

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.6855/Del/2019
Assessment Year: 2011-12

Sh. Amit Aggarwal, 117, 1 st Floor, Harsh Vihar, Pitampura, Delhi	Vs.	ITO, Ward-38(2), Delhi
PAN :AHAPA8853G		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Sh. R.K. Gupta, Sr.DR

Date of hearing	01.07.2021
Date of pronouncement	01.07.2021

ORDER

PER O.P. KANT, AM:

This appeal has been preferred by the assessee challenging the order dated 12/06/2019 passed by the learned Commissioner of Income Tax (Appeals)-13, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2011-12 raising following grounds:

- The Ld. A.O. had made an addition of Rs.11,91,000/- as cash deposited and treated it as income of the assessee from undisclosed sources. Further, at the time of appellant proceeding we submitted all the explanation in respect of cash deposit. And all the documents/copy of deeds produced to before*

- CIT-13 to prove the source of cash deposited in the bank. The cash deposited in the bank was out of the earlier cash withdrawal from the saving bank account.*
2. *The assessee is NRI and residing at U.S.A since 15.06.2009 and doing medical practice, therefore he could not get informed. In the month of December 2018, when he visited to India on the occasion of family function he got about the notices and order. In this respect A.R. submitted copy of passport and visa for confirmation the status of appellant*
 3. *It is bring to your kind notice that before CIT-13 never raised any query regarding address of the appellant and his mother's current address nor given any opportunity of being heard to appellant. Further we would like to your kind attention his mother had not any information regarding notices as she was not residing on said address in the order. The current address of the appellant's mother is 117, 1st Floor, Harsh Vihar, Pitampura, Delhi-110034 and the same address as proof of resident address is mentioned on passport.*
 4. *The appellant have all the information and can provide the required informations/documents.*
 5. *The appellant craves to add or amend any grounds of appeal.*

2. Briefly stated facts of the case are that the assessee is a non-resident Indian and permanent resident of United States of America (USA) and working as a professional doctor. On the basis of the Annual Information Return (AIR), a cash deposit of ₹ 11,91,500/- during financial year 2010-11 relevant to assessment year under consideration, i.e., AY 2011-12 was observed in the bank account maintained by the assessee with ICICI Bank. According to the Assessing Officer, no return of income was filed by the assessee for the year under consideration, therefore, he reopened the assessment by view of issue notice under section 148 of the Income-tax Act, 1961 (in short 'the Act') on 19/03/2018. In view of no compliance on the part of the assessee, the Assessing Officer completed assessment on the basis of the available material in terms of section 144 (i.e. best judgment assessment) of the Act after making addition of Rs.

11,91,000/-. The assessee filed appeal before the learned CIT(A) and contested the addition. The learned CIT(A) observed that notices were served by the Assessing Officer at the same vary address, which was mentioned in Form No. 35 i.e. the prescribed format in which appeal was filed before the learned CIT(A), and the assessee had selectively not appeared before the Assessing Officer, therefore, she upheld the disallowance.

3. None appeared on behalf of the assessee. The Learned DR relied on the order of the lower authorities.

4. We have heard submission of the Learned Departmental Representative and perused the relevant material on record. The Learned CIT(A) has recorded that the assessee is a non-resident Indian and assessment has been completed in expertly manner due to non-compliance on the part of the assessee. She has mentioned that for first appellate proceedings, the assessee had given a general power of the attorney in favour of his mother Smt. Sudha Agrwal. The Learned CIT(A) observed that address in the prescribed format for filing appeal is same, on which notices were sent by the Assessing Officer. According to her, there was no reasonable cause as why the notices were not responded to. The Learned CIT(A) held that *selective compliance to assert and enjoy one's right of appeal while avoiding scrutiny proceeding willfully, is not the intent of the law and cannot be increased*. Accordingly, confirmed the addition. This action of Ld. CIT(A) is not justified. She has already observed that assessee is non-resident Indian and represented by her elderly mother. If by any reason, the assessee, who is a non-resident, could not be represented before the Assessing Officer, it is the duty of the Learned First Appellate

Authority to consider the documents filed in terms of Rule 46A of Income-tax Rules, 1962 (in short 'the Rules') and decide the appeal on merit rather than dismissing without deciding the issue-in-dispute. The assessee has not been represented before us, however, in the interest of substantial justice, we set aside the finding of the Learned CIT(A), and restore the matter back for deciding afresh on merit. It is needless to mention that both the assessee as well as Assessing Officer shall be afforded adequate opportunity of being heard. The grounds of appeal accordingly allowed for statistical purposes.

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

Order pronounced in the open court on 1st July, 2021.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 1st July, 2021.

RK/-(DTDC)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi