

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5785/Del/2015
(Assessment Year: 2007-08)

Sh. Hulas Rahul Gupta, Legal Heir of Shri Bhushan Kumar Gupta, C-12, Friends Colony (East), New Delhi PAN: AAAPG3671R (Appellant)	Vs.	DCIT, Circle-11(1), New Delhi (Respondent)
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Assessee by :	Shri Salil Agarwal, Adv
Revenue by:	Md. Gayasuddin Ansari, Sr. DR
Date of Hearing	24/10/2018
Date of pronouncement	09/01/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-4, New Delhi dated 08.09.2015 for the Assessment Year 2007-08.
2. The assessee has raised the following grounds of appeal:-
 - "1. *That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining an order of assessment under section 143(3)/147 of the Act at an income of Rs.1,41,09,790/- as against returned income of Rs. 1,36,78,108/-.*
 - 2 *That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in sustaining the initiation of proceedings under section 147 of the Act and. further completion of assessment under section 143(3)/147 of the Act without satisfying the statutory pre-conditions for initiation of the proceedings and, further completion of assessment under the Act.*
 - 2.1 *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that the reasons recorded were mere reasons to suspect and were not cogent enough to clothe him with the jurisdiction to frame the assessment in as much as the same were based on mere suspicion, conjectures and surmises*

and thus, the proceeding initiated under section 148 was a mere pretence without there being any escapement of income and the same should have been quashed, as such.

3 *That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining an addition of Rs. 4, 31,680/- by treating the long term capital gain as business income and brought to tax under section 28(va) of the Act.*

3.1 *That the learned the learned Commissioner of Income Tax (Appeals) while sustaining the instant assessment has proceeded on irrelevant and extraneous consideration, by disregarding the submissions/ material/ evidence furnished by the assessee appellant in shape of detailed replies and information's and as such, the addition so sustained, is wholly untenable on facts and also in law.*

4. *That the learned Commissioner of Income-tax (Appeals) has grossly erred in sustaining the assessment without providing to the assessee, a fair and proper and meaningful opportunity of being heard, thereby violating the principles of natural justice and thus such an order is vitiated both on facts and in law."*

3. The brief history of the litigation shows that the assessee filed its return of income on 31.10.2007 declaring income of Rs. 13678108/-. The assessment was completed on 05.11.2009 at the total income of Rs. 13678108/-. The 147 notice was issued on 27.03.2012 to tax the non- compete fees The reasons recorded were sent to the assessee on 18.02.2013 and the assessee submitted its objection on 05.03.2013. The assessment order was passed u/s 147 read with section 143(3) of the Act, wherein, as per the version of the Id AO the objection of the assessee against reopening of the assessment were disposed off. Meanwhile, the assessee preferred writ petition before the Hon'ble Delhi High Court in WPC No. 1925/2013 against the notice dated 29.03.2012 issued u/s 148 of the Act. The Hon'ble High Court vide order dated 23.03.2013 disposed off the writ petition directing the Id AO, setting aside the original assessment order passed on 05.03.2013, to dispose off the objection of the petitioner by speaking order in accordance with the law and only thereafter to proceed with the assessment. The Id AO therefore, recorded these facts in para 3 of his

assessment order and passed assessment order u/s 143(3) read with section 147/ u/s 260A of the Act on 21.03.2014 determining the total income of the assessee of Rs. 14109790/-. Consequently, the addition of Rs. 4361680/- was made to the total income of the assessee. The assessee preferred appeal before the Id CIT(A) who upheld the reopening of the assessment as well as addition of Rs. 431680/-. Therefore, the assessee is in appeal before us. The assessee challenges reopening of the assessment as well as the addition on the merits of the case. The merit of the case is related to the only dispute whether a sum of Rs. 431680/- being non-compete fees shall be chargeable to tax as long term capital gain or business income. The assessee has offered the same as long term capital gain the AO has taxed it as business income. On the reopening the simple challenge is that despite the direction of the Hon'ble High Court the Id AO has not disposed of the objection raised by the assessee.

4. The Id AR pleaded that despite the direction of the Hon'ble High Court the Id AO has not disposed off the objection raised by the assessee by passing an independent and separate speaking order.
5. The Id DR relied upon the order of the lower authorities.
6. We have carefully considered the rival contentions and also perused the orders of the lower authorities. Apparently in this case the Hon'ble High Court has directed the Id AO to dispose of the objection of the assessee against reopening of the assessment first and then pass an assessment order. Despite this specific direction of the Hon'ble High Court the Id AO has not passed a speaking independent order to the objection raised by the assessee against 148 proceedings initiated by the AO. As the impugned order passed by the Id AO is contrary to the direction of the Hon'ble High Court. We quash the same. Accordingly, the assessment order passed by the Id AO and the action of the Id CIT(A) upholding the same are reversed. Accordingly, the appeal filed by the assessee is allowed on this ground itself.

7. Accordingly, the appeal of the assessee is allowed.

Order pronounced in the open court on 09/01/2019.

-Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:09/01/2019

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi