

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.6003/Del./2018
Assessment Year 2010-2011

Shri Saurabh Saini, H.No.488/5, 1 st Floor, Near Suchita Memorial, Public School, Sector-5, Gurgaon – 122001. PAN BCAPS2542E	vs.,	The Income Tax Officer, Ward-4(2), Gurgaon.
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, Sr. Advocate And Ms. Surbhi Goyal, C.A.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	22.08.2019
Date of Pronouncement :	.09.2019

ORDER

This appeal by assessee has been directed against the order of Ld. CIT(A)-1, Gurgaon, Dated 15th June, 2018 for the assessment year 2010-2011.

2. Briefly the facts of the case are that Department was in possession of the information that assessee had made cash deposits of Rs.9 lacs in his savings bank account

maintained with Standard Chartered Bank and also made investment in purchase of shares of various companies amounting to Rs.11,87,530/- during the assessment year under appeal. It was found that assessee has not filed return of income for assessment year under appeal. Therefore, source of the aforesaid cash deposit and purchase of shares remains unexplained by failure of assessee to file return of income. The assessment was reopened under section 147 of the Income Tax Act, 1961. The assessee claimed before assessing officer that he has made cash deposits of Rs.7,50,000/- on three dates only. The assessing officer accordingly made the addition of Rs.7,50,000/-.

3. The assessee challenged the addition before the Ld. CIT(A). The explanation of assessee and source is reproduced in the appellate order. The Ld. CIT(A), however, given benefit of Rs.40,000/- only on account of cash withdrawal from the account and confirmed the addition of Rs.7,10,000/-.

4. The assessee in the present appeal challenged the initiation of re-assessment proceedings under section 147/148 of the Income Tax Act and addition of Rs.7,10,000/-.

5. I have heard the Learned Representatives of both the parties and perused the material on record. It is well settled Law that validity of the re-assessment proceedings is to be determined with reference to the reasons recorded for reopening of the assessment. Learned Counsel for the Assessee filed copy of the reasons recorded for reopening of the assessment under section 148 of the income Tax Act. The same reads as under :

<i>"Name & Address of the Assessee</i>	<i>Sh Saurabh Saini, H.No.139, Sector-5, Part-III, Opp. Vardhman Hospital, Gurgaon – 122 001.</i>
<i>Assessment Year</i>	<i>2010-2011</i>
<i>PAN</i>	<i>BCAPS2542E</i>
<i>Status</i>	<i>Individual</i>
<i>Date</i>	<i>09.03.2017</i>

Reasons to issue notice U/s.148 of the I.T. Act, 1961

This is an NMS case. The Income tax Department has received information on financial activities relating to

financial transaction of the assessee for the financial year 2009-10 relevant to assessment year 2010-11. As per this information the assessee has made cash deposits amounting to Rs.9,00,000/- to his savings bank account maintained with Standard Chartered Bank Grindlays Ltd., SCF-77. Sector-14, Gurgaon and has also made investment in purchase of shares of various companies amounting to Rs.11,87,530/-. From the ITD data base, it is found that assessee has not filed his return of Income for the A.Y. 2010-11. In this respect, NMS notice was issued to the assessee but no reply has been filed by the assessee.

As the assessee has not filed the return of Income, the source of cash deposits as well as investment in shares of various companies remains unexplained. Therefore, I have reason to believe that on account of failure on the part of the assessee to explain the source of cash deposits and investment in shares, income to the tune of Rs. 20,87,530/-, has escaped

assessment for the A.Y. 200-11 within the meaning of Section 147 of Income Tax Act, 1961.

In view of above proceedings u/s. 147 of the I.T. Act, 1961, are hereby initiated against the assessee for the assessment year 2010-11 to bring to tax the undisclosed income of Rs.20,87,530/-.

*Sd/- V.K. Jain
Income Tax officer,
Ward 4(2), Gurgaon.”*

5.1. Learned Counsel for the Assessee submitted that the assessing officer has recorded wrong facts in the reasons that assessee has made cash deposits of Rs.9 lacs in his savings bank account though it was only Rs.7,50,000/-. He has submitted that no amount has escaped income on account of purchase of shares as the assessing officer has accepted the claim of assessee. He has submitted that cash deposit by itself would not disclose that income has escaped assessment. He has submitted that issue is covered by the Order of ITAT Delhi SMC-Bench in the case of Shri Abrar Ahmad Qasimi, Delhi vs. ITO,

Ward-46(5), New Delhi, for the assessment year 2007-08

Dated 1st June 2018 in which it was held as under :

“This appeal by assessee has been directed against the order of the Ld. CIT(A)-16, New Delhi, dated 06th March, 2017, for the A.Y. 2007-2008.

2. *Briefly, the facts of the case are that in this case notice under section 148 for reopening of the assessment was issued on 21.02.2014 after obtaining the approval of JCIT, New Delhi. The assessee in response to the notice, filed return of income declaring income of Rs.99,200/-. During the year, assessee had declared salary income only. The reasons for reopening of the assessment have been provided to the assessee. The assessee was asked to explain nature of source of entry of Rs.14,75,000/- in S.B. account of the assessee. The A.O. noted that assessee has not filed satisfactory explanation regarding cash deposit in Axis Bank, therefore, it was treated as unexplained deposit under section 69A of the I.T. Act and made the addition of Rs.14,75,000.*

3. *The assessee challenged the above addition before Ld. CIT(A) and it was submitted that assessee is Maulvi for Arabic Religious and Teacher and teaching Arabic in the Masjid. He has prestige in the society and trustworthy in the community. People coming to him for pious purposes, giving money for safe deposit and take back whenever required. The assessee deposited the amount in bank account which was later on withdrawn and returned to them. Assessee gets salary from Waqf Board, Delhi.*

4. *At the appellate stage, assessee was asked to produce lenders for their statements. The assessee produced some of the persons at the appellate stage. Their statements were recorded in which they have confirmed to have given amounts to the assessee. Ld. CIT(A), however, do not accept the contention of assessee because lenders are not having enough money and that they themselves have bank account, therefore, there were no reason to deposit amount in the bank*

account of the assessee. Appeal of the assessee has been dismissed.

5. *The assessee in the present appeal challenged the reopening of the assessment as well as addition of Rs.14,75,000/-. Learned Counsel for the Assessee submitted that assessee obtained reasons for reopening of the assessment under RTI Act, 2005, copy of which is filed on record, in which, A.O. has recorded reasons for reopening of the assessment. The same reads as under :*

“As per information available in ITD System of the Income Tax Department, Sh Abrar Ahmad Qasimi during the financial year 2006-07 relevant to A.Y. 2007-08 has made cash deposit of Rs.14,75,000/- in saving bank account. The assessee has not filed Tax return for A.Y. 2007-08. After examination of information available in ITD system by independent application of mind, I have reason to believe that income of Rs.14,75,000/-for Financial Year 2006-07 relevant to

Assessment Year 2007 -08 has escaped assessment with in meaning of sec 147 of Income Tax Act, 1961. The case for assessment year 2007 -08 is taken up for assessment u/s. 147 of I. Tax Act, 1961.”

5.1. *He has submitted that mere deposit of the cash in the bank account is not sufficient to believe that income chargeable to tax has escaped assessment, therefore, reopening of the assessment is bad in law. It was submitted that the issue is covered in favour of assessee by order of ITAT, SMC-Bench in the case of Shri Arvind Yadav vs. ITO, Ward-1(1), New Delhi ITA.No.1508/Del./2017 for the A.Y. 2008-2009, Dated 07.07.2017, in which the Tribunal on identical facts, set aside the orders of the authorities below and quashed the reopening of the assessment vide order dated 07.07.2017. Copy of the order is placed on record.*

6. *Ld. D.R. relied upon the orders of the authorities below.*

7. *After considering rival submissions, I am of the view that reopening of the assessment is bad in law. The A.O. merely noted in the reasons that since there is an information available on ITD System of the Department that assessee has made cash deposits of Rs.14,75,000/- in his Bank Account, therefore, income chargeable to tax has escaped assessment. The ITAT, Delhi Bench in the case of Shri Arvind Yadav (supra) considering the identical facts held that the deposit in the bank account per se cannot be the income of the assessee. This is a mere suspicion of the A.O. based on incorrect fact that income chargeable to tax has escaped assessment and accordingly, quashed the reopening of the assessment. The findings of the Tribunal in para 8 of the Order are reproduced as under:*

“8. In this case the Assessing Officer after obtaining the AIR information wanted to verify the same and issued a letter of enquiry to the assessee. The Assessing Officer thus did not apply his independent mind to the information received from AIR. Since no proceedings

were pending before the Assessing Officer when he issued a letter of enquiry to the assessee, therefore, such enquiry letter was not valid in eyes of law. Therefore, the assessee was not required to respond to invalid letter of enquiry issued by the Assessing Officer. The Assessing Officer in the absence of reply of the assessee presumed that cash deposited in the bank account has escaped assessment. The deposit in the bank account per se cannot be income of the assessee. It is mere suspicion of the Assessing Officer based on incorrect fact that income chargeable to tax has escaped assessment. The issue is therefore covered in favour of assessee by order of ITAT SMC Delhi Bench in the case of Tajendra Kumar Ghai (supra). In view of this matter, I am of the view that the Assessing Officer has wrongly assumed jurisdiction u/s 147 of the Income Tax Act for the purpose of reopening of the assessment. I accordingly set aside the orders of the authorities below and quash the reopening of the assessment in

the matter. Resultantly, the addition made in the reassessment would stand deleted.

8. In the result, the appeal filed by the assessee is allowed.”

7.1. *The issue is, therefore, covered in favour of the assessee by the decision of the Delhi Tribunal in the case of Shri Arvind Yadav (supra). Following the reasons for decision for the same, I set aside the orders of the authorities below and quash the reopening of the assessment in the matter. Resultantly, the addition made in the re-assessment would stand deleted and appeal of assessee is allowed.*

8. *In the result, appeal of the assessee is allowed.”*

5.2. He has, therefore, submitted that re-assessment is liable to be quashed.

6. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

7. Considering the facts of the case in the light of Order of the Tribunal in the case of Shri Abrar Ahmad Qasimi, Delhi vs. ITO, Ward-46(5), New Delhi (supra), I am of the view that the issue is covered in favour of the assessee by the aforesaid decision of the Tribunal. The assessing officer in the reasons recorded incorrect facts that assessee made cash deposit of Rs.9 lakhs, despite assessing officer has accepted that assessee made cash deposit of Rs.7,50,000/- only. The assessing officer while recording the reasons has not applied mind to the material on record. Further, source of purchase of shares have been accepted by the assessing officer, which was also found factually incorrect. Further the deposit in the bank account *per se* cannot be income of the assessee. It is mere suspicion of the assessing officer based on incorrect facts that income chargeable to tax has escaped assessment. Following the reasons for the decision in the case of Shri Abrar Ahmad Qasimi, Delhi vs. ITO, Ward-46(5), New Delhi (supra), I set aside the orders of the authorities below and quash the

reopening of the assessment in the matter. Resultantly, the addition made in the re-assessment would stand deleted.

8. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 05th September, 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.