

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'D' : NEW DELHI)
BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 615/Del/2023
(Assessment Year : 2013-14)**

Sh. Naresh Kumar Sharma 967, P/31-32A, Near Sector-31, Haryana, Gurgaon PAN : ASXPS6194G	Vs.	ACIT, Int. Taxation, Gurgaon
(APPELLANT)		(RESPONDENT)

Appellant by	None
Revenue by	Sh. Sanjay Kumar, Sr. DR

Date of hearing:	08.08.2023
Date of Pronouncement:	23.08.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by assessee against the assessment order dated 11.01.2023 for assessment year 2013-14 passed by ACIT, Int. Tax, Gurgaon u/s 147 r.w.s. 144C(13) of the Income Tax Act, 1961.

2. None has appeared for the appellant as the appeal was called for hearing. Notices have been repeatedly issued and it is reported appellant is not available

on the address. Notice through Email are also sent. No more opportunity is justified. The arguments of Ld. DR were heard and who supported the findings for ld. Tax authorities below.

3. The brief facts of the case are that as per information available with the Income-tax Department, the assessee had not filed any return of income for Financial Year 2012-13 relevant to A.Y.2013-14. As per ITD records, the assessee purchased mutual fund units amounting to Rs.7,37,53,837/-, made time deposits of Rs.2,00,00,000/-, received other receipts of Rs.7,22,932/- and paid credit card bills amounting to Rs.10,79,081/- during the FY 2012-13 relevant to A.Y.2013-14 which was not in tune with the declared return profile (the assessee being a non-filer). Accordingly, assessment proceedings u/s 147/148 of the Income-tax Act, 1961 (the Act for brevity) were initiated by issuing a notice u/s 148 of the Act on 28.03.2021 after obtaining necessary approval of the Competent Authority u/s 151 of the Act.

4. In response to the notice u/s 148 of the Act, the assessee filed his return of income on 18.10.2021. Thereafter, notices u/s 143(2) dated 18.01.2022 & 142(1) dated 19.01.2022 of the Act were issued through which the assessee was requested to furnish his response on sources of the said financial transactions. Response of the assessee was received through ITBA portal consisting of explanation on sources of investment /expenditure alongwith documentary evidences.

5. Ld. AO observed that the perusal of a/c statement of the assessee's bank maintained with Indusind bank reveal that cash amounting to Rs. 5,00,000 & 4,50,000 were deposited on 03.12.2012 & 06.12.2012 in FY 2012-13, Hence, vide notice dated 22.02.2022 u/s 142(1) of the Act, the assessee was requested to

explain sources of the said cash deposits. In response to the same, the assessee stated that he had withdrawn cash of Rs.10 lakhs from his HDFC NRE a/c no.06221060000028 on 28.06.2012 out of which he deposited sum of Rs.9,50,000 in December, 2012. The Response of the assessee was not found satisfactory by the Ld. AO, hence, the assessee was show caused vide notice dated 24.02.2022 as to why cash deposits of Rs.9,50,000/- in his bank a/c no.100002795994 maintained with Indusind bank may not be treated as unexplained as source for the same could not be explained satisfactorily.

6. The assessee filed his response through ITBA and submitted the following explanation:

‘I have withdrawn Rs 10,00,00/- from my HDFC NRE Account on 06221060000028 on 28.06.2012 when I was in India during my visit between 30.05.2012 to 08.07.2012. The money could neither be used nor deposited back in the bank and I left India for Dubai. When I visited India again between 02.12.2012 to 21.12.2012, I deposited Rs 9,50,000/- in my NRO account with Indusind Bank as stated by you. Since I do not stay in India, the only possible time to deposit the amount was on my subsequent visit only.’

7. The response of the was not found tenable by the Ld. AO for the following reasons :

“(a) That the assessee has failed to demonstrate purpose of cash withdrawal of such huge amount in cash as there is no requirement of cash as such when cash dispensing facilities are available 24x7 besides electronic modes of payment.

(b) That the assessee has failed to demonstrate he had cash in his possession while leaving India. No declaration of currency certificate has been furnished by the assessee disclosed to immigration authorities.

(c) That the assessee has failed to establish that he had stored cash in India in custody of someone else.

(d) That there is significant time gap between alleged withdrawal of cash on 28.05.2012 and deposits on 03.12.2012 & 06.12.2012.

(e) That there is no source of cash income of the assessee in India that could show generation of cash income and explain sources of cash deposits.”

8. Appellant assessee had filed objections before Ld. DRP and it observed that during reassessment proceedings the AO categorically asked the assessee to explain the sources of cash deposits in his bank account amounting to Rs. 9,50,000/-. After considering the submissions of the assessee the AO held that the explanation furnished is not reasonable/ satisfactory and therefore the said amount was treated as unexplained money. Once the AO has found the assessee to have made certain cash deposits and sought explanation thereof, the onus lies upon the assessee to substantiate the same with necessary documentary evidence. In the instant case, as observed by the AO the assessee has only put forth arguments against the opinion and observations.

9. The DRP vide its order dated 06.12.2022 had also directed to pass a speaking order on the issue as to whether quantum of addition made as unexplained money forms a part of the income for which the reason to believe was recorded to reopen assessment, or the above addition lies entirely within the domain of any other income.

10. Ld. AO has given following findings in the final assessment order;

“Case records have been perused and it is noted that the then AO had initiated proceedings on the basis of the following information:

- (i) Time deposits exceeding Rs. 2,00,000/- with a banking company*
- (ii) Paid Rs. 2,00,000/- or more against credit card bills*
- (iii) TDS return-payment to non-residents (section 195) &*
- (iv) Paid Rs. 2,00,000/- or more for purchase of Units of Mutual Funds*

The above issues were examined during the scrutiny proceedings. The assessee furnished his account statement in support of his explanation for sources of credit card payments, sources of time deposits, purchase of MFs etc. The account statements were relied upon by the assessee to explain the sources of the above payments or investments. Thus, cash and non-cash credits in the accounts of the assessee formed basis of source of investment/expenditure. The cash deposits in question also formed sources of the above payments/investments. Therefore, addition of unexplained cash deposits was integral part of issues for which the proceedings were initiated. It is not the case of the assessee that the above payments/investments were made from some other sources. Therefore, cash deposits formed part of income which was used for purchasing time deposits, for payments of credit card bills, purchase of MFs etc. Thus, addition on account of unexplained cash deposits is part of reasons to believe recorded for initiation of proceedings.

Also, the law does not restrict that issues which formed reasons to believe can only be examined and assessed during scrutiny proceedings u/s 147 of the Act. The proceedings were initiated by recording reasons to believe as per law. Explanation to section 147 of the Act provides that any other issue which comes to the notice of the AO subsequently can also be examined and assessed during proceedings u/s 147 of the Act. Thus, the contention of the assessee is not tenable as per law.”

11. Assessee has come in appeal and has raised following grounds ;

1. That having regard to the facts and circumstances of the case, Ld. AO has erred in law and on facts in making an

addition of Rs. 9,50,000/- on account of alleged unexplained Cash Deposit in the year under appeal and impugned addition has been made by recording incorrect facts and findings and without observing the principles of natural justice.

2. *That having regard to the facts and circumstances of the case the action of Ld. AO in charging interest u/s 234A/B/C of Income Tax Act, 1961 is erroneous.*

That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

12. Appreciating the aforesaid, the Bench is of considered opinion that assessee had not filed any return of income for the relevant year and based upon the information with regard to purchase of units of mutual funds, deposits of FDR and payment of credit bills. The case of assessee was peaked up for reopening, Ld. AO was justified to examine the issue of deposit of Rs. 9,50,000/- in the bank account as part of reopening to examine the sources of investments in liquid assets and payment of credit card bills.

13. Further, no fault can be found in the conclusion drawn by Ld. AO giving reasoning for not accepting the explanation of the assessee as narrated above in para 6. The Bench is of considered view that the burden to give up explanation is a factual nature and has to be tested on the scales of reasonableness and prudence. The claim of assessee that the amount withdrawn between the period 30.05.2012 to 08.07.2012 while he was in India, was deposited between 02.12.2012 and 21.12.2012 when he was in India needed more factual evidences and only by way of substantial evidences, assessee could have demonstrated the same but apart from the bald assertion there was no direct or substantial evidence to justify the explanation. The findings of Ld. AO require no interference, the

ground raised by assessee have no substance. **The appeal of assessee is dismissed.**

Order pronounced in the open court on 23rd August, 2023.

Sd/-
(G.S.PANNU)
PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 23rd .08.2023

Binita, SR.P.S

Copy forwarded to:

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

AR, ITAT
New Delhi