

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : F/SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.8248/Del/2018  
Assessment Year: 2010-11

Jaswinder Kaur,  
19/56A, Tilak Nagar,  
New Delhi.

Vs ITO,  
Ward-45(5),  
New Delhi.

PAN: BALPK6754R

(Appellant)

(Respondent)

Assessee by	:	Shri Anil Bajaj, CA
Revenue by	:	Shri Pradeep Singh Gautam, Sr. DR
Date of Hearing	:	30.01.2020
Date of Pronouncement	:	28.04.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 28<sup>th</sup> September, 2018 of the CIT(A)-15, New Delhi relating to assessment year 2010-11.

2. Facts of the case, in brief, are that the assessee is an individual and has not filed the return of income for the impugned assessment year. The AO obtained information that an amount of Rs.15,21,000/- was deposited in Corporation Bank

account in the shape of cash. Therefore, after obtaining the necessary administrative approval of the PCIT, Delhi, granted on 31.03.2017, the AO reopened the case u/s 147 of the Act after recording reasons. The notice u/s 148 of the Act dated 31.03.2017 was issued. Subsequently, the AO issued notice u/s 142(1) on 7<sup>th</sup> June, 2017 which was issued and served upon the assessee. However, there was no compliance from the side of the assessee. Subsequently, the AO issued a questionnaire dated 27<sup>th</sup> October, 2017 which also remained uncomplished with. Subsequently, the assessee appeared and submitted that the cash so deposited in the bank account was nothing but contract receipts. However, the AO did not accept the same in absence of any supporting confirmation regarding source of cash deposit on 16<sup>th</sup> May, 2009 amounting to Rs.14 lakhs. Since the assessee has deposited a total amount of Rs.15,17,890/- out of which the assessee was unable to explain the source of cash deposit of Rs.14 lakhs, the AO treated Rs.14 lakhs as unexplained cash credit and determined the total income of the assessee at Rs.16,66,160/- as against the income declared by the assessee at Rs.2,66,161/-.

3. Before the CIT(A), apart from challenging the addition on merit, the assessee challenged the validity of the notice issued u/s 148 on the ground that the same was issued by the AO on 01.04.2017 which is barred by limitation. The Id. CIT(A) called for a remand report from the AO who reported that notice u/s 148 was issued and dispatched from the office of the AO on 31.03.2017 after obtaining

the necessary approval from the PCIT. However, due to the server breakdown of the speed post system on the very day, the speed post was entered on the system of the server by post office on 01.04.2017 at 3.22 AM which is evident from the speed post sticker. Therefore, due to the breakdown of the server of the Postal Department, the same was entered on 01.04.2017 at 3.22 AM. It was accordingly reported by the AO that the argument of the assessee is not tenable.

3.1 Based on the arguments advanced by the assessee, the remand report of the AO and the rejoinder of the assessee to such remand report, the Id.CIT(A) dismissed the ground raised by the assessee challenging the validity of notice issued u/s 148 of the Act by observing as under:-

ø7.8. I have carefully considered the facts involved. The remand report of AO clearly states that the notice u/s 148 was issued and dispatch from this office after obtaining the necessary approval from Pr. CIT-15, New Delhi. The notice is dated 31.03.2017. This fact clearly establishes that the approval from Pr. CIT-15, New Delhi was definitely taken on or before 31.03.2017. As regard dispatch of notice, the remand report clearly states that after issuance of notice, the said notice was handed over to speed post authorities for dispatch on the same day on 31.03.2017. However, due to server breakdown of the speed post system on the very date, the speed post was entered on system of the referred post office on the next day on 01.04.2017 at 3:22 which is shown on speed post sticker bearing No. ED266259290IN.

The above-stated facts clearly establish that the notice could be dispatched with delay of one day, purely due to server breakdown of the speed post system on 31.03.2017. These circumstances were absolutely beyond the control of AO. Since the requirement of the provisions of the act is only in respect of issuance of notice within six years from the end of A.Y. under consideration and in this case the notice was duly issued on 31.03.2017, ie. within the six years from the end of A.Y. under consideration, there is no legal infirmity in said issuance of notice u/s 148. Consequently, this Ground of appeal raised by the appellant is dismissed.ö

4. So far as the addition of the amount of Rs.14 lakhs is concerned, the Id.CIT(A) also confirmed the addition on the ground that the assessee failed to produce absolutely any document to establish that it was carrying on any business activity. Since the assessee could not explain such cash deposit of Rs.14 lakhs in the bank account, the Id.CIT(A) upheld the addition made by the AO.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal raising the following grounds:-

01, That the Learned Commissioner of Income-tax (Appeals) (Ld. CIT (A)) has erred on facts and in law in sustaining the reassessment order passed by the Learned Assessing Officer (Ld. AO) under section 147 read with section 144 of the Act on a total income at Rs. 16,66,160 (Rupees Sixteen Lacs Sixty Six Thousand One Hundred and Sixty Only) as against the returned income of Rs. 2,66,161 (Rupees Two Lacs Sixty Six Thousand One Hundred and Sixty One Only).

2. That the Ld. CIT(A) has grossly erred on facts and in law while confirming an unwarranted addition of Rs. 14,00,000 (Rupees Fourteen Lacs) under section 68 of the Act.

3. That the impugned notice dated March 31, 2017 issued on April 01, 2017 under section 148 is barred by limitation in the light of section 149 and as such the reassessment as made is unlawful, bad-in-law and liable to be quashed. There is nothing on record to substantiate that the notice was issued on March 31, 2017 instead of April 01, 2017.

4. That the Ld. AO has erred on facts and in law in by not recording and furnishing the reasons to believe before invoking jurisdiction under section 147. Therefore, the reassessment as made is unlawful, bad-in-law and liable to be quashed.

5. That the notice issued under section 148 is illegal, void and without jurisdiction as it is not in conformity with the procedures laid down under section 151 of the Act and applicable binding judicial precedents and memorandum explaining Finance Act 2008.

5.1 That the Ld. AO including Ld. Pr. CIT in complete disregard to the judgment of the Honøble Supreme Court pronounced in the case of Chhugamal Rajpal v. S.P. Chaliha reported at 79 ITR 603 have accorded sanction for issuing notice under section 148. Thereby assumption of jurisdiction to reopen the assessment is non-est, the reassessment as made is invalid and liable to be quashed.

6. That the reassessment as made is without jurisdiction and without sanction of the relevant provisions of the Act including section 147, 148, 149 and 151 of the Act. There is no income that has escaped assessment. The reassessment as made is unlawful and liable to be quashed.

7. That the Ld. CIT(A) has erred in not providing an opportunity of being heard to the appellant to enable her to file rejoinder and submission on merits, thus against the principle of equity and natural justice. On September 11, 2018, the appellant was not in India, being the date fixed for hearing by Ld. CIT(A) and Ld. CIT(A) has passed an order by upholding the order of Ld. AO without providing opportunity.

8. That the reassessment as made is against law and facts of the case involved.

9. That the grounds of the appeal as herein are without prejudice to each other.

10. That the Appellant respectfully craves leave to add, amend, alter and / or forego any ground(s) at or before the time of hearing.ö

6. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited by both the parties. We find the AO, in the instant case, on the basis of the information obtained from the ITD System that there is cash deposit of Rs.15,21,000/- in the Corporation Bank account maintained by the assessee issued notice u/s 148 of the Act after recording reasons. The submission of the assessee that the amount so deposited in the bank account was on account of contract receipts was rejected by

the AO on the ground that the assessee could not file supporting confirmations in respect of contracts taken by the assessee and supporting confirmation in respect of cash deposit of Rs.14 lakhs in Corporation Bank. The argument of the assessee that she does not maintain any books of account and has offered for presumptive tax @ 12.30% on the contract receipt of Rs.15,17,890/- was rejected by the AO in absence of any supporting confirmation regarding the source of cash deposit of Rs.14 lakhs on 16<sup>th</sup> May, 2009. We find, before the CIT(A), the assessee, apart from challenging the addition on merit, challenged the validity of the notice issued u/s 148 on the ground that the said notice was issued on 01.04.2017 which is after the time barring date i.e., 31.03.2017. However, the Id.CIT(A) rejected this ground, the reasons of which have already been reproduced in the preceding paragraphs. So far as the addition on merit is concerned, we find the Id.CIT(A) also sustained the addition made by the AO on the ground that the assessee failed to produce any supporting evidence to substantiate the nature and details of such contract receipts.

6.1 We find, the assessee before the AO had categorically stated that the gross receipt of Rs.15,17,890/- was on account of petty construction, repair & maintenance contract work and has declared profit u/s 44AD of the IT Act, 1961 on such contract receipt. We find, out of the total deposit of Rs.15,21,000/- in the bank account, the AO has accepted Rs.1,21,000/- and has doubted the source of the balance Rs.14 lakhs and accordingly made addition of the same as unexplained

cash deposit. We do not find any merit in the stand taken by the Revenue. Either the whole amount should have been considered as unexplained cash credit or the whole amount should have been accepted as contract receipt from construction, repair and maintenance contract work. Since the assessee has declared an income of Rs.1,87,603/- on the total contract receipt of Rs. 15,21,000/- which is more than the prescribed rate of 8% u/s 44AD, therefore, we do not find any merit in the addition of the amount of Rs.14 lakhs to the total income as unexplained cash deposit. Accordingly, the order of the CIT(A) is set aside and the AO is directed to delete the addition of Rs.14 lakhs. Since the assessee succeeds on merit, the legal ground raised by the assessee challenging the validity of the reassessment proceedings being barred by limitation becomes academic in nature and, therefore, is not being adjudicated.

7. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 28.04.2020.

Sd/-

(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 28<sup>th</sup> April, 2020

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi