

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHE : SMC : NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 5234/Del/2016
Assessment Year : 2008-09

DINESH SHARMA,
S/O SH. M.P. GUPTA,
163, SHIV PURI HAPUR
UTTAR PRADESH
(PAN: AABCD6942Q)
(Appellant)

Vs. ITO, WARD-3(4),
HAPUR

(Respondent)

Assessee by : Sh. Suresh Kumar Gupta, CA
Department by : Sh. Pradeep Singh Gautam, Sr. DR.

ORDER

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A), Ghaziabad on 03.06.2016 in relation to the assessment year 2008-09 on the following grounds:-

1. On the facts and circumstances of the case and also in law, the Ld. CIT(A) has erred in confirming the addition of Rs. 1,50,000/- u/s. 69 of the I.T. Act on account of cash deposit in the bank account rejecting the explanation of the appellant that the above cash deposits is out of the earlier withdrawal from the bank account.
2. The action of the AO of charging interest u/s. 234B which is consequential is bad in law and on the facts of the case.
3. The appellant craves leave to add, alter, amend, delete any other grounds of appeal.

2. Brief facts of the case are that the proceedings u/s. 147 of the Income Tax Act, 1961 (in short "Act") were initiated as per the reasons placed on record and a notice u/s. 148 of the Act was issued on 16.2.2015. In compliance to this notice, the return of income has been filed on 13.3.2015,

declaring income of Rs. 72,343/- and agriculture income of Rs. 96,000/-. Further notices u/s. 143(2) and 142(1) of the Act were issued. In compliance to these notices, the AR and the assessee's son appeared and filed necessary details from time to time which have been examined by the AO. As per AIR information it was found that the assessee had deposited an amount of Rs. 10,10,000/- on different dates in his saving bank account maintained at Indian Bank, Railway Road, Hapur and the source thereof has been given in the assessment order at page no. 1 in the given table. As regards source of cash deposits of Rs. 1,50,000/- is concerned, the assessee has stated that money was withdrawn on 27.4.2007 at Rs. 2,00,000/- to make payment under a deal to purchase a land which could not be materialized. On verification of saving bank account of the assessee it is found that the money was withdrawn by the assessee on 27.4.2007 whereas the cash deposit of Rs. 1,50,000/- was made on 22.10.2007 i.e. after 6 months which is not believable in view of the fact that the assessee has maintained his saving bank account. Further the assessee was also failed to submit the necessary document evidences regarding purchase of land. AO did not accept this contention and added Rs. 1,50,000/- to the assessee's total income as unexplained cash deposit and also initiated the penalty proceedings u/s. 271(1)(c) of the Act by assessing the total income at Rs. 2,27,760/- + agricultural income at Rs. 96,000/- u/s. 147/143(3) of the I.T. Act, 1961 vide order dated 28.10.2015. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 03.6.2016 has dismissed the appeal of the assessee. Aggrieved with the impugned order dated 03.6.2016, assessee is in appeal before the Tribunal.

3. At the time of hearing, Ld. Counsel for the assessee stated that assessee has filed additional ground of appeal stating that impugned reassessment order passed by the Assessing Officer u/s. 147/143(3) of the

I.T. Act, 1961 is invalid, void-ab-initio for want of valid notice u/s. 143(2) of the Act, as per law, as evident from the fact that the return of income has been filed in response to notice u/s. 148 of the Act on 13.03.2015. The notice u/s. 143(2) of the Act was issued on the same very date i.e. on 13.03.2015 which shows that the AO has not applied his mind before issuance of notice u/s. 143(2) of the Act. Therefore, assuming jurisdiction to frame reassessment on this basis, the notice is not tenable in the eyes of law and therefore, he requested that the impugned assessment proceedings may be quashed. For the sake of convenience, the additional ground taken by the assessee is reproduced as under:-

"On the facts and circumstances of the case and also in law, the impugned reassessment order passed by the Ld. AO u/s. 147/143(3) of the Act is invalid and void-ab-initio for want of valid notice u/s. 143(2) as per law as evident from fact that when return in response to notice u/s. 148 was admittedly filed on 13.03.2015, the notice u/s. 143(2) is issued on very same day i.e. 13.03.2015 which shows non application of mind in issuing notice u/s. 143(2) and thereafter assuming jurisdiction to frame assessment on the basis of such a notice is not tenable in law and therefore impugned proceedings need to be quashed."

3.1 Ld. Counsel for the assessee further stated that the aforesaid additional ground is pure legal ground and its adjudication does not require any fresh investigation into facts apart from looking into the material already on record and the same may be admitted in view of the Hon'ble Supreme Court of India in the case of NTPC vs. CIT 229 ITR 383 (SC) and Jute Corporation of India Ltd. vs. CIT 187 ITR 688 (SC) and the issue in dispute may be decided in favour of the assessee. To support his contention, he draw my attention towards the order sheet dated 13.03.2015 of the proceedings of the Assessing Officer, a copy of which was placed before the Bench. He also draw my attention towards the notice issued u/s. 143(2) of the Act dated 13.03.2015 for appearance on 06.04.2015 at 11.30 AM, a copy of which is placed in the paper book page no. 12.

4. On the contrary, Ld. DR stated that Ld. CIT(A) has passed a well reasoned order on the basis of the documentary evidences filed by the assessee, as per law. Therefore, the appeal filed by the assessee may be dismissed.

5. I have heard both the parties and perused the records especially the orders passed by the revenue authorities and the Paper Book filed by the assessee. I am agree with the contention made by the Ld. Counsel for the assessee that the aforesaid additional ground may be admitted in view of the Hon'ble Supreme Court of India decision in the case of NTPC vs. CIT 229 ITR 383 (SC) and Jute Corporation of India Ltd. vs. CIT 187 ITR 688 (SC), being legal ground and its adjudication does not require any fresh investigation into facts apart from looking into the material already on record. Therefore, the additional ground as reproduced in para 3 of this order, as aforesaid, is admitted and is being adjudicated.

5.1 I have perused the copy of order sheet dated 13.03.2015, which is reproduced as under:-

"13/03/2015 Shri Asutosh Sharma, son of Shri Dinesh Sharma, appeared. Filed Income Tax Return in compliance to notice u/s. 148. Notice u/s. 143(2) issued for 06.04.2015."

5.2 I have also perused the notice dated 13.3.2015 issued u/s. 143(2) of the Act, copy of the same is placed at page no. 12 of the Assessee's Paper Book, which is reproduced as under:-

"Notice under section 143(2) of the Income Tax Act, 1961

*Office of the Income Tax Officer,
Ward 3(4), Hapur.*

Dated: 13/03/2015

To

*Sh. Dinesh Sharma S/o MP Sharma
163, New Shiv Puri,
Railway Road,
Hapur
Sir/Madam,*

There are certain points in connection with the return of income submitted by you on 13.03.2015 for the assessment year 2008-09 on which I would like to some further information.

2. You are hereby required to attend my office at Hapur on 06.04.2015 at 11.30 AM. either in person or by a representative duly authorized in writing in this behalf or produce or cause there to be produced at the said time any documents, accounts and any other evidence on which you may rely in support of the return filed by you.

*Yours faithfully,
Sd/-
(Sangeet Bansal)
Income Tax Officer,
Ward 3(4), Hapur"*

5.3 After perusing the aforesaid reproduced contents of the order sheet dated 13.03.2015 as well as the notice issued u/s. 143(2) of the Act dated 13.03.2015 issued by the Income Tax Officer, I am of the considered view that the impugned reassessment order passed by the Assessing Officer u/s. 147/143(3) of the Act is invalid and void-ab-initio for want of valid notice u/s. 143(2) as per law as evident from fact that when return in response to notice u/s. 148 of the Act was admittedly filed on 13.03.2015, the notice u/s. 143(2) of the Act was issued on very same date i.e. on 13.03.2015 which shows non application of mind on the part of the Assessing Officer in issuing notice u/s. 143(2) of the Act and thereafter assuming jurisdiction to frame assessment on this basis, the notice is not tenable in law and therefore impugned proceedings need to be quashed. I hold and directly

accordingly. My aforesaid view is supported by the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Silver Line reported in (2016) 383 ITR 455 wherein, the Hon'ble High Court has observed as under:-

"...12. The Court first proposes to consider the question as to whether in terms of the proviso to Section 292BB of the Act, the Assessee was precluded, at the stage of the proceedings before the ITAT, from raising a contention regarding failure of the AO to issue a notice under section 143(2) of the Act. The legal position appears to be fairly well settled that Section 292BB of the Act talks of the drawing of a presumption of service of notice on an assessee and is basically a rule of evidence. In Commissioner of Income Tax vs. Parikalpana Estate Development (P) Ltd. (supra) in answering a similar question, the Court referred to its earlier decision in ITA No. 5789 of 2015 and connected matters page 10 of 15 of Income tax vs. Mukesh Kumar Agrawal (2012) 345 ITR 29 (All.) and pointed out that Section 292BB of the Act was a rule of evidence which validated service of notice in certain circumstances. It introduces a deeming fiction that once the Assessee appears in any proceeding or has cooperated in any enquiry relating to assessment or reassessment it shall be deemed that any notice under any provision of the Act that is required to be served has been duly served upon him in accordance with the provisions of the Act and the Assessee in those circumstances would be precluded from objecting that a notice was required to be served upon him under the Act was not served upon him or not served in time or was served in an improper manner. It was held that Section 292BB of the Act is a rule of evidence and it has nothing to with the mandatory requirement of giving a notice and especially a notice under

section 143(2) of the Act which is a notice giving jurisdiction to the AO to frame an assessment. The decision of the Allahabad High Court in Manish Prakash Gupta vs. Commissioner of Income Tax (Supra) is also to the same effect.”

5.2 Since I have quashed the reassessment, as aforesaid, hence, other grounds have become academic and therefore, are not being adjudicated.

6. In the result, the Appeal filed by the Assessee stands allowed

Order pronounced on 04-03-2020.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Dated: 04-03-2020

SRB

Copy forwarded to:

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

AR, ITAT, NEW DELHI.