

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'C' NEW DELHI]**

BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 6559/DEL/2018 (A.Y. 2014-15)

Indra Sharma A-43, 1 st Floor, Ssector-12, Noida, Uttar Pradesh PAN No. EJGPS2259C (APPELLANT)	Vs.	ITO (E) Ward-1(5) Noida (RESPONDENT)
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Assessee by :	Sh. None
Department by:	Sh. Anuj Garg, Sr. DR

Date of Hearing	14.06.2023
Date of Pronouncement	23.06.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order dated 28/06/2018 passed by the Commissioner of Income-tax (Appeals)-15 Noida (hereinafter referred to 'CIT(A)' for assessment year 2014-15.

2. The assessee has raised the following grounds of appeal:-

“1. The CIT(A) has erred in confirming the assessment order dated 29.11.2016 for the assessment year 2014-15.

2. That the appellant denies its liability to be assessed at total income of Rs.75,12,930/- as against returned income of Rs. 5,45,930/- and accordingly denies its liability to pay tax, cess and interest demanded thereon.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting impugned assessment order and that too without assuming jurisdiction as per law and without serving the mandatory notices u/s 143(2) and 142(1) of the Income Tax Act, 1961.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting order passed by A.O an ex-parte assessment order u/s 144 and that too without giving show cause notices as per law and without giving adequate opportunity to the assessee.

5. That in any case and in any view of the matter, action of Ld. AO in passing an ex-parte assessment order u/s 144 is illegal, bad in law and against the facts and circumstances of the case.

6. That having regard to the facts and circumstances of the case, Ld. CIT has erred in law and on facts in not deleting addition as done by A.O. aggregate addition of Rs.69,67,000/- on account of cash deposits in bank account of assessee by treating it as alleged income from undisclosed sources u/s 69 and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing and without granting the opportunity of cross examination

of the entire material used against the assessee and without observing the principles of natural justice.

7. That in any case and in any view of the matter, action of Ld. CIT(A) not deleting AO's in making aggregate addition of Rs.69,67,000/- on account of cash deposits u/s 69, is bad in law and against the facts and circumstances of the case.

8. That having regard to the facts and circumstances of the case, Ld. CIT(Appeal) Officer has erred in law and on facts in not deleting, charging interest u/s 234A, 234B and 234C of the Income Tax Act, 1961.

3. None appeared for the assessee. Several notice have been issued by the registry which were returned unserved. The Department has been directed to serve the notice on the assessee by way of affixture which was duly complied by the Department and a report dated 18/04/2023 has been submitted by the Department wherein it is found that the assessee has been served with the notice by way of affixture. Even after service of the notice by way of affixture, the assessee remained absent before the Tribunal. Considering the above facts and circumstances, we deem it fit to decide the appeal on hearing the Ld. Ld. Departmental Representative and on verifying the material on record.

4. Brief facts of the case are that, the assessee filed return for the Assessment Year 2014-15 at an income of Rs. 5,45,930/-, the assessment was completed u/s 144 of the act on 29/11/2016 by making addition of Rs.

69,67,000/- u/s 69 of the Act on account of cash deposited in the bank accounts. As against the assessment order dated 29/11/2016 the assessee preferred an appeal before the CIT(A) the ld. CIT(A) vide order dated 28/06/2018 dismissed the appeal filed by the assessee. Aggrieved by the order of the CIT(A) the assessee preferred the present Appeal on the grounds mentioned above.

5. The Ld. Departmental Representative submitted that the findings recorded by the authorities are after giving adequate opportunities to the assessee and the grounds of appeal of the assessee in the present appeal are devoid of merit, therefore, by relying on the orders of the Lower Authorities sought for dismissal of the Appeal filed by the assessee.

6. We have heard the Ld. Departmental Representative and perused the material on record. The issue involved in the grounds of Appeal of the assessee is regarding aggregate addition of Rs.69,67,000/- on account of cash deposit in the bank account of the assessee which has been treated as income from undisclosed sources u/s 69 of the Act. The assessee during the year under consideration, the assessee has shown income from house property of Rs. 2,60,400/-, Long Term Capital Gain of Rs. 87,188/- and Income from other sources of Rs. 1,99,462/-. As per information available with the A.O. during the year under consideration, the assessee deposited cash amounting to Rs. 69,67,000/- in her various saving bank accounts. The assessee was asked to

establish the source of these cash deposited in her saving bank accounts. But the assessee was unable to produce any reply regarding the source of these deposits, Accordingly, the amount of Rs. 69,67,000 has been taken as income from undisclosed sources and added by the A.O. to the income of the assessee as per provisions of section 69 of the I.T. Act.

7. During the appellate proceedings while dismissing the appeal filed by the assessee, the Ld. CIT(A) has held as under:-

“7. Further, in the said cash book substantial amount of cash is shown to have been received from N.K. Sharma (son), Renu Sharma (daughter) and Madhu Sharma (daughter) but despite the specific query raised to the Ld. Counsel for the appellant as to the source of money in the hands of those three persons and whether they had disclosed the same in their own assessments or returns of income no reply was provided nor any documentary evidence was laid to corroborate the claims of the appellant. The appellant did also not provide any details of those three persons like their PAN, returns of income, sources of their income, the details of the cash available with those persons or withdrawn from somewhere, the reasons for giving such huge cash to the appellant etc. The appellant also could not explain why she was withdrawing huge amount of money from her alleged Butik and depositing that in her bank account not for the purposes of the business of the Butik but something else and why the same was not to be treated as at drawings from the said business thus being in the nature of income. The appellant could not explain if she was having an income of Rs. 28,50,000/- from her

Butik why the turnover from the said business should not be presumed to be at about Rs. 3,00,00,000/- as it is reasonable to expect the turnover to be around 10 times of the net income. The appellant also not furnished any details regarding the end use of the money deposited by her in her bank accounts. As that would have thrown light on the source of the cash deposited, the appellant chose not to divulge the same and despite taking repeated opportunities for filing the cash flow statement, no such statement was ever filed by the appellant.

8. *The Ld. Counsel for the appellant also could not produce any bill book, purchase vouchers, trade license, electricity connection documents, sale vouchers, any other evidence of running of the Butik by the appellant to corroborate the claim of the appellant that she was running a Butik.*

9. *The appellant has taken no ground as such and has only enclosed a type sheet which is neither stated to be the statement of fact nor is claimed to be the grounds of law. However, even if the same is treated as the grounds of law taken by the appellant no meaningful purpose is to be served as none of these grounds are of any help to the appellant. The first ground is the denial of the liability of the appellant to be assessed on a total income of Rs. 75,12,930/- against returned income of Rs. 5,45,930/- but without disclosing what is the basis of such denial in the teeth of the evidence collected by the Ld. AO regarding the deposit of cash amounting to Rs. 69,67,000/- in the bank accounts of the appellant. It is trite that she who makes the claim has to prove the same and if*

the appellant is denying its liability in the teeth of the material evidence brought on the record it is the appellant who has to lead the evidence to corroborate its denial. As no such evidence has been laid by the appellant or the evidence led by the appellant being the alleged cash book has no evidentiary value this ground of the appellant has no merit and is therefore, rejected.

10 *The second is regarding alleged non service of notice by the Ld. appellant u/s 143(2) and 142(1) of I.T. Act, 1961. The ground taken by the appellant is absurd and purely an afterthought as the appellant has entered appearance before the Ld. AO through her son Sri Sanjay Sharma and no such ground was raised by the appellant regarding non receipt of any such notice. In any case, the Ld. AO has recorded in the impugned assessment order that notice u/s 143(2) of I.T. Act, 1961 were issued and served upon the appellant on 28.08.2015. The notice u/s 142(1) along with questionnaire were issued and served on the appellant on 12.08.2016 and 31.10.2016. All the notices were sent to the appellant by the speed post of the postal authorities as well as by the email. The Ld. AO has specifically recorded that all the notices were properly served upon the appellant and in response to the same the appellant entered appearance before the Ld. AO through her son Sanjay Sharma and therefore, the ground of non-service of notice is a simple concoction fabricated by the appellant to cover up her mischief.*

11. *The third ground taken by the appellant is challenge to framing of assessment u/s 144 of I.T. Act, 1961 without allegedly giving notice u/s 144 of I.T. Act, 1961. This ground has no merit or*

substance as the Ld. AO has issued a questionnaire to the appellant which was not replied by the appellant and in course of the hearing when appellant appeared through her son Sanjay Sharma, the Ld. AO called for the material evidence being relied upon by the appellant and which was not provided at all. After the Ld. AO had brought to the notice of the appellant the material on its record the onus was on the appellant to discharge that the logical deductions of such material were not to be drawn against the appellant. The appellant brought no material on the record of the Ld. AO and has brought no material on the record of this office as well to explain the source of cash deposited by the appellant in her bank account. In such facts and circumstances of the case, the impugned assessment order was correctly framed by the Ld. AO u/s 144 of I.T. Act, 1961 and there was no denial of natural justice and the same cannot be interfered with on flimsy and absurd grounds being taken by the appellant.

12. The fourth ground is merely repetition of the third ground claiming the impugned assessment order framed u/s 144 of I.T. Act, 1961 to be bad in law. For the reasons stated in para 11 above, this ground has no merit or substance and is of no help to the appellant. The same is rejected.

13. The fifth ground taken by the appellant is that the Ld. AO fell into error in treating the cash deposited in her bank accounts as her income from undisclosed sources and by allegedly recording incorrect facts and findings and without giving adequate opportunity of hearing and without granting the opportunity of cross examination of entire material used against the assessee and without observing

the principles of natural justice. It is not clear from the paraphrasing of the ground what grievance is being sought to be made by such omnibus ground. The material relied upon against a defendant is rebutted not cross examined. The cross examination is done only of a Witness. In the instant case, the Ld. AO has not relied upon any witness but has framed the impugned assessment order with reference to the material on its record. Therefore, there were no questions of any cross examination. As far as the material relied upon by the Ld. AO is concerned, the same was the material of the appellant herself being the bank statements of her bank accounts which were very much in her knowledge and possession. The Ld. AO disclosed its reliance on the admitted documents of the appellant and if the appellant was denying its own documents the onus on her to prove that the same were either not correct or were not reliable. Once the Ld. AO has shown that the documents belonged to the appellant and the appellant was not able to prove that the same were either incorrect or unreliable, the same became admitted and proved document qua the applicant and therefore, had to be relied upon by the revenue if that supported the case of the appellant. The AO has served upon the appellant all the necessary notices by post as well as by email and the service of the same is duly recorded. The receipt of those notices is borne out by the appearance of the appellant before the Ld. AO and therefore, there is no merit or substance in the allegation of the appellant that she was not given proper opportunity of being heard, in any case, appropriate opportunity has been allowed to the appellant by this office to corroborate her case whatever that may be and when hearing on 04.07.2017 were scheduled the appellant sought an adjournment

through the counsel and which was duly allowed and case was adjourned for 20.07.2017. On that date, again the appellant sought an adjournment claiming that the CA of the appellant was not in good health and that was also allowed and the case was fixed for 04.08.2017. There was no response on that date. Case was again re-fixed for 24.08.2017 when the Ld. Counsel for the appellant again sought an adjournment and the case was adjourned to 07.09.2017. On that date also, the appellant sought an adjournment on the ground that her CA was not available and the same was allowed and the case was adjourned for 18.09.2017. On that date, the Ld. Counsel for the appellant sought adjournment to file the cash flow statement and the same was allowed and case was adjourned for 28.09.2017. However, there was no response. The case was again fixed for 29.11.2017 but there was no response. The case was again fixed for 20.12.2017 but again the Ld. Counsel for the appellant sought an adjournment to file additional evidence. The request of the appellant was allowed and case was fixed for hearing on 10.01.2018. On that date, the Ld. Counsel for the appellant filed in the Dak a written submission but did not appear for hearing. The case was thereafter fixed for 06.02.2018 when the Ld. Counsel for the appellant sought further time to file the cash flow statement and the case was adjourned for 20.02.2018 but on that date there was no compliance. Case was again fixed for 26.06.2018 but there was no compliance. From this it is clear that appellant is only delaying the conclusion of its appeal and is raising frivolous allegations against the revenue with an intent to divert attention from its mischief. There is no merit or substance in this ground as well and the same is dismissed.

14. *The sixth ground taken by the appellant is that the addition of Rs. 69,67,000/- being the cash deposited by the appellant in her bank account is bad in law for having been made by the Ld. AO u/s 69 of I.T. Act, 1961. The provisions of Section 69 which has been invoked by the Ld. AO deals with unexplained investment by a tax payer. Perusal of the bank account of the appellant shows that the appellant has deposited unaccounted cash in her bank account and thereafter has taken the proceeds by closing the bank account itself in one bank account with the Union Bank of India and has regularly transfer the cash deposited in her bank account to some other bank account not claimed to be owned by her and therefore, the Ld. AO was not too far off from the correct position of law in treating such application of money as unaccounted investment. However, the more appropriate provision of law which is applicable to the facts of the case is the provision of Section 68 of I.T. Act, 1961 as money has been found to be credited to the accounts of the appellant and the explanation for the same is either not available or are woefully unsatisfactory. It is therefore, directed that the provisions of Section 68 of I.T. Act, 1961 would be applied against the appellant in respect of the unexplained cash deposited by her. In any case, the ground taken by the appellant is of no help as the appellant is liable to be proceeded against u/s 68 of I.T. Act, 1961 for the entire amount of cash deposited in her bank accounts.*

15. *The seventh ground is regarding charging of interest which is only consequential and as the additions has correctly been made by the Ld. Assessing Officer resulting in addition to the income of the*

appellant, the interest has correctly been charged and the ground taken by the appellant has no force.

16. The eighth ground is merely procedural and does not require any consideration.

17. In these facts and circumstances of the case, the impugned assessment order does not require any interference by this office except to the extent that in addition to Section 69 invoked by the Ld. AO the provisions of Section 68 of I.T. Act, 1961 are to be applied in respect of cash found credited in the bank accounts of the appellant and for which the appellant has of no explanation or the explanation of the appellant is unsatisfactory. The impugned assessment order is therefore confirmed subject to the observations herein above. The appeal of the appellant fails and is dismissed.”

8. The above said finding of the Id. CIT(A) are well reasoned neither cryptic nor erroneous, the assessee who has failed to appear before the A.O. after filing the present Appeal has not appeared even single occasion and produced any document to refute the findings of the CIT(A). The assessee has failed to give any explanation regarding cash found to be credited in the bank accounts of the Assessee, further we do not find any infirmity in the addition made by the A.O. which has been sustained by the CIT(A). Thus, we find no merit in grounds of appeal of the assessee accordingly, the Ground No. 1 to 9 of the assessee are dismissed.

9. In the result, the Appeal filed by the assessee is dismissed.

Order pronounced in the open court on : **23/06/2023**.

Sd/-
(Dr. B. R. R. KUMAR)
ACCOUNTANT MEMBER
Dated : 23/06/2023
R.N, Sr. PS

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to :-

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

