

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.5860/Del/2018
Assessment Year: 2008-09

Yogesh Pal Singh,
C/o S. Chaturvedi & Associates,
305, Deep Shikha,
Rajendra Place,
New Delhi.

Vs. ITO,
Ward-3(5),
Noida.

PAN: BMZPS1847P

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri S.L. Anuragi, Sr. DR
Date of Hearing	:	01.07.2019
Date of Pronouncement	:	08.07.2019

ORDER

This appeal filed by the assessee is directed against the order dated 31st May, 2018 of the CIT(A)-1, New Delhi, relating to Assessment Year 2008-09.

2. None appeared on behalf of the assessee despite service of notice. Therefore, this appeal is being disposed of on the basis of the material available on record including the written synopsis filed by the assessee on the earlier occasion and after hearing the ld. DR.

3. Facts of the case, in brief, are that the assessee is an individual and had not filed any return of income. On the basis of the AIR information that the assessee has deposited cash of Rs.11,80,000/- in the savings bank account maintained with Mahamedha Urban Co-operative Bank Ltd. during the financial year 2007-08, the Assessing Officer issued verification letter to the assessee. Since there was no compliance from the side of the assessee, the Assessing Officer initiated proceedings u/s 147 of the IT Act. Again, there was no compliance for which the Assessing Officer issued statutory notice u/s 142(1). Again, there was non-compliance. Therefore, the Assessing Officer completed the assessment u/s 144/147 determining the total income at Rs.11,80,000/-.

4. Before the CIT(A), the assessee challenged the validity of the notice issued u/s 148 on the ground that such notice was never served on the assessee as the address of the assessee was incorrectly mentioned in the said notice. Certain additional evidences were also filed which were forwarded to the Assessing Officer for a report from his side. The Assessing Officer contested such additional evidences filed. Based on the arguments advanced by the assessee, the Id.CIT(A) deleted the addition made by the Assessing Officer directing him to issue fresh notice u/s 148 as per the address given in Form No.35 and also as per the PAN application form as per law.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. I have perused the material available on record and heard the ld. DR. A perusal of the record shows that on the earlier occasion the assessee had contested in his written synopsis the limitation for issuance of notice u/s 148 which lapsed on 31.03.2015 for assessment year 2009-10. It has been mentioned that as per Section 150(2), the notice cannot be issued because on the date of assessment order (order subject matter of appeal before CIT(A) was of 29.11.2016), on 03.03.2016 Section 149 does not permit the issuance of notice u/s 148 because the time limitation has already lapsed on 31.3.2015.

7. It has further been mentioned in the synopsis that the CIT(A) has transgressed the power given to him u/s 251 by giving direction to AO to issue fresh notice u/s 148 and frame a fresh assessment. However, the power of CIT(A) for setting aside the assessment has been withdrawn since 1.6. 2001.

8. It is the submission of the ld. DR that since the appeal filed by the assessee has indirectly been allowed by the CIT(A) by deleting the addition, therefore, the assessee should not have any grievance. In my opinion, the addition made by the Assessing Officer has already been deleted by the CIT(A). He has only given a direction to the Assessing Officer to issue notice u/s 148 afresh on the address given by the assessee in form No.35. If the same is not within the prescribed time limit, the assessee can always challenge the validity of such reopening before appropriate forum at appropriate time. However, in my opinion, the present appeal is not maintainable since

the Id.CIT(A) has already deleted the addition. Therefore, this appeal filed by the assessee has become infructuous. Accordingly, the same is dismissed.

9. In the result, the appeal filed by the assessee is dismissed.

The decision was pronounced in the open court on 08.07.2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 08th July, 2019

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Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi