

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH : KOLKATA

[Before Hon’ble Shri S.S. Godara, JM & Shri M.Balaganesh, AM]

I.T.A No. 1524/Kol/2018

Assessment Year : 2010-11

Shri Hartaj Sewa Singh
[PAN: ABHPS 9122 R]
(Appellant)

-vs-

ACIT(IT), Circle-1(1), Kolkata.
(Respondent)

For the Appellant : Shri S. M .Surana, Advocate

For the Respondent : Shri Robin Choudhury, Addl. CIT Sr.DR

Date of Hearing : 30.08.2018

Date of Pronouncement : 12.10.2018

ORDER

Per S.S. Godara, JM

1. This assessee’s appeal for assessment year 2010-11 arises against the CIT(A)-22, Kolkata’s order dated 10.05.2018 passed in case no. 106/CIT(A)-22/10-11/17-18/Kol, involving proceeding u/s 143(3) / 147 of the Income Tax Act, 1961 (in short the ‘Act’).

Heard both the parties. Case file perused.

2. The assessee raised the following substantive ground in the instant appeal.

2. For that on the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the action of the AO in reopening the assessment beyond 4 years from the end of the assessment year only for change of opinion when two views were possible with regard to the nature of expenses which required the interpretation

of law, whether the expenses were capital or revenue in nature and there cannot be reasonable belief that any income has escaped assessment.

3. For that the Ld. CIT(A) should have cancelled the assessment made u/ s. 147 since the no addition was retained on the grounds for which the assessment was reopened and when such addition was not made, the proceedings were liable to be dropped.

4. For that on the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the action of the AO in adding back gift of Rs. 75 lakhs received from the uncle of the assessee as unexplained cash credit u/ s. 68 of the LT. Act when the identity and creditworthiness of the donor was proved and the genuineness of the transaction was established and the assessee duly discharged his onus to prove the same.

5. For that even otherwise the addition of Rs. 75lakhs was not maintainable since in the course of reassessment proceedings there was nothing on record on the basis of which it can be said that the Aa noticed some other escaped income.

3. We have given our thoughtful consideration to rival contentions. It emerges at the outset that the Assessing Officer had framed reasons to believe regarding escapement of the tax payer's income from assessment for the sole reason that his finance charges amounting to Rs. 10,00,001/- are not allowable on both counts i.e. being advances as well as capital in nature. This followed the impugned reassessment framed on 27.12.2017 disallowing / adding the above sum along with section 68 addition of Rs. 75 lacs pertaining to gifts received from assessee's uncle as unexplained cash credit u/s 68 of the Act respectively. The assessee preferred appeal. The CIT(A) has admittedly deleted the former disallowance / addition of Rs. 10,00,001/- (supra) and confirmed the latter addition of unexplained cash credits. This is what gives rise to assessee's instant appeal challenging correctness of both validity of reopening as well as impugned addition of unexplained cash credits of merits.

4. The assessee's only argument during the course of hearing is that he has succeeded on the former issue of finance charges forming the sole reason of reopening and

therefore, the entire reassessment deserves to be quashed. The Revenue's stand on the other hand vehemently contends that there is no legal bar in such a case to sustain any disallowance / addition on remaining issue(s) other than the subject matter of reopening. We find Revenue's instant argument to be not sustainable as per this tribunal's co-ordinate bench's decision in Sanju Jalan vs. ITO I.T.A. No. 634/ Kol/2017 dated 10.01.2018 adjudicating the very issue in assessee's favour as under:

"15. We have heard the submissions of the ld. Counsel for the assessee and the ld. DR. The ld. Counsel for the assessee pointed out that the jewellery in question has been purchased by the assessee which was confirmed by Nice Diamonds and the payment has been made by cheques. More important it was pointed out that the investments has been shown in the books of accounts and the source had been duly explained as from the disclosed bank accounts of the assessee. It was submitted that in the circumstances the addition made u/s 69 of the Act cannot be sustained. The ld. DR relied on the orders of CIT(A).

16. We have given a very careful consideration to the rival submissions. It is an undisputed position that addition in case of the assessee has been made u/s 69 of the Act. Section 69 of the Act reads as follows :-

Unexplained investments " 69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

17. In the present case investments of jewellery is duly reflected in the books of accounts of the assessee. Therefore there is no scope of applying the provision of section 69 of the Act. Apart from the above source of funds is evidenced by the payments from disclosed bank accounts. Therefore the source of investments is also properly and satisfactorily explained by the assessee. In the circumstances, We are of the view that the additions made by the AO and confirmed by CIT(A) cannot be sustained and the same is directed to be deleted. Ground No.5 raised by the assessee is accordingly allowed.

18. The ld. Counsel for the assessee submitted that on the other grounds of appeal vi., Gr.No.6 to 8, it is the plea of the assessee before us that when an assessment is reopened for one reason but no addition is made in the reassessment proceedings in respect of that reason or when the said addition is deleted, then, no further addition can be made in the reassessment proceedings. In this regard ld. Counsel for the assessee placed reliance on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Jet Airways India Ltd., 331 ITR 326 (Bom), wherein the Hon'ble Bombay High

Court held that if AO does not assess income for which reasons were recorded u/s 147 of the Act, he cannot assess other income u/s 147 of the Act. The Hon'ble Court observed that (i) S. 147 provides that the AO may assess the income which has escaped assessment "and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section". Explanation 3 to s. 147 inserted by F (No. 2) Act, 2009 w.r.e.f 1.4.1989 provides that the AO "may assess or reassess the income in respect of any issue ...notwithstanding the reasons for such issue have not been included in the reasons recorded ..."

(ii) The words "and also" indicate that reassessment must be with respect to the income for which the AO has formed an opinion and also in respect of any other income which comes to his notice subsequently. However, if the AO accepts the objection of the assessee and does not assess the income which was the basis of the notice, it is not open to him to assessee income under some other issue independently;

(iii) Explanation 3 to s. 147 was inserted to supersede the judgments in Vipin Khanna 255 ITR 220 (P&H) & Travancore Cements 305 ITR 170 (Ker) where it was held that the AO could not assess income in respect of issues unconnected with the issue for which the notice was issued. However, Explanation 3 does not affect the judgments in Shri. Ram Singh 306 ITR 343 (Raj) & Atlas Cycle Industries 180 ITR 319 (P&H) where it was held that if the AO accepted that the reasons for which the notice was issued were not correct, he would cease to have jurisdiction to proceed with the reassessment;

(iv) Explanation 3 lifts the embargo inserted by judicial interpretation on the making of a s. 147 assessment in respect of items not referred to in the recorded reasons. However, it does not and cannot override the substantive part of s. 147 that the income for which the notice was issued must be assessable. The learned DR relied on the order of the CIT(A).

19. We have considered the submission of the learned counsel for the Assessee in the light of the judgment of the Hon'ble Bombay in the case of Jet Airways (I) Ltd. (Supra). We are of the view that on the facts and in the circumstances of the present case the ratio laid down by the Hon'ble Bombay High Court in the case of Jet Airways India Ltd. (supra) is squarely applicable. As we have already seen that the assessment was reopened for the reason that the jewellery purchased by the Assessee was from undisclosed sources and the purchases were bogus. That addition has not been sustained now. The Assessing Officer however, proceeded to make an addition on account of Long Term Capital Gain (LTCG) on sale of shares. This was clearly beyond the scope of the proceedings under section 148 of the Act. The Assessing Officer, therefore, could not have proceeded to make the impugned addition of bogus LTCG. Similar view has been expressed by the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories vs. CIT, ITA 148 of 2008 dated 3/6/2011. The Hon'ble Delhi High Court followed the decision of the Hon'ble Bombay High Court in the case of Jet Airways (supra). In that view of the matter we hold that the addition by treating the LTCG as bogus cannot be sustained as it was beyond the scope of the proceedings

under section 147 of the Act. We therefore delete the said addition also and allow Ground No..6 to 8.

20.. In view of the above conclusions we are of the view that the issue with regard to the validity of initiation of re-assessment proceedings u/s 147 of the Act does not require any consideration.”

We adopt the above detailed reasoning mutatis mutandis to annul reopening / reassessment in issue as not valid. The same is accordingly quashed. All this renders the assessee's remaining grounds on merits to be academic.

5. This assessee's appeal is allowed.

Order pronounced in the Court on 12.10.2018

Sd/-

[M. Balaganesh]
 Accountant Member

Sd/-

[S.S.Godara]
 Judicial Member

Dated : 12.10.2018

SB, Sr. PS

Copy of the order forwarded to:

1. Shri Hartaj Sewa Singh, Mews III, IC, Tivali Court, Ballygunge Circular Road, Beck Bagan, Kolkata-700019.
2. ACIT(IT), Circle-1(1), Kolkata, 110, Shantipally, Near Ruby Hospital, E.M. Bye Pass, Aayakar Bhawan Poorva, Kolkata-700107.
- 3..C.I.T(A).- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
 Head of Office/D.D.O., ITAT, Kolkata Benches