

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "G" NEW DELHI]**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

A N D

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA No. 1605/DEL/2020

Assessment Year: 2011-12

Smt. Somi Devi, 216, R. K. Puram, Jattal Road, Panipat (Haryana) 132 103. PAN: FCXPD5871A	Vs	Income Tax Officer, Ward : 4, Panipat.
(APPELLANT)		(RESPONDENT)

Assessee by :	Shri Akarsh Garg, Adv.; & Shri Himanshu Agarwal, C.A.
Department by :	Shri Ved Prakash, Sr. D.R.;

Date of hearing:	27/10/2020
Date of Pronouncement:	27/10/2020

ORDER

PER AMIT SHUKLA, JM :

This aforesaid appeal has been filed by the assessee against the impugned order dated 19.02.2020 under Section 147/148 of the Income Tax Act, 1961 (the 'Act') for the year 2011-12.

2. The assessee has raised the following grounds of appeal :-

1. *On the facts and circumstances of the case, the order passed by the learned Assessing Officer ('AO') and Commissioner Income Tax Appeals ('CIT(A)') is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO by not providing reasonable*

opportunity of being heard and thereby violating the principles of natural justice.

3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO and rejecting the contention of the assessee that the no notice under section 148/143(2)/142(1) of the Income Tax Act, 1961, ('the Act') was served on the assessee during the assessment proceedings by the learned AO.*
4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite the fact that the reopening by the AO and consequent reassessment without complying with the statutory conditions prescribed under Section 147 read with Section 148 of the Act, is bad in law.*
5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO ignoring the fact that the AO has erred both on facts and in law in making reassessment under Section 147 of the Act, as the reasons recorded for reopening the assessment does not meet the requirements of Section 147 of the Act.*
6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of AO reopening the assessment proceedings as the same has been made on the basis of material collected at the back of the assessee without giving assessee an opportunity to rebut the same in violation of provisions of the Act.*
7. (i) *On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 49,01,000/- made by the AO on account of cash deposits in the Saving Bank Account.*
 (ii) *On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the notional addition of Rs. 42,30,500/- made by the AO on account of investment in agricultural land without any evidence on record.*
8. *On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in confirming the above addition by indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption.*
9. *On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in confirming the action of the AO by passing the order without discussing the merits of the case, which is in gross violation of section 250(6) of the Act.*
10. *On without prejudice basis the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.42,30,500/- made by the AO account of investment in agricultural land is a double addition as can be seen from the assessment order that the cash has been deposited in the bank account prior to the purchase of land.*

11. *That the appellant craves leave to add, amend or alter any of the grounds of appeal. “*

3.1 At the outset the learned counsel for the assessee submitted that during the course of assessment proceedings neither notice under Section 148 or any other further notices were served upon the assessee. Due to non-service of notices assessment has been passed ex-parte and additions have been made under Section 69 and 68 of the Act for a sum aggregating Rs.91,31,500/- which were on account of unexplained cash credit in the bank account and undisclosed amount invested in the purchase of land. Further even the Id. CIT (Appeals) has passed the order ex-parte without serving any notice to the assessee. In support the assessee filed an Affidavit, the contents of which are reproduced hereunder:-

“ AFFIDAVIT

I, Somi Devi, W/o Sh. Balbir Singh, of age 65 years, having PAN FCXPD5871A, R/o. H. No. 216, R.K. Puram, Jattal Road, Panipat, Haryana-132103, do solemnly affirm and state as under:

- 1. That reassessment proceedings under section 147/144 of the Income Tax Act were initiated against me by the ITO, Ward-4, Panipat, for Assessment Year 2011-12 and an assessment order was passed on 04.12.2018.*
- 2. That in the said assessment order dated 04.12.2018 it has been mentioned that several notices like notices under section 133(6) of the Act dated 21.02.2018 and 15.03.2018 were issued and served on me, notice under section 148 of the Act was issued and served on me on 28.03.2018. It is also stated that notices under section 142(1) dated 01.08.2018 and 08.10.2018 were issued and served on me.*
- 3. That I solemnly state and affirm that no notice under section 133(6)/148/142(1) or any hearing notice under the Act for the AY 2011-12 has been received by me before the receiving of the reassessment order dated 04.12.2018.*
- 4. Thereafter, I was in receipt of the assessment order dated 04.12.2018 along with the notice of demand under section 156 of the Act on 04.12.2018, which was served to me by hand on 15.12.2018.*

5. *That an appeal before the CIT(A) was filed, by my Chartered Accountant, against the Reassessment order dated 04.12.2018 and the same was received on 21.01.2019.*
6. *That even in the appellate proceedings under section 250(6) of the Act an order was passed on 05.03.2020, received by me by hand on 17.07.2020 on communication over telephone by A.O., wherein it is stated that notices dated 07.11.2019, 21.11.2019, 26.11.2019, 18.12.2019 and 04.02.2020 for hearing were issued and served on me on various occasions.*
7. *That I solemnly state that no notice for hearing of case before Commissioner of Income Tax has been received by me in the name of Somi Devi at the aforesaid residential address i.e. H.No. 216, R.K. Puram, Jattal Road, Panipat, Haryana- 132103.*
8. *That it is further stated that I am an Illiterate women having no educational qualification and I am primarily a rural agriculturist/farmer and do not know how to read and write.*
9. *That I am not conversant with English Language but I can Speak and understand Hindi.*
10. *I take oath and solemnly declare/affirm that the particulars furnished by me above are correct and that I have not concealed or misrepresented any facts. “*

3.2 The learned counsel, therefore, requested that the matter should be sent back to the file of the Assessing Officer to decide all the issues including legal issue of re-opening of assessment under Section 147 / 148 of the Act and on merits.

4. The learned Departmental Representative has no objection if the matter is remanded back to the Assessing Officer to be decided afresh and in accordance with law.

5. In view of the aforesaid facts that initiation of proceedings under Section 147/148 of the Act and the assessment order has been passed

without service of statutory notices and without giving any opportunity to the assessee there is gross violation of natural justice. Even before the first appellate authority the matter has been decided ex-parte, without any opportunity to represent as notices could not be served. Therefore, in the interest of substantial justice the matter is restored back to the file of Assessing Officer to be decided afresh in accordance with law on all the issues raised before us including the legal issues are kept open and the assessee is directed comply with the notices and substantiate her case before the Assessing Officer.

6. In the result, appeal of the assessee is allowed, for statistical purposes.

Order pronounced in the open court on 27/10/2020.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Date : 27.10.2020

MEHTA

Copy forwarded to :-

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	27.10.2020
Date on which the typed draft is placed before the dictating Member	27.10.2020
Date on which the typed draft is placed before the Other Member	27.10.2020
Date on which the approved draft comes to the Sr.PS/PS	27.10.2020
Date on which the fair order is placed before the Dictating Member for pronouncement	27.10.2020
Date on which the fair order comes back to the Sr.PS/PS	27.10.2020
Date on which the final order is uploaded on the website of ITAT	27.10.2020
Date on which the file goes to the Bench Clerk	27.10.2020
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	