

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: A: NEW DELHI

BEFORE SHRI G.S PANNU, HON'BLE PRESIDENT
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No. 773/Del/2019
Assessment Year: 2008-09

Ashok Kumar Chopra, Shop No. 09/97, Ground Floor, Karan Wali Gali Main 60, Futer Road, Vishwas Nagar, Shahdara, New Delhi 110032 PAN ADEPC 4618 H	vs.	ITO, Ward 40(4), New Delhi
(Appellant)		(Respondent)

For Assessee :	None
Revenue For :	Ms. Anubhaa Tah, Sr. DR

Date of Hearing :	03.10.2023
Date of Pronouncement :	06.10.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order CIT(A)-14, New Delhi dated 10.12.2018 for A.Y. 2008-09.

2. The grounds of appeal raised by the assessee are as follows:-

1. That the Ld. CIT (Appeal) has erred in law and facts in deciding the appeal against the appellant without considering any evidences placed on record. The order of the Ld. CIT (Appeal) is illegal, arbitrary and unreasonable.

2. That the Ld. CIT (Appeal) failed to appreciate the grounds of appeal before him and has not only wrongly upheld the action of the Assessing Officer, but has further enhanced the addition. Addition is incorrect & illegal in circumstances.

3. That the AO has erred in Law and facts in making the addition of Rs.3,48,89,516/- on account of income from undisclosed sources, under Section 68 of IT Act 1961. Keeping in view the facts and circumstances no addition could be legally made.

4. That the CIT (A) & AO has erred in law and facts in not appreciating that the money found credited does not belong to the Appellant as Appellant is an entry provider and money does not belongs to him. The Appellant was engaged in providing entries and earn commission which itself is a business.

5. That on the basis of the income earned by the appellant in circulation of the various deposits in his own name and in other names directly or indirectly the appellant has only earned the commission by providing entries. Therefore the appellant should have been assessed on the income disclosed on the commission of turnover which is the entries as appearing in the banks with different names.

6. That the CIT(A) has erred in law in enhancing the addition of Rs.65,92,97,926/- without affording due and proper opportunity to the appellant to rebut the presumption.

7. Because the AO has made addition of Rs.3,48,89,516/- under the head of income from undisclosed source u/s 68 of the Income Tax Act, 1961 and CIT(A) further enhanced the addition by invoking the provision of section 69A of the Income Tax Act, 1961. Actions of both are unjust and arbitrary.

8. That the Ld. CIT (Appeal) has erred in law and on facts in sustaining the addition of Rs. 3,48,89,516/- u/s 68 of the Income Tax Act, 1961 as an unexplained credits in the banks which does not belong to the Appellant as he is an entry provider. Moreover, the Ld. CIT (A) instead of allowing the appeal of the appellant enhanced the addition to Rs.65,92,97,926/- by invoking the provision if section 251(2) of the Income Tax Act, 1961 as unexplained money 69A.

9. That the Ld. CIT(A) erred in law and facts and failed to appreciate and understand the applicability of provisions of Section 68 and 69A of the Income Tax Act, 1961 in the facts and circumstances. That Ld. AO invoked the provision of Section 68 of the Act, 1961 and CIT (Appeal) has blindly upheld the action of the AO against the appellant and enhanced the demand of the appellant by adding the credited, amount in the bank.

3. When the case was called for hearing neither the assessee nor any authorised representative or counsel appeared nor any adjournment application has been filed despite due service of notice. Therefore we deem it just and proper to adjudicate the appeal ex-parte qua assessee after hearing the submissions of Id. Senior DR. Hence we proceed to adjudicate the appeal.

4. From the assessment order we note that the Assessing Officer has made one addition on account of income from undisclosed sources by taking out peak of credits in the accounts of different entities. The assessee carried the matter before Id. CIT(A) but remained empty handed. From first appellate order we note that the Id. CIT(A) has not only confirmed the addition of Rs. 3,53,67,530/- made by the Assessing Officer but has also enhanced the addition to Rs. 65,92,97,926/-. In the back drop above factual matrix

discernable from the orders of the authorities below we proceed to adjudicate the appeal of assessee.

5. In ground no. 6 to 8 of assessee it has been alleged that the Id. CIT(A) has enhanced the addition without show causing the assessee and thus the enhancement has been made without allowing the assessee an opportunity of hearing. The Id. Senior DR did not controvert that the conclusion drawn by the Id. CIT(A) in the first appellate order enhancing the addition has been recorded by Id. CIT(A) without issuing any showcause notice to the assessee . For the sake of completeness of this order we find it appropriate to reproduce the relevant operative para 14 of order of Id. CIT(A) as follows:-

14. As regards, the quantum of addition the assessee was required to show cause for enhancement u/s 251(2) of the I.T. Act for addition of gross credits in the bank accounts. Before the AO, the assessee claimed that the deposits represent turnover but could not be established it. Before the CIT(A), the assessee claimed to be an accommodation entry provider but did not furnish any details of the people to whom accommodation entries were given and the purpose for which it was given. Therefore, the assessee has failed to establish both the claims. In such a case, the entire deposits in the bank account of the assessee are to be added u/s 69A of the I.T. Act as unexplained money in the hands of the assessee. On the other hand, since the assessee has claimed the corresponding credits in the books of account as sale proceeds but failed to establish the same, it is required to be added u/s 68 of the I.T. Act as well. Consequently, the addition made of Rs. 3,48,89,516/- is required to be enhanced. Since, the total credits in all the bank accounts including the bank account of Jupiter Trading Agencies comes to Rs. 65,92,97,926/-, the total income of the assessee is taken at Rs. 65,92,97,926/- instead of assessed total income of Rs. 3,53,67,530/-. Consequently, the appeal is dismissed and assessment is enhanced to Rs. 65,92,97,926/-.

6. From the above conclusion of Id. CIT(A) enhancing the addition recorded in para 14 it is vivid that the Id. CIT(A) has not issued any show cause notice to the assessee showing his intention to enhance the addition on merits either by way of any notice or order sheet entry. Therefore, we set aside the enhancement order passed by the Id. CIT(A). The matter is restored to the file of Id. CIT(A) for adjudication of grounds of assessee on merits after allowing due opportunity of hearing to the assessee on all the issues including enhancement of addition. Accordingly, matter is restored to the file of Id. CIT(A) for afresh adjudication of appeal of assessee.

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

Order pronounced in the open court on 06.10.2023.

Sd/-
(G.S PANNU)
PRESIDENT

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 06th October, 2023

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi