

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC-2' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.788/Del/2020
Assessment Year: 2009-10

Sh. Ranjiv Kumar, A8-B, Friends Colony East, New Delhi,	Vs.	ITO, Ward-28(4), New Delhi
PAN :AFAPK1184Q		
(Appellant)		(Respondent)

Appellant by	Sh. Rishi K.S. Gautam, Adv.
Respondent by	Sh. R.K. Gupta, Sr. DR

Date of hearing	01.07.2021
Date of pronouncement	16.07.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 25/10/2019 passed by the learned Commissioner of Income Tax (Appeals)-10, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2009-10 raising following grounds:

1. *That the Id. CIT(A) had erred on facts and under the law in not admitting the additional evidence as filed before him; and accepting the Assessing Officer's version in report saying that no documentary evidences were submitted..*
2. *That the provisions of section 147/148 of the I.T. Act were not applicable to the facts of Assessee's case and therefore, the issue*

of notice u/s 147/148 was illegal and consequently, the impugned assessment order as passed u/s 147/143(3) is unlawful and unjust and therefore the same deserved to be annulled/cancelled.

3. *That without prejudice to ground No.2 above, no justification subsisted on the part of the Ld. AO in making an additions aggregating at Rs.9,20,984/- u/s 68 of the I.T. Act on account of alleged unexplained cash credits and the same ought to have been deleted by the Ld. CIT(A) keeping in view the submissions made before him were supported by documentary evidence and also in view of the judicial pronouncements.*
4. *That without prejudice to ground No. 3 above, the additions aggregating at Rs.9,20,984/- towards the assessable income of the Assessee is not the amount belonging to Assessee as the same was taxes like VAT and TDS payable by his employer to the government, deposited in his account to only facilitate the payment of taxes in time and to avoid, withdrawals by other parties before clearing of tax payments.*
5. *Various observations made by the assessing authority in his respective order is either incorrect or untenable. Detailed written submissions along-with the papers filed before the Ld. CIT(A) and the arguments advanced by the Counsel had not been appreciated properly or had been ignored.*
6. *That the appellant reserves its right to add, amend / modify the grounds of appeal at any time before or during the hearing of the appeal.*

2. Briefly stated facts of the case are that the assessee filed its regular return of income for the year under consideration on 08/02/2010 declaring total income of Rs.2,79,066. In view of information of cash deposit of ₹ 12,00,050/- in financial year 2008-09 in the saving bank account of assessee maintained with State Bank of Patiala, the Assessing Officer reopened the assessment by way of issue of a notice dated 21/03/2016 under section 148 of the Income-tax Act, 1961 (in short 'the Act'). The Authorized Representative of the assessee submitted part replies in his letter dated 19/12/2016 and 22/12/2016, however, same was not found by the Assessing Officer as supported by any documentary evidence and, therefore, he held the cash deposit of

₹ 12,00,050/- as unexplained income of the assessee and after reducing the income declared, made addition of ₹ 9,20,984/-. The assessee filed additional evidences before the Id. CIT(A), who called for remand report from the Assessing Officer. The Ld. CIT(A) called for rejoinder of the assessee on the remand report of the Assessing Officer, however, in view of no compliance by the assessee, the Ld. CIT(A) upheld the finding of the Learned Assessing Officer observing as under:

“6.15 On the basis of above discussion considering the ratio of various judicial pronouncements, it can be concluded that it is necessary for the appellant to prove prima facie the transactions which result in credit in his bank accounts. These things must be proved prima facie by the appellant and only after the assessee has adduced evidence to establish prima facie the aforesaid, the onus shifts on the Department, In the present case, the explanation given by the appellant is not found to be satisfactory and plausible for the reasons mentioned by the AO in his remand report that the explanation is not satisfactory since in the affidavits filed by the partners of the firm they have affirmed that the cash was paid to the appellant for the purpose of making payment towards sales tax/VAT but out of the total cash deposited in the appellant’s bank account of Rs. 12 00,050/-, only an amount of Rs.3,21,621/- was found to be utilized for the above purpose. I am also inclined to agree with the observation of the AO that if the firm had cash available with it why the same has not been utilized for making payment directly towards VAT/sales tax instead of depositing it in the appellant’s bank account. Further, the contents of the affidavit of the partners of the firm that during the FY 2008-09 firm was facing financial problem due to low sales, high rent and working capital shortage and that the suppliers were given post-dated cheques against their supplies and due to financial crunch, the VAT payment challans were dishonored due to low sales resulting lower balance in the bank and suppliers used to present cheques without information remained un-verified in the absence of any corroborative documentary evidence. No plausible reason has been explained that in spite of having availability of cash with the firm, the same has not been utilized directly by the firm for making payment towards VAT/cash. Considering these facts, the affidavits filed by the partners, the basis on which appellant was trying to explain the source of cash deposit is held to be self-serving in nature in collusion with the appellant Thus, in view of the above discussion and ratio of judicial pronouncements, it is held that appellant has miserably

failed to explain the source of cash deposits of Rs. 12,00,050/- in the above mentioned bank account both during assessment and at appellate stage for which sufficient opportunities were provided to the appellant. Accordingly, it is held that no interference is called for to the order passed by the Assessing Officer making above addition treating the same unexplained cash credit. The grounds of appeal taken by the appellant are held to be devoid of any merit and stand dismissed.”

2.1 Aggrieved, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. Both the parties appeared before us through Video Conferencing facility.

4. At the outset, the learned counsel of the assessee submitted that Learned CIT(A) passed the impugned order without taking into consideration rejoinder/explanation of the assessee on the remand report of the Assessing Officer. The learned counsel submitted that due to some personal difficulties, the assessee could not respond to the remand report by the Assessing Officer and now the assessee is willing to file its rejoinder and, therefore, he requested that the matter may be sent back to the file of the Ld. CIT(A) for considering the explanation of the assessee and adjudicate the matter in accordance with law.

5. The Learned DR, on the other hand, relied on the order of the Learned CIT(A) and submitted that sufficient opportunity was granted to the assessee for rejoinder on the remand report of the Assessing Officer, however, looking to the non-compliance on the part of the assessee, the Learned CIT(A) is justified in deciding the appeal on the basis of the material available before him.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find

that the Learned CIT(A) in para 6.6 of the impugned order has mentioned the fact of calling rejoinder from the assessee on the remand report. The relevant part of the order of the Ld. CIT(A) is reproduced as under:

“6.6 The above remand report was confronted to the appellant through his AR which was received in person to submit the rejoinder on the above remand report containing the above observation challenging the genuineness of the claim/explanation given by the appellant to explain the source of the cash deposit. In this connection, it is pertinent to mention here that on 06/08/2019, a letter has been received from the AR of the appellant seeking adjournment, which was granted till 27/08/2019. Again on 27/08/2019, adjournment has been sought by Ld. AR and on his request, hearing of the case was adjourned to 25/09/2019. However, no compliance was made on 25/09/2019 and again adjournment was sought by Ld. AR and hearing of the case was adjourned to 21/10/2019. The proceedings again remained un-complied with on 21/10/2019 and adjournment has been sought by another AR of the appellant which has been refused considering various opportunities granted earlier to the appellant, as mentioned above. Therefore, I have no other option but to complete the appellate proceedings on the basis of material available on record relying on the ratio of following judicial pronouncements:

.....”

6.1 We find that the assessee was given opportunity to file the rejoinder, however, the assessee sought adjournment and finally did not comply. However, before us, the Learned counsel of the assessee has expressed willingness of the assessee to file the rejoinder in appeal before the Learned CIT(A). In view of the undertaking given by the Learned counsel of the assessee, we are of the opinion, that one more opportunity may be provided to the assessee. In the facts and circumstances of the case and in the interest of the substantial justice, we set aside the order of the Learned CIT(A) on the issue-in-dispute and restore the matter back to him for deciding afresh after taking into consideration

rejoinder of the assessee on the remand report of the Assessing Officer. It is needless to mention that both the parties, i.e., the assessee as well as the Assessing Officer, should be given adequate opportunity of being heard. The grounds of the appeal of the assessee are accordingly allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16th July, 2021.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 16th July, 2021.

RK/- (DTDC)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi