

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No.2539/DEL/2019
[Assessment Year: 2013-14]

Shri Brijpal Singh Tomar
C -11/78, Near DDA Nursery
Yamuna Vihar, Delhi

Vs.

The I.T.O
Ward 64(1)
New Delhi

PAN: AOIPS 9304 M
[Appellant]

[Respondent]

Date of Hearing : 25.04.2019
Date of Pronouncement : 26.04.2019

Assessee by : Shri Suresh K. Gupta, FCA
Revenue by : Shri S.L. Anuragi, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 32, New Delhi dated 05.03.2019 pertaining to A.Y 2013-14.

2. Vide Ground Nos. 1 to 4, the assessee has challenged the validity of notice u/s 148 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'], thereby questioning the jurisdiction of the assessment order framed u/s 147 of the

Act and vide Ground Nos. 5 and 6, the assessee has challenged the additions on merits.

3. Representatives of both the sides were heard at length and case records carefully perused.

4. Briefly stated, the facts of the case are that the assessee filed return of income showing total income of Rs. 4.96 lakhs on 18.07.2013. Return was processed u/s 143(1) of the Act. On the basis of information received from the Investigation Wing of the department, the Assessing Officer came to know that the assessee has paid capitation fee/donation of Rs. 18 lakhs over and above the regular fees in cash to Santosh Medical College, Ghaziabad for his daughter Priyanka Tomar. On the basis of this information, notice u/s 148 was issued and reasons recorded for reopening assessment read as under:

"In this connection, please refer to the letter dated 30.11.2015 filed by your Authorized Representative, Shri Suresh K Gupta in this office on 01/12/2015. In this regard, it is stated that the reason recorded for issuance of notice

u/s 148 is as under:-

" A letter was received from DDIT(Inv.), Unit-V(I), New Delhi dated 11.03.2015 informing that a search & Seizure action u/s 132 of the I.T. Act, 1961 was carried out on 27.06.2013 in Santosh Group of Institutions and Dr. P. Mahalingam. During the search certain documents/ books of accounts were seized from the premises H-1 to H-6, Santosh Nagar, Pratap Vihar, Ghaziabad, the main administrative block of the college which reveals receipts of donation/capitation fee over and above the regular course fee, paid in cash by the parents of the students taking admission in various medical courses. Vide above mentioned letter, it was further informed that the following person, the jurisdiction over which lies with the office has given donation in cash [which is likely to be unaccounted and disclosed] as per the details below

<i>S No.</i>	<i>Name of the candidate</i>	<i>Father's Name And Address</i>	<i>Date of nayment of Canitation / donation amount</i>	<i>Total donation/ Canitation fee paid in cash</i>	<i>CIT Charge</i>	<i>Course pursue</i>
1.	Dr. Privanka Tomar	Shri Briibal Sinah Tomar C- 11/178, Near DDA Nursery, Yamuna Vihar. Delhi-53.	08.06.2012	18,00,000/ -	19	MBBS

5. In my considered view, instead of issuing notice u/s 148 of the Act and reopening assessment, the Assessing Officer could have issued notice u/s 133(6) of the Act and asked the assessee to furnish the details of cash paid, if any, as capitation fee to Santosh Medical College. Moreover, a perusal of the reasons extracted hereinabove clearly show that the Assessing Officer has not independently applied his mind and has simply extracted the information received from the DDIT, INV Unit VI, New Delhi dated 11.02.2015. In fact, the Assessing Officer himself has observed that the donation in cash is likely to be unaccounted and disclosed.

6. In my considered view, reopening cannot be done on suspicion unless the Assessing Officer has reason to believe that income has escaped assessment. As mentioned elsewhere, the assessee has returned income of Rs. 4.76 lakhs and the Assessing Officer could have easily asked the assessee regarding the source of capitation fee paid, if any, by issue of notice u/s 133(6) of the Act. However, the Assessing Officer chose to reopen the assessment, which, in my considered opinion, is bad in law.

7. The Hon'ble Delhi High Court in the case of Shamshad Khan in 395 ITR 265, while allowing the writ petition of the assessee, observed that the initiation of case for reopening of the assessment was erroneous and without application of mind especially since the Assessing Officer had not examined the return filed, which if he had, would have revealed that the assessee had filed regular returns, had sufficient opening balance in his account and withdrawals therefrom, substantiated the donation made.

8. The co-ordinate bench in the case of SBS Realtors Pvt. Ltd in ITA No. 7791/DEL/2018 had the occasion to consider a case where assessment was reopened on the basis of information from INV Wing and the co-ordinate bench observed that the Assessing Officer has reopened the case u/s 147 of the Act for the purpose of verification of genuineness, identification and creditworthiness of the transactions mentioned in the information supplied by the DIT(INV) and this is what the Assessing Officer has concluded at the end of the reasons recorded for issue of notice u/s 148 of the Act was invalid for two reasons - (i) Notice is

issued for the purpose of verification of genuineness, identification and creditworthiness of the transactions which is not permissible and (ii) the Assessing Officer has recorded his satisfaction on the basis of mere report from the INV Wing. There is no crucial link between the information made available to the Assessing Officer and formation of belief of escapement of income.

9. Considering the facts of the case in hand in light of the judicial decisions discussed hereinabove for reopening the assessment mentioned elsewhere, I am of the considered view that the assumption of jurisdiction by issue of notice u/s 148 of the Act is bad in law and assessment so framed deserves to be quashed. Accordingly, I set aside the assessment order and allow Ground Nos. 1 to 4 of the appeal.

10. Since I have quashed the assessment order, I do not find it necessary to dwell into the merits of the case.

11. In the result, the appeal filed by the assessee in ITA No. 2539/DEL/2019 is allowed.

The order is pronounced in the open court on 26.04.2019.

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 26th April, 2019.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	