

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "SMC", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

	ITA NO. 3360/Del/2024		
	A.YR. : 2010-11		
BRIJESH KUMAR S/O SHRI HUKAM SINGH, VILLAGE-DURIYAI, POST-KACHERA, GAUTAM BUDH NAGAR, UTTAR PRADESH (PAN:BMHPK4475P)	VS.	ITO, WARD 1(2), NOIDA, UP	
(APPELLANT)		(RESPONDENT)	

Appellant by : Sh. Sahil Sharma, Adv. & Sh. Sanjay Parashar, Adv.

Respondent by : Sh. Sanjay Kumar, Sr. D.R.

Date of hearing : 20.02.2025

Date of pronouncement : 20.02.2025

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed the instant Appeal against the Order of the Ld. CIT(Appeal)/NFAC, Delhi dated 21.05.2024, relating to assessment year 2010-11 on the following grounds:-

- 1. That on the facts and circumstances of the case and in law, the impugned order passed by the Assessing Officer ("AO") u/s 147 r.w.s 144 of the Income Tax Act, 1961 ("the Act") imposing an addition of Rs. 13,03,400/- is arbitrary, bad in law and liable to be quashed.*
- 2. That on the facts and circumstances of the case and in law, the CIT(A) has erred in failing to condone the delay in filing of appeal, and thereby dismissing the appeal on limitation despite reasonable cause for delay contrary to the principles of substantial justice.*
- 3. That on the facts and circumstances of the case and in law, the AO has*

solely placed reliance on. the AIR information devoid of any independent application mind vide borrowed satisfaction which renders the income escaping assessment proceedings void-ab-initio.

4. That on the facts and circumstances of the case and in law, the approval accorded by the Ld. Pr. Commissioner of Income Tax u/s 151 of the Act is mechanical in nature, thereby rendering the income escaping assessment proceedings non-est in the eyes of law.

5. That on the facts and circumstances of the case and in law, the verification letters issued u/s 133(6) are legally invalid in the absence of mandatory approval of the competent authority and therefore, the reasons to believe are legally deficient which shall vitiate the income escaping assessment proceedings.

6. That on the facts and circumstances of the case and in law, the AO has failed to consider the corresponding cash withdraws in the bank account statement while imposing the addition base< upon cherry picking of credit entries on account of cash deposits for the relevant assessment year which has resulted in an erroneous addition liable to be quashed.

The Appellant craves leave to add, delete, modify or vary any of the grounds of appeal at an time during the pendency of the appeal or at the time of hearing.

2. Brief facts of the case are that in this case AO made addition u/s. 147/144 of the Act for an amount of Rs. 13,03,400/- for cash deposit during the period 1.4.2009 to 31.3.2010 in savings bank account. Assessee was asked to give the details, but assessee did not provide the same, hence, the AO made the impugned addition.


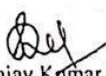
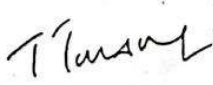
3. Upon assessee's appeal, Ld. CIT(A) noted that there is delay of 30 days in filing the appeal, hence he dismissed the appeal for being time barred.

4. Against the aforesaid order, Assessee is in appeal before me.

5. I have heard both the parties and perused the records. Ld. Counsel for the assessee assailed the permission granted by the Pr. Commissioner of Income Tax.

He submitted that the permission has been granted in the following manner:-

FORM FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS UNDER SECTION 148 AND FOR OBTAINING THE APPROVAL OF JOINT/ADDL./PR. COMMISSIONER OF INCOME TAX

1.	Name & address of the assessee	SHRI BRIJESH S/O TARA, VILL- DURIYAL, KACHAIDA, G B NAGAR
2.	Permanent Account No.	Not Available
3.	Status	Individual
4.	District/Circle/Range/Ward	Ward -1(2), Noida
5.	Assessment year in respect of which it is proposed to issue notice u/s 148.	2010-11
6.	The quantum of income which has escaped assessment	13,03,400/-
7.	Whether the assessment is proposed to be made for the first time. If reply is in the affirmative please state whether any voluntary return had already been filed, and if so, the date of filing of the said return.	Yes
8.	If the answer to column 7 is negative, please state the income originally assessed whether it is a case of under assessment, assessment at too low a rate, assessment which has been made the subject of excessive relief or allowing of excessive loss or depreciation	N/A
9.	Whether the provisions of Sec. 150(1) are applicable, if the reply is in the affirmative, the relevant facts may be stated against item no. 11 and it may also be brought out that the provisions of Sec.150(2) would not stand in the way of initiating proceedings u/s 147.	No
10.	Reasons for the belief that income has escaped assessment.	As per separate sheet attached.
	Dated : 21-02-2017	 (Narendra Singh) Income Tax Officer, Ward - 1(2), Noida
11.	Whether the Addl/Joint Commissioner of Income Tax is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for the issue of a notice u/s 148. Dated : 23-02-2017	Yes, in view of the reasons recorded, I am satisfied that this is a fit case for issue of notice u/s 148 read by 147.  (Dr. Sanjay Kumar Lal) Addl. Commissioner of Income Tax Range-1, Noida
12.	Whether the Pr. Commissioner of Income Tax is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for the issue of a notice u/s 148. Dated : 24/03/2017	Fit Case  (T. Tonsing Prasad) Pr. Commissioner of Income Tax Noida

Ld. AR further submitted that there is no application of mind while granting the permission by the Pr. Commissioner of Income Tax. He further submitted that on identical facts and circumstances, the ITAT, Delhi SMC

Bench in the case of Shri Kadir Ahmed vs. ITO (ITA no. 418/Del/2020 – AY 2010-11) vide order dated 4.10.2022 has quashed the assessment on account of lack of approval. Furthermore, Ld. Counsel for the assessee relied upon the following case laws for the proposition that recording of satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice u/s. 148 for reopening was invalid.

- CIT vs. S. Goyanka Lime & Chemical Ltd. [2015] 64 taxmann.com 313 (SC) dated 08.07.2015.
- CIT vs. S. Goyanka Lime and Chemical Ltd. [2015] 56 taxmann.com 390 (MP) dated 14.10.2014.
- PCIT vs. Pioneer Town Planners (P) Ltd. [2024] 160 Taxmann.com 652 (Delhi) dated 20.2.2024.
- Vijayeswari Textiles Ltd. vs. CIT (2003) 131 Taxman 833 (Mad.) dated 01.10.2001.
- Udesb Sharma vs. ITO, Ward 2(1), Ghaziabad (ITA no. 7579/Del/2017) dated 29.3.2022 of the Delhi Tribunal.
- Shri Kadir Ahmed vs. ITO dated 4.10.2022 in ITA No. 418/Del/2020 of the Delhi Tribunal, SMC Bench.
- Shri Birpal vs. ITO [ITA No. 8849/Del/2019) dated 20.11.2024 of ITAT, Delhi 'A' Bench.

6. I find that the instant issue emanating from the aforesaid case laws is squarely applicable in the present case, as the approval granted is mechanical and does not reflect any application of mind, hence, I quash the reopening of the assessment made by the AO and accordingly, allow the appeal of the assessee on this very issue.

7. Since I have already quashed the reopening of the assessment, the other grounds have become academic and hence, need not be adjudicated.

8. In the result, the Assessee's appeal is allowed.

Order pronounced in the Open Court on 20/02/2025.

SD/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRBHATNAGAR

Copy forwarded to:-

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

Assistant Registrar