

आयकर अपीलीय अधिकरण, "एस.एम.सी" न्यायपीठ, राँची
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, RANCHI

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No.109/RAN/2019

(निर्धारण वर्ष / Assessment Year :2012-2013)

Shri Sanjog Prasad, H.No.493, B-Block, Sonari, Jamshedpur-831011	Vs.	ACIT, Circle-3(1), Jamshedpur
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACUPP 8930 A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Devesh Poddar, Advocate

राजस्व की ओर से /Revenue by : Shri P.K.Mondal, ACIT(DR)

सुनवाई की तारीख / Date of Hearing : **23/05/2019**

घोषणा की तारीख/Date of Pronouncement **24/05/2019**

आदेश / O R D E R

This appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals), Jamshedpur, dated 14.01.2019 passed in First Appeal No.50/JSR/2018-19 for the assessment year 2012-2013.

2. The assessee has raised the following grounds of appeal :-

1. *For that the assessment being completed U/s 147/143(3) is ab initio void and illegal. The subject matter for the initiation of proceeding U/s 147 was already considered and looked into during the course of scrutiny assessment U/s 143(3). As such, this initiation can only be said to be change of opinion. As such, proceeding being initiated U/s 147 is ab initio void, illegal and fit to be deleted.*
2. *For that the authorities below were not justified in not considering the objection raised by the appellant regarding the initiation of proceeding U/s 147. There was no fresh material available on record with the Ld. AO to suggest any escapement of income. As such, the proceeding being initiated merely on change of opinion is unjustified, illegal and fit to be deleted.*

3. *For that Ld. CIT(A) was not justified in confirming the addition of Rs. 2,40,000/- being the amount of cash withdrawn from the bank account. Complete details for the same was furnished before the authorities below who failed to consider the same and give credit for the same against the addition being made for large cash deposit.*
 4. *For that Ld. CIT(A) was not justified in confirming the addition of Rs. 1,34,800/- being cash deposited by 4 different persons. It was mentioned to the authorities below that the payments deposited by the concerned persons were duly be repaid back. Complete details for the same was furnished before authorities below who failed to consider the same and made addition in a summary manner. As such, the addition being made is fit to be deleted.*
 5. *For that Ld. CIT(A) was not justified in confirming the addition of Rs. 18,03,000/- being unexplained cash deposit. Total cash deposited during the year was Rs. 60 lacks (approx.). Complete details for the same were furnished before the authorities below. Ld. AO being convinced with the same made addition of Rs. 18,03,000/- as unexplained source of income and added the same to the income of the assessee. It was mentioned before the authorities below that this amount includes assessee's past savings and income. Details as available was furnished to suggest the same. However, the authorities below failed to consider our submissions and made the addition in a summary manner. In any view of the case, the addition being made U/s 147 is ab initio void and fit to be deleted.*
 6. *For that the Ld. Assessing officer was not justified in charging interest on the assessed income. Interest U/s 234A and 234B be charged on returned income following the decision of Hon'ble Jharkhand High Court.*
 7. *For that other grounds in detail will be argued at the time of hearing.*
3. Grounds No.1 & 2 are to be taken first for consideration as they are legal in nature with the consent of both the parties.
4. Brief facts of the case are that the assessee is a salaried employee and filed his return of income electronically on 09.08.2012 declaring total income of Rs.10,82,370/-. The case of the assessee was selected for scrutiny and thereafter the AO framed the assessment u/s.143(3) of the

Act determining total income of the assessee at Rs.33,38,110/- and made various additions. Aggrieved thereby the assessee filed appeal before the CIT(A), however, the CIT(A) passed the ex-parte order and dismissed the appeal of the assessee.

5. Now, the assessee is in further appeal before the Tribunal.

6. Ld. DR informed that relevant assessment records is received and he also furnished copy of the reasons recorded for initiation of re-assessment proceedings and another copy was also provided to the Id. AR.

7. I have heard arguments of the both the sides and carefully perused the material available on the record of the Tribunal, *inter alia*, impugned reassessment and first appellate order along with relevant appeal records and paper book filed by the assessee.

8. Ld. AR submitted that from the copy of the reasons recorded by the AO on 21.09.2017 for A.Y.2012-2013, it is clearly discernible that the AO perused the case and relevant case record and thereafter picked up two issues for initiation of reassessment proceedings u/s.147 of the Act and issuance of notice u/s.148 of the Act. Ld.AR vehemently pointed out that there was no new material with the AO at the time of recording reasons which was not before him during the original assessment proceedings, therefore, it is a clear case of change of opinion without any new tangible material in the hands of AO.

9. Ld. AR also pointed out that from the copy of reassessment order passed u/s.143(3) r.w.s.147 of the Act, it is also clear that in para 8 the

AO has reproduced the details available with him regarding cash deposit of Rs.18,03,000/- during the period 01.04.2009 to 31.03.2011, which pertains to assessment year 2011-2012 and the AO initiated reassessment proceedings for A.Y.2012-2013 on the basis of such information which was not related to the present assessment year which shows a clear non-application of mind by the AO. Ld.AR lastly submitted that on account of change of opinion as well as on the clear non-application of mind, the initiation of reassessment proceedings, notice u/s148 of the Act and all consequent proceedings and orders including the impugned reassessment and first appellate order may kindly be held as bad in law and be quashed.

10. Replying to above, Id. DR submitted that the AO proceeded to invoke provision of Section 147 & 148 of the Act on verification of bank statements of State Bank of India, therefore, initiation of reassessment proceedings are quite correct and valid. He also submitted that the second issue is pertaining to deemed rental income from house property at Jamalpur, which has escaped the assessment, therefore, the AO is empowered for initiation of reassessment proceedings.

11. Placing rejoinder to the above, Id. AR submitted that from the copy of the original assessment order dated 04.06.2014 u/s.143(3) of the Act, it is clearly discernible that the AO in para 4 has adjudicated the issue on which cash deposited to the bank account of the assessee and in para 6 & 7 the AO also considered the rental income of the assessee from three parties including house at Jamalpur and made addition of Rs.66,300/- on

account of flat No.502, Syndicate Colony, Uliyan Kadma, Jamshedpur to the total income of the assessee as undisclosed income, therefore, it is a clear case of change of opinion.

12. On careful consideration of above rival submission, first of all, I may point out that the AO on 21.09.2017 recorded the following reasons for initiation of reassessment proceedings u/s.147 of the Act and issuance of notice u/s.148 of the Act :-

“21.09.2017 On verification of the case record for the A.Y. 2012-13, the following facts have been noticed:-

- 1. On perusal of bank statements of the assessee with the United Bank of India bearing A/c no. 301102010010800 it is noticed that the assessee had made cash deposit of Rs.51,75,000/-. Again on verification of bank statements of State Bank of India (SBI) it is found that the assessee had made cash deposit of Rs.8,77,000/-. The source of the total cash deposit in the above mentioned two banks accounts to the tune of Rs.60,52,000/- (5175000 + 877000) has not been explained by the assessee and the same has escaped assessment.*
- 2. The assessee owns three House Property, one at Sonari, Jamshedpur, self occupied, second at Kadma, Jamshedpur on which deemed rent of Rs.66,300/-was added to the total income of the assessee during the course of assessment and third at Jamalpur, Karaikela-Kharsawan, on which the assessee had not shown any deemed income from house property. Therefore, deemed income from house property at Jamalpur is also taken at Rs.66,300/-, which has escaped assessment. Therefore, I have reason to believe that the Income of Rs.61,18,300/- (6052000 + 66300) has escaped assessment within the meaning of Section 147 of the I.T. Act 1961.*

Put up for kind perusal and necessary approval/sanction u/s 151(1) of Hon'ble Pr.Commissioner of Income-tax, Jamshedpur for issue of notice u/s 148 of the I.T. Act, 1961 to the assessee.”

*Sd/-
(Saikat Basu)
ACIT, Circle-3(1), Jamshedpur*

13. From the above, it is clearly discernible that the AO verified the case records relevant to A.Y.2012-2013 and noticed two points viz. cash deposits to the bank account of the assessee and deemed rental income from house property at Jamalpur. From the copy of the original assessment order dated 04.06.2014, from para 4, 6 & 7, I clearly observe that the issue of cash deposits to the bank account of the assessee as well as deemed income from house property situated at flat No.502, Syndicate Colony, Uliyan Kadma, Jamshedpur has been considered and adjudicated by the AO while framing scrutiny assessment order. From the reasons recorded, I am unable to gather any fact which could show that there was any new tangible material, which was not before him during the original assessment proceedings and at the time of initiation of reassessment proceedings, therefore, have no hesitation to hold that it is a clear case of change of opinion.

14. So far as the issue of non-application of mind is concerned, from para 8 of the impugned reassessment order, I clearly observe that the AO has noted and verified the details available on record, which shows that the assessee has withdrawn cash amounts from 01.09.2009 to 24.03.2011. In the same para second part at page 8, the AO noted that the assessee has claimed this amount of Rs.18,03,000/- was accumulated by him and became a source of cash which was deposited in F.Y.2011-2012. However, it was found from the bank statement that the assessee has also deposited more than Rs.18,03,000/- in cash in the period from 01.04.2009 to 31.03.2011. In view of this factual findings, I am

of the view that from the reasons recorded by the AO in para 1 of the reassessment order, it is clear that the AO has considered the bank accounts of the assessee i.e. bank account maintained at United Bank of India and another with State Bank of India and in the second part of para 8 of reassessment order the AO negated the claim of the assessee that amount of Rs.18,03,000/- was accumulated by him from withdrawals made by him during the previous year from United Bank of India and the same was deposited in State Bank of India account. Therefore, I decline to hold that at the time of initiation of reassessment proceedings, the AO did not apply his mind. Accordingly, the second contention of Id. AR is dismissed.

15. However, as I have held in earlier part of this order that it is a clear case of change of opinion by the AO as there was no new tangible material with him at the time of initiation of reassessment proceedings and issuance of notice u/s.148 of the Act, therefore, in view of the decision of Hon'ble Supreme Court in the case of CIT vs. Kelvinator India Ltd. 320 ITR 561 (SC), the initiation of reassessment proceedings u/s.147 of the Act and notice u/s.148 of the Act and all consequential proceedings & orders, and impugned reassessment order and first appellate order, are bad in law and, therefore, I quash the same.

16. Since, by the earlier part of this order, I have quashed the initiation of reassessment proceedings and impugned orders of the authorities below, therefore, grounds of assessee on merits become infructuous and I have not adjudicated the same as become infructuous.

17. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 24/05/2019.

Sd/-
(CHANDRA MOHAN GARG)
न्यायिक सदस्य / JUDICIAL MEMBER

राँची/Ranchi; दिनांक Dated 24/05/2019

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- .
Shri Sanjog Prasad,
H.No.493, B-Block, Sonari, Jamshedpur-
831011
2. प्रत्यर्थी / The Respondent-
ACIT, Circle-3(1), Jamshedpur
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राँची / DR, ITAT, Ranchi
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, राँची / ITAT, Ranchi