

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC-2" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.4182/Del/2019
Assessment Year : 2010-11**

Sher Singh, C/o-Ved Bhanu Arya, Adv., H.No.7, Friends Colony, Jharsa Road, Gurgaon, Haryana-122001. PAN-BWDPS8994R	vs	ITO, Ward-4(2), Gurgaon
APPELLANT		RESPONDENT
Appellant by		Sh. Ved Bhanu Arya, Adv.
Respondent by		Sh.Gaurav Pundir, Sr. DR
Date of Hearing		19.07.2021
Date of Pronouncement		23.07.2021

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2010-11 is directed against the order of Ld. CIT(A)-1, Gurgaon dated 26.02.2019. The assessee has raised following grounds of appeal:-

- "That the impugned Order of CIT (Appeals)-1, Gurugram, upholding the additions made by the Assessing Officer, ITO Ward-4(2), Gurugram, thereby creating a demand of Rs.18,86,120/- on account of tax and interest due thereon Vis 144 r.w. Sec. 147 of the Income Tax Act, 1961 is arbitrary, unjustified, unfair and against the principles of natural justice.*
- That the Best Judgment Assessment Order of the ITO Ward - 4(2), Gurugram creating the demand of Rs.18,86,120/- is grossly unjustified since the notices purported to have been sent by the Assessing Officer were never received by the Appellant, thereby making the contention of the Assessing Officer that the*

Appellant was "deliberately avoiding the Assessment proceedings" unfounded.

3. *That the upholding of the Order of the Assessing Officer by the Ld. CIT (Appeals)-I, Gurugram, is grossly unjustified and against the principles of natural justice, since the same is also based on the belief "that the Assessee is not interested in pursuing the Appeal". In the instant case, the notices claimed to have been sent by the Department intimating the Appellant about the date of hearing of the Appeal were never received by the Appellant, thereby rendering the belief of the Ld. CIT (Appeals)-1, Gurugram incorrect. It is pertinent to note that if the Appellant was "not interested in pursuing the Appeal", then he would not have filed the Appeal in first place.*

4. *That the Assessing Officer grossly erred in considering the Cash deposit of Rs.25,00,000/- by the Appellant into his Bank Account No. 2041101004797 with Canara Bank, Haily Mandi, Gurugram, as unexplained credit Vis 69 of the Income Tax Act, 1961, since the amount of Cash deposited by the Appellant into his Bank Account comprised primarily of Cash received by the Appellant by way of advance against Agreements for sale of immovable property owned and possessed by him. The summary of the Cash deposit of Rs.25,00,000/- by the Appellant into his said Bank Account is as follows:*

<i>Advance Received against Agreement for Sale</i>	<i>Rs.22,00,000/-</i>
<i>Proceeds from Sale of Livestock</i>	<i>Rs. 1,40,000/-</i>
<i>Accumulated savings</i>	<i><u>Rs. 1,60,000/-</u></i>
<i>Total</i>	<i><u>Rs.25,00,000/-</u></i>

5. *That denying the Appellant to explain the perceived "Unexplained Credits U/s 69 of the Income Tax Act, 1961" as falsely concluded by the Assessing Officer and upheld by CIT (Appeals) - 1, Gurugram would be a gross miscarriage of justice, since the reality of the case as indicated hereinabove clearly*

prove that every penny deposited by the Appellant into his said bank account can be explained and accounted for and that there exists no unexplained and illegitimate deposit of Cash by the Appellant into his Bank Account rendering the deposit punishable under the provisions of the Income Tax Act, 1961.

6. *That the Appellant herein craves for your leave to reserve his right to add to, alter, amend or modify Grounds of Appeal before or at the time of the hearing thereof.*

7. *That in the light of the explanations provided hereinbefore, the order of the Assessing Officer as upheld by the Ld. CIT (Appeals)-1, Gurugram is bad and needs to be quashed.”*

2. Facts giving rise to the present appeal are that the case of the assessee was re-opened on the ground that the assessee had deposited cash in Saving bank account held with Canara bank amounting to Rs.55,90,000/- during the Financial Year 2009-10 relevant to Assessment Year 2010-11. A notice u/s 148 of the Income Tax Act, 1961 (“the Act”) was issued on 27.03.2017. However, in response to the notice, no representation was made on behalf of the assessee. Therefore, the Assessing Officer proceeded to make addition of Rs.25,00,000/- deposited in the bank account.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A). Before Ld.CIT(A) also, there was no representation on behalf of the assessee. Therefore, Ld.CIT(A) dismissed the appeal of the assessee.

4. Now, the assessee preferred present appeal before this Tribunal.

5. Ld. Counsel for the assessee submitted that the assessee is a retired army personnel and at the relevant time, he was posted at various places.

He could not receive the notice as sent by the Revenue. Ld. Counsel for the assessee submitted that in the interest of principles of natural justice and in the fair play, the matter may be remanded back to the Ld.CIT(A) to subserve the principles of natural justice.

6. On the contrary, Ld. Sr. DR opposed these submissions and supported the order of the authorities below.

7. I have heard contentions of both the parties and perused the material available on record. I find that the assessee has demonstrated reasonable cause of non-attending the proceedings before the authorities below. Therefore, the impugned order is set aside and the grounds raised by the assessee are restored to Ld.CIT(A) to decide the appeal afresh after giving reasonable opportunity to the assessee. However, the assessee is hereby directed not to seek adjournment without any reasonable cause. The assessee is further directed to appear *suo motto* before Ld.CIT(A) after obtaining the order of the Tribunal. Thus, grounds raised by the assessee in this appeal are allowed for statistical purposes.

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

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 23rd July, 2021.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI