

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI 'SMC' BENCH, NEW DELHI**

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 1369/DEL/2019
[Assessment Year: 2008-09]

VIPIN KUMAR JAIN,
5166, KOHLAPUR ROAD,
KAMLA NAGAR,
DELHI – 110 007
(PAN: ABNPJ6425E)
[Appellant]

Vs. ITO, WARD-1,
JIND, HARYANA

[RESPONDENT]

Assessee by: Shri Sunil Kumar Mukhi, Adv.
Revenue by : Sh. Pradeep Singh Gautam, Sr. DR.

ORDER

This appeal is filed by the assessee is against the order of the Ld. Commissioner of Income Tax [Appeals], Hisar dated 12.12.2018 pertaining to assessment year 2008-09 on the following grounds:-

1. That the orders of the Ld. CIT(A) are against the facts and circumstances and legal provisions of law, thus are illegal, erroneous, unjustified and perverse.
2. That the Ld. CIT(A) is not justified in concurring with the AO in confirming the issuance of notice u/s. 148 of the Act as the appellant disputes the very issuance of the impugned notice as without jurisdiction and hence bad in law and hence the consequent proceedings and additions are also bad in law.
3. (a) That the Ld. CIT(A) is not justified in concurring with the AO in confirming the addition

of Rs. 9,75,000/- without affording sufficient opportunity of hearing of the appellant which action is against the facts of the present case and hence bad in law.

(b) That without prejudice to above the appellant disputes the quantum of addition has highly excessive.

4. That the appellant craves leave to add, amend or delete any of the grounds of appeal on or before the disposal of the present appeal.

2. The facts relating to the issue in dispute are that AO initiated the assessment proceedings u/s. 147 of the I.T. Act, 1961 by way issuance of notice u/s. 148 of the I.T. Act, 1961 on 25.3.2013. In response to the same, AR of the assessee appeared and furnished the written reply dated 17.7.2013 received on 22.7.2013 stating therein that the return already filed on 1.8.2000 may be treated as having been filed in response to the notice issued u/s. 148 of the I.T. Act. The return was filed on 01.08.2000 declaring income of Rs. 12,40,310/-. AO issued the notice u/s. 143(2)/142 of the Act on 23.7.2013 by registered post which was duly served fixing the case on 6.8.2013 for hearing. In response to the same, assessee nor his AR nor filed any communication. AO again re-fixed the case of the assessee for 20.8.2013 by way of issuing the notice dated 12.8.2013 u/s. 143(2)/142 of the Act. Again no compliance was made. Another opportunity was provided by way of issuance of notice u/s. 143(2)/142 of the Act fixing the case of the assessee on 04.9.2013 and in compliance thereto assessment proceedings were attended by the Ld. AR of the assessee. He filed the written explanation which were examined with reference to the details given

in the return and also verified from the supporting evidences produced. Details of information were asked which were furnished and placed on record making it integral part of assessment order. After examining the same, the AO was of the view that on the examination of the evidences filed by the assessee, the assessee sold land measuring 31 Kanal 13 Marla (19148.25 sq. Yards) situated at Indira Colony, Jind to M/s Saraswati Builders, H.No. 1535, Urban Estate, Jind for amounting to Rs. 6300000/- vide sale deed dated 4.1.2008. But whereas Stamp Valuation Authority which in this case happens to be Sub Registrar, Jind who has adopted the value of the aforesaid land at Rs. 13403755/- in respect of such transfer taking into account the collectorate rate. Assessee has paid stamp duty of Rs. 1072320/- plus registration fee of Rs. 15,000/- on the value of the property i.e. Rs. 13403775/- work out as per the collectorate rate prevailing in that area. When confronted on the issue of variation in value of the land so sold, the AR of the assessee in the written reply dated 03.10.2013 stated that actually the assessee sold the agricultural land measuring 31 Kanal 13 Marla (19148.25 sq. Yds) which was in dispute as the possession of the said land was defacto with Sh. Jagdish Dalal S/o Sh. Diwan Singh, resident of 1535, Urban Estate, Jind. The seller i.e. assessee filed a Civil Suit against him vide file no. 108 dated 1.5.2003. Sh. Vipin Kumar adopted son of Smt. Ram Kali Widow of Late. Sh. Ram Chander, Resident Vishkarma Colony, near Jain Nagar, Ward No. 19, House NO. 5166, Now Kolhapur Road, Kamla Nagar, Delhi vs. (1) Jagdish Dalal S/o Sh. Diwan Singh, Resident of 1535, Urban Estate, Jind and (2) Municipal Council, Jind through its President.

2.1 On this Petition, Court granted the stay against defendant no. 1 to restrain from interfering in peaceful possession over the land in dispute by way of raising any construction till disposal of the Suit. Assessee further stated that the assessee was under duress due to the aforesaid facts, he sold the said land to the said firm i.e. Jagdish Dalal as the assessee was fed up due to false & fabricated litigation against him. He sold the land in order to purchase mental peace. The assessee actually received Rs. 63,00,000/- as consideration stated in the sale deed and not Rs. 13403775/-.

2.2 The matter was referred to the Asstt. Valuation Officer, Rohtak for determining the Fair Market Value of the property so sold by the assessee vide this office reference no. 961 dated 16.01.2014. The AVO, Rohtak vide his office letter dated 18.03.2014, placed on record, has assessed the Fair Market Value of the property in question at Rs. 6300000/- treating it to be a distress sale keeping in view the various petitions on the land as also facts of the case based on the sale instances of other agriculture properties. As such, there is no variation between the sale consideration as shown by the assessee and the Fair Market Value so assessed by the AVO. In view of this position, no addition is warranted to be made on this account.

2.3 According to the AO the assessee was maintaining saving account no. 054010100034229 jointly with Smt. Suman Jain with AXIS Bank. By going through the said bank statement, it was noticed that the assessee has made, inter-alia, cash deposits during the period 29.03.2007 to 31.03.2008, the details thereof was given by the AO at page no. 3 of the assessment order. On asking by the AO to the assessee regarding the source of action deposits in the said bank and assessee stated that the said amount was deposited

out of the sale proceeds of agricultural land sold measuring 31 Kanal 13 Marla situated at Indira Colony, Jind. The revisionary proceedings u/s. 263 of the Act were taken up by the CIT, Hisar, in the case of M/s Saraswati Builders, Jind. The statement of the assessee was recorded in the capacity 'As Witness' by the CIT, Hisar on 19.2.2013 during the course of revisionary proceedings. In the statement it was deposed by him (Vipin Kumar Jain) that he had received Rs. 2115000/- during the period from 29.3.2007 to 16.1.2007 from Sh. Jagdish Dalal. The details of receipts of Rs. 2115000/- by the assessee (Vipin Kumar Jain) as per his own statement dated 19.2.2013 stating the details of cash deposits as mentioned by the AO at the bottom of page no. 3 and starting at page no. 4 of the assessment order. The statement of Sh. Jagdish Dalal was also recorded by the Income Tax Officer, Ward-2, Jind on 23.9.2013 during the course of assessment proceedings for the AY 2008-09 in the case of M/s Saraswati Builders, Jind in which he has denied having given any money to Sh. Vipin Kumar Jain during the period 29.3.2007 to 16.10.2007. Assessee vide letter dated 24.3.2014 called upon to have his position explained by 26.3.2014 which is reproduced in the middle of page no. 4 of the assessment order. AO fixed the case for hearing, but no reply was filed by the assessee nor his AR. Assessee requested for adjournment without any reasons before the AO, but the AO completed the assessment because the assessment is going to be barred by time and finally concluded that assessee has made cash deposits of Rs. 1975000/- (2115000 - 140000) being Rs. 140000/- does not pertain to AY 2008-09 in the saving bank account from his own undisclosed sources. The AO called the explanation from the assessee for source of amount of RS. 1975000/-, but the assessee failed to explain the

same before the AO and finally AO added Rs. 19.75 lacs to the return income of Rs. 1240310/- totalling income of Rs. 3215310/- and completed the assessment u/s. 143(3) of the I.T. Act on 29.3.2014. Aggrieved by the assessment order dated 29.3.2014, assessee filed the appeal before the Ld. CIT(A), who vide his impugned order dated 12.12.2018 has partly allowed the appeal filed by the assessee and given the relief of Rs. 10 lacs to the assessee and confirmed the addition of Rs. 9,75,000/- while passing the impugned order. Against the impugned order dated 12.12.2018 assessee is in appeal before the Tribunal.

4. At the time of hearing, Ld. Counsel for the assessee draw my attention towards the grounds raised by the assessee in the grounds of appeal in which assessee has stated that AO has issued notice u/s. 148 of the I.T. Act, without jurisdiction and hence, the same is bad in law and requested for quashing the same and deletion of addition in dispute. Ld. Counsel for the assessee further stated that Ld. CIT(A) has wrongly confirmed the addition of Rs. 9,75,000/- without affording opportunity to the assessee which is against the principle of natural justice. In support of his contention, he draw my attention towards the reasons recorded by the AO for issuance of notice dated 25.3.2013 u/s. 148 of the Act and stated that the AO has issued the notice u/s. 148 of the Act without applying the mind because the AO has given notice of Rs. 7103775/- in the reasons recorded stating therein that assessee has escaped the assessment amounting to Rs. 7103775/- within the provisions of section 147 of the Act for AY 2008-09. But finally made the addition of Rs. 19,75,000/- on account of own sources and completed the assessment u/s. 143(3) of the Act on 29.3.2014. He stated that in view of the judgment of the Hon'ble

Delhi High Court passed in the case of Ranbaxy Laboratories Ltd. vs. CIT in ITA No. 148/2008 dated 03.6.2011. The Hon'ble Delhi High Court in para no. 16 of the judgment has held that the AO was justified in initiating the proceedings u/s. 147/148 of the Act, but then, once he came to the conclusion that the income with reference to which he had entertained, his jurisdiction came to a stop at that, and did not continue to possess jurisdiction, to put to tax, any other income which subsequently came to his notice, in the course of the proceedings, which were found by him, to have escaped assessment. In support of his contention, Ld. Counsel for the assessee further draw my attention towards the decision of the Hon'ble Bombay High Court in the case of CIT vs. Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom) and requested that the addition in dispute may be deleted on legal as well as on merits also. In support of his arguments, he has also filed small Paper Book containing pages 1-23 in which he has attached the copy of the statement of Mr. Vipin Kumar Jain, the assessee, dated 19.2.2013 recorded by CIT, Hisar in the presence of Mr. Rajesh Swaroop Partner M/s Saraswati Builders i.e., Co-owner in the property so purchased from the assessee; copy of written submissions before CIT(A) Hisar and copy of sale deed dated 4.1.2008. He has also certified that these documentary evidences were filed before the authorities below.

5. Ld. DR relied upon the orders passed by the revenue authorities. At the time of hearing Ld. DR pointed out that Ld. CIT(A) in the impugned order has reproduced the grounds of appeal; statement of the assessee; remand report and has given the finding at para n. 5 to 5.2 at page no. 12 to 13 of the impugned order. He requested that Ld. CIT(A) has not passed a speaking

order on the issue in dispute and partly allowed the appeal of the assessee by giving the relief of Rs. 10 lacs and sustained the addition of Rs. 9.75 lacs. He requested that the issues may be set aside to the Ld. CIT(A) to pass a speaking order or alternatively he requested that the appeal filed by the assessee may be dismissed and impugned order may be upheld.

6. I have heard both the parties and perused the orders of the revenue authorities, the case laws relied upon by the Ld. Counsel for the assessee alongwith the documentary evidences filed by the assessee in the shape of paper book. I have also gone through the impugned order passed by the Ld. CIT(A) especially the para no. 5.1 to 5.2 at page no. 12 to 13 of the impugned order. For the sake of convenience, I am reproducing the para no. 5.1 to 5.2 as under:-

"5.1. Ground No. 1 and 2, the assessee has objected the jurisdiction of making addition, the submission made by the assessee has been considered and it is seen that AO has re-opened the case on valid grounds. Therefore, the re-opening u/s 148 is not invalid. The Hon'ble Kerla High Court in the case of M/s Palakkad Dist. Co-operative Bank Ltd. Vs Addl.CIT in [2017] 77 taxman n.com 349 (Kerala)/[2017] 392 ITR 539 (Kerala)/[2017] 293 CTR 328 (Kerala) held that "instead of passing an order on reply given with respect

to reason to believe, Assessing Officer straight away proceeded to pass a composite order stating reasons for reopening of assessment as well as proceeding to pass an order of assessment after reopening same. It was held that where a composite order is passed, it has to be verified whether it is per se illegal or whether any prejudice will be caused to assessee. In this case, right to appeal against reopening of assessment as well as assessment proceedings could be taken up in a regular appeal, hence, no prejudice would be caused to assess on account of a composite order being passed." In light of the above and facts of the case the ground of the assessee is dismissed.

5.2. *Ground No. 3,4,5&6 the assessee objected that the no sufficient opportunity had been given and no cross examination was conducted. The submission made by the assessee alongwith case laws has been considered and seen that the assessee did*

appear before the AO during the assessment and remand proceeding and was given ample opportunity to re-present his case. This submission of the appellant cannot be accepted. During the remand report proceedings, the assessee was able to satisfy the AO regarding cash deposit of Rs. 10,00,000/-. However, balance Rs. 9,75,000/- the assessee could not satisfy the AO with any documentary evidence, nor prove beyond doubt that it was the same cash which he had withdrawn earlier from the bank.

In light of the above, the assessee gets relief of Rs. 10,00,000/- and an addition of Rs. 9,75,000/- is confirmed. Appeal is partly allowed."

6.1 After going through the findings given by the Ld. CIT(A) on the issues in dispute in which the Ld. CIT(A) has disposed of the legal grounds regarding reopening u/s. 148 of the Act as well as given the relief of Rs. 10 lacs and upheld the balance addition of Rs. 9.75 lacs, I am of the view that the finding given by the Ld. CIT(A) by deleting the addition of Rs. 10 lacs and sustaining the addition of Rs. 9.75 lacs is non-speaking one, which is not acceptable in the eyes of law. Keeping in view of the facts of the present case and the arguments advanced by both the parties as

well as documentary evidences filed by the assessee, I am of the view that the issues in dispute require a thorough consideration and adjudication on the basis of documentary evidences filed by the assessee and the case laws on the legal issue by the Ld. CIT(A) as the non-speaking order is not sustainable in the eyes of law. Therefore, I cancel the impugned order passed by the Ld. CIT(A) with the directions to the Ld. CIT(A) to decide the same, afresh after giving adequate opportunity of being heard to the assessee as indicated above.

7. In the result, the Appeal of the Assessee is allowed for statistical purposes.

The order pronounced on 03.02.2020.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Dated:03-02-2020

SRB

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi