

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-3' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-2099/Del/2016
(ASSESSMENT YEAR-2009-10)**

Kamal Kishore Agarwal, 4, Racquet Court Road, Civil Lines, Delhi-110054. PAN-AFIPA0583K (APPELLANT)	Vs	ITO, Ward-20(2), Vikas Bhawan, I.P.Estate, New Delhi-110002. (RESPONDENT)
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Assessee by	Sh.Manoj Kumar, CA
Revenue by	Sh.Anil Sharma, Sr.DR
Date of Hearing	29.09.2016
Date of Pronouncement	07.12.2016

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 05.02.2016 of CIT(A)-32, New Delhi pertaining to 2009–10 assessment year on the following grounds:-

1. *“That on the facts and in the circumstances of the appellant’s case, the learned Commissioner of Income Tax (Appeals) erred both in facts and in law in upholding the validity of initiation of proceedings under section 147 of the Income Tax Act, 1961.*
2. *That on the facts and in the circumstances of the appellant’s case, the learned Commissioner of Income Tax (Appeals) erred both in facts and in law in upholding the addition of Rs.38,42,500/- made by the AO under section 69/69A of the Income Tax Act, 1961 on account of alleged purchase of his own land.*
3. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

2. A perusal of the record shows that as per the information available with the tax authorities the assessee purchased agricultural land bearing No.(3-0) bighas, the part of Khasra No.111 min situated in Village-Wazirabad, Delhi for a consideration of Rs.36,25,000/- from SH. Praveen Aggarwal vide sale deed dated 06.03.2009 registered before the Sub-Registrar-I, Kashmere Gate, Delhi-06. It was noticed that the source of the investment was not addressed as on a perusal of the balance sheet, it was found that no assets were reflected therein. Accordingly, notice u/s 148 dated 09.05.2012 as per para 1 of the assessment order was issued. As a result thereof, the assessee returned an income of Rs.2,24,609/-. Considering the reply of the assessee the income was assessed at Rs.40,67,109/- as a result of the addition of Rs.38,42,500/-. The said addition and the

jurisdiction was challenged by the assessee in appeal before the First Appellate Authority. As per the following extract of the submissions extracted by the CIT(A), the assessee assailed the jurisdiction on the basis of the following arguments on facts:-

*“The assessee filed another written submission dated 01.02.2016 challenging the re-opening of the assessment proceedings u/s 148. The assessee in the submission has mentioned that **the A.O. had issued reason for re-opening dated 07.05.2012 which had factual inaccuracies. After realizing the mistake the A.O. issued fresh reasons for re-opening anti dating it to 07.05.2012 and destroyed the original reasons for re-opening.***

In this letter the assessee has also narrated the sequence of events which led to execution of the purchase deed dated 06.03.2009. The assessee has also mentioned that the A.O has not mentioned the section which the addition of Rs.3842500/- was made by him.”

(emphasis provided)

3. These serious allegations were rejected by the CIT(A) by holding that these were bald allegations without any documentary evidence. For ready reference, the relevant extract is reproduced from page 6 of the impugned order:-

*“In his letter dated 01.02.2016 the assessee has made bald allegations against the A.O. without any documentary evidence. The assessee never challenged the grounds for reopening during the assessment proceedings. The grounds of re-opening was duly served upon him along with the notice u/s 148. In response to this notice the assessee vide his letter dated 18.06.2010 had stated that the return filed by him u/s 139(1) should be treated as return filed in response to the notice u/s 148. **The assessee didn't take any objection to the re-opening** and made his submissions before the A.O. on merit of the case. In view of this **the allegation that the A.O anti dated the reasons for re-opening is baseless and is rejected.**”*

(emphasis provided)

4. Assailing the said conclusion, Ld. AR, Mr.Manoj Kumar, CA appearing on behalf of the assessee, submitted that he had been seeking time to file Paper Book consisting of relevant evidences as the assessee has copies of both the reasons recorded by the Assessing Officer and the assessee was ready to file an affidavit in support of the said assertion. Accordingly, after considering the submissions of the parties before the Bench, in view of the serious issues raised in the present appeal, it is deemed appropriate to set aside the issues back to the file of the CIT(A) directing him to first adjudicate upon the jurisdictional issues. While so directing, it is made clear that the mere fact that the assessee has not challenged the reopening at the assessment stage itself, does not mean that the assessee has given up its rights to challenge the same at a later stage. When jurisdiction of an authority is questioned

then it is incumbent upon the adjudication authority to address the fact and decide by a speaking order whether the authority who passed the order had the jurisdiction to pass the order. Being a fundamental foundational fact, its existence cannot be left in limbo and the issue is necessarily first required to be addressed by the adjudication authority. In case it is found that the Assessing Officer has substituted his original reasons recorded for reopening the proceedings by another order than this is a very serious lapse and the issue may also necessitate a redressal for internal administrative purposes also. Thus, evidence in support thereof it is directed to be filed before the CIT(A). The CIT(A) considering the same shall pass a speaking order in accordance with law after affording the assessee a reasonable opportunity of being heard.

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

The order is pronounced in the open court on 07th of December, 2016.

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI