IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI
(Through Virtual Court Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA Nos.3396 & 3397/Del/2017
Assessment Year: 2010-11

Raj Bala, C/o Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi. PAN: AFQPB2097F	Vs	ITO, Ward-21(4), New Delhi.

ITA Nos.3398 & 3399/Del/2017
Assessment Year: 2010-11

Joginder Dahiya, C/o Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi. PAN: ACTPD6893M	Vs .	ITO, Circle 21(1), New Delhi.

(Appellant) (Respondent)

Assessee by	:	Shri Kapil Goel, Advocate
Revenue by	:	Shri Saras Kumar, Sr.DR
Date of Hearing	:	08.07.2020
Date of Pronouncement	:	24.07.2020

ORDER

PER R.K. PANDA, AM:

ITA Nos.3396 & 3398/Del/2017 filed by the respective assessees are directed against the separate orders dated 31st March, 2017 of the CIT(A)-30, New

Delhi relating to assessment year 2010-11. ITA Nos. 3397 & 3399/Del/2017 filed by the respective assessees are directed against the separate orders dated 21st April, 2017 confirming the penalty levied u/s 271(1)(c) of the Act for the assessment year 2010-11. For the sake of convenience, all these appeals were heard together and are being disposed of by this common order.

ITA No.3396/Del/2017 (A.Y. 2010-11).

2. Facts of the case, in brief, are that the assessee is an individual and filed her return of income on 20th April, 2012 declaring the total income at Rs.9,43,897/-. Since the return was filed beyond the time allowed of upto one year from the relevant assessment year, the same was treated as invalid. The AO issued notice u/s 148 of the Act on 15th June, 2012 after recording the following reasons which has been reproduced by the CIT(A) on page 4 of the order:-

> "In this case, the assessee has filed her return declaring total income of Rs.9,43,897/- (ITR-4) for the A.Y. 2010-11 in this office at ASK Counter vide ASK No. 090200412000468 on 20.04.2012, and received in Circle-21 (1) on 20.04.2012. As per provisions of section 139 (1) of Income tax Act, 1961, the assessee was required to furnish her return of income by 31st July, 2010 without liable for any penal interest and upto 31.03.2011 without any penalty u/s 271F of the Income Tax Act. Further as per the provisions of section 139(4) of the Income Tax Act, the assessee was required to furnish the return upto 31.03.2012 alongwith penalty u/s 271F & other consequential actions. However, since the assessee failed to stick any of the above mandatory schedule of filing of her Income Tax return the above mentioned return was treated as invalid being time-barred. Penalty Notice u/s 271F was also sent to the assessee by speed post on 15.06.2012. However, since the assessee has shown business income of Rs. 9,43,897/- in the above invalid return, and total Gross receipts of Rs.9,43,897/- in the Col. No. 51(a) of Part-A-P&L at Page No-5 of the return, blank Col. No. 1 to 50 of Part-A-P&L at Page No. 5 of the return, claimed TDS of Rs.80,000/- and Advance tax of Rs.1,38,791/-, therefore, I believe that an income of Rs.9,43,897/- has escaped assessment. Hence, proceedings u/s 147 of Income Tax Act are being initiated against the Assessee for the assessment year 2010-11 and notice u/s 148 issued.ò

3. Further, the AO mentions in the assessment order that there was an AIR information that the assessee has deposited cash amounting to Rs.10,10,000/- in her savings bank account with HSBC Bank, made payment of Rs.6,86,000/- and Rs.10,00,000/-were also deposited in saving bank account held jointly with Mr. Joginder Singh. The AO issued notice u/s 143(2) and 142(1) to the assessee along with a detailed questionnaire. The assessee appeared from time to time and filed the requisite details before the AO. Rejecting various explanations given by the assessee, the AO completed the assessment u/s 147/143(3) on 19th March, 2014 determining the total income at Rs.50,12,770/- by computing the same as under:-

Income as declared in ITR	Rs. 9,43,897/-
Add: Redemption of Mutual Fund as discussed above	Rs. 65,826/-
Add: Unexplained cash credits as discussed above	Rs.23,10,000/-
Add: Unexplained cash credits as discussed above	Rs. 10,00,000/-
Add: Unexplained credit card expenses as discussed above	Rs. 6,86,000/-
Add: Saving Bank Interest as discussed above	Rs. 7,049/-
Total Income	Rs.50,12,772/-
Rounded Off	Rs.50,12,770/-

4. In the case of Joginder Dahiya, vide ITA No.3398/Del2017, the AO computed the income at Rs.59,50,630/- as against the returned income of Rs.21,73,285/- by making the following additions:-

In view of the above, the total taxable income of the assessee is computed as under:-	
Total Income as declared by assessee	Rs.21,73,285/-
Add: Addition as discussed in Para 3	Rs.18,48,495/-
Addition as discussed in Para 4	Rs.19,08,853/-
Addition as discussed in Para 5	Rs. 20,000/-
Total Income	Rs.59,50,633/-
Assessed Income	Rs.59,50,630/-

5. In the case of Smt. Raj Bala, the ld. CIT(A) upheld the validity of reassessment proceedings. However, so far as the additions are concerned, the ld.CIT(A) gave partial relief to the assessee by restricting the addition of Rs.23,10,000/- to Rs.11,66,103/- and deleting the addition of Rs.10 lakh. However, she sustained the remaining additions

6. Similarly, in the case of Shri Joginder Dahiya, the ld.CIT(A) upheld the validity of the reassessment proceedings. However, so far as the addition on merit is concerned, the ld.CIT(A) restricted the addition of Rs.18,48,495/- and Rs.19,08,853/- to Rs.20 lakhs and confirmed the addition of Rs.20,000/-.

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

> ñJurisdictional Ground: Proceedings are invalid.
>
> 1. That notice issued u/s 148, order passed in consequence thereto, subsequent order passed by Ld. CITA are bad in law because reasons recorded were never communicated during the course of assessment proceedings and even otherwise as apparent from assessment order reasons are based on mere AIR information, which in turn were based on cash deposit, which cannot give reason to believe for income escaping assessment.

2. That assessment framed by ITO, Ward - 21(4), on basis of notice issued u/s 148 by DC1T, Circle - 21(1) is Invalid for want of issuance of notice, etc. by jurisdictional officer.

3. That assumption of jurisdiction u/s 148 is invalid in as much as Ld. AO has accepted return income of Rs. 9,43,897/- which was basis of reopening and reasons recorded, on which there is no addition in the order passed by the AO.

4. That there is no coherence in reasons given post assessment available at page 4 of the impugned order, vis-a-vis AIR information narrated at Page 1 of the assessment order and assessment finally made, which all are at variance and there is no meeting point, due to which reasons recorded notice issued u/s 148 and all subsequent proceedings becomes bad in law, which requires to be quashed.

On Merits

5. That Ld. CITA erred in sustaining addition of amounting Rs. 65,826/- which is not forming part of reasons recorded as such and same is outrightly bad because there is no separate notice issued u/s 148 for the same. Even otherwise on merits addition is plainly bad.

6. That Ld. CITA erred in not deleting the complete addition of Rs. 23,10,000/- which is also not forming part of reasons recorded as such and same is outrightly bad because there is no separate notice issued u/s 148 for the same. Even otherwise on merits addition is plainly bad.

7. That Ld. CITA erred in confirming the addition of Rs. 6,86,000/- which is not forming part of reasons recorded as such and same is outrightly bad because there is no separate notice issued u/s 148 for the same. Even otherwise on merits addition is plainly bad.

8. That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal.

Prayer:

1. To quash the proceedings u/s 148 for want of fulfillment of mandatory jurisdictional condition stipulated under the act.

2. To hold that when returned income is accepted all other additions made are outside the scope of reopening and proceedings needed to be drop, once returned income was accepted in assessment made.

3. To hold proceedings u/s 148 are not initiated in accordance with law by jurisdictional officer.

4. To hold all additions made beyond reasons recorded lacks complete jurisdiction for want of separate notice u/s 148.

5. To give any other relief as deemed appropriate.ò

8. The ld. Counsel for the assesseee while arguing the appeal in the case of Smt. Raj Bala as the lead case, submitted that the assessee had filed the return of income on 20th April, 2012 declaring the total income at Rs.9,43,897/-. Since the said return was filed beyond the time prescribed as per the provisions of section 139(4) of the Act, the same was treated as invalid. The AO, in the order passed u/s 147/143(3) has accepted the said return of income, but, made various other additions. He submitted that when the pre 148 return amount and the post 148 return amount remains the same, which is the only basis for reopening, the AO should have dropped the proceedings at that very stage given the scheme of section 147 and 148 of the Act especially in view of provisions of section 152(2) of the Act. He submitted that since the pre-148 return and post 148 return amount remained the same which is the only basis for reopening, no further notice u/s 143(2) should have been issued after post 148 return since nothing survives to scrutinize as far as limited and restricted scope of reopening proceedings are concerned vis-à-vis the income escaping assessment.

9. Referring to the decision of the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. vs. CIT, 336 ITR 136, he submitted that since the AO

has accepted the returned income for which reasons were recorded, therefore, for making any other addition, he should have issued fresh notice. He submitted that in the said decision, the Hon'ble Delhi High Court upheld the decision of the Tribunal in holding that the AO had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated, but, he was not so justified when the reasons for the initiation of those proceedings seized to survive. The appeal filed by the Revenue was accordingly dismissed. He submitted that similar view has been taken by the Mumbai Bench of the Tribunal in the case of Juliet Industries Ltd., vide ITA No.5452/M/2016, order dated 4th April, 2018 for A.Y. 2009-10. He also relied on the following decisions:-

i) Dr. Shiva Kant Mishra vs. CIT, 380 ITR 257 (All); and

ii) M/s PVP Ventures Limitedm 65 Taxmann.com 221 (Madras High Court)

10. He submitted that identical facts are involved in the case of Joginder Dahiya. However, in the case of Raj Bala, there is an additional fact that officer recording reasons i.e., DCIT, Circle 2(1), New Delhi, who happened to issue notice u/s 148 and record reasons u/s 148 was not the AO as assessment is framed by ITO, Ward-21(4) who has nowhere recorded reasons and nowhere has issued any notice u/s 148. This has happened because the monetary limit of Rs.20 lakhs of Metro cities of Delhi, etc., to assess the return lies with the ITO concerned and addition of Rs.20 lakhs lies with AC/DC in case of individual returns as per CBDT Instruction

No.1/2011 due to which the DCIT assuming jurisdiction and recording reasons/issuing notice transferred the case to the ITO concerned which is violation of above CBDT Instructions and section 148(2) which requires correct and valid AO to record reasons. For the above proposition, he relied on the decision of the Hon'ble Gujarat High Court in the case of Pankajbhai Jaysukhlal Shah and the Hon'ble Allahabad High Court in the case of Md. Rizwan, copies of which are placed on record along with the copy of the CBDT Instruction No.1/2011. So far as the merit of the case is concerned, the ld. Counsel for the assessee reiterated the similar arguments made before the AO and the CIT(A).

11. The ld. DR, on the other hand, heavily relied on the order of the CIT(A) so far as the validity of the reassessment proceedings are concerned. He submitted that the ld.CIT(A) has given justifiable reasons as to how and why the reassessment proceedings initiated by the AO are valid. So far as the merit of the case is concerned, the ld. DR heavily relied on the order of the CIT(A) and submitted that the ld.CIT(A) has already given substantial relief to the assesseee and in absence of any further material brought to the notice of the Bench, the addition made by the AO and sustained by the CIT(A) should be deleted.

12. We have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee, in the instant case filed the return of income on 20th April, 2012

declaring the total income at Rs.9,43,897/- which was beyond the time prescribed u/s 139(4) and therefore, was treated *nonest* by the AO. We find, the AO issued notice u/s 148 after recording reasons that income to the tune of Rs.9,43,897/- has escaped assessment, the reasons for which have already been reproduced in the preceding paragraphs. We find, the AO completed the assessment u/s 147/143(3) determining the total income at Rs.50,12,770/- wherein he computed the same after considering the income declared in the post 148 income-tax return at Rs.9,43,897/- and made various other additions. It is the submission of the ld. Counsel for the assessee that since the AO has accepted the income declared in the return filed in response to the notice issued u/s 148, he could not have made other additions without issuing fresh notice u/s 147. According to him, the AO had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated, but, he was not so justified when the reasons for the initiation of those proceedings cease to survive. We find merit in the above argument of the ld. Counsel for the assessee. We find identical issue had come up before the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories (supra). The Hon'ble High Court held that the AO had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated, but, he was not so justified when the reasons for the initiation of those proceedings cease to survive. The relevant observation of the Hon'ble High Court reads as under:-

ñ17. Now, coming back to the interpretation which was given by the Bombay High Court to Sections 147 and 148 in view of the precedent on the subject. The Court held as under:-

"11. ... Interpreting the provision as it stands and without adding or deducting from the words used by Parliament, it is clear that upon the formation of a reason to believe under Section 147 and following the issuance of a notice under Section 148, the Assessing Officer has the power to assess or reassess the income which he has reason to believe had escaped assessment and also any other income chargeable to tax. The words "and also" cannot be ignored. The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by Parliament otiose. Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words "and also" cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that Parliament has not used the word "or". The Legislature did not rest content by merely using the word "and". The words "and" as well as "also" have been used together and in conjunction."

...

Evidently, therefore, what Parliament intends by use of the words "and also" is that the Assessing Officer, upon the formation of a reason to believe Under Section 147 and the issuance of a notice under Section 148(2) must assess or reassess: (i). 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under Section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of Section 147 with effect from 1st April 1989 clearly stipulated that the Assessing Officer has to assessee or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax

which came to his notice during the proceedings. In the absence of the assessment or reassessment the former, he cannot independently assess the latter."

Section 147 has this effect that the Assessing Officer has to assessee or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings However, if after issuing a notice under Section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under Section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.

18. We are in complete agreement with the reasoning of the Division Bench of Bombay High Court in the case of Jaganmohan Rao (supra). We may also note that the heading of Section 147 is "income escaping assessment" and that of Section 148 "issue of notice where income escaped assessment". Sections 148 is supplementary and complimentary to Section 147. Sub-section (2) of Section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or recompute escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per explanation (3) if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under Section 147 regarding assessment or reassessment of escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under Section 148.

19. In the present case, as is noted above, the Assessing Officer was satisfied with the justifications given by the assessee regarding the items viz., club fees, gifts and presents and provision for leave encashment, but, however, during the assessment proceedings, he found the deduction under Section 80 HH and

> 80-I as claimed by the assessee to be not admissible. He consequently while not making additions on those items of club fees, gifts and presents, etc., proceeded to make deductions under Section 80HH and 80-I and accordingly reduced the claim on these accounts.
>
> 20. The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the Assessing Officer proceeded to reduce the claim of deduction under Section 80 HH and 80-I which as per our discussion was not permissible. Had the Assessing Officer proceeded not to make disallowance in respect of the items of club fees, gifts and presents, etc., then in view of our discussion as above, he would have been justified as per explanation 3 to reduce the claim of deduction under Section 80 HH and 8-I as well.
>
> 21. In view of our above discussions, the Tribunal was right in holding that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated but he was not so justified when the reasons for the initiation of those proceedings ceased to survive. Consequently, we answer the first part of question in affirmative in favour of Revenue and the second part of the question against the Revenue.
>
> 22. The present appeal is accordingly allowed.ò

13. Since, in the instant case, the AO had initiated proceedings u/s 147 for escapement of income of Rs.9,43,897/- which was the returned income filed prior to issue of notice u/s 148 in the belated return and as well as in the return filed in response to notice u/s 148 and since the AO has accepted the said returned income and proceeded to make various other additions without issuing fresh notice u/s 147/148, therefore, we are of the considered opinion that the AO has exceeded his jurisdiction in reassessing issues other than the issues in respect of which the proceedings are initiated and reasons for the initiation of those proceedings cease to survive. We, therefore, hold that the various other additions made by the AO are not in accordance with the law being without jurisdiction and, therefore, are to

be deleted. Since the assessee succeeds on this legal ground, the grounds raised by the assessee on merit are not being adjudicated being academic in nature.

ITA No.3397/Del/2017 (2010-11)

14. The assessee in the grounds of appeal has challenged the order of the CIT(A) in partly sustaining the penalty levied by the AO u/s 271(1)(c) of the Act. Since, in the quantum appeal we have deleted the various additions made by the AO and partly sustained by the CIT(A), therefore, the penalty does not survive. Accordingly the order of the CIT(A) partly sustaining the penalty levied by the AO u/s 271(1)(c) is set aside and the AO is directed to cancel the penalty.

ITA No.3398/Del/2017

15. The grounds raised by the assessee are as under:-

> ñJurisdictional Ground: Proceedings are invalid.
>
> ñ1. That notice issued u/s 148, order passed in consequence thereto, subsequent order passed by Ld. CITA are bad in law because reasons recorded were never communicated during the course of assessment proceedings and even otherwise as apparent from assessment order reasons are based on mere AIR information, which in turn were based on payment of credit card (Rs.16,02,000/-), which cannot give reason to believe for income escaping assessment, particularly because AO has mentioned in para - 2 of the order ñThe AIR information reconciliation has been filedò.
>
> 2. That assumption of jurisdiction u/s 148 is invalid in as much as Ld. AO has accepted return income of Rs. 21,73,285/- which was basis of reopening and reasons recorded, on which there is no addition in the order passed by the AO.
>
> 3. That there is no coherence in reasons given post assessment available at page 4 of the impugned order, vis-a-vis AIR information narrated at Page 1 of the assessment order and assessment finally made, which all are at variance and there is no meeting point, due to which reasons recorded notice issued u/s

148 and all subsequent proceedings becomes bad in law, which requires to be quashed.

On Merits

4. That Ld. CITA erred in sustaining addition of Rs. 20,00,000/- treating it to be undisclosed business receipts, which was never part of reasons recorded u/s 148 for the same, even on merits treating complete business receipts as income is not correct as only profit element can be added.

5. That Ld. CITA erred in not deleting the complete addition of Rs. 20,000/- which is not forming part of reasons recorded as such and same is outrightly bad because there is no separate notice issued u/s 148 for the same. Even otherwise on merits addition is plainly bad.

6. That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal.

Prayer:

1. To quash the proceedings u/s 148 for want of fulfillment of mandatory jurisdictional condition stipulated under the act.

2. To hold that when returned income is accepted all other additions made are outside the scope of reopening and proceedings needed to be drop, once returned income was accepted in assessment made.

3. To hold all additions made beyond reasons recorded lacks complete jurisdiction for want of separate notice u/s 148.

4. To give any other relief as deemed appropriate.ò

16. After hearing both the sides, we find, the grounds raised by the assessee are identical to those in Appeal No.3396/Del/2017. We have already decided the issue and the appeal filed by the assessee has been allowed. Following similar reasonings, this appeal filed by the assessee is allowed.

ITA No.3399/Del/2017

17. The assessee in the grounds of appeal has challenged the order of the CIT(A) in partly sustaining the penalty levied by the AO u/s 271(1)(c) of the Act. Since, in the quantum appeal we have deleted the various additions made by the AO and partly sustained by the CIT(A), therefore, the penalty does not survive. Accordingly the order of the CIT(A) partly sustaining the penalty levied by the AO u/s 271(1)(c) is set aside and the AO is directed to cancel the penalty.

18. In the result, all the four appeals filed by the respective assessees are allowed.

Order pronounced in the open court on 24.07.2020.

Sd/-	Sd/-
(AMIT SHUKLA) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER

Dated: 24th July, 2020.

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi