

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 5335/Del/2018
Assessment Year 2010-11

Brij Mohan & Co. 2878/5, Gali Jajampuria, Bazar Sirkiwalan, Delhi-110 006	Vs.	ITO, Ward-46(3) New Delhi.
(Appellant)		(Respondent)

Department by:	Shri Bishnu Bhagwan Gupta , Advocate
Assessee by :	Shri S.L. Anuragi, Sr. DR
Date of Hearing	28/01/2019
Date of pronouncement	25/03/2019

ORDER

The aforesaid appeal has been filed by the assessee in the impugned order dated 13.6.2018, passed by Ld. CIT(Appeals) 16 New Delhi for the quantum of assessment u/s 143(3)/147 for the assessment year 2010-11. In various grounds of appeal the assessee has challenged the validity of notice u/s148 and the same was issued in the name of the firm which is non resident and had come at a wrong address and Ld. CIT (A) therefore, has erred in law and on facts in dismissing the appeal as not admitted.

2. Here in this case based on AIR information that assessee has deposited cash aggregating to Rs.26,68,000/- in his bank account with Syndicate Bank during the financial year 2009-10 and assessee

has not filed its return of income, therefore, a notice u/s 148 was issued on 31.3.2017. Ld. AO after seeking replies and details from assessee accepted that these cash deposits relates to assessee's business receipts and in that year GP rate of 6.18% declared and made addition of Rs. 1,64,882/-.

3. Aggrieved by the said order the assessee preferred an appeal before the Ld. CIT(A), wherein the assessee stated that here in this case notice u/s 148 was issued in the name of the firm which is nonexistent and was sent at a wrong address. Therefore, assessment itself is not valid. However, the Ld. CIT(A) has dismissed the appeal as invalid and non-est after Observing and holding as under :-

“As per form no. 35, the appeal is filed in the name of Brij Mohan and Co. PAN: AAFB3951B. The assessment u/s 143(3)/147 is also completed in this name with the same PAN. The appeal is verified and signed by Shri Pramod Kumar having PAN AAHPK7907P being the proprietor of Brij Mohan and Co., The firm namely Brij Mohan and Co., PAN: AAFB3951B, is stated to be dissolved in 9.12.1994. As per Rule 45 of the Rules, the appeal must be signed and verified by the person who is authorized to sign the return under section 140 of the Act. When the firm is stated to be dissolved and appeal has been filed by the above cited person who is neither partner nor authorised persons to verify and sign the current appeal against the assessment order. Therefore the appeal filed cannot be considered an appeal filed in and verified in prescribed manner. In view of this the appeal is invalid and non-est. Therefore, the appeal is dismissed as not admitted. ”

4. After considering the rival submission and on perusal of the relevant material referred to before me at the time of hearing, it is seen

that the assessee is a partnership firm which consisted of four partners constituted by partnership deed dated 9.12.1994 including Shri Pramod Kumar who was carrying on the business in his individual capacity as a Proprietor, from the address 3345, Gali Peepal Mahadev, Hauz Quazi, Delhi – 110 006. Ld. Counsel for the assessee submitted that later on three partners retired from the said partnership vide retirement deed dated 31.3.2000 and only one of the partner, Shri Pramod Kumar remained and therefore, Shri Pramod Kumar became the Proprietor of this concern, w.e.f. 1.4.2009. The earlier PAN of partnership firm AAAFB3951B ceased to exist and now the PAN of assessee as a proprietor since 2009 is AAHPK7907P and from this PAN number, Shri Pramod Kumar has been filing his income tax return and also for the assessment year 2010-11. Shri Pramod Kuamr has electronically filed his return of income on 30.9.2010 declaring an income of Rs. 1,69,801/- which also included business net profit at Rs. 2,13,882/- after claiming deductions/s 80C of Rs. 43,680/-. Even in the bank account maintained with Syndicate Bank Branch, the name 'Brij Mohan & Company' was appearing as, 'M/s. Brij Mohan & CO. Proprietor, Shri Pramod Kumar' wherein the cash was deposited. Despite all these information on record, the addition on account of cash deposits and gross profit rate has been made in the case of partnership firm which did not even exist after year 2000. During the course of assessment proceedings the assessee had informed the AO that the cash deposit under reference was duly shown in the books of accounts of the partnership concern, M/s. Brij Mohan & CO. was the same in his income tax return. The AO in his impugned assessment order has mentioned wrong PAN and PAN of partnership firm had ceased to exist. Thus, entire assessment order passed on non existing entity deserved to be quashed. He further submitted that appeal before the Ld. CIT (A) was filed by the proprietor

and form No. 35 was rightly verified and signed by the proprietor. Under these circumstances dismissing of the appeal of the assessee as *non-est* is bad in law.

5. Ld. DR strongly relied upon the order of the Ld. CIT(A) and alternatively submitted that matter can be remanded back to the file of the Ld. CIT(A) to decide the issue afresh.

6. After considering the aforesaid submissions and material on record, I find that it is an undisputed fact that the assessment has been framed in the name of M/.s Brij Mohan & Co. with the PAN AAAFB3951B which was partnership firm. The said partnership firm was dissolved vide retirement deed dated 31.3.2000 and thereafter, the firm is being carried out in a Proprietorship concern of Shri Pramod Kumar who has been filing his income tax return under his own PAN AAHPK7907P. Ld. CIT (A) has wrongly dismissed the appeal holding that appeal must be signed by a person who is authorised to sign the return u/s 139 and if firm has been dissolved then the appeal signed by the partner who is neither a partner nor authorised person cannot file the appeal. If assessment order has been passed on a non existing entity then ostensibly such an assessment is *non-est* in law and consequently no demand or assessment can be made; and on this ground alone the entire assessment deserves to be quashed.

7. In any case it has been brought on record that the entire cash deposit made in the bank account has been duly shown in the books of accounts of the partnership concern of Shri Pramod Kumar on which he has already declared net profit of Rs. 2,13,882/- The addition made by the AO on account of gross profit on such cash deposits already was subject to tax in the hands of Proprietorship firm of Shri Pramod Kumar. Thus, there could not be double tax for same income. Accordingly, entire proceedings initiated u/s 148 and the

addition made by the AO is quashed and consequently appeal of the assessee is allowed.

8. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 25th March, 2019.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 25/03/2019

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Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi