

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)
BEFORE SHRI U.B.S. BEDI, JUDICIAL MEMBER AND
SHRI A.N. PAHUJA, ACCOUNTANT MEMBER**

**ITA No.4753/Del./2010)
(Assessment Year : 2002-03)**

**Prem Colonisers Pvt. Ltd.,
C1/1213, Vasant Kunj,
New Delhi.
(PAN/GIR No.AACCP5682J)**

Vs.

**ITO, Ward 14(3),
New Delhi**

(Appellant)

(Respondent)

**Assessee by : Shri S.K. Goyal, CA.
Revenue by : Shri B.R.R. Kumar, Sr.DR**

ORDER

PER U.B.S. BEDI, J.M.

This appeal of the assessee is directed against the order passed by the CIT(A)-XVII, New Delhi 20.09.2010, relevant to assessment year 2002-03 by raising effective grounds from 1 to 6 as under:

1. On facts and in the circumstances of the case, the order passed by CIT(A) is bad both in the eye of law and on facts.
2. On the facts and in the circumstances of the case the CIT(A) has erred both on facts and in law in passing an order without giving assessee an opportunity of being heard in clear violation of the principle of natural justice.
3. On the facts and in the circumstances of the case, the CIT(A) has erred both on facts and in law confirming the order of the Assessing Officer made u/s 147 ignoring the fact that the same has been passed on the basis of a notice u/s 148 issued, without complying the statutory procedure and conditions prescribed under law.
4. On the facts and in the circumstances of the case the CIT(A) has erred both on facts and in law in confirming the order made by Assessing

Officer u/s 147 on the basis of reason which are vague, bad in law and the assessment being reopened without application of mind.

5. On the facts and in the circumstances of the case, the CIT(A) has erred both on facts and in law in confirming the addition of Rs.10,01,500/- made by Assessing Officer on account of accommodation entry.
 6. On the facts and in the circumstances of the case the CIT(A) has erred both on facts and in law in confirming the addition of Rs.2,50,000/- made by Assessing Officer on account of cash deposit in the bank account.
2. Brief facts of the case are that the AO received information from Directorate of Investigation that the assessee company has received accommodation entries amounting to RS.10,01,500/- from M/s Performance Trading & Investment, A-261, Shastri Nagar, Delhi on 18.03.2002 from A/c No. 4281 of State Bank of Patiala, Darya Ganj, New Delhi. Accordingly, the AO issued notice to the assessee company u/s 148 on 30.03.2009. The assessee vide its letter stated that return of income already filed vide receipt No. 4415 dated 31.03.2003 in Range-14 may be treated to have been filed in response to notice u/s 148 dated 30.03.2009. The AO issued a notice u/s 143(2) to the assessee on 29.04.2009 fixing the case for hearing on 12.05.2009 but this remained un-complied with. The AO issued another notice u/s 142(1) on 16.07.2009 along with questionnaire and the case was fixed for hearing on 03.08.2009. The assessee made no compliance on that date. The AO obtained bank statement from the bank which revealed that the assessee has deposited cash amounting to RS.2,50,000/- in his bank account on 13.02.2002. The AO issued a final show cause notice on 21.10.2009 wherein the assessee was informed of the proposed addition and the case was fixed for hearing on 30.10.2009. However, the assessee failed to attend. Therefore, the AO completed assessment in the manner provided u/s 144 and made addition of Rs.12,51,000/-.

3. Aggrieved by the action of the Assessing Officer, the assessee took up the matter in appeal, and CIT(A) after noting the details of various hearing notices has proceeded to decide the appeal on merit as per paras. 2.2 to 5 of his order to dismiss the appeal of the assessee as under:

“2.2 In ground No. the appellant has contended that the AO has not allowed reasonable opportunities to present the case. However, from the perusal of assessment order as discussed in para. 2.1, it is seen that the AO has allowed sufficient opportunities to the assessee. Hence, this ground is rejected.

2.3. Ground No. 2 relates to addition of RS.10,01,5001- on account of accommodation entries of share capital received from M/s Performance Trading and Investment. It is seen that the appellant company has received accommodation entries of RS.10,01,5001- from M/s Performance Trading and Investment on 8.03.2002 from account No. 4281 of State_Bank of Patiala, Darya Ganj, New Delhi. It is a settled principle of law that when any amount is credited in the books of the assessee, the onus lies upon the assessee to prove the identity of the person, creditworthiness of such person and genuineness of the transaction. However, in the case under consideration the appellant company has chosen for the reasons best known to the appellant not to submit any details whatsoever either before the AO or before the undersigned in respect of amount of RS.10,01,500/- . In view of the above facts, I do not find any reason to interfere with the order of the AG. Hence, this ground of appeal is rejected.

2.4. Ground No. 3 relates to addition of Rs.2,25,000/- on account of cash deposited in the bank account of the assessee. It is seen that the appellant company has deposited cash of Rs.2,50,000/- in its bank account. However, no detail has been submitted regarding the source of the cash deposits either before the AO or before the undersigned. Under these circumstances, I do not find any infirmity in the order of the AG. Therefore, the addition of RS.2,25,000/- made by the AO is hereby confirmed. This ground of appeal is rejected.

3. Ground No.4 relates to charging of interest u/s 234B. Charging of interest is mandatory under the Income Tax Act. Hence, this ground of appeal is rejected.

4. Ground No.5 relates to initiation of penalty u/s 271 (1)(c). Since the penalty has not been levied, this ground is premature and hence reject/

5. Ground No.6 relates to initiation of penalty u/s 271 (1)(b). Since the penalty has not been levied, this ground is premature and hence rejected.”

4. Still aggrieved, the assessee has filed further appeal and while reiterating the submissions made in the memorandum of appeal before the first appellate authority, the assessee has pleaded for setting aside the orders of the authorities below and restoring the matter back on the file of the Assessing Officer with the direction to afford opportunity to the assessee to decide the case afresh after due opportunity to the assessee. It was also submitted that assessee's counsel did not appear either before the Assessing Officer or before the CIT(A) when the cases were fixed for hearing. Assessee cannot be penalized for the default on the part of the Ld.Counsel for the assessee whom he engaged before the Assessing Officer as well as before CIT(A). Therefore, without naming or citing any authority, Ld. Counsel for the assessee laid stress on the point that for the default on the part of the assessee's counsel, assessee cannot be penalized. Hence, orders of the authorities below should be set aside and the matter restored back on the file of the Assessing Officer.

5. Ld.DR submitted that firstly, the assessee did not comply with the notices of hearing issued by the Assessing Officer and notice u/s 143(2) read with section 142(1) of the I.T. Act, 1961 were issued to the assessee along with questionnaire and case was fixed up for hearing on more than one occasion. But, assessee did not make any compliance and order u/s 144 of the Act, had to be passed. Similarly, after filing of the appeal, assessee's attitude did not change and despite having been given number of opportunities, he did not comply with the hearing notices and Ld. First appellate authority had no option except to decide the appeal on merit on the material available on record and assessee has not been able to substantiate its claim in the grounds of appeal made before first appellate authority. Therefore, he had to reject the appeal on merits.

Assessee before this bench, assessee has also not been able to point out any bona fide reason or explanation as to why he has not either appeared before the Assessing Officer or CIT(A) despite having been given number of opportunities and assessee has not been able to make out a case on merits also before the CIT(A), who was justified in confirming the action of Assessing Officer which may further be confirmed.

6. We have heard both the sides, considered the material on record as well as written submissions filed before this bench, contained from pages 1-6 of the paper book, and find that during the assessment proceedings not only number of opportunities were given to the assessee by issuing various notices along with questionnaire from time to time, but assessee was given final notice proposing two additions of Rs.10,01,500/- and Rs.2,50,000/- with the stipulation that in case of non-compliance, Assessing Officer would proceed to decide the case on merits on the basis of material available on record u/s 144 of the I.T. Act, 1961. And there was no compliance with regard to either of the notices, questionnaire or final notice, assessment order came to be passed making proposed additions as intimated to the assessee. Assessee took up the matter in appeal and in appeal proceedings, various notices were issued, assessee's counsel also attended and applied for adjournment on the plea that Ld.Counsel for the assessee was not well. The case was adjourned, but nobody attended on the adjourned date. Another opportunity was further granted, but neither assessee nor his counsel attended and the appeal has been decided by first appellate authority on merits and in further appeal before this bench it is the main contention of the assessee that he had engaged a counsel, who did not appear. So, it is not the fault of the assessee. Therefore, orders of the authorities

below should be set aside and the matter should be remanded back to the Assessing Officer for reconsideration.

7. From the material on record, it is found that the assessee has not been able to establish that counsel of the assessee could not appear before the CIT(A) in appeal proceedings for any bonafide reason. No doubt, mistake of counsel may in circumstances be taken into account, although there is no general proposition that mistake of counsel by itself is always a sufficient cause, so it is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose. In this case, nothing has been brought on record to show that action of the assessee was bona fide and there was no taint of malafide or element of recklessness or ruses. Therefore, we are of the view that non-appearance by the counsel in appeal proceedings could not be a valid ground. As such plea of the assessee in this regard is rejected. So far as case on merit is concerned, despite various opportunities given by the Assessing Officer including proposed action with regard to both the additions and basis for making the additions, assessee did not respond either before the Assessing Officer or before CIT(A) also. No material or evidence has been produced in this regard before this bench also. Assessee has failed to establish that additions made by the Assessing Officer and confirmed by the CIT(A) are not warranted when there was proper basis for making/confirming such additions. As such while considering entirety of facts, circumstances and material on record, we do not find any justification to accept the appeal of the assessee on merits too. Hence, order of authorities below is confirmed and appeal of the assessee is dismissed.

8. As a result, the appeal of the assessee gets rejected.

Order pronounced in open court on 29.02.2012.

Sd/-

(A.N. PAHUJA)

ACCOUNTANT MEMBER

Dated : February 29, 2012

SKB

Copy of the order forwarded to:-

- 1. Appellant**
- 2. Respondent**
- 3. CIT**
- 4. CIT(A)-XVII, New Delhi.**
- 5. CIT(ITAT)**

Sd/-

(U.B.S. BEDI)

JUDICIAL MEMBER

Deputy Registrar, ITAT