

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C+SMC ": NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.N.CHARY, JUDICIAL MEMBER

ITA No. 592/Del/2019
(Assessment Year: 2010-11)

Kamal Narain Kapoor, AE-6, Shalimar Bagh, Neew Delhi PAN: AAJPK4144Q	Vs.	ITO, Ward-34(2), New Delhi
(Appellant)		(Respondent)

ITA No. 593/Del/2019
(Assessment Year: 2010-11)

Kamal Narain Kapoor(HUF) AE-6, Shalimar Bagh, Neew Delhi PAN: AAFHK7825Q	Vs.	ITO, Ward-34(2), New Delhi
(Appellant)		(Respondent)

ITA No. 594/Del/2019
(Assessment Year: 2010-11)

Aditya Kapoor, AL-2, Shalimar Bagh, Neew Delhi PAN: BCFPK1041P	Vs.	ITO, Ward-34(2), New Delhi
(Appellant)		(Respondent)

ITA No. 595/Del/2019
(Assessment Year: 2010-11)

Renu Kapoor, AE-6, Shalimar Bagh, Neew Delhi PAN: AHFPK3415R	Vs.	ITO, Ward-34(2), New Delhi
(Appellant)		(Respondent)

ITA No. 596/Del/2019
(Assessment Year: 2010-11)

Naresh Kapoor, AL-2, Shalimar Bagh, Neew Delhi PAN: AAKPK0332M	Vs.	ITO, Ward-34(2), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Sahil Sharma, Adv
Revenue by:	Ms. Ekta Vishnoi, Sr. DR
Date of Hearing	16/10/2019
Date of pronouncement	16/10/2019

O R D E R

PER BENCH

1. These are the 5 appeals in case of 5 different assesses for assessment year 2010-11, wherein the order passed by the learned Commissioner of income tax (appeals) – 12, New Delhi dated 27/7/2018 is under challenge.
2. The brief facts of the case shows that on the basis of information received from the Deputy Director (Investigation), New Delhi as per letter dated 6/3/2017 the assessee has given an unsecured loan amounting to Rs. 5,000,000 to Shri Vijay Shandilya during the Financial Year 2009-10 relevant to Assessment Year 2010-11. Assessee has filed return of income on 30/3/2011 declaring an income of Rs. 161300/-. Therefore, the case of the assessee was reopened u/s 147 of the Income Tax Act after recording of reasons for reopening of the case and the notice u/s 148 of the Act was issued on 31/3/2017, which was served upon the assessee. In response to the notice u/s 148 the assessee submitted the reply on 15/05/2017 and submitted that the copy of ITR for assessment year 2010-11 is enclosed and same may be considered in response to notice u/s 148 of the income tax act.
3. The learned Assessing Officer noted that assessee has given unsecured loan of Rs. 1,500,000/- to Mr Vijay Shandilya the assessee denied the above fact. The learned Assessing Officer further issued notice u/s 133 (6) of the Income Tax Act to the bankers in which Mr Vijay Shandilya was maintaining his account. On perusal of the bank account it was found that the cheque of Rs. 1,500,000/- was debited in his account on 01/07/2010 which was traced to the bank account of the assessee with Bank of Rajasthan. The assessee was issued a show cause notice on 06/12/2017 against which no reply was filed and thus the learned Assessing Officer made an addition in the hands of the assessee of Rs. 1,500,000/- as income from other sources and thus the total income was assessed at Rs. 1661300/- by passing an order u/s 147 read with section 143 (3) of the income tax act on 21/12/2017.

4. The assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT(A) who passed an order on 27/7/2018 confirming the action of the learned assessing officer. Therefore the assessee is in appeal before us.
5. Identical facts exist except that the amount of loan is Rs. 2,500,000/- instead of Rs. 1,500,000/- in the case of Shri Kamal Narain HUF in ITA No. 593/Del/2019, the amount of loan of Rs. 200,000/- in case of Sri Aditya Kapoor in ITA No. 594/Del/2019, loan of Rs. 2,600,000/- in case of Shrimati Renu Kapoor in ITA No. 595/Del/2019 , loan of Rs. 1,500,000/- in case of Shri Naresh Kapoor in ITA No. 596/Del/2019.
6. At the time of the hearing the learned authorised representative submitted that in these appeals in spite of repeated requests to the revenue to supply the reasons to reopen the cases u/s 147 of the income tax act same has not been granted. It was further submitted that not granting of the reasons to the assessee for reopening of the assessment rendered the assessment order passed in case of all these assessee is as a nullity.
7. The learned departmental representative vehemently stated that it does not render the order passed by the learned assessing officer as nullity. She submitted that it is merely any regularity which can be rectified and the revenue is ready to provide the copies of the reasons recorded reopening of the assessment. She therefore submitted that if the matter is set aside to the file of the learned assessing officer then the copies of the reasons recorded for reopening of the assessment would be provided to the assessee.
8. We have carefully considered the rival contentions and perused the orders of the lower authorities. Apparently the case of the assesses involved in all these 5 appeals are reopened by issue of notice u/s 148 of the income tax act. The assessee has filed the return of income in response to such notices. Therefore as a principle of natural justice, it is the duty of the learned assessing officer to submit the copies of the reasons recorded for reopening to the assessee. Not providing reasons to the assessee seriously hampers his right to object to it on jurisdictional issues. Even otherwise the order passed by the learned CIT – A was without considering the merits of the case as assessee did not furnish any information before him.

Identical issue arose before the Hon'ble Delhi High Court in 2019 (8) TMI 23 Surendra Kumar Jain Vs. Principal Commissioner Of Income Tax (Central) -III, New Delhi & ANR. W.P.(C) 593/2019 & CM No. 2670/2019 Dated 29th July 2019 where the matter was set aside to the file of the learned assessing officer to correct the principles of natural justice violated during the course of the assessment proceedings. As the revenue has agreed before us to provide the copies of the reasons recorded for reopening of the assessment, in the interest of the justice, and as agreed by both the parties, we set aside all these 5 appeals back to the file of the learned Assessing Officer with a direction to provide the copies of the reasons recorded for reopening of the assessment. The learned Assessing Officer will wait for 4 weeks after providing the reasons recorded to give proper opportunity to the assessee to file any objections to the reasons recorded and reopening of the assessment. Thereafter, the learned Assessing Officer should pass an order disposing of objections of the assessee. Thereafter, the learned AO may pass the order in accordance with the law after giving proper opportunity of hearing to the assessee. Accordingly, all the grounds of appeal of the assessee are set aside to the file of the learned Assessing Officer.

9. In the result all the 5 appeals of the assessee are allowed the subject to the above direction for statistical purposes.

Order pronounced in the open court on 16/10/2019.

-Sd/-
(K.N.CHARY)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 16/10/2019
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi