

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F+SMC', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And
Shri Prashant Maharishi, Accountant Member**

**ITA No.6926/Del/2018
Assessment Year: 2010-11**

Virdhi Joshi, 138, Pocket 24, Rohini, Sector-24, New Delhi. PAN- ADMPJ0090L (Appellant)	vs.	ITO, Ward 33(3), New Delhi (Respondent)
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Appellant by	Sh. Anil Kumar Gupta, Advocate
Respondent by	Sh. S.L. Anuragi, Sr. Dr.

Date of Hearing	23.07.2019
Date of Pronouncement	18.10.2019

ORDER

Per Amit Shukla, J.M.;

The aforesaid appeal has been filed by the assessee against impugned order dated 05.09.2018, passed by learned CIT(Appeals)-11, New Delhi for the quantum of assessment passed u/s. 147/144 for the assessment year 2010-11.

2. In various grounds of appeal, the assessee has challenged firstly, validity of reopening u/s. 148/147 on various counts and secondly, the addition of Rs.17,49,120/- made on account of unexplained cash deposits in the bank account.

3. The facts, in brief, are that the assessee is an individual and on the basis of Individual Transaction Statements received from ITD, it was gathered that the assessee had deposited cash amounting to Rs.17,49,120/- in her bank account and accordingly, proceedings u/s. 147 were initiated and notice u/s. 148 was issued on 28.03.2017. As per assessment order, in response to notice u/s. 148 and other notices issued to the assessee, there was no response from the side of the assessee nor from her representative. Besides this, no details were furnished. Accordingly, the Assessing Officer passed order u/s. 144 adding the entire amount of Rs.17,49,120/-.

4. The ld. CIT (A) held that even during the appellate proceedings, the assessee had stated that assessee has not able to obtain the account statement from the bank and to furnish any explanation with regard to the source of cash deposits in the bank account. However, it was stated by the assessee that she had family savings of Rs.5 lakhs and Rs. 5 lakhs were received from her younger brother, who was NRI and rest of the amount was received from her mother. In absence of any satisfactory evidence to explain the source of deposits, the addition made by Assessing Officer was confirmed by the ld. CIT (A).

5. Before us, the ld. counsel for the assessee submitted that the assessee has sought for bank transaction details from Income-tax Department to verify the deposits in the bank account and in response to which the same has been supplied to the assessee, copies of which have been placed in the paper book pages 22 to 23. From the said statement, he pointed out that the amount of Rs.7,00,000/-

deposited in the City Bank Account was pertaining to financial year 2008-09 relevant to assessment year 2009-10 which could not be added in assessment year 2010-11. Regarding balance amount of Rs.10 lakhs, he submitted that same has come by way of family savings and transfer by assessee's younger brother from USA, who was staying in USA since 2000, and the amount was remitted to her by him to take care of herself and their mother. Apart from that, her deceased mother had received benefits from NDMC on her retirement, part of which was received by cheque and rest was received from NDMC Employee's Society in cash. All these amounts were deposited in the bank account and thus, the source of deposit stood explained. It was further submitted that the reopening of the case is bad in law on various counts, firstly, no notice u/s. 148 was served upon the assessee nor any other notice issued from time to time; secondly, even the reason to believe is not available in the case file of the Assessing Officer; and lastly, the material on the basis of which notice u/s 148 has been issued itself reveals that the ITO had even recorded the cash deposits of Rs.7 lakhs in the bank account of the assessee, which pertained to F.Y. 2008-09 and Rs.10 lakhs during F.Y. 2009-10. The Assessing Officer had issued notice for A.Y. 2010-11 for the entire deposits, which is erroneous in law. He also pointed out that even the impugned order was not served and it was only in the month of February, 2018 that to when through some telephonic message received from the department for recovery of demand, the assessee obtained the assessment order dated 30.11.2017. He has also furnished documents relating to cash deposit in two accounts which

comprise of around 1000 US Dollars every month from F.Y. 2001-02 to 2011-12 from her NRI brother who has sent the same through money transfer from Western Union. This was received for taking care of the assessee and when her mother was alive.

6. On the other hand, the ld. DR submitted that apart from the factual error that the transaction for the sum of Rs.7 lakhs did not pertain to the assessment year under consideration, however, for the balance deposits, the assessee could not explain any source nor discharged her onus. Therefore, the addition was rightly made.

7. After considering the aforesaid submissions and on perusal of the material placed on record, we find that the reopening proceedings have been initiated u/s. 147/148 on the basis of individual transaction statement of the IT department which has reported that the assessee has deposited cash aggregating to Rs. 17,49,120/-. On perusal of the same documents obtained from the department, it is seen that the amount aggregating to Rs. 7 lakhs pertains to F.Y. 2008-09, i.e., transaction date is 20.08.2008. Thus, said cash deposit could not have been added in the assessment year 2010-11. This itself goes to show that there is clear non-application of mind by the AO while assuming jurisdiction u/s. 147. Apart from that, from the bare perusal of the assessment order, it is seen that there is neither any whisper about the contents of the reasons recorded nor it has been mentioned that on which address the notice has been served upon the assessee, because neither the notice u/s. 148 nor other statutory notices have been served upon the assessee nor have been

complied with. Under these circumstances, it is very difficult to hold that the jurisdiction u/s. 147 has been validly assumed. Further, the assessee before the ld. CIT(A) had filed documentary evidence at least to the extent that the assessee has received money from her NRI brother, who was staying in USA and had been sending per month an amount of 980 US dollars which comes to around Rs.45,000/- per month. The amounts received by way of Western Union from the sender to the assessee goes to show that the assessee has been regularly receiving money for herself and for her mother and this definitely constitutes source of deposit in her bank account. Thus, it cannot be held that either the source could not be explained or the proceedings initiated u/s. 148/147 is valid. Accordingly, the impugned assessment order passed by the Assessing Officer is quashed on the ground that there is no application of mind on the facts and material on the basis of which the assessment has been sought to be reopened, because even from those material facts, the reason to believe entertained by the Assessing Officer is misconceived. Accordingly, the appeal of the assessee is allowed.

8. In the result, the appeal is allowed.

Order pronounced in the open court on 18/10/2019.

Sd/-

(Prashant Maharishi)
Accountant Member

Sd/-

(Amit Shukla)
Judicial member

Dated: 18th October, 2019

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