

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E" : DELHI
[THROUGH VIDEO CONFERENCING]
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA.No.7078/Del./2017
Assessment Year 2012-2013

Shri Nitin Bajaj, 29/585-F, Block-29, East Patel Nagar, New Delhi. PIN 110 008 PAN ASHPB9971E (Appellant)	vs.	The Income Tax Officer, Ward – 50 (1), New Delhi. (Respondent)
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For Assessee :	-None-
For Revenue :	Shri Gaurav Pundir, Sr. DR

Date of Hearing :	28.09.2021
Date of Pronouncement :	28.09.2021

ORDER

PER R.K. PANDA, A.M.

This appeal filed by the Assessee is directed against the Order dated 18.09.2017 of the Ld. CIT(A)-17, New Delhi, relating to the A.Y. 2012-2013.

2. This appeal was fixed on a number of occasions, but, no one was appearing on behalf of the assessee. On 27.01.2021 the Bench directed the Registry to send notice through RPAD again at the address mentioned in Form No.36 at Column No.10. However, the notice issued by the Registry through RPAD was returned by the Postal Authorities with the remarks "Not Known". The assessee has also not taken any steps to intimate the change of address, if any. Under these circumstances, we have no other option, but, to decide the appeal on the basis of the material available on record and after hearing the Ld. D.R.

3. Facts of the case, in brief are that the assessee is an individual and filed his return of income on 25.09.2012 declaring total income of Rs.2,00,150/-, after claiming deduction of Rs.79,500/- under Chapter-VIA of the I.T. Act, 1961. The return was processed under section 143(1) and thereafter was selected for scrutiny through CASS. Statutory notice under section 143(2) was issued to the assessee on 07.08.2013 and was duly served upon the assessee by the ITO, Ward-26(2), New Delhi. Subsequently,

the case was received on transfer to ITO, Ward-50(1), New Delhi. Again notices under section 143(2) and 142(1) along with questionnaire were issued. However, no one attended on behalf of the assessee on the appointed date. Subsequently, the Learned A.R. of the Assessee appeared before the A.O. and filed copy of the return and the case was adjourned. However, subsequently nobody appeared on behalf of the assessee.

4. During the course of assessment proceedings, the A.O. observed from the P & L A/c that assessee has claimed expenses amounting to Rs.8,42,763/-. Since nobody appeared before the A.O. to justify the allowability of the same, the A.O. disallowed an amount of Rs.1,68,553/- being 20% of the expenses on adhoc basis. Similarly, the A.O. made addition of Rs.5,86,742/- being 20% of the sundry creditors on estimate basis in absence of any details. Since the assessee did not file any evidence to support its claim regarding the deduction under section 80C of the I.T. Act, 1961, the A.O. made addition of Rs.79,100/- to the total income of the assessee. The A.O. further noted from

the AIR information that assessee has deposited cash of Rs.60,22,000/- with HDFC Bank Ltd. In absence of any justifiable reason explaining the source of such cash deposit by the assessee in his Bank A/c, the A.O. made addition of the same to the total income of the assessee as per the provisions of Section 68 of the I.T. Act, 1961. Thus, the A.O. completed the assessment on a total income of Rs.70,56,545/-.

4.1. In appeal, the Ld. CIT(A) upheld the various additions made by the A.O.

5. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :

“On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in

a) Dismissing the appeal of the assessee.

b) Not holding the assessment illegal and invalid in the absence of any valid service of notice u/s

- 143(2) for selecting the case for scrutiny i.e before the expiry of the time limit permissible for taking the case under scrutiny.*
- c) Not holding the assessment illegal and invalid in the absence of any 143 notice issued by the jurisdictional Assessing Officer.*
- d) Not holding the assessment illegal and invalid since the notice u/s 143(2) if any, was issued by a non jurisdictional assessing officer and therefore, being invalid notice.*
- e) Not holding the assessment illegal and invalid in the absence of service of the notice u/s 143(2) within the permissible time limit.*
- f) Confirming the addition of Rs.1,68,553/- incorrectly and unjustifiably made by the AO.*
- g) Confirming the addition of Rs.5,86,742/- incorrectly and unjustifiably made by the AO.*
- h) Confirming the addition of Rs.60,22,000/- incorrectly and unjustifiably made by the AO.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in holding that the fresh evidences filed by the appellant could not be admitted in the absence of Rule-46A. application whereas in the appeal order evidences have been considered and rejected but without hearing the assessee on such fresh evidences and- also without considering such fresh evidences in detail and also merits of the evidences.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in confirming the addition of Rs.60,22,000/- incorrectly and unjustifiably made by the AO u/s 68 whereas there is no such credit of this amount in the books of account which is prerequisite condition for any addition u/s 68.*

4. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in confirming the assessment incorrectly made by the AO u/s 144.”*

6. We have heard the Ld. D.R. and perused the record.

7. It is an admitted fact that due to non-appearance of the assessee before the A.O. and non-filing of the details, the A.O. made various additions to the total income of the assessee. We find the Ld. CIT(A) in his elaborate order has sustained the various additions made by the A.O. So far as the disallowance of 20% of the expenses is concerned, the Ld. CIT(A) while upholding the addition made by the A.O. has observed as under :

“In ground no.1, the appellant has challenged the disallowance of Rs.1,68,553/- without any basis. The appellant has claimed that the Assessing Officer disallowed expenses on the basis that no justification and no details in respect

of expenses amounting to Rs.8,42,763/- was filed by the appellant. He therefore disallowed 20% of the expenses on estimate basis. In appeal, the appellant has claimed that the expense has been incurred an expense of Rs.5,63,513/- under various heads for running of the business. These expenses are genuine expenses and have been incurred in the ordinary course of business. The perusal of the detail of the expenses show that the entire expenses have been incurred by the appellant in cash. Thus, there is always possibility to inflate the expenditure on the basis of self-made vouchers/in absence of proper bills/vouchers. Further, without producing bills/vouchers of various expenses, the authenticity of the expenses cannot be ascertained. Under these circumstances, I find that the AO was justified to disallow out of the claim of the appellant. Keeping in view-all these facts, the disallowance of 20% made by the Assessing Officer is justified and upheld.”

7.1. Similarly, while upholding the addition of 20% sundry creditors, the Ld. CIT(A) has rejected the various additional evidences filed before him as per Rule-46A in the absence of any application for admission of the same. Even otherwise he has also decided the issue on merit by holding as under :

“Further, even on merits, the above confirmations did not contain the PAN of the party and were undated. Even the Ledger account of these parties filed by the assessee only shows that the assessee had been making only cash payment to these parties against purchases of Rs.20,000/- each on continuous dates. Hardly any payment has been made through cheques. It is apparent that the assessee is making purchases from small parties who do not have the capacity to sell their goods on credit. The cash payments have been shown to square up the account on subsequent dates. Thus, the grounds of appeal are dismissed.”

7.2. Similarly, while upholding the addition of unexplained cash deposit in the Bank A/c under section 68 of the I.T. Act, 1961, the Ld. CIT(A) has given a categorical finding that assessee could not substantiate with evidence regarding source of the cash deposit. The relevant observations of the Ld. CIT(A) at Para-10.6 of the order is reproduced as under :

10.6. In respect of the deposits made in the bank account the appellant has been unable to prove the source. The explanation offered by the assessee thus about the nature and source of the cash received in the bank account, is not satisfactory thus there is, prima facie, evidence against the assessee. The burden was on the assessee to rebut the same, and, it failed to rebut it. The appellant has failed to discharge its onus to produce legally acceptable evidence of genuineness of the transactions. The expression "the assessee offers no explanation" means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the

assessee. In this case the appellant has offered no creditable explanation about the amounts credited in his bank account, the entire receipts of Rs.56,58,640/- (as against Rs.60,22,000/- taken by the r Assessing Officer) therefore cannot be treated as explained. In appeal, the additional evidence filed by the appellant has been examined, and perused, however, in the absence of application for admission of additional evidence, the same has not been admitted and taken cognizance of. The additions made by the Assessing Officer is therefore upheld subject to the confirmation in respect of the amount of cash deposited in the account whether Rs.56,58,640/- as claimed by the appellant or Rs.60,22,000/- as claimed by the Assessing Officer. Considering the above facts, the addition made by the AO u/s 68 is confirmed. The grounds of appeal are therefore dismissed.”

7.3. Since the assessee did not to appear before the Tribunal and since there is no other evidence before us to take a contrary view than the view taken by the Ld. CIT(A)

in sustaining the various additions made by the A.O, we do not find any infirmity in his order. We, accordingly, uphold the order of the Ld. CIT(A) and the grounds raised by the assessee are dismissed.

8. In the result, appeal of the Assessee is dismissed.

Order pronounced in the open Court at the time of hearing itself i.e., on 28.09.2021.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi, Dated 28th September, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'E' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.