IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH: 'SMC', NEW DELHI

BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER

ITA No. 2505/Del/2018
Assessment Year: 2009-10

AMIT TYAGI, B-6 (BASEMENT), J.S. ARCADE, NEAR BIKANERWALA, OPP. METRO PILLAR NO. 65, SECTOR-18 NOIDA **(PAN: ADUPT6382P)**	VS.	ITO, WARD 1(5), GHAZIABAD
(APPELLANT)		**(RESPONDENT)**

Assessee by : Sh. Chaman Singh, CA
Revenue by : Sh. SL Anuragi, Sr. DR.

ORDER

The Assessee has filed the Appeal against the Order dated 31.1.2018 of the Ld. CIT(A)-2, Noida pertaining to assessment year 2009-10 on the following grounds:-

1. That the impugned Assessment order passed by the Ld. AO is bad in law, wrong on facts and against the Principal of natural justice hence is unsustainable. That the impugned Assessment order passed by the Ld. AO is wrong, having no base and against the circumstance of the case, Ld. AO had made addition on the basis of AIR information only and order for a/y 2009-10 had been passed but there is not any transaction in a/y 2009- 10,

as mentioned in order so, assessment order is null and void as time limit had been expired for passing order u/s 148.

2. Ld. ITO and Ld. CIT(A), had passed order u/s 144/147 and 250 respectively without providing an opportunity of being heard regarding production of evidences regarding investment in agriculture properties and assessment order had been made by AO & CIT(A).

3. That the AO had passed order u/s. 144/147 of the Income Tax Act without issuing notice u/s. 143(2) of Income Tax Act, 1961, which is against law as this is also mentioned in case of 'harshingargutkha pvt. ltd. vs. CIT, Central Kanpur" 2012 i.e. service of notice on assessee within the period provided under the proviso is mandatory. In the absence of notice being served within the stipulated period u/s. 143(2) of the Act, the assessment proceeding comes to an end and deemed to have become final. Reliance is placed on the decisions in the case of CIT v.M. Chellappan (2006) 281 ITR 444 (Mad), Vipan Khanna v. CIT (2002) 255 ITR 220 (P & h) V.C. Palaniappan (2006) 284 ITR 257 (Mad), CIT v. Bhan Textiles P.Ltd. (2006) 287 ITR 370 (Delhi), CIT v. Lunar Diamonds Ltd. (2006) 281 ITR 1 (Delhi) and

Deputy CIT v. Mahi Vally Hotels and Resorts (2006) 287 ITR 360 (Guj).

4. That on facts and circumstances of the case and in Law, the assessing officer had erred in assessing the income tax of the appellant at Rs.15,26,645, please be deleted.

5. The assessing officer had issued the notice for assessment year 2010-11, but the agriculture land purchased in assessment year 2009-2010.which is not valid and the order should be deleted

6. Assessee had purchase two property jointly for Rs. 35,32,800 with stamp duty, assessee had paid his share Rs. 17,66,400 with stamp duty .which had been paid from assessee's earlier savings and gift received from his relatives. Details and proofs of investment will be produced at the time of hearing

7. The addition made by the A.O. is devoid of any merits and is away from the factual matrix of the case and based on just an imagination and on fimsy ground. Submission was not made by the assessee because opportunity of being heard had not been provided.

8. The assessment order is therefore illegal being in violation of the principal of natural justice and unsustainable in law.

9. That the impugned assessment order is arbitrary, illegal, bad in law in violation of rudimentary principal of contemporary jurisprudence. That the provisions of section 271(1) (C) is not applicable in the case of the applicant.

10. That the impugned Assessment order passed by Ld. Assessing Officer, Ghaziabad is a , clear cut case of misunderstanding and wrong interpretation of Law.

11. That the appellant crave leave to add, alter, amend, delete or modify any or more of the ground of appeal before or at the time of hearing.

2. The brief facts of the case are that as per the AIR information, during the relevant assessment year, the assessee had purchased two immovable properties jointly with one Sh. Dashrath, the stamp duty rates of which were Rs. 73,54,000/- and Rs. 32,81,000/- respectively. Proceedings u/s. 148 of the Income Tax Act, 1961 (in short "Act") was initiated. In view of the non-compliance during the assessment proceedings, ½ share of investment of Rs. 53,17,500/- was considered to be unexplained investment in the hands of the assessee and considered as deemed income of the assessee u/s. 69 of the Act. Against the

assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 31.1.2018 has partly allowed the appeal of the assessee. Aggrieved with the impugned order, assessee is in appeal before the Tribunal.

3. During the hearing, Ld. counsel for the assessee has stated that Assessee had not received any notice u/s. 148 of the Act i.e. any notice under section 148 of the Act had not been served on the assessee, so assessment order us. 147/144 of the Act is void ab initio. In the assessment year 2009-10, assessee had not purchased any agriculture land, assessee had purchased agriculture properties vide sale deeds dated 09.11.2009 as these transactions are not relevant for AY 2009-10 and hence, the impugned order is clearly illegal, without jurisdiction and void ab initio. It was further submitted that assessment order was passed by AO without issuing notice u/s. 143(2) of the Act and was therefore, bad in law. It was further submitted that the Hon'ble Jurisdictional High Court in the case of "Lalit Mohan Gupta vs. CIT Allahabad", ITA No. 212 of 2007 judgment dated 24.2.2015 it is clear that where the notice u/s. 143(2) is not issued by the AO, the assessment proceedings would come to an end and would be deemed to have become final and there would remain no authority with the AO proceed further and to frame an assessment order. It was further submitted that assessee and his wife earlier savings to purchase these agriculture land and some amount had been received from his relatives, which could not be produced to AO due to not receiving notice. i.e. an opportunity of being heard had not been received. Hence,

he requested an opportunity of being heard and transfer of case to the respective jurisdictional ward in Ghaziabad.

4. On the other hand, Ld. DR relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned order, which does not need any interference.

5. I have heard both the parties and perused the records especially the impugned order. I note that in this case approval to initiate proceedings u/s. 148 of the Act was taken for the assessment year 2010-11 and accordingly notice was issued to the assessee, which establishes that the statutory approval and the statutory notice to initiate proceedings u/s. 148 of the Act was very much for the assessment year 2010-11 and there is no infirmity in initiating the proceedings and issuing the statutory notice to the assessee. I further note that notices u/s. 142(1) and notice u/s. 271(1)(b) of the Act were also issued to the assessee by mentioning the assessment year correctly. The typographical mistake in mentioning the assessment year was occurred for the first time in passing order u/s. 271(1)(b) on 26.7.2016 and notice was issued u/s. 156 of the Act for demand of Rs. 10,000/- continued the mistake by mentioning assessment year 2010-11 instead of 2009-10 and same mistake continued in further correspondences till passing the assessment order on 31.10.2016 and issuing the demand notice u/s. 156 of the Act; penalty notice u/s. 271(1)(c). Such mistake in mentioning the assessment year wrongly in subsequent correspondences are nothing but mistake apparent from

record with was recognized later and rectified by the AO by passing a valid order u/s. 154 of the Act on 13.01.2017. Hence, the argument of the assessee on this account fails and therefore, it was rightly held that the assessment order dated 31.10.2016 is a valid order, which does not need any interference on my part, hence, I uphold the action of the Ld. CIT(A) on the issue of dispute and reject the grounds raised by the assessee.

5.1 On the merits of the case, it is noted that assessee did not file any evidence in support to explain the source of investment of his half share in the impugned two properties. In view of the fact that the assessee had not brought any evidence on record to explain such investment, the action of the AO to treat the unexplained investment made by the appellant is considered to be appropriate. However, it is gathered from the purchase deed of these two properties that the actual sale consideration was paid for these properties were Rs. 20,00,000/- and Rs. 10,00,000/- respectively. The value taken by the AO in assessment order as purchase consideration (unexplained investment) has been the value mentioned in the purchase deeds for the purpose of stamp duty. Such stamp duty value is for the purpose of application of provision of section 50C of the Act to compute the capital gain in the hand of the seller. The unexplained investment u/s 69 of the Act will be the actual amount paid by the assessee. In view of the same, 50% of the total consideration of Rs. 20,00,000/- and Rs. 10,00,000/- i.e Rs. 15,00,000/- and stamp duty of Rs. 4,32,300/ (Rs. 3,67,900/- and Rs. 1,64,900/- paid

over such purchase amount, totaling to Rs. 19,32,300/, should be considered as unexplained investment in the hand of the assessee u/s 69 of the Act. I note that the case law cited by the Ld. AR is distinguished on facts of the present case. Hence, the assessee gets relief of Rs. 33,85,200/- and the remaining addition of Rs. 19,32,300/- was rightly confirmed by the Ld. CIT(A), which does not need any interference on my part, therefore, I uphold the action of the Ld. CIT(A) on the merits of the case and reject the grounds raised by the Assessee.

6. In the result, the Appeal of the Assessee is dismissed.

Order pronounced on 19-02-2019.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Date: 19/02/2019

SRBhatnagar

Copy forwarded to: -

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

By Order,

Assistant Registrar, ITAT, Delhi Benches