

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'I(2) + SMC-1' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 2461/DEL/2019 ( A.Y 2010-11)**

Rakesh Aggarwal 66, Surya Kiran Building, K. G. Marg, Delhi PIN: 110001 PAN: AAWPA1372M <b>(APPELLANT)</b>	Vs	ITO Ward-48(1) New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Anil Kumar Jain, CA</b>
<b>Respondent by</b>	<b>Sh. Pradeep Singh Gautam, Sr. DR</b>

<b>Date of Hearing</b>	<b>05.03.2020</b>
<b>Date of Pronouncement</b>	<b>15.05.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 26/02/2019 passed by CIT(A)-16, New Delhi for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

1. *That on the facts and circumstances of the case and the provision of the law the Ld CIT(A) has erred in not admitting additional evidence filed before him.*
2. *That on the facts and circumstances of the case and the provision of the law the Ld CIT (A) has failed to appreciate that the initiation of proceeding u/s 147 and issue of notice u/s 148 is illegal and bad in law and consequently assessment framed also becomes illegal and bad in law.*
3. *That on the facts and circumstances of the case and the provision of the law the Ld CIT (A) has failed to appreciate that the assessment order passed by the Ld AO is illegal and bad in law as no valid notice u/s 143(2) has been*

*issued by the Ld AO.*

*4. That on the facts and circumstances of the case and the provision of the law the Ld CIT(A) has failed to appreciate that approval/ satisfaction as required u/s 151 is not proper and valid in law.*

*5. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has failed to appreciate that the assessment order passed is in violation of the principle of natural justice and hence, the assessment order is bad in eyes of law and liable to be quashed.*

*6. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has erred in sustaining an addition of Rs. 15,47,056/- u/s 68 on account of cash deposited in the bank as Unexplained Investments.*

*7. That on the facts and circumstances of the case and the provisions of law, the Ld.CIT(A) has failed to appreciate that the Ld AO has erred in ignoring the explanation given, evidences and material placed and available on records. The same has not been properly considered and judicially interpreted and the same do not justify the addition made with preset mind of the Ld AO and his order is based on surmises, conjectures and suspicion.*

*8. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has failed to appreciate that the various observations and findings of the Ld AO in the impugned assessment order are irrelevant, unjustified, baseless and vitiated in the law.*

*9. That on the facts and circumstances of the case and the provisions of law, the Ld Assessing Officer has erred in initiating proceeding u/s 271(l)(c) of Income Tax Act, 1961.*

*10. That the interest charged u/s 234A, 234B & 234C is illegal and bad in law and liable to be deleted.”*

3. The Assessing Officer was in receipt of information that the assessee had deposited cash aggregating to Rs. 10,62,000/- or more with a Bank. The assessee had not filed return of income for Assessment Year 2010-11. On the basis of information received, the Assessing Officer initiated reassessment proceedings after recording reasons and after seeking approval by the competent authority. During the course of reassessment proceedings, the assessee was required to explain the source of the cash deposits. However, no one attended in response to statutory notices issued by the Assessing Officer. The Assessing Officer accordingly passed a best judgment assessment by invoking the provisions of Section 144. The Assessing Officer made an

addition of Rs.15,46,076/- by invoking the provisions of Section 68 holding that the said deposits as unexplained cash deposits/credits made in Vijaya Bank Account during the year under consideration.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A) and CIT(A) dismissed the appeal of the assessee.

5. At first the Ld. AR made submission challenging the proceedings initiated u/s 147 of the Income Tax Act, 1961, thus, as regards to Ground No. 2, the Ld. AR submitted that in the present case, the proceeding u/s 147 has been initiated by the Assessing Officer on the basis of information with regard to cash deposit of Rs. 10,62,000/- in a bank account. The Ld. AR relied upon the following cases of the Delhi Tribunal wherein it is held that information with regard to cash deposit in the Bank Account will not constitute an income which has escaped assessment. This information may be treated as a reason to suspect only and on the basis of this information it cannot lead to the conclusion that there is an escapement of income. The decisions are as follows:

1. Tajender Kumar Ghai vs. ITO in ITA no. 970,971/Del/2017.
2. Hameeda Begum vs. ITO (ITA No. 7403/Del/2018] (No compliance was made of the enquiry letter issued by the Assessing Officer and no return was filed by the assessee)
3. Saurabh Saini vs. ITO (ITA No. 6003/Del/2018)
4. Bir Bahadur Singh Sijwali vs. ITO (ITA no.3814/Del/2011)

The Ld. AR further submitted that the enquiry letter issued to ask for the source of the cash deposited in the bank account is not valid in the eyes of the law as at that time no proceeding was pending. The assessee is under no obligation to respond to this invalid and honest so called letter of enquiry.

6. The Ld. DR submitted that the initiation of the proceedings u/s 147 are valid and as per the law. The reliance made by the Ld. AR upon the decisions are not at all applicable in the present case. The Ld. AR relied upon the

Assessment Order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. In the present case the information was received by the Assessing Officer and the proper reasoning has been recorded after taking necessary approval as per the mandate of Section 147 of the Income Tax Act. The Ld. AR could not point out that there is lack of reasoning or no necessary approval taken from the higher authorities. The case laws submitted by the Ld. AR also factually different from the present case as in the present case, the assessee has not filed any return prior to issuance of Section 148 notice and has not given any details to the Assessing Officer as relates to cash deposits. Thus, the CIT(A) was right in holding that there is no infirmity in the re-opening proceedings. Ground No. 2 is dismissed.

8. As regards to Ground No. 3, the Ld. AR submitted that the assessment order passed by the Assessing Officer is illegal and bad in law as no valid notice u/s 143(2) has been issued by the Assessing Officer. In the case of 148 proceeding also notice u/s 143(2) is very much required. As per Section 148(1) the return filed in response to notice u/s 148 is to be treated as a return furnished u/s 139 and the provisions of this Act shall, so far as may be, apply accordingly. In the case of PCIT vs. Shri Jai Shiv Shankar Traders Pvt. Ltd. in ITA 519/2015 the Hon'ble Delhi High Court has held that the failure of the Assessing Officer in reassessment proceeding to issue notice u/s 143(2) is fatal to the order of reassessment and even cannot be condoned by referring to provisions of section 292BB of the Act as it relates to when notice has been issued but there is a dispute with regard to service of notice and when no notice has been issued shelter of 292BB cannot be taken. The Ld. AR further submitted that in this judgment, the judgment of CIT vs. Madhya Bharat Energy Corporation which has been relied by the CIT was also considered and properly distinguished as in this case appeal was not admitted on the question concerning the mandatory compliance with regard to issue of notice u/s

143(2). Further for the above proposition reliance is also placed on the following judgments:

1. Alpine Electronics Asia Pvt. Ltd. vs DGIT (Writ Petition Civil No. 7932/2010) by the Hon'ble Delhi High Court.
2. M/s Sapthagiri Finance & Investments vs ITO (TC(A) No. 159 of 2006) by the Hon'ble Madras High Court.
3. CIT vs Rajeev Sharma (336 ITR 678) by the Hon'ble Allahabad High Court

9. The Ld. DR relied upon the Assessment order and the order of the CIT(A).

10. We have heard both the parties and perused all the relevant material available on record. From the perusal of records, the Ld. AR could not point out that the notice was not duly served upon the assessee. In fact, the records shows that the notice was served to the assessee, but the assessee could not attend the assessment proceedings which leads to passing of Assessment Order u/s 144 of the Act. The reliance of case laws by the Ld. AR will not help in the present case, as the assessee could not demonstrate that the notice was not served to him at his address mentioned in the records. Thus Ground No. 3 is dismissed.

11. As regards to Ground No. 4 and 5, the Ld. AR submitted that approval/satisfaction as required u/s 151 is not proper and valid in law. From the review of the approval document, it is observed that the Ld. Assessing Officer has himself written the satisfaction of the Additional CIT and Pr. CIT. [As the entire approval letter is computer typed and in the same font and even the alleged satisfaction of the CIT is also computer typed]. The Additional CIT and the Pr. CIT has only signed which indicates that there is no application of mind whereas as per section 151, The Pr. CIT should be satisfied with regard to statement of income after application of mind. The Assessing Officer cannot

put himself into the shoes of Additional CIT and Pr. CIT. Further, in the satisfaction note nothing has been mentioned that what documents the CIT has verified before deriving the satisfaction. The Ld. AR relied upon the following judgments:

1. M/s Virat Credit & Holdings Pvt. Ltd. vs ITO (ITA No. 89/Del/2012) ITAT Delhi
2. Shri Amarlal Bajaj vs. ACIT (ITA No. 611/Mum/2004) ITAT Mumbai
3. United Electrical Co. (P) Ltd. vs CIT (ITA no. 258 ITR 317) Hon'ble Delhi High Court
4. PCIT Vs. M/s NC Cables Ltd. (ITA No. 335/2015) Hon'ble Delhi High Court
5. Pioneer Town Planners Pvt. Ltd. Vs. DCIT (ITA No 132/Del/2018) ITAT Delhi
6. Shri Ghanshyam vs. ITO (ITA No. 238/Agra/2018) ITAT Agra.

12. The Ld. DR submitted that the approval was rightly taken by the Assessing Officer before re-opening and there is proper reasons given by the authorities. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

13. We have heard both the parties and perused all the relevant material available on record. This Ground is in consonance to Ground No. 2 which is discussed hereinabove. Thus, in the present case the information was received by the Assessing Officer and the proper reasoning has been recorded after taking necessary approval as per the mandate of Section 147 of the Income Tax Act. The Ld. AR could not point out that there is lack of reasoning or no necessary approval taken from the higher authorities. The case laws submitted by the Ld. AR also factually different. The approval is not mechanical but is in conformity with the reasoning given by the Assessing Officer which describes

the nature of cash transactions and its relevance to the escapement of tax liability on behalf of the assessee. Thus, the CIT(A) was right in holding that there is no infirmity in the re-opening proceedings. Ground No. 4 and 5 are dismissed.

14. Since, the legal issues are dismissed we are now taking up the appeal on merits. As regards to Ground No. 1, the Ld. AR submitted that the CIT(A) has erred in not admitting additional evidence filed before him. With regard to admissibility of additional evidences, the Ld. AR placed reliance on the following judgments:

1. Electra Jaipur Pvt. Ltd. vs. IAC (1986) 26 ITD 236 (Delhi)
2. Collector Land Acquisition vs Mst. Katiji & others 167 ITR 471 (SC)

(When Substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred)

3. Bonanze Stock Broker vs. ITO (ITAno. 1002/Del/2006)

(If the evidence goes to the root of the matter and is essential for rendering substantial justice, then the same is required to be admitted).

15. The Ld. DR relied upon the assessment order and the order of the CIT(A).

16. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee submitted that additional evidence before the CIT(A), but the CIT(A) has not admitted the same. The CIT(A) should have looked into the additional evidences while arriving at the proper conclusion which the CIT(A) failed to do so. In the present case, the assessment order was passed under Section 144 of the Act which shows that the Assessing Officer has not seen any evidences while making additions. Thus, we are admitting the additional evidence filed before the CIT(A). We further find that it is just and proper to remand back the issue on merit to the file of the Assessing Officer in the present case for proper adjudication after taking

cognizance of the additional evidences. Needless to say, the assessee be given proper opportunity of hearing by following principles of natural justice. Ground No. 1 is partly allowed for statistical purpose. Since the matter is remanded back Ground Nos. 6 to 10 which is on merit of the case are remanded back to the file of the Assessing Officer. Ground Nos. 6 to 10 are partly allowed for statistical purpose.

17. In result, the appeal of the assessee is is partly allowed for statistical purpose.

**Order pronounced on this 15<sup>th</sup> Day of May, 2020.**

Sd/-

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 15/05/2020  
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	13.03.2020
Date on which the typed draft is placed before the dictating Member	16.03.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	15.5.2020
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	