

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: ' F ' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER  
AND  
SHRI J.S.REDDY, ACCOUNTANT MEMBER**

**I.T.A .No.-1448/Del/2013  
(ASSESSMENT YEAR- 2007-08 )**

ITO, Ward-46(2), Room No-307, 3 <sup>rd</sup> Floor, D-Block, Civic Centre, Delhi  <b>(APPELLANT)</b>	<b>vs</b>	Pallavi Srivastava, C/o-Sanjay rastogi & Co., CA, 203, 2 <sup>nd</sup> Floor, A-36, Street No.2, Madhu Vihar, New Delhi. <b>PAN-APQPS8211Q</b> <b>(RESPONDENT)</b>
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**CO-193/Del/2013  
I.T.A .No.-1448/Del/2013  
(ASSESSMENT YEAR- 2007-08 )**

Pallavi Srivastava, C/o-Sanjay rastogi & Co., CA, 203, 2 <sup>nd</sup> Floor, A-36, Street No.2, Madhu Vihar, New Delhi. <b>PAN-APQPS8211Q</b> <b>(APPELLANT)</b>	<b>Vs.</b>	ITO, Ward-46(2), Room No-307, 3 <sup>rd</sup> Floor, D-Block, Civic Centre, Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by:</b>	<b>Sh. Manoj Kumar Chopra, Sr. DR</b>
<b>Respondent by:</b>	<b>Sh. Somil Aggarwal, CA</b>

**ORDER**

**PER DIVA SINGH, JM**

This is an appeal filed by the Revenue against the order dated 21.12.2012 of CIT(A)-XXX, New Delhi pertaining to 2007-08 assessment year on the following grounds:-

*“On the facts and in the circumstances of the case and in law, the Ld. CIT(A)  
has erred in :-*

- (i) *Deleting the addition on Rs.28,00,000/- as rightly made by the AO on account of unexplained investment u/s 69 of the I.T.Act made by the assessee.*
- (ii) *Deleting the addition of Rs.2,33,433/- made by the AO on account of unexplained expenditure through Credit Card u/s 69C of the I.T.Act, 1961 made by the assessee.*

*The appellant craves the right to alter, amend, add or substitute the grounds of appeal.”*

2. The assessee has filed cross objection in the present proceedings on the following grounds:-

1. *“That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the assessment order inter alia on the ground that notice u/s 143(2) was not served upon the assessee, more so when Ld. AO himself has accepted this fact.*
2. *That in any case and in any view of the matter, impugned order passed u/s 144/143(3) is bad in law and against the facts and circumstances of the case.*
3. *That the cross objection craves the leave to add, amend, modify, delete any of the ground(s) of cross objection before or at the time of hearing.”*

3. The relevant facts of the case are that the assessee returned an income of Rs.16,47,190/- by way of filing its return on 31.03.2008 which was processed u/s 143(3) and subsequently selected for scrutiny through CASS. For which notice u/s 143(2) was issued which returned unserved. Thereafter various other notices were also sent which either remained unserved and thus returned back and some never returned back. Since the assessee remained unrepresented the assessment was concluded u/s 144.

4. Aggrieved by this the assessee came in appeal before the First Appellate Authority. Before the CIT(A) the assessee assailed the additions made on merit as well as assailed the action of the AO in passing the assessment order u/s 144 as no notices were served upon the assessee. The CIT(A) considering the arguments of the assessee allowed relief on merit. Aggrieved by this the Revenue is in appeal before the Tribunal and the assessee also has filed the present C.O before us.

5. Ld. Sr. DR has placed reliance on the assessment order however the finding on facts have not been assailed. The Ld. AR on the other hand relied upon the impugned order.

6. We have heard the rival submissions and perused the material available on record. It is seen from the record that the assessment order is passed u/s 144 by the AO who has varied the return of income of the assessee from Rs. 16,47,190/- which was returned to Rs.4680623/- as a result of additions made based on AIR information. The specific reasons given by him for making these additions are set out in paras 2 to 5 of the assessment order. These are reproduced hereunder for ready-reference:-

*"2. Thereafter, the case was again fixed vide notices u/s 142(1) dated 09.09.2008, 12.05.2009, 07.08.2009, 30.10.2009 and final show cause notice on 26.11.2009 fixing the hearing for 15.09.2008, 25.05.2009, 17.08.2009, 09.11.2009 and 07.12.2009 respectively at all the available addresses. Some of above notices are undelivered and some are not received back. The assessee has not been traced out after best efforts. In view of these circumstances, I have no other alternative but to complete the assessment ex-parte under section 144 of the I.T.Act, 1961 to the best of my judgement on the basis of material available on record as the matter is bared by limitation on 31.12.2009.*

*3. "The assessee has shown income from salary and income from other sources i.e. interest income. As per AIR information, the assessee has paid Rs. 2,33,433/- against the credit card bills during the financial year 2006-07 relevant to asstt. year 2007-08. As nobody attended the case thus the said expenditure of the assessee remained unexplained within the meaning of section 69C of the I.T. Act, 1961 which is reproduced as under:*

*"Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation if any, offered by him is not, in the opinion of the AO, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year."*

*4. Similarly the assessee has invested Rs. 28,00,000/- for purchase of units of mutual funds during the F.Y. 2006-07 relevant to the assessment year 2007-08. None attended the case, thus, the said investment of the assessee also*

*remained unexplained within the meaning of section 69 of the I.T. Act which is reproduced hereunder:*

*“Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investment may be deemed to be the income of the assessee of such financial year.”*

*5. In view of above, I held the entry of credit card payment of Rs. 2,33,433/- and investment in mutual funds of Rs. 28 lakh totaling to Rs. 30,33,433/- as unexplained and as such the same is added to the income of the assessee as ‘Income from undisclosed Sources’. I am satisfied that penalty u/s 271(1)(c) read with section 274 of the I.T. Act is attracted which is being initiated separately for furnishing inaccurate particulars of his income.”*

6.1. A perusal of the impugned order shows that before the CIT(A) the assessee contended that no notice was served upon the assessee. On merits it was explained that a perusal of the HSBC Bank A/c No. 019-266477006 which the AO has considered would show that the assessee has used the credit card for personal and other expenditure amounting to Rs. 2,33,613/- as opposed to Rs.2,33,433/- wrongly taken by the AO. The date wise details of the expenditure are extracted from the impugned order itself:

<i>S.No.</i>	<i>Date of Payment</i>	<i>Amount</i>
1.	17/05/2006	1,794.00
2.	16/06/2006	9,908.08
3.	17/07/2006	3,090.99
4.	16/08/2006	2,863.58
5.	16/09/2006	10,257.53
6.	17/10/2006	48,394.46
7.	16/11/2006	45,946.22
8.	18/12/2006	85,459.26
9.	15/01/2007	19,518.25
10.	16/02/2007	1,514.51

11.	19/03/2007	4,866.50
		2,33,613.38

6.2. It is seen from the record that it was also submitted that the assessee is working in IBM India Pvt. Ltd. and getting a salary every month. The assessee in the year under consideration has received a gross salary of Rs. 17,32,987/- and all these amounts have been received in this specific bank account from which the assessee has made payment of credit card of Rs. 2,33,613/-. In support of the said explanation copy of the bank statement of HSBC, details of the credit card, ITR copy and Form 16 were placed before the CIT(A).

6.3. Referring to the second addition of Rs. 28 lakh also based on the same bank account it was submitted that the assessee through SIP has invested on different dates a total amount of Rs. 70,000/- , Rs. 35,000/- & Rs. 1 lakh in HDFC Long Term Advantage Fund, Franklin India Flexi Cap Fund, HSBC Midcap Equity Fund and HSBC Floating Rate Fund respectively. Apart from this the assessee had also made investment by SIP through its Citi Bank A/c No. 5-53355-1116 amounting to Rs. 6,000/-, Rs. 48,000/- and Rs. 36,000/- in Birla Advantage Growth Fund, Birla Sunlife Equity Fund and HDFC Top 200 Fund respectively thereby making a total investment of Rs. 12,30,000/- and not Rs. 28 lakh as considered by the AO. Out of this total investment it was explained Rs. 11,40,000/- was invested through the HSBC Bank Account which is the only account of the assessee where all the salary income has been credited and the remaining amount of Rs. 90,000/- has been made through Citi Bank Account which is in the name of Master Devansh Srivastava under the guardian of the assessee. It was contended how the AO has arrived at a figure of Rs. 28 lakh is not evident as the assessee has only invested Rs. 12,30,000/- only.

6.4. A perusal of the impugned order shows that remand report was obtained from the AO as reply of the assessee is found extracted in unnumbered page 5 of the impugned order in paras 3 & 4 which makes a reference to written submission dated 24/05/2012, wherein the assessee contends that since the AO accepts that no notice u/s 143(2) was served upon the assessee the ex-parte assessment be declared as invalid and illegal. For ready-reference, we extract the same hereunder:-

3. *“The written submission dated 24.05.2012 is produced as under:-  
“Kindly refer to remand report given by the assessing officer of the assessee, it is categorically finding that no notice u/s 143(2) of the Income Tax Act, 1961 was served upon the assessee in respect of above mentioned assessment year. Therefore we request your Hon’ble, in the absence of any service of notice u/s 143(2), the ex-parte assessment is invalid, illegal and void ab initio. Therefore the addition made by the assessing officer may be kindly deleted.”*
4. *The appellant filed his written submissions dated 27.11.2012 which is reproduced for ready-reference:-  
“Kindly refer to above, we are enclosing the copy of AIR information in the case of Ms Pallavi Srivastava for your kind perusal. As per AIR information the following transactions are made:-*

S.No.	Date	Particulars	Amount(Rs.)	Our reply/submission
1.	31 March 07	Credit Card	2,33,433/-	All the payment have been made through HSBC Bank of Ms Pallavi Srivastava and source of payment are explained in our earlier submission filed on dated 20/09/2010.
2.	31 August 06	HSBC Mutual Fund	10,00,000/-	Same as mentioned in Para 1.
3.	18 May 06	Frank Lin Templeton Mutual Fund	3,00,000/-	(i)The investment in Mutual fund is in the name of Mr. Devesh Kumar Srivastava husband of Ms Pallavi Srivastava and the payment is also made by Mr. Devesh Kumar Srivastava bank account. (ii) We are enclosing the copy of City Bank investments wealth Report of Mr. Devesh Kumar Srivastava in which detail of all

				<i>investment made by Mr. Devesh Kumar are given. (iii) We are enclosing the copy of City bank Saving Account of Mr. Devesh Kumar Srivastava in which the payment have been made for these investments in Mutual funds.</i>
4.	22 May 06	Fidelity Mutual Fund	4,00,000/-	Same as mentioned in Para 3.
5.	8 Oct. 06	HDFC Mutual Fund	11,00,000/-	Same as mentioned in para 3.

6.5. Considering the above the CIT(A) came to the following conclusions:

1. *"I have perused the assessment order, written submission, grounds of appeals of appellant and discussed the matter with AR carefully. I have verified the bank statement of the appellant and it is found that the appellant had made all his credit card expenses out of his HSBC Bank Account by cheques (Page no. 6). The appellant had also invested Rs. 12,30,000/- in mutual fund and **not Rs. 28 lakh as claimed by the AO from AIR.** There is a mistake of getting the information through AIR which was collected by the appellant's AR from bank. The transaction reported in the AIR was wrongly reported by the department. The AO should inform DGIT(System) to verify such information from the department server and correct it in future. The appellant investments of Rs. 12,30,000/- (page no. 8) is out of his bank amounts through SIP (Systematic Investment Plan) by the cheques. The appellant's all the investments made by the appellant stands explained. The appellant's written income during the year is Rs. 16,47,190/-. She is now settled in Singapore with her husband and both are in Chartered Accountant Firm. She is software engineer, considering her explanation and evidences, I deem it proper to delete the additions made by the AO of Rs. 30,33,433/-. The appellant's returned income is accepted."*

6.6. In the aforementioned peculiar facts and circumstances in the absence of any rebuttal or arguments assailing the facts, we find no good reason to interfere with the findings arrived at in the impugned order. It is seen that no evidence controverting the facts as taken into consideration by the CIT(A) has been placed before us. The relevant documents relied upon by the CIT(A) support the case of

the assessee wherein the assessment order is u/s 144 and the Remand Report in regard to relevant evidences has been obtained and considered. In the aforementioned peculiar facts and circumstances the departmental ground is dismissed.

7. In view of the above fact that the department's appeal is dismissed and the Cross Objection filed by the assessee is dismissed as academic.

8. In the result, the appeal of the Revenue and the C.O. of the assessee are dismissed.

**The order is pronounced in the open court on 29<sup>th</sup> of August 2014.**

**Sd/-  
(J.S.REDDY)  
ACCOUNTANT MEMBER**

**Sd/-  
(DIVA SINGH)  
JUDICIAL MEMBER**

Dated: 29/08/2014  
*\*Amit Kumar/Kavita\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI