

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 4933/Del/2018
Assessment Year: 2010-11

PRAMOD KUMAR SHARMA,
C/O SH. C.S. ANAND, ADVOCATE
104, PANKAJ TOWER, 10, LSC,
SAVITA VIHAR,
DELHI – 92
(PAN: AHNPS9561Q)

VS. ITO, WARD 2(1),
NEW DELHI

(APPELLANT)

(RESPONDENT)

Assessee by : Sh. C.S. Anand, Adv. & Sh. Mayank Maheshwari, Adv.
Revenue by : Sh. SL Anuragi, Sr. DR.

ORDER

The Assessee has filed the Appeal against the Order dated 14.5.2018 of the Ld. CIT(A), Meerut pertaining to assessment year 2010-11 on the following grounds:-

1. That on the facts of the case and under the law, the Id. CIT(A) had erred in rejecting the appellant's claim that the Id. A.O. had passed the assessment order, without giving sufficient opportunity of being heard to the assessee. The Id. A.O. had neither communicated the next date of hearing to the assessee w.r.t. the assessee's application dt. 24.07.2017 seeking adjournment, nor issued any notice of hearing thereafter during the period 24.07.2017 to 22.12.2017,

2. That on the facts of the case and under the law, the Id. CIT(A) had erred in rejecting the appellant's application u/r 46A, through which the appellant sought admission of documentary evidences to explain the issues raised by the Id. A.O. in the assessment order (particularly when during the course of assessment proceedings, the assessee had no occasion to furnish such documentary evidences).

3. That on the facts of the case and under the law, the proceedings initiated u/s 147 are liable to be quashed because the facts narrated in the reasons recorded are incorrect, in as much as (i) the assessee had already filed his IITR for A.Y. 2010-11 under PAN:AHNPS9561Q on 15.10.2010; and (ii) in response to the query letter dt. 05.01.2017 issued by the Id. A.O., vide letter dt. 03.03.2017 the assessee had explained the facts relating to purchase of - property under reference with the help of supporting documents.

4. That on the facts of the case and under the law, the proceedings initiated u/s 147 are liable to be quashed because there was no tangible material on record, on the basis of which a belief of escapement of income could have been formed by the Id. A.O.

5. That on the facts of the case and under the law, the proceedings initiated u/s 147 are liable to be quashed because the Id. A.O. had initiated penalty proceedings u/s 147 in a mechanical manner, without application of his own mind.

6. That on the facts of the case and under the law, the proceedings initiated u/s 147 are liable to be quashed because the superior authorities of the Id. A.O. had approved the vague / non specific reasons

recorded by the Id. A.O., in a mechanical manner, without application of their own minds.

7. That on the facts of the case and under the law, the Id. CIT(A) had erred in not deciding the ground of appeal relating to addition of Rs. 39,19,555/-, by simply stating "I find no evidence or argument that controverts or sales the findings of the AO in the assessment order in any way. Thus, I have no choice but to confirm the order of the AO".

8. That on the facts of the case and under the law, the addition of Rs. 39,19,555/- (which was arbitrarily made by the Id. A.O.) is liable to be deleted because the entire investment was made out of known / disclosed sources.

9. That on the facts of the case and under the law, the assessment proceedings as well as assessment order passed by the Id AO are liable to be quashed because no notice u/s 143(2) was issued by the Id AO.

10. That on the facts of the case and under the law, the credit of taxes paid by the assessee, is liable to be allowed.

NOTE:

The assessee craves leave to amend/ modify aforementioned grounds of appeal and/or to raise additional ground(s) of appeal, at any time prior to / during the course of appellate proceedings.

2. The facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

3. At the time of hearing, Ld. Counsel for the assessee has stated that A.O. had passed the assessment order, without informing the next date of hearing to the assessee and also without making any communication with the assessee during the period of five months commencing from 24.07.2017 (the last effective date of hearing) to 22.12.2017 (the date on which the assessment order was passed). He further submitted that it is a case where the Id. CIT(A) had (i) not adjudicated the ground relating to assumption of jurisdiction u/s 147 [copy of reasons recorded are placed at PB:06-07]; (ii) refused to consider the documentary evidences furnished by the assessee vide application u/r 46A, on the ground that the assessee had not availed the opportunity granted by the Id. A.O. by not appearing before the Id. A.O. on 21.08.2017. He further submitted that in order to comply with the directions of this Hon'ble Bench, as given on 01.01.2019, the assessee is hereby furnishing copies of those documents which were furnished by the assessee during the course of appellate proceedings, along with application u/r 46A and which are relevant to the issues involved (including the issue relating to addition of Rs. 39,19,555/-) and requested that the same may be admitted and issues in dispute may be set aside to the AO for fresh adjudication, after giving adequate opportunity of being heard to the assessee.

4. On the contrary, Ld. DR relied upon the order of the authorities below, but have not raised any serious objection on the admission of evidences and the application u/R 46A filed before the Ld. CIT(A).

5. I have heard both the parties and perused the records. I find considerable cogency in the submissions of the Id. counsel for the assessee that A.O. had passed the assessment order, without informing the next date of hearing to the assessee and also without making any communication with the assessee during the period of five months commencing from 24.07.2017 to 22.12.2017. I further find that Ld. CIT(A) had not adjudicated the ground relating to assumption of jurisdiction u/s 147 and also refused to consider the

documentary evidences furnished by the assessee vide application u/r 46A, on the ground that the assessee had not availed the opportunity granted by the A.O. by not appearing before the A.O. on 21.08.2017. I further note that now the assessee has furnished the copies of those documents which were furnished by the assessee during the course of appellate proceedings, along with application u/r 46A and which are very much relevant and essential in adjudicating the issues in dispute. Hence, I admit the same and set aside the issues in dispute to the file of the AO with the directions to decide the same, afresh, as per law, after giving adequate opportunity of being heard to the assessee.

6. In the result, Assessee's appeal is allowed for statistical purposes.

Order pronounced on 03-01-2019.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Dated :03-01-2019

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.

