

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC : NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 3260/Del/2018
Assessment Year : 2009-10

Ashok Kumar Bothra & Sons Vs. ITO, WARD 36(4),
K-5/24, Model Town-II, NEW DELHI
New Delhi – 110 009
(PAN AAAHA2193J)

(Appellant)

(Respondent)

Assessee by : Ms. Himani Agarwal, CA
Department by : Sh. S.L. Anuragi, Sr. DR.

ORDER

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A)-12, New Delhi on 28.3.2018 in relation to the assessment year 2009-10 on the following grounds:-

- 1. On the facts and circumstances of the case, the order passed by Ld CIT (A) is bad both in eyes of law and on facts.*
- 2. That Ld. CIT (A) has erred in law as well as on facts by upholding the addition of Rs. 11,56,570 made by Ld. AO.*
- 3. That Ld.CIT (A) has upheld the above addition arbitrarily and without appreciating the facts of the case.*
- 4. That Ld. CIT (A) has erred in law as well as on facts in ignoring the fact that the Assessing Officer has not provided any proof of above transaction made*

- except repetitions of borrowed facts and information and not on the basis of independent inquiry.*
- 5. That the Ld. CIT(A) erred in fact and law as well by not providing reasonable opportunity of being heard.*
 - 6. That the Ld. CIT(A) erred in law as well as fact by passing the order without taking into consideration the details and evidences submitted by the applicant.*
 - 7. That the AO has erred in law and fact as well by initiating penalty proceedings u/s. 271(1)© of the Act.*
 - 8. That the appellant reserves the right to add, modify, alter, amend or delete any of the grounds.*

2. The brief facts of the case are that the assessee e-filed the return of income for A Y 2009-10 on 24.03.2010 declaring an income of Rs.1,78,275/-. The case of the assessee was re-opened under section 148 of the Income Tax Act, 1961 on the basis of information received by ADIT (Inv) unit-1(3) Ahmedabad vide dated 18.03.2016 in respect of Client Code Modification (CCM) Dissemination of beneficiary client who have taken contrived losses and shifted out profit of Rs..11,56,570.75 during the FY 2008-09. Before the AO, the assessee has submitted that no transaction took place with the alleged broker and that the total income of the assessee during the year including the exempt income was Rs.1,78,275/-. In replies dated 17.06.2016 and 12.12.2016, the assessee shared all the DMAT

details alongwith bank statements for FY 2007-08 and FY 2008-09. In order to clarify the allegations, the assessee requested the A.O. for a cross examination, which was never arranged. A perusal of the reasons recorded by the AO clearly show that the AO has simply acted upon the information received from the Investigation Wing and did not apply his own mind to the said information. Being aggrieved the assessee carried the matter to the Ld. CIT(A), who vide his impugned order dated 28.3.2018 has upheld the action of the AO by holding the opening of assessment proceedings as valid and also on merit confirmed the addition in dispute. Against the impugned order 28.3.2018, assessee is in appeal before the tribunal.

3. During the hearing, Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that without prejudice even if reliance is placed on the alleged account statement of the broker, no profit/income has been earned by the asseesee during the above period and hence, no addition is called for even on merit. The Ld. Counsel for the assessee further submitted that the reasons recorded do not show any application of mind nor the same show any belief independently arrived at by the AO, which is the basic pre-requisite for issuing notice u/s 148. AO

made addition purely on the basis report received from investigation team and without applying his mind. Therefore, in view of the above circumstances and further considering the settled position of law in this regard, the reassessment proceedings initiated by the AO are without due application of mind, and thus, the reassessment proceedings should be quashed as such. Further, the AO's order shows that this may at best be a 'reason to suspect' & not 'reason to believe'. Only on the basis of reason to suspect, reopening cannot be done. Therefore, the addition made by the AO and sustained by the Id. CIT(A) was not justified and needs to be deleted.

4. In his rival submissions, the Id. DR strongly supported the orders of the authorities below.

5. I have heard both the parties and perused the records especially the orders of the authorities below. In the present case, it is evident from the copy of account of the broker which the assessee has strongly denied having dealt with, that no income has accrued to the assessee rather a loss of Rs. 11,56,570/- has been incurred and the same has also not been claimed by the assessee. The assessee has neither paid nor received any amount to/from the broker. In my opinion, when no income has been earned and the assessee has not claimed any losses in the return of income nor setoff those losses

against any income aided by the fact that the assessee has neither received/paid any amount to/from the broker which substantiates the claim of the assessee that he have not dealt with the broker, then the addition made by the AO and sustained by the Id. CIT(A) was not justified. Therefore, I delete the addition in dispute and allow the ground raised by the assessee.

5. In the result, the Appeal filed by the Assessee stands allowed

Order pronounced on 11-01-2019.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Dated: 11-01-2019

SRBhatnagar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.