

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

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 3065/Del/2014 : Asstt. Year : 1999-2000**

Alka Goel, 32-E, Sainik Farm, New Delhi	Vs	Income Tax Officer, Ward-13(1), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAJPG1271G</b>		

**Assessee by : Sh. A. Mathur, CA**

**Revenue by : Sh. T. Vasanthan, Sr. DR**

<b>Date of Hearing : 27.06.2017</b>	<b>Date of Pronouncement : 30.06.2017</b>
-------------------------------------	-------------------------------------------

**ORDER**

This is an appeal by the assessee against the order dated 20.02.2014 of Id. CIT(A)-XVI, Delhi.

2. Following grounds have been raised in this appeal:

*“1) That the Hon'ble Commissioner of Income Tax (Appeal) on the facts and in the circumstances of the case has erred in law in upholding the addition of Rs. 24,93,297/- which was erroneously made by the learned Income Tax Officer Ward -23(1) New Delhi u/sec. 148/144 of the Income Tax Act vide order dated 09.03.2006.*

*2) That the Hon'ble Commissioner of Income Tax (Appeal) while upholding the aforesaid addition of Rs. 24,93,297/- u/sec. 68 of the Act has failed to appreciate that:-*

*a) that the learned Income tax Officer Ward-23(1) had lack of jurisdiction in passing the impugned order*

*u/sec. 148/144 because no notice u/sec. 143(2) was issued and served on the appellant within the stipulated time as prescribed under "proviso" to sec. 143(2) of the Act after the issuance of alleged notice u/sec. 148 of the Act.*

*b) That the appellant was not provided any opportunity to represent her case before the learned Assessing Officer as no notice u/sec. 142(1) and 143(2) were ever been served on the appellant. Thus the appellant is deprived of an opportunity of being heard which is against the principle of natural justice.*

*c) That on the facts and in the circumstances of the case it is evident from the Assessment order that the learned Assessing Officer has neither recorded the reason for the issuance of alleged notice u/sec. 148 of the Act nor got the mandatory approval from the concerned higher authority as requires under sub section 2 of section 151 of the Act had been obtained as the date of report / information sent by learned DDIT(Inv) Unit -II, New Delhi to the learned Assessing Officer was dated 30.03.2005 and the date of issuance of alleged notice u/sec. 148 was also the same i.e. 30.03.2005.*

*On the prima facie facts of the case the learned Assessing Officer neither applied his mind independently nor made any investigation of his own or the information received by him from learned DDIT (Inv) Unit- II, New Delhi. He merely relied upon the information received from the learned DDIT (Inv) Unit -II, New Delhi. Thus the notice issued u/sec. 148 of the Act is invalid in law and consequently the assessment made u/sec. 148/144 on 09.03.2006 also invalid in law.*

*3) That the Hon'ble Commissioner of Income Tax (Appeal) before upholding the addition of Rs. 24,93,297/-*

*made u/sec. 148/144 of the Act has failed to appreciate that on the same information which were sent by the Hon'ble DDIT(Inv) Unit -II, New Delhi dated 30.03.2005 to the learned income Tax Officer Ward 23(1) New Delhi the learned Asst. Commissioner of Income Tax, Circle 24(1) had also issued notice u/sec. 148 of the Act for the Assessment year 1999-2000 and 2000-01 on 30.03.2006 which subsequently after close examination of the required information and documents filed by the appellant, learned Dy. Commissioner of Income tax Circle 24(1) vide order No. F.NO. DCIT, Circle 24(1)/2006- 07/626 dated 29.12.2006 had filed the proceedings which were initiated by him u/sec. 148 of the Act in both the years. Thus on the date of passing the appellate order by the Hon'ble Commissioner of Income Tax(Appeal) i.e. 20.02.2014, the proceeding initiated u/sec. 148 of the Act for the year 2009-10 were not survive, therefore, impugned addition of Rs. 24,93,297/- is abnatio void.*

**4) Without Prejudice to the above**

*On the merits of the case, the appellant submit that the impugned alleged deposit of U\$58,900/- equivalent to Rs. 24,93,297/- in Indian Bank situated in Singapore does not belong to her but the Hon'ble CIT(A) has grossly erred in treating the said amount as undisclosed income of the appellant without providing an opportunity of being heard on this issue, to the appellant, the addition of Rs. 24,93,297/- is totally unwarranted and invalid in law.*

*5) That the appellant assail her right to amend, alter and furnishing additional Ground(s) of Appeal, if required at the time of hearing of the appeal.*

*That on the facts stated herein above, the order passed by the Hon'ble Commissioner of Income Tax (Appeal) may kindly be quashed and the unwarranted impugned*

*addition of Rs. 24,93,297/- erroneously made u/sec. 68 of the Act may please be deleted after providing an opportunity of being heard to the appellant.”*

3. The assessee has also raised the following additional grounds:

*“1) That the Hon'ble Commissioner of Income Tax (Appeals) has erred in law as much as on the facts of the case by sustaining the addition of Rs.24,93,297/- with regards to alleged unaccounted deposits of US\$ 58,900 with Indian Bank, Singapore and upholding the assessment as completed u/sec. 144/148 by the learned Assessing Officer, Ward 23(1), without appreciating the fact that the appellant had expressly denied the service of notice issued u/sec. 148 of the Act by the learned Income Tax Officer, Ward 23(1), New Delhi on 30<sup>th</sup> March, 2005 either by post or by affixture and in the absence of service of notice, the learned Assessing Officer did not assume the jurisdiction to complete the assessment initiated u/sec. 148 of the Act.*

*2) That the Hon'ble Commissioner of Income Tax (Appeals) has further erred in law as much as on the facts of the case by affirming the fact that the notice u/sec. 148 of the Act have been served upon the assessee by affixture at her old address without conducting its own independent enquiry as to whether the notice was actually affixed or not or whether provisions laid out u/sec. 282 of the Act and under Code of Civil Procedure, 1908 for affixture of notice have been followed or not especially when the assessee have expressly denied the service of such notice.*

*3) That the Hon'ble Commissioner of Income Tax (Appeals) have erred in law as much as on the facts of the case by sustaining the addition of Rs.24,93,297/- as made by the learned Assessing Officer, Ward 23(1), New Delhi without appreciating the fact that he did not have the jurisdiction to issue the notice u/sec. 148 of the Act as the notice can only be issued by the Assessing Officer who is having jurisdiction to make the original assessment on the date of issuance of notice which in the case of the appellant vest with DCIT, Circle 24(1), New Delhi as just before issuing the*

*notice u/sec. 148 on 30<sup>th</sup> March, 2005, the return of income for assessment year 2004-05 was filed with Range-24, New Delhi.*

*4) Without prejudice to the above, the Hon'ble Commissioner of Income Tax (Appeals) has erred in law as much as on the facts of the case in sustaining the addition of US Dollars 58,900 equivalent to Rs,24,93,297/- without appreciating the fact that the addition, if any, can only be made in assessment year 1998-99 in accordance with the provisions of section 5 of the said Act as cheque through which the alleged payment was made was dated 12.02.1998 though it was alleged to be deposited in June, 1998.*

*The appellant craves leave to add, alter, amend or vary from the above grounds of appeal before or at the time of hearing.”*

4. The assessee also filed an application under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963 and furnished new evidences in the form of a paper book comprising from page nos. 1 to 142 as per following details:

S. NO.	PARTICULARS	PAGE NO.
1)	Copy of the order of the Hon'ble Commissioner of Income Tax (Appeals)-XVI, New Delhi dated 20.02.2014.	01 to 08
2)	Affidavit filed by the appellant whereby she has expressly denied about the service of notice u/sec. 148 of the Act dated 30.03.2005 issued by the learned Income Tax Officer, Ward 23(1), New Delhi and also that she had never opened or operated any bank account with Indian Bank, Singapore.	09 to 10-A
3)	Copy of the summons u/sec. 131 of the Income Tax Act, 1961 issued by the Dy. Director of Income Tax, (Inv.) Unit-IV, Jhandewalan New Delhi dated 29.04.2004.	11 to 13
4)	Copy of the letter filed by the appellant on 10.01.2005 before the Dy. Director of Income Tax, (Inv.) Unit-IV, Jhandewalan New Delhi whereby the appellant filed the following :- -Copy of acknowledgement of income tax return for the assessment year 1998-99. -Copy of acknowledgement of income tax return for the assessment year 1999-00 along with computation of income. -Copy of acknowledgement of income tax return for the assessment year 2003-04,	14 to 15 16 17 to 18 19
5)	Copy of letter dated 23.02.2005 filed with the Dy. Director of Income Tax (Inv.), Unit-II(2), New Delhi.	19A to 19D

6)	Copy of the letter filed by the appellant on 30.03.2005 before the Dy. Director of Income Tax, (Inv.) Unit-IV, Jhandewalan New Delhi whereby the appellant filed the income tax return along with its computation of income for the assessment year 2004-05.	20 to 23
7)	Copy of order dated 09.03.2006 passed by the learned Income Tax Officer, Wards 23(1), New Delhi u/sec. 148 / 144 of the Act.	25 to 26
8)	Copy of notice dated 21.11.2006 u/sec. 142(1) of the said Act along with the questionnaire issued by the Dy. Commissioner of Income Tax, Circle 24(1), New Delhi.	27 to 28
9)	Copy of reply to the above said notice filed on 11.12.2006 before the Dy. Commissioner of Income Tax, Circle 24(1), New Delhi.	29 to 32
10)	Copy of letter dated 18.12.2006 before the Dy. Commissioner of Income Tax, Circle 24(1), New Delhi.	33 to 42
11)	Copy of reply dated 14.07.2003 filed by the appellant through their counsel Aggarwal Associates to the notice issued by Luthra & Luthra -Advocates.	43 to 45
12)	Copy of suit against the appellant filed before the Hon'ble Delhi High Court on 27.02.2004 by M/s Carre Blanc Distribution.	46 to 58
13)	Copy of transaction protocol / settlement dated 13.04.2005 reached between the appellant and M/s Carre Blanc Distribution whereby all the complaints against the appellant have been withdrawn.	59 to 70
14)	Copy of Income Tax return along with the Audited Balance Sheet and Profit & Loss Account along with Tax Audit Report of M/s LA Sorogeeka Incorporated for the assessment year 2006-07 whereby the settlement amount received by the firm is clearly reflected in the Balance Sheet and Tax Audit Report.	71 to 92
15)	Copy of letter dated 29.12.2006 bearing reference No, DCIT.Cir.24(I)/2006-07/626 issued by DOT, Circle 24(1), New Delhi whereby he had filed the reassessment proceeding initiated by him against the appellant for assessment year 1999-00 and 2000-01.	93
16)	Copy of notice of demand issued by the Income Tax Officer, Wards 23(1), New Delhi on 28.02.2011.	94
17)	Copy of assessment order dated 10.11.2008 passed by the Dy. Commissioner of Income Tax, Circle 24(1), New Delhi u/sec. 143(3) of the Act.	95 to 96
18)	Copies of the judgement relied upon by the appellant :-	
	i) CIT vs. Hotline International Pvt Ltd. 296 ITR -333 (Delhi)	97 to 100
	ii) Kiran Machines vs. (TO & Anr. 156 Taxman 463 (Madras)	101 to 102
	iii) ITO, Ward 15(4) vs. Ritwik Fincon Pvt. Ltd. in I.T.A.No. 3116/DEL/2009 (ITAT, F Bench, Delhi).	103 to 106
	iv) Sh. Sanjay Dadani va. DOT,. 10(3), in I.T.A. No. 5221/Mum/2014 (ITAT, E Bench, Mumbai).	107 to 121
	v) ITO vs. Sh. Om Prakash Kukreja in I.T.A. No. 335 & 336/Chd/2015 (ITAT, Chandigarh Bench, Chandigarh).	122 to 129
	vi) K.K. Loomba, Mrs. Uma Looma vs CIT & Others 241 ITR - 152 (Delhi)	130 to 135
	vii) Rajneet Singh vs. ACIT 120 TTJ 517 (ITAT, Delhi)	136 to 137
	viii) Kishanchand Chellaram vs. CIT 125 ITR 713 (SC)	138 to 142

5. It has been stated in the said application that the fresh documents are very important for proper representation of the appeal and a request has been made to admit these additional evidences. It has further been submitted that the assessee could not furnish those documents during the course of assessment proceedings or before the Id. CIT(A) for the reasons beyond her control. The Id. Counsel for the assessee requested to admit the additional evidences and the additional grounds. The reliance was placed on the following case laws:

- *National Thermal Power Corpn. Ltd. Vs CIT 229 ITR 383 (SC)*
- *Jute Corporation of India Ltd. Vs CIT & Anr. 187 ITR 688 (SC)*

6. In his rival submissions the Id. DR opposed to admit the additional evidences and the additional ground. Alternatively, it was submitted that the matter may be restored to the AO to consider the additional evidences furnished by the assessee first time before the Tribunal.

7. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is not in dispute that the assessee had produced the additional evidences first time before the ITAT which were not before the AO or the Id. CIT(A). In my opinion, these documents furnished first time, are relevant to decide the present controversy. However, the authorities below did not have the occasion to deal with those documents furnished first time by the assessee. I, therefore, considering the totality of the

facts, deem it appropriate to set aside this issue back to the file of the AO to be decided afresh in accordance with law after considering the documents furnished by the assessee first time before the Tribunal and also the contention raised in the additional grounds. The AO shall provide a due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Court on 30/06/2017)

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 30/06/2017**

**\*Subodh\***

Copy forwarded to:

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

**ASSISTANT REGISTRAR**