

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.7914/DEL/2018
Assessment Year: 2009-10

Pawan Kumar, C/O Saubhagya Agarwal, K-185/14, Surya Plaza, 1 st Floor, New Friends Colony, New Delhi.	vs.	ITO, Ward-4, Panipat.
TAN/PAN: ADDPN 0339P		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri S.L. Anuragi, Sr.D.R.		
Date of hearing:	25	07	2019
Date of pronouncement:	16	10	2019

ORDER

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the assessee against the impugned order dated 08.10.2018 passed by Commissioner of Income Tax (Appeals), Karnal for the quantum of assessment passed u/s.144/147 for the Assessment Year 2009-10. In the grounds of appeal, the assessee has raised various grounds challenging the validity of reopening u/s.147 and also the addition of Rs.6,98,250/- by treating it as an unexplained investment.

2. The facts in brief are that assessee's case was reopened u/s.147 on the following reasons:-

“There is information on records that the assessee has purchased property and the assessee's share his 1/5th in investment of Rs. 33,25,000/- during financial year 2008-09 relevant to A. Y, 2009-10. Thus amount of his share in Rs.33,25,000/- chargeable to tax has escaped assessment for the financial year 2008-09 relevant to the A.Y. 2009-10 by reason of the failure on the part of the assessee to make a return under section 139 of the income-tax, Act, 1961 and to disclose fully and truly all material facts necessary for his assessment for the assessment year.

In these circumstances, I have reasons to believe that income chargeable to tax on account of investment of his share on purchase of property amounting to Rs. 33,25,000/- have escaped assessment for the A Y. 2009- 10. To assess the escaped income as discussed above and also any other income which may come to the notice of the Assessing Officer subsequently in the course of proceedings under this section, notice under section 148 of the Income-tax Act, 1961 is required to be issued. As such notice under section 148 of the Income-tax, Act, 1961 is issued in the case of the assessee for the A.Y. 2009-10.”

3. The Assessing Officer noted that in response to the said notice, assessee had filed a letter stating that a return filed on 27.08.2010 u/s.139(1) for the Assessment Year 2009-10 may be treated as return filed u/s. 139 wherein the assessee has declared income of Rs.1,43,220/- and agriculture income of Rs.18,000/-. The assessee was specifically asked to explain the source of investment made during the financial year 2008-09 for the purchase of property at Rs.6,65,000/- being

1/5th of the total investment of the property of Rs.33,25,000/- Before the Assessing Officer, the assessee had given following reply with regard to source of investment:

“1. With reference to aforesaid notice dated 02.06.2016 served on 10.06.2016 fixed for 13.06.2016, it is point wise submitted as under:

2. As stated in computation of income of assessee, the assessee has earned Rs.75365/- from trading of cloths, Rs, 60350/- earned from PCO and Rs 7500/- from other incomes. This information is self declared while filing ITR. The case pertains to long back period of F.Y. 2008-09 and now PCO business has been closed down. Accordingly, the assessee has no record on date as relates to PCO Business and Clothing Business.

3. Copy of Sahkari Statement is being furnished herewith.

4. The assessee has given the land to Sh. Ajmer S/o Sh. Ram Krishan R/o VPO Dahar (Panipat) for cultivation. Copy of Fard/Jamabandi of the concerned agriculture land is enclosed herewith.

5. The assessee has enclosed the documentary evidence justifying purchase of “GUN”, Bills for purchase of Gun may be submitted is required.

6. Copy of purchase deed being documentary evidence for investment made for purchase of agricultural land from Sh. Lahna Singh is being furnished. The assessee's father funded the purchase of above-said land.

The assessee shall be glad to furnish the desired information/detail/document/data to complete the assessment on its merits.”

4. However, the ld. Assessing Officer has held that assessee has no genuine source of investment for the purchase of property nor any documentary evidence has been filed.

Accordingly, he added the entire amount of Rs.6,65,000/- and also assessee's share on account of stamp duty payment of Rs.33,250/-.

5. Before the Ld. CIT (A), assessee had raised various objections and also filed application under Rule 46A for submitting various additional evidences. However, the Ld. CIT (A) has confirmed all the grounds raised by the assessee.

6. From the perusal of the impugned order, we find that the assessee had challenged validity of notice u/s.148 on various grounds, viz., *firstly*, it was not served in accordance with law; *secondly*, notice has been issued by the Assessing Officer other than the one who had jurisdiction over the assessee; *thirdly*, Assessing Officer has not disposed of the assessee's objection raised in response to notice u/s 148; and *lastly*, mandatory notice u/s.143(2) has not been issued to the assessee by the Jurisdictional Assessing Officer. Besides this, catenas of other objections were also raised. Ld. CIT (A) in his order though has incorporated all the objections of the assessee in detail and also called for the remand report, but he has not given any proper finding on any of the legal issues raised including on merits. None of the objections and issue raised including additional evidences have been properly adjudicated or dealt with. Accordingly, under these circumstances and in the interest of justice, we are remitting back the entire issues raised before us to the file of the Ld. CIT(A) to pass a speaking order after giving effective

opportunity to the assessee on each and every ground raised before us including the various legal issues and merits on additions. Accordingly, the appeal of the assessee is allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 16th October, 2019.

Sd/-

**[PRASHANT MAHARISHI]
[ACCOUNTANT MEMBER]**

DATED: 16th October, 2019

PKK:

Sd/-

**[AMIT SHUKLA]
JUDICIAL MEMBER**