

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

ITA No. 5553/Del/2018
Assessment Year: 2010-11

SUMIT GUPTA
SHOP NO. 18/19, S/F, T/F,
KUCHA CHOUDHARY,
CHANDNI CHOWK,
NEW DELHI - 110 006
(PAN: AIUPG9428Q)
(APPELLANT)

VS. ITO, WARD 47(4),
DRUM SHAPE BUILDING,
NEW DELHI - 110 002
(RESPONDENT)

Assessee by : SH. MUKUL GUPTA, CA
Department by : SH. S.L. ANURAGI, SR. DR.

ORDER

This appeal has been filed by the Assessee against the order dated 19.6.2018 of the Ld. CIT(A)-16, New Delhi relating to assessment year 2010-11 on the following grounds:-

1. The learned CIT(A) has erred on facts and in law in upholding the impugned order of the learned assessing officer which is contrary to law, passed without application of mind and without complying with the procedure and rules, is against equity and justice and facts of the assessee and material on record.
2. The appellant denies his liability to tax as upheld by the learned CIT (A) and determined and computed by the learned

assessing officer and the manner in which it has been so determined or computed.

3. Learned CIT(A) has erred on facts and in law in holding the validity of reassessment proceedings ignoring the fact that initiation of the proceedings u/s 148 and the consequent order u/s 147 are bad in law as:
 - a. The initiation of proceedings u/s 148 is contrary to provisions of law.
 - b. The mandatory procedure laid down in the Act has not been followed.
 - c. The proceeding u/s 148 has been initiated by AO ward 63(2) having no jurisdiction over the case and approval has been granted by PCIT having no jurisdiction over the case. The assessment has been completed by the AO Ward 47(4) who had not issued notice u/s 148.
 - d. The assessment has been made on the basis of conjecture & surmises without any cogent evidence. Addition on account of arbitrary turnover is against law. Not all credits in bank are sales.
4. The learned CIT(A) has erred on facts and in law in upholding the addition of Rs.2,42,511/- on account of conjecture and surmises.
5. The learned CIT(A) has erred on facts and in law by not adjudicating ground of initiation of penalty proceedings u/s 271(1)(c) without any material on record.
6. The learned CIT (A) has erred on facts and in law by not adjudicating ground of initiation of penalty proceedings u/s 271B for failure to get accounts audited on the basis of assumptions and presumptions.

Prayer

1. The appellant craves leave and sanction of the Hon'ble ITAT to file additional evidence, if so required for proper prosecution of the case, based on facts and circumstances, which has not been or could not be produced or filed before lower authorities either because proper and sufficient opportunity was not provided or because it was not solicited or its need was not appreciated.
 2. The appellant craves leave to and permission of the Hon'ble ITAT to add to or alter any of the grounds of appeal at any time upto the final decision of the appeal.
 3. The order of the A.O. as upheld by the learned CIT(A) be declared as null and void ab-initio, additions made by AO and upheld by Ld. CIT(A) be deleted, and the income returned be accepted as true as per law; or such other order as Your Honours may deem fit under the circumstances of the case be passed.
2. 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. Ld. Counsel of the assessee stated that the Ld. CIT(A) has wrongly upheld the validity of reassessment proceedings ignoring the fact that initiation of the proceedings u/s. 148 and the consequent order u/s. 147 are bad in law, because the initiation of proceedings u/s. 148 is contrary to provisions of law; the mandatory procedure laid down in the Act has not been followed;

the proceeding u/s. 148 of the Act has been initiated by the AO, Ward 63(2) having no jurisdiction over the case and approval has been granted by PCIT having no jurisdiction over the case. The assessment has been completed by the AO, Ward 47(4) who had not issued notice u/s. 148 and the assessment has been made on the basis of conjecture and surmises and without any cogent evidence. Therefore, he requested to grant an opportunity to file additional evidence, for proper prosecution of the case, based on facts and circumstances, which has not been or could not be produced or filed before the lower authorities either because of proper and sufficient opportunity was not provided or because it was not solicited or its need was not appreciated. Hence, he requested that the issues in dispute may be set aside to the file of the Ld. CIT(A) to decide the same afresh by passing a speaking order and after considering all the additional evidences.

4. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records especially the impugned order of the Ld. CIT(A) as well as the paper Book filed by the Assessee containing pages 1-72 pages in which he has attached the copy of notice u/s. 148 issued on 31.3.2017 by the ITO, Ward 63(2), New Delhi; Copy of return filed in response to notice u/s 148 dated 29.4.2017 alongwith balance sheet, profit and loss account and challan of tax paid; request dated 7.6.2017

submitted on 14.6.2017 to provide reasons recorded before issue of notice u/s. 148; copy of reasons provided by AO Ward 63(2) through letter dated 25.8.2017; objection to reasons recorded filed by the assessee before AO Ward 63(2) dated 18.9.2017; disposal of objections by AO Wards 63(2) dated 16.10.2017; request to drop proceeding u/s. 148 before AO Ward 63(2) through letter dated 30.10.2017 by speed post; issue of notice u/s. 143(2) by AO Wards 47(4); written submission given to AO Ward 47(4) dated 18.12.2017 to drop proceedings u/s. 148 before AO Ward 63(2) through letter dated 30.10.2017 by speed post; issue of notice u/s. 143(2) by AO Wards 47(4); written submission given to AO Ward 47(4) dated 18.12.2017 to drop proceedings; show cause notice dated 18.12.2017 rejecting request of assessee dated 18.12.2017 on jurisdiction point; written submission before AO Ward 47(4) with books of accounts maintained by assessee and assessment order dated 21.12.2017. I find that considerable cogency in the contention of the Ld. counsel for the assessee that the proceeding u/s. 148 of the Act has been initiated by the AO, Ward 63(2) having no jurisdiction over the case and approval has been granted by PCIT having no jurisdiction over the case. I further find that the assessment has been completed by the AO, Ward 47(4) who had not issued notice u/s. 148 and the assessment has been made. In this view, I am of the considered opinion that request for grant of filing the additional evidences, if any, is quite genuine and hence, the same is accepted. Accordingly, in the interest of justice, I set aside the issues in dispute to the file of the Ld. CIT(A) to decide the issues in dispute afresh, in accordance with law, after giving adequate opportunity of being heard to the parties and pass a speaking order and accept and consider the additional evidences, if any, to be filed by the Assessee. However, the Assessee is directed to cooperate with the Ld.

CIT(A) in the proceedings and produce all the documents before him to substantiate its claim and not to take any unnecessary adjournment.

6. In the result, the Appeal filed by the Assessee stands allowed for statistical purpose.

Order pronounced on 04/02/2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Dated:04/02/2019

SR BHATNAGAR

Copy forwarded to: -

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

By Order,

ASSISTANT REGISTRAR