

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.7654/Del./2018  
Assessment Year 2009-2010

Mr. Prince Choudhary, Ghaziabad. PAN APAPC7871A C/o. Shri Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi – 110 085.	vs.,	The Income Tax Officer, Ward-2(1), Ghaziabad.
(Appellant)		(Respondent)

For Assessee :	Shri Kapil Goel, Advocate.
For Revenue :	Shri V.R. Sonbhadra, Sr.DR

Date of Hearing :	06.06.2019
Date of Pronouncement :	06.06.2019

**ORDER**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-2, Noida, Dated 24.11.2017, for the A.Y. 2009-2010, on the following grounds :

*Jurisdictional ground challenging validity of the reopening proceedings*

- 1. That orders passed by Ld AO and Ld CIT-A are bad in law being passed mechanically in name of non existing*

*person in assumed status of individual that is “Prince/Kalu” where as both are different individuals having different identity (as PAN no of Prince Chaudhary is APAPC 7871A and PAN No of Kalu is CXPPK 9263H) so notice issued u/s 148 dated 09/03/2016 and all subsequent proceedings including orders of Ld AO dated 14/12/2016 and Ld CIT-A are void ab initio;*

*2. That orders passed by Ld AO and Ld CIT-A are bad in law being founded on the reasons which are solely based on information of cash deposit in the bank account which cannot confer valid jurisdiction u/s 148 of the Act to initiate the reopening proceedings and accordingly notice issued u/s 148 and all subsequent proceedings including orders of Ld AO and Ld CIT-A are void ab initio;*

*3. That orders passed by Ld AO and Ld CIT-A are bad in law as mere AIR information is the basis to reopen the present case u/s 148 of the Act which information cannot be treated as giving rise to valid and escaped*

*adequate reasons to belief that income has escaped assessment within the meaning of section 148 of the Act, accordingly notice issued u/s 148 and all subsequent proceedings including orders of LdAO and Ld CIT-A are void ab initio;*

*Merits of the case*

4. *That Ld CIT-A seriously erred in confirming the arbitrary and unlawful addition made by Ld AO without appreciating objectively the explanation tendered by assessee u/s 69 of the Act as assessee was not operating given bank a/c and has no economic capacity to earn the stated amount which bank a/c was operated mainly by late Mr Kalu who expired on 04/09/2015 (father of Price Chaudhary) therefore no addition u/s 69 could have been made as Prince Chaudhary could be asked to explain the source of deposits made by Late Sh Kalu .*

*Natural Justice serious violation : Makes the assessment a nullity*

5. *That orders passed by Ld AO and Id CIT-A are bad in law as Ld AO passed the order u/s 144 in strangulation of principles of natural justice (audi altrem partem) which makes the entire proceedings nullity (coram non judice) in eyes of law.*

2. I have heard the Learned Representatives of both the parties and perused the material available on record.

3. The A.O. in this case initiated the re-assessment proceedings under section 148 of the I.T. Act, 1961. The A.O. noted that during assessment year under appeal, assessee has deposited cash of Rs.36,20,170/- in his S.B. A/c maintained with Bank of India, Harsaon. The A.O. giving benefit of Rs.2,30,000/- made addition of Rs.33,90,170/- under section 69 of the I.T. Act. The A.O. passed the ex-parte assessment order under section 148/144 of the I.T. Act, Dated 14.12.2016 in the following

name "Shri Prince/Kalu s/o. Sh. Raj Pal Singh. The Ld. CIT(A) dismissed the appeal of assessee.

4. Learned Counsel for the Assessee filed copy of notice under section 148 of the I.T. Act, 1961, Dated 09.03.2016 which is issued in the name of Shri Prince/Kalu son of Shri Raj Pal Singh. He has filed copy of PAN of Shri Prince Chaudhary-Assessee as is mentioned in the ground of appeal in which Shri Kalu Singh have been shown as father of Shri Prince Chaudhary. He has also filed copy of PAN of Kalu in which his father's name has been mentioned as Shri Rajpal. He has also filed Death Certificate of Shri Kalu Singh to show that he has expired on 04.09.2015 prior to issue of notice under section 148 of the I.T. Act, Dated 09.03.2016. Learned Counsel for the Assessee, therefore, submitted that assessment order is passed in the name of an individual but, these are two different persons mentioned in the notice under section 148 of the I.T. Act and assessment order. The A.O. issued notice under section 148 on a non-existing person as well as a dead person, therefore, entire re-assessment proceedings are vitiated and

no assessment could be passed in the name of a non-existing persons and there is no valid assumption of jurisdiction under section 148 of the I.T. Act, 1961. He has submitted that the grounds of appeal raised now in the appeal of assessee on legal issues are raised for the first time before the Tribunal.

5. On the other hand, the Ld. D.R. relied upon the Orders of the authorities below. He has submitted that since these legal grounds are raised for the first time before the Tribunal, therefore, matter may be remanded to the file of Ld. CIT(A) for deciding the issues afresh since no opportunity have been given to the Department to verify these facts.

6. I have considered the rival submissions and perused the material on record. It is submitted by Learned Counsel for the Assessee for the first time that notice under section 148 have been issued in the name of Prince/Kalun son of Raj Pal Singh which fact is also mentioned in the assessment order because assessment order is framed in the name of the same persons. However, the PAN of Shri

Prince Chaudhary-Assessee shows he is an individual and son of Shri Kalu Singh. Shri Kalu's PAN shows he is son of Rajpal who expired on 04.09.2015 prior to initiation of re-assessment proceedings. Thus, there was no justification for the A.O. to proceed against a dead person or to proceed against two different persons under section 148 of the I.T. Act and to frame assessment in the status of an individual. These legal issues have bearing on validity of the re-assessment proceedings as well as passing of the Order in the name of non-existing persons. These issues are raised for the first time before the Tribunal and there was no occasion for the Revenue to examine these facts. The Ld. D.R, therefore, rightly contended that the matter may be remanded to the file of Ld. CIT(A) for passing the order afresh as per Law. I, accordingly, set aside the Order of the Ld. CIT(A) and restore all the grounds of appeal including merits to the file of Ld. CIT(A) with a direction to re-decide all these grounds and appeal of assessee afresh as per law, by giving reasonable, sufficient opportunity of being heard

to the assessee as well as A.O. The Ld. CIT(A) shall take into consideration the observations made in this order.

7. In the result, appeal of Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 06<sup>th</sup> June, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "SMC" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :  
Delhi.