

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR (SMC)**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER

**I.T.A. No. 700/Asr/2017**  
Assessment Year: 2009-10

Nirmal Kaur,  
H. No. 1966,  
Gali Arorian, Hall Bazar,  
Amritsar

Vs. Income Tax Officer,  
Ward-1(2), Amritsar

[PAN: AAWPK 8504D]

**(Appellant)**

**(Respondent)**

Appellant by : Sh. K. R. Jain (Adv.)

Respondent by: Sh. Charan Dass (D.R.)

Date of Hearing: 19.03.2019

Date of Pronouncement: 14.06.2019

**ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-1, Amritsar ('CIT(A)' for short) dated 08.8.2017, dismissing the assessee's appeal contesting her assessment u/s. 143(3) read with section 147 of the Income Tax Act, 1961 ('the Act' hereinafter) dated 08.12.2016 for the Assessment Year (AY) 2009-10.

2.1 The facts of the case in brief are that the assessee was issued a notice u/s. 148 on 30.3.2016 on the basis of the Annual Information Report (AIR) with the Revenue as to the assessee having made purchase/sale transaction in shares/mutual funds at Rs.2 lacs during the relevant year (PB pg. 7). The assessee responded vide letter dated 20.10.2016 (PB pg. 17), stating that the return already filed (i.e., u/s.

139, on 30.11.2009) may be considered as in compliance of the notice u/s. 148. And, further, that she had not made any investment (of Rs.2 lacs) during the relevant year, as alleged in the notice u/s. 142(1) dated 29.9.2016 (PB pg. 16). Information u/s. 133(6), called for by the Assessing Officer (AO) from Kotak Mahindra Mutual Fund (KMMF), revealed the assessee to have purchased 20,000 Units of a mutual fund scheme of KMMF for Rs.2 lacs vide cheque no. 148167 drawn on Bank of India, City Centre, Amritsar (BOI) on 05.9.2008 (PB pg. 15). The assessee's bank account with BOI was also requisitioned by the AO u/s. 133(6), which revealed a cash deposit of Rs.2,90,000 on 02.9.2008, which was *fully utilized* for investing in KMMF on 05.9.2008. The units had in fact been realized on 10/12.3.2009 at Rs.3,05,418, realizing thus a profit of Rs.15,418, with the sale proceeds having been invested in KMMF and Shriram MF (PB pg. 5). The assessee, on being confronted with this information, explained the cash deposit of Rs.2.90 lacs on 02.9.2008 (in BOI) as out of the credit balance of Rs.3,05,915 in the said account during f.y. 2006-07, i.e., relevant to AY 2007-08 (PB pg. 3). The said balance (on 10.4.2006) had in fact been withdrawn (at Rs. 3 lacs) by the assessee on 10.04.2006 itself, so that the same could not be regarded as available with him after two and a half years, i.e., in September, 2008. The same was accordingly deemed as unexplained income u/s. 69. The BOI account also revealed a cash deposit of Rs.47,000/- on 05.7.2008 (i.e., prior to 02.9.2008), utilized (along with balance in account) for making investment in DBD at Rs.1.0 lacs on the same date. This cash deposit (at Rs. 0.47 lacs) was also brought to tax as unexplained cash deposit in bank account. The same stood confirmed in appeal by the Id. CIT(A), holding as under:

'6. I have gone through the grounds of appeal, submissions of the appellant and the assessment order of the AO.

Since the assessee in the initial reply filed on 20.10.2016 has denied having made any investment of Rs.2,90,000/- in mutual funds and has also not declared the profit of

Rs.15,418/- on sale of total investment of Rs. 2,90,000/- made in mutual funds during the year which were sold for Rs.3,05,418/-. So it clearly shows that this investment of Rs.2,90,000/- and profit earned on the said investment of Rs.15,418/- is an undisclosed income of the assessee and a withdrawal of Rs.3 lakh made on 10.04.2006, i.e., 2 years before the said investment cannot be considered as the source of said investment and is clearly an after thought.'

2.2 Aggrieved, the assessee is in second appeal, raising the following grounds:

'1. That the order of the Learned Income Tax Officer making an addition of Rs.3,37,000/- and likewise Ld. CIT(A) confirming the same is wrong, illegal and against facts.

2. That the learned CIT(A) has not appreciated the submissions made, explanation offered and proceeded to make the addition arbitrarily.

3. That the AO has not appreciated the fact that cash was available in the earlier and hence no addition could be made during the year under assessment.

4. That the notice u/s. 148 is illegal, invalid and void ab initio and there was no proper satisfaction of mind by the AO while reopening the case. The case has been reopened on the basis of borrowed satisfaction which is not permissible under the law.

5. That initiation of proceedings are illegal and no notice u/s. 148 was ever served upon the assessee.'

3. While the first three Grounds challenge the addition on merits, the last two assail the validity of the assessment proceedings itself. The legal grounds, therefore, shall be taken up first. The reasons recorded are stated to be on borrowed satisfaction; the words 'no proper satisfaction of mind' in Ground 4, to be meaningful, are to be read as 'no proper application of mind'.

Now, to begin with, it is not clear as to whose satisfaction is alleged to have borrowed by the Assessing Officer (AO) while forming his belief. He is in possession of information, from a reliable source – the concerned Mutual Fund (under AIR), definite and specific in nature, and relevant, i.e., of the assessee having purchased units of KMMF for Rs.2 lacs during the relevant year. The only question therefore that survives is whether the said investment by the assessee is out of explained source or an undisclosed source. Notice u/s. 133(6) was

accordingly issued to the assessee on 15.3.2016, seeking the relevant details, viz. the relevant bank account; the source of investment, as well as the copy of the return for the relevant year (PB pg. 8). The same went unresponded. The said investment being not reflected in the return of income (for AY 2008-09), the AO had a reasonable basis to infer or suppose that the investment was made out of unexplained source/s. *How could it be regarded as a borrowed satisfaction or arising out of non application of mind?* The reason to believe has to be based on the information in the possession of the AO and the material on record, resulting in a *prima facie* reason/s to believe escapement of income chargeable to tax for the relevant year from assessment. The sufficiency of the reasons; the satisfaction being in the realm of the subjective satisfaction of the AO (though based on objective facts), cannot be examined or called into question (i.e., in appellate proceedings). Why, even the accuracy of the information, i.e., as long as it is from a reliable source, and relevant, cannot be questioned at that stage, and all that is relevant is, if, given the truth of the information, a requisite belief as to the escapement of income from assessment could be formed by a reasonable person on the basis of the said information/material, i.e., in the facts and circumstances of the case. It was contended that the assessee did not receive the notice u/s. 133(6), for him to have responded thereto. But, then, that would not invalidate either the information that the AO had or the fact that the said investment could not be verified from the assessee's return of income. It may be here pertinent to state that the Apex Court in *GKN Driveshafts (India) Ltd. v. ITO* [2003] 259 ITR 19 (SC) has laid down a procedure in the matter; the assessee, after complying with the notice u/s. 148(1), may seek a copy of reason/s recorded, raising, at his option, preliminary objection/s thereto. Where so, the AO is bound to dispose those objections per a speaking order before proceeding further in the matter. The ld. counsel of the assessee, Sh. Jain, would upon this being observed by the Bench

during hearing, state that the assessee did raise an objection (on 20.10.2016/PB pg. 17), which was not disposed of by the AO per a speaking order. The assessee, per the said reply, denied having been made any investment in shares or mutual funds during the year, enclosing along with the copy of his return and bank account. That is, gives an information, seeking to substantiate it, which is patently false, even as further confirmed by the AO from KMMF vide letter dated 20.10.2016 (through its reply dated 04.11.2016/PB pg. 15). *How could the assessee, then, contend that his 'objection' had not been met, i.e., as required in terms of the procedure prescribed in GKN Driveshafts (India) Ltd. (supra)?* Rather, the said decision, as by any other by any court of law, does not contemplate a false statement, which in fact cannot be regarded as an 'objection', much less a valid objection. The raising of the 'objection' by the assessee, if the letter filed on 20.10.2016 (PB pg. 17) could be regarded as one, is nothing but an abuse of the process of law, to be strongly discountenanced, much less given cognizance to. There is under the circumstances no need to remit the matter back to the file of the AO – who has stated all the facts in the assessment order, to pass a speaking order, as is generally directed by the Tribunal or the Hon'ble High Courts. In the present case, it is only after the assessee denied having made any investment in shares or mutual fund, that the AO, in confirmation of the information in his possession, clarified the matter, seeking direct information from the concerned MF, i.e., KMMF, which responded vide their letter dated 04/11/2016 (refer PB pgs. 15-17). The whole purport of the communication of the reasons recorded u/s. 148(2) to the assessee, as well as seeking to meet his preliminary objections, if any, thereto, as explained per several decisions by the Hon'ble High Courts, as in *CIT v. Inderjeet Sen Gupta* (in ITA No. 589 of 2008, dated 19/8/2013); *B.K. Jagan & Co. v. CIT* [2004] 136 Taxman 343 (P&H), is to observe the principles of natural justice. *How could, then, it be said that there has been a transgression thereof in the instant case?* The premise

and the rationale of the procedure laid down by the Apex Court is that no prejudice is caused to the assessee on account of initiation of the proceedings, so that the same, where misconceived, gets settled at the initial stage itself. No case of violation of the principles of natural justice, or the procedure laid in *GKN Driveshafts (India) Ltd.* (supra), is made out in the facts and circumstances of the case. The 'objection' by the assessee cannot, in fact, be said to be an objection, much less one contemplated per the said decision. The assessee fails on her Gd. 4.

4. The other legal objection is *qua* non service of notice u/s. 148, toward which the assessee again refers to her letter filed on 20.10.2016 (PB pg. 17). The said plea, again, in the given facts and circumstances of the case, and the law in the matter, only needs to be stated to be rejected. The reason is simple. The objection, of no valid service of notice u/s. 148(1) is contradicted by the assessee's compliance thereto, stating, and per the very same letter (i.e., per which she indicates the non service of notice u/s. 148), that the return already filed be considered as in compliance of the notice u/s. 148 (PB pg. 17). Now how could an un-served notice be complied with, implying a knowledge of the said notice? The assessee, on this being observed by the Bench during hearing, would submit that the said letter was in response to the notice u/s. 142(1), duly served and, further, filed in protest. How, one wonders, could a return in response to a notice u/s. 148 be filed in reply to a notice u/s. 142(1)? That apart, the basic question of the assessee being, as apparent, aware of the issue of the notice u/s. 148(1) to her, obtains, invalidating the plea. Even if not served, i.e., as per the prescribed mode, which the assessee had in any case constructive notice of the same. Why, the assessee could, where not in possession of the said notice, request the AO to supply her the said notice. Not to impute such behavior on the part of the assessee would imply that despite being aware of proceedings in her case having

commenced (with the issue of notice u/s. 148(1)), yet does not intend to comply thereto, defeating her case. In fact, to be fair to the assessee, her conduct shows otherwise. The purport of any notice, it may be appreciated, is to put the assessee-noticee to notice that proceedings under a particular section of the Act are being initiated against him.

As regards the claim of it (compliance of notice u/s. 148(1)) being made 'under protest' the same is nowhere borne out by the record. Further, what does the term 'under protest' signify or convey, i.e., in law. If it implies that the assessee reserves the right to object to the said notice; or to the initiation of the reassessment proceedings thereby, the same is even otherwise implied, for responding to or otherwise complying with the notice does not – by any stretch of imagination, imply or could be construed as of the assessee having accepted the validity of the said notice or as having lost (or waived) his right to object thereto (in law). If, therefore, that is what is meant by 'under protest', the point is well taken, though carries no particular significance inasmuch as the assessee has indeed raised a legal objection (per Gd. 4), to which no jurisdictional objection stands raised by the Revenue. In fact, the right to raise an objection/s inures to the assessee only after complying with the notice u/s. 148. How, then, could the assessee claim of having complied with the notice and, further, of thus having validly raised an objection thereto, while at the same time claim, i.e., legally, of the said notice having not been served on him? No wonder it was held in *ITO v. Gurinder Kaur* [2006] 102 ITD 189 (Del) and *CIT v. C. Palaniappan* [2011] 55 DTR 81 (Mad), that the reassessment proceedings could not be struck down on the basis of the claim of non-receipt of notice u/s. 148 where the assessee had complied with the notice u/s. 148(1). The raising of the objection of the service by the assessee, which he does per Gd. 5, is thus itself invalid.

Continuing further, it is not only the assessee's claim of complying with the notice u/s. 148(1), and raising a preliminary objection - also raised per para 4 of the written submissions (PB pgs. 10-14), on that basis, that invalidates her challenge to the service of the said notice. It is also the legal imbroglio that such as challenge raises, to be therefore of no consequence. Service of notice is a matter of procedure. It conveys to the assessee that proceedings u/s. 147 in his case for the relevant year have been initiated, requiring him to file a return of income in response thereto. No wonder, thus, the time limitation u/s. 149 for completing the said proceedings is with reference to the date of service of the said notice, and not its' issue, on the basis of which (i.e., its' issue) though jurisdiction to reassess is assumed (ref: *R.K. Upadhyaya v. Shamabhai P. Patel* [1987] 166 ITR 163 (SC); *Jai Hanuman Trading Co. v. CIT* [1977] 110 ITR 36 (P&H)(FB); *CIT v. Sheo Kumari Devi* [1986] 157 ITR 13 (Patna)(FB)). Reference in this context be also made to the decision in *Grover Nursing Home v. ITO* [2001] 248 ITR 493 (P&H). How could proceedings commence without the service of the notice u/s. 148(1), which is a jurisdictional notice? Would that therefore mean that the proceedings have not yet commenced? That is, while on the one hand the assessee states of complying with the said notice and participating in the proceedings, on the other, it objects to the service of the very notice it claims to comply and object its' legal validity? As afore-noted, service is not an empty formality, its' function is to put the assessee to notice of proceedings in his case having been initiated – nothing more and nothing less. Even if therefore a procedural irregularity has occurred in non-service of the said notice, the matter would have go back to the stage at which the irregularity had occurred, i.e., as per the said law in the matter of larger benches (ref: *Guduthur Bros. v. ITO* [1960] 40 ITR 298 (SC); *Supdt., Central Excise v. Pratap Rai* [1978] 114 ITR 231 (SC)). No wonder, the Hon'ble High Court in *CIT v. Jasbir Singh* [2014] 103 DTR 427 (P&H) did not countenance the

assessee's claim of non-service of notice u/s. 148. Reference in this context may also be drawn to the decision in *CIT v. Ram Narain Bansal* [2011] 202 Taxman 213 (P&H) in which the Hon'ble jurisdictional High Court, on the assessee claiming non-service of notice u/s. 143(2) *qua* proceedings validly initiated u/s. 147, restored the matter back to the file of the AO for the causing the said service, setting aside the Tribunals' order annulling the proceedings and, thus, the assessment, on that score. So much so, in *V.R.A. Cotton Mills (P.) Ltd. v. Union of India* [2013] 359 ITR 495 (P&H), the Hon'ble jurisdictional High Court has read down the words 'service' in *proviso* to section 143(2) to mean 'issue', so as to eschew attempts by the assesseees to avoid service of notice u/s. 143(2), so that the said set aside, is also, in view of the latter decision by the Hon'ble jurisdictional High Court, not required in view of no claim of any prejudice having been caused, and the fact of the assessee having participated in the proceedings. There was, in that case, as indeed in the present case, no claim of any prejudice being caused to the assessee on account of non-service of notice. The assessee was in fact specifically questioned by the Bench during hearing on this, and no prejudice could be stated by the ld. counsel, Sh. Jain. There is, it needs to be borne in mind, no time limitation for the service of a notice u/s. 148 under the Act. The instant case is, apart from the said decision, also squarely covered by the decisions afore-noted, clarifying first legal principles. Sh. Jain, upon being again specifically inquired during hearing if the assessee, in that case, therefore, requires u/s. 148 to be served upon her, replied in the negative. And which is only reasonable and legally valid course considering that the assessee has already participated in the proceedings, validly initiated by the issue of a notice u/s. 148, as already found (while answering the assessee's Gd. 4).

The matter also finds extensive deliberation in the recent decisions by the tribunal in *Rakesh Gupta v. ITO* (in ITA No. 222/Asr/2016, dated 31/1/2019) and

*Jaspal Singh v. ITO* (in ITA No. 445/Asr/2016, dated 08/5/2019), drawing on binding judicial precedents by the Apex Court and the jurisdictional High Court, as well as the clear language of the relevant provisions of law. The non-service of a notice u/s. 148(1), even where proved, it was explained in *Jaspal Singh* (supra), does not carry any particular significance inasmuch as all it implies is that the said notice is undisposed, and the proceedings, accordingly, would necessarily require being restored to that stage. There is no time limit for the service of notice u/s. 148(1), which is again, by way of procedure, seeking to enjoin the assessee to the proceedings initiated against him, for which reference was also made, apart from s. 153(2), to the decision in *Prakash Electric Co. v. ITO* [2008] 118 TTJ 539 (Bang). The Id. counsel for the assessee, Sh. Jain, was specifically asked during hearing if the assessee wished to opportunity to explain his case before the AO, which he denied, as was indeed the case in *Jaspal Singh* (supra) as well, where, however, despite so, the tribunal restored the proceedings to the stage of the assessing authority finding that, even as no prejudice had been caused to the assessee, he had, unlike in the present case, not joined the proceedings before him, adverting to the decision in *Jasbir Singh* (supra). In *Rakesh Gupta* (supra), the tribunal draws on several decisions by the Apex Court *qua* the purport of a notice, as well as the effect of improper service or non-service, again finding it to be toward observing the principle of natural justice, even as the assessee in the present case had constructive notice of the said notice, even objecting to the reasons recorded. Reference, it is emphasized, is once again drawn to the several decisions by the Apex Court and the Hon'ble jurisdictional High Court referred to hereinbefore.

5. As regards the decisions relied upon by the assessee, in *Rajesh Kumar Doneria v. Asstt. CIT* [2005] 94 ITR 345 (Agra), stated in the written submissions dated 18.07.2017 before the Id. CIT(A) (PB pgs. 1-2) would thus be of no

assistance to the assessee, i.e., given the factual matrix of the case and the legal position as elucidated by the binding judicial precedents. Similarly, the decision in *Micro Spacematrix Solutions (P.) Ltd. v. ITO* (in ITA No. 669/Del/2012) is with reference to service of notice u/s. 143(2), a jurisdictional notice, while jurisdiction for assessment u/s. 147 gets assumed on the basis of issue of notice u/s. 148(1), which thus has been validly assumed in the instant case. Rather, as afore-noted, there is no time limit under the Act for service of the said notice and, further, the assessee having participated in the proceedings so that the objection *qua* service is even otherwise not maintainable. The said decision would also thus not be of any assistance to the assessee. The assessee's Gd. 5, thus, does not carry her case as regards the validity of the reassessment proceedings any further, which (Gd. 5) therefore also deserves to be and is, accordingly, dismissed.

6. Coming to the assessee's case on merits, projected per Grounds 1-3, the same were in fact not pressed during hearing. I shall, however, inasmuch as there is no endorsement, as is usually the case, marked by the words 'not pressed', alongside the relevant grounds in the appeal memo, the merits thereof is examined. The only explanation advanced by the assessee, i.e., toward investment of Rs.2.90 lacs in units of KMMF on 05.9.2008, is the cash withdrawal of Rs.3 lacs from her said bank account with BOI on 10.4.2006. There is no explanation as to why cash, and in such huge amount, was withdrawn in the first place and, further, why and where was it kept for so long, i.e., from April, 2006 to September, 2008. The same, in fact, represents the closure proceeds, presumably of some investments, credited to her said account on 10.4.2006 itself. Why, there is another cash withdrawal of Rs.2.70 lacs in the said bank account some time later, i.e., from July 8 to 21, 2006. The assessee, it appears, is a regular investor/dealer, purchasing and selling shares/units. No regular books of account have been maintained. The assessee did

either disclose the investment in shares/units during the current year to the Revenue, nor return the profit on their sale. The explanation advanced is, besides being un-evidenced, implausible and/or improbable, i.e., given the time lag, and wholly untenable and inconsistent with the facts and circumstances of the case. The same has, accordingly, rightly been not accepted by the Revenue. I therefore find no reason to interfere, and decide accordingly.

7. In the result, the assessee's appeal is dismissed.

*Order pronounced in the open court on June 14, 2019*

Sd/-

(Sanjay Arora)

Accountant Member

Date: 14.06.2019

*/GP/Sr. Ps.*

Copy of the order forwarded to:

- (1) The Appellant: Nirmal Kaur, H. No. 1966, Gali Arorian, Hall Bazar, Amritsar
- (2) The Respondent: Income Tax Officer, Ward-1(2), Amritsar
- (3) The CIT(Appeals)-1, Amritsar
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True Copy

By Order