5.1 As far as Ground No.1 challenging the validity of notice issued u/s 148 of the Act, I find that the notice u/s 148 of the Act was issued on 26.03.2018 through speed post No. E1911275575IN . Though the assessee has raised the objection that address in the notice was not correct but the assessee has been unable to place on record any proof of that address mentioned in the PAN database and secondly how did the assessee come to know about the notice on a later date even if it has been claimed that it may be served on wrong address. Considering the fact that the Ld. A.O has placed

the details of Speed Post Number and date of notice issued u/s 148 of the Act is well within 6 years from the end of the assessment year in question and that too after receiving the prior approval from the competent authority I find that proper and valid notice is issued u/s 148 of the Act. The finding of Ld. CIT(A) is upheld and Ground No.1 raised by the assessee is dismissed.

6. As far as merits of the case are concerned raised in Ground No.3 & 4, I find that the assessee has not filed any details before the Ld. A.O during the course of assessment proceedings. Even when the matter travelled before Ld. CIT(A) in first round assessee failed to appear and then the assessee challenged the order of Ld. CIT(A) before this Tribunal. Thereafter this Tribunal vide ITA No.432/Ind/2022 dated 18.04.2023 allowed the appeal of the assessee for statistical purposes directing the Ld. CIT(A) to pass a speaking order as contemplated in Section 250(6) of the Act. Even in the set aside proceedings the assessee again failed to furnish any details explaining the source of alleged cash deposited. The finding of Ld. CIT(A) in para 6.8 to 6.15 of the impugned order reads as under:

6.8. *These grounds are regard to additions to tune of Rs. 30,74,000/- (being unexplained cash deposits) to the total income of the appellant.*

6.9. *The AO has stated that during the course of the assessment proceedings, the appellant has deposited cash of Rs. 30,74,000/- into his bank accounts and the appellant has not filed the Return of Income for the year under consideration. Therefore, notice u/s 148 of the IT Act, 1961 was issued to the appellant to file the Return of Income for the year under consideration.*

6.10. *However, the appellant was failed to file the same. Further notice u/s 142(1) of the IT Act, 1961 was issued to the appellant. The appellant was failed to comply the same.*

6.11. *Further the AO has issued a show cause notice u/s 144 of the IT Act, 1961 dated 30.10.2018 to the appellant. However, the appellant was failed to comply the same. Therefore, the AO was left with no other alternative except to treat the whole amount of Rs. 30,74,000/- as unexplained amount in the hands of the appellant. Accordingly, assessment proceedings were concluded by the AO after making an addition of Rs. 30,74,000/- for the year under consideration.*

6.12. *In view of the above, the assessment proceedings were concluded by the AO after making addition of Rs. 30,74,000/- as unexplained cash deposits.*

6.13. *It is noted from the submissions furnished by the appellant has deposited cash out of earlier withdrawals. However, the appellant has not furnished any documentary evidences to substantiate his. Therefore, the contention of the appellant is not found to be acceptable. Hence assessment order was passed by the AO is upheld.*

6.14. *In view of the above, I am of the considerate view that the reason mentioned for the appellant's claim by the appellant is not satisfied. Therefore, the addition made to the tune of Rs. 30,74,000/- by the AO is upheld.*

6.15. *Accordingly, the Ground No. 3 and 4 are dismissed”.*

6.1 From the above findings of Ld. CIT(A) I notice that the assessee failed to furnish any documentary evidence to substantiate the

claim of explaining the cash deposit being made out of the cash withdrawals. Even today during the course of hearing the assessee has not furnished any details of such withdrawals and it seems that the assessee is intentionally prolonging the litigations without having any concrete evidence on record. During the course of hearing it was discussed that the matter needs to be restored to the lower authorities i.e. either Ld. CIT(A) or Ld. A.O to consider the facts of the case and also giving a last opportunity to the assessee. I therefore deemed it fit appropriate to restore Ground No.3 and 4 on merits challenging the addition of Rs.30.74 lakhs to the file of Ld. CIT(A), NFAC for necessary adjudication. The assessee is directed to place details of bank account for F.Y 2010-11 before Ld. CIT(A) on the date of hearing and should not take adjournment unless otherwise required for reasonable cause. Ld. CIT(A) may give reasonable opportunity to the assessee and then decide the issue on merits in accordance with law.

7. In the result appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 28.02.2025.

Sd/-

(MANISH BORAD)
Accountant Member

Indore, 28.02.2025
Dev/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore