

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH 'D' NEW DELHI**

**BEFORE : SHRI C.M. GARG, JUDICIAL MEMBER &
 SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 2485/Del./2012
Asstt. Year : 2003-04**

Vrinda Suri, Z-507, Siddhartha Apartments, Pitampura, New Delhi [PAN:AAKPR 4644P] (Appellant)	vs.	Income-tax Officer, Ward 25(1), New Delhi. (Respondent)
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Appellant by	:	Sh. Rajeev Saxena, Advocate
Respondent by	:	Sh. Yogesh Kumar Sharma, Sr. DR
 Date of hearing	 :	 13.06.2016
Date of pronouncement	:	30.06.2016

ORDER

Per L.P. Sahu, Accountant Member:

This appeal by the assessee is directed against the order of Id. CIT(A)-XXIV, New Delhi dated 20.03.2012 for the assessment year 2003-04 on the following ground :

“1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the additions made of Rs.2,36,250/- in respect of Gift received of Rs.2,25,000/- and commission thereon of Rs.11,250/-.”

In addition to above ground, the assessee has also raised additional grounds and has prayed to take on record for adjudication. The additional grounds read as under :

Ground No. 1A

That Ld. CIT(A) has erred in law as well as on facts in not disposing ground No. 1 challenging the assessment bad in law and so was required to be quashed.

Ground No. 1B

That assessment made by the assessing officer is without jurisdiction as assessee has already shifted to Bangalore and assessing officer has no jurisdiction on her.

Ground No. 1C

That assessment made u/s. 147 is bad in law because :

(a). No notice u/s. 148 was served upon the assessee within the stipulated period provided by the statute.

(b). The reasons recorded were vague, imaginary and general in nature but not specific to form reason to believe.

(c). Neither the material relied upon was provided to the assessee nor an opportunity to cross-examine was allowed to the assessee which was relied upon by AO to form reason to believe.

(d). The addition made on forming reasons on the behest of superiors is bad in law."

2. Since the above additional grounds raised by the assessee are on legal aspects of the case, we deem it proper to admit the same on record for adjudication, as the Id. DR has raised no objection on admissibility of these grounds.

3. The brief facts of the case are that on the basis of information received from Investigation Wing of the department, notice u/s. 148 dated 26.03.2010 was issued after recording reasons as under :

“The Investigation Wing, Delhi conducted large scale investigation to unearth a huge racket involving accommodation entry operators. Such entry providers were found to be involved in giving accommodation entries in form of bogus gifts/loans/share application money/capital gain etc. by cheques/DDs in lieu of cash received from intending beneficiaries. The entry providers operated large number of bank accounts in their own names and also in fictitious names. The list of beneficiaries who had taken accommodation entry from such persons/firs included the name of Hukum Chand & Ishwar Sharama.

The details of accommodation entries taken by the assessee and particulars of entry providers are as under :

Beneficiary Bank name	Beneficiary Bank branch	Account No. of Beneficiary	Value of Entry Taken	Instrument No. by which entry taken	Date on which entry taken	Name of account holder of entry giving account	Bank from which entry given	Branch of entry giving bank	A/c No.
Canara Bank	Rani Bagh	SB 7538	100000	5884	23-Nov-02	Hukum Chand	Ratnakar	Karolbagh	239
Canara Bank	Rani Bagh	SB 7538	125000	25122	23-Nov-02	Ishwar Sharma	Ratnakar	Karolbagh	206

In view of the precise information as discussed above, I have reasons to believe that assessee had obtained accommodation entries worth Rs.2,25,000/- from the above mentioned person(s) who is/are involved in the business of providing accommodation entries. Such amount represents undisclosed income of the assessee, which has escaped assessment.”

4. In response to notice u/s. 148, the assessee submitted that during the year the assessee had received gift of Rs.2,25,000/- from Shri Kukam Chand and Shri Ishwar Sharma. The Id. Assessing Officer rejected the version of the

assessee stating that both these persons, i.e., entry providers, have no relation with the assessee and no occasion of such huge gift has been stated. No evidence with regard to the confirmation of the said gifts was filed and the donors were also not produced inspite of repeated opportunities given to the assessee. It was also observed that these persons have not only gifted the assessee with huge amounts but they have also given gifts or the accommodation entries after receiving cash from several other persons of lacs of rupees. Therefore, the AO made an addition of Rs.2,25,000/- u/s. 68 of the Act and of Rs.11,250/- as commission paid for receiving accommodation entries u/s. 69C of the Act. The assessee carried the matter before the Id. CIT(A), who dismissed the appeal of the assessee on merits of addition.

5. We have heard the submissions of both the parties and have gone through the entire material on record. We first deal with the additional grounds raised by the assessee before us. Before us, additional ground No. 1A, 1B and 1C(a) have not been pressed by the Id. AR of the assessee. The same are therefore dismissed as not pressed.

6. With respect to additional ground No. 3(b), (c) and (d), the Id. Counsel for the assessee submitted that the assessee raised legal aspect of the case

vide ground No. 1 before the Id. CIT(A), but he did not adjudicate the same and decided the appeal by confirming the additions made by the AO u/s. 68 and 69C of the Act. It is submitted that reopening of the case cannot be made on the basis of vague, imaginary and general reasons recorded. It was submitted that the additions have been made on the behest of superior authorities and the Id. Assessing Officer has not applied his own mind before initiating the proceedings u/s. 147/148 of the Act. Several decisions of various benches of ITAT have been relied upon to contend that in the circumstances, the reopening of assessment is not legally valid. The Id. DR on the other hand opposed the contentions of the assessee.

7. Having considering the rival submissions, we find that the assessee has not raised the legal issues specifically before the Id. CIT(A). Ground No. 1 raised before the CIT(A) does not speak in speaking terms as to why the reassessment order was bad in law. The Id. CIT(A) has also not rendered any decision or findings on validity of reopening of assessment. However, keeping in view the fact that the assessee can raise the legal grounds at any stage, as raised before us, we deem it just and proper to restore the matter to the file of Id. CIT(A) to decide the issues raised by assessee on legal aspect of the case, i.e., validity of reopening of assessment in the light of attending facts and

circumstances of the case and the decisions of ITAT relied upon before us. Both the parties shall be afforded reasonable opportunity of being heard. The assessee is directed to put up its case before the Id. CIT(A). Accordingly, the appeal of the assessee has to be allowed for statistical purposes.

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

Order pronounced in the open court on 30.06.2016.

Sd/-
(C.M. GARG)
Judicial Member

Sd/-
(L.P. SAHU)
Accountant Member

Dated :30.06.2016

*aks/-

Copy of order forwarded to:

(1) *The appellant*
(3) *Commissioner*
(5) *Departmental Representative*

(2) *The respondent*
(4) *CIT(A)*
(6) *Guard File*

By order

Assistant. Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi