

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 3849/DEL/2019
[Assessment Year: 2010-11]

HARISH TYAGI,
H.NO. 0, HANS COLONY,
JEETPUR,
RAWLI ROAD,
MURADNAGAR,
GHAZIABAD - 201206
(PAN : ADOPT0663K)

Vs. ITO, WARD 1(3),
GHAZIABAD

[Appellant]

[RESPONDENT]

Assessee by : Ms. Surbhi Goyal, CA
Revenue by : Sh. C.P. Singh, Sr. DR.

ORDER

This appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax [Appeals], Ghaziabad dated 31.01.2019 pertaining to assessment year 2010-11 and raised as many as 06 grounds on legal issue as well as on merit. However, Ld. Counsel for the assessee has only argued the ground no. 1-3 on legal grounds and not argued on merit i.e. ground no. 4, hence, the ground no. 4 is dismissed as such. Ground NO. 5 & 6 also not argued hence, the same are also dismissed. For the sake of convenience, the ground nos. 1 to 3 on the merit, as argued by the Ld. Counsel for the assessee are reproduced as under:-

1. *"On the facts and circumstances of the case, the order passed by the Ld. CIT(A) is bad, both in the eye of law and on the facts.*
2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the initiation of the reassessment proceedings and the reassessment*

order are bad both on facts and in law and liable to be quashed as the statutory conditions and procedure prescribed under the statute have not been complied with.

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the reassessment order passed by the AO is bad and liable to be quashed as the same has been reopened on the basis of the reasons which are vague and has been recorded without application of mind on the part of the AO."

2. The brief facts of the case are that assessee's source of income is agriculture and stocking of Gur and agriculture produce after purchasing from the rural farmers in crop season. The assessee had manually filed income tax return on 25.05.2010, declaring an income of Rs. 1,73,105/- from the sale of sugar cane. Thereafter, on the basis of AIR information received by the AO that the assessee has deposited cash of Rs. 27,28,000/- in the savings bank account, various verification letters were issued to the assessee to verify these transactions. Subsequently, the assessee's case was reopened u/s 147 of the Act and notice dated 23.03.2016 u/s 148 of the Act was issued to the assessee. However, the AO completed the assessment proceedings u/s 144 of the Act by alleging that the assessee did not furnish ITR for the year under consideration and made an addition of Rs. 27,43,000/- in the hands of the assessee. Aggrieved by this, assessee filed an appeal before the Ld. CIT(A), who vide his impugned order dated 31.01.2019 has dismissed the appeal of the assessee. Against the impugned order, the assessee is in appeal before the Tribunal.

3. At the time of hearing, Ld. Counsel for the assessee submitted that Ld. CIT(A) has erred in rejecting the contention of the assessee that the initiation of the reassessment proceedings and the reassessment order

are bad both on facts and in law and liable to be quashed as the statutory conditions and procedure prescribed under the statute have not been complied with. It was further submitted that Ld. CIT(A) has erred in rejecting the contention of the assessee that the reassessment order passed by the AO is bad and liable to be quashed as the same has been reopened on the basis of the reasons which are vague and has been recorded without application of mind on the part of the AO. To support his aforesaid contention, he filed the written submissions as well as Paper Book containing pages 1-27 in which he has attached the various documentary evidence to support the case of the assessee and requested by considering the written submissions as well as the documentary evidences, the assessment may be quashed.

4. On the contrary, Ld. DR relied upon the order of the Ld. CIT(A).

5. I have heard both the parties and perused the records especially the impugned order of the Ld. CIT(A), written submissions filed by the assessee's counsel and the case laws relied therein and the Paper Book containing pages 1-27 in which he has attached the copy of acknowledgement of income tax return alongwith computation of income; copy of bank statement; copy of cash flow statement; copy of affidavit of the buyers; copy of details of land record; copy of details of sale of sugar cane and copy of assessment order in the assessee's case for the AY 2012-13. After perusing the written submissions as well as the documentary evidences, it is noted that the AO has issued the notice u/s 148 of the Act merely on the basis of non-compliance of the verification letters issued by him for verifying the cash deposits in the bank account of the assessee. The relevant extract of the assessment order (Pg.1 of AO's order) read as under:

"...To verify the genuineness of financial transaction verification letters dated 27.04.2016, 14.09.2016, 09.12.2016 & 25.01.2017 were issued to the assessee through speed post. In response to these notices no compliances were made by the assessee. Subsequently provisions of section 147 of

the I.T. Act, 1961 were invoked and after obtaining necessary approval from the Appropriate Authority, statutory notice u/s 148 of the Act dated 23.03.2016 was issue to the assessee..."

6. On perusal of the above order, it is evident that the AO reopened the case of the assessee merely on the basis of suspicion that the income of the assessee has escaped assessment. It is a settled that notice u/s 148 of the Act cannot be issued merely on the basis of the insufficient compliance to the letters issued by the department. There must be a something which indicates, even if it does not establish, the escapement of income from assessment. Merely because some further investigations have not been carried out, which, if made, could have led to detection of an income escaping assessment, cannot be reason enough to hold the view that the income has escaped assessment. Thus, in the present case also, the AO issued notice u/s 148 of the Act merely on the basis of suspicion that the cash deposited in the bank account of the assessee has escaped assessment. To support this view, I draw support from the the decision of the ITAT Delhi Bench in the case of Bir Bahadur Singh Sijwali vs. ITO, in I.T.A. No. 3814/Del/2011, vide order dated 20.01.2015 wherein it was held as under:

"All that the reasons recorded for reopening indicate is that cash deposits aggregating to Rs. 10,24,100 have been made in the bank account of the assessee, but the mere fact that these deposits have been made in a bank account does not indicate that these deposits constitute an income which has escaped assessment. The reasons recorded for reopening the assessment do not make out a case that the assessee was engaged in some business and the income from such a business has not been returned by the

assessee. It is not open to deal with the question as to whether the assessee could be said to be engaged in any business; all that is to be examined is whether the fact of the deposits, per se, in the bank account of the assessee could be basis for holding the view that the income has escaped assessment. The answer is in negative. The Assessing Officer has opined. that an income of Rs.10,24,100 has escaped assessment of income because the assessee has Rs.10,24,100 in his bank account but then such an opinion proceeds on the fallacious assumption that the bank deposits constitute undisclosed income, and overlooks the fact that the sources of deposit need not necessarily be income of the assessee. Of course, it may be desirable, from the point of view of revenue authorities, to examine the matter in detail, but then reassessment proceedings cannot be restored to only to examine the facts of a case, no matter how desirable that be, unless there is a reason to believe, rather than suspect, that an income has escaped assessment. {Para 8}

In view of the reasons set out above, as also bearing in mind entirety of the case, the reasons recorded by the Assessing Officer, as set out earlier, were not sufficient reasons for reopening the assessment proceedings. We, therefore, quash the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits of the additions,

in the impugned assessment proceedings, are rendered academic and infructuous. [Para 10}.

7. Keeping in view of the facts and circumstances of the case as explained above and respectfully following the precedent, as aforesaid, I am of the view that the reassessment proceedings initiated by the AO are bad in law and liable to be quashed. I hold and directly accordingly.

8. In the result, the Appeal of the Assessee is partly allowed.

The order pronounced on 19.03.2020.

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

Dated:19-03-2020

SRB

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi