

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. H. S. Sidhu, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 1509/Del/2017 : Asstt. Year : 2007-08

ITA No. 1510/Del/2017 : Asstt. Year : 2008-09

Tsurphu Labrang, E-59, Ground Floor, Grater Kailash-II, New Delhi-110048	Vs	Income Tax Officer, Ward-2(3), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AABTT9161A		

**Assessee by : Sh. K. Sampath, Adv. &
Sh. V. Raj Kumar, Adv.**

Revenue by : Sh. Apoorva Bhardwaj, Sr. DR

Date of Hearing: 07.01.2021

Date of Pronouncement: 08.01.2021

ORDER

Per Dr. B.R.R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of Id. CIT (A)-40, New Delhi dated 07.02.2017.

2. Since, the issues involved in both the appeals are common, they were heard together.

3. In ITA No. 1509/Del/2017, following grounds have been raised by the assessee:

1. On the facts and circumstances of the case, the learned CTT (A) has erred in upholding the initiation of proceedings under section 147 of the I.T Act, 1961 by the learned A.O and the reassessment order passed by the

learned A.O in culmination thereto.

2. On the facts and circumstances of the case, the learned CIT (A) has erred in holding that Rupee equivalent of intended offering of foreign currencies by the devotees amounting to Rs.98,99,491/- in the previous year is income of the appellant and consequently confirming addition of Rs.98,99,491/- to the total income.

3. On the facts and circumstances of the case, the learned CIT (A) has erred in confirming the disallowance and consequent addition of Rs. 7,91,659/- to the total income out of expenses on account of help, charity and donations."

4. The reasons recorded before issue of the notice u/s 148 for the assessment years 2007-08 and 2008-09 is reproduced below:

"This office is in possession of credible information that the assessee Tsuphu Labrang is not registered u/s 12A of the Income Tax Act 1961 for the year under consideration. The assessee has filed belated return for A.Y. 2008-09 on 24.06.2011 in Form No. ITR7 meant for assessee claiming benefits of exemption u/s 11 and 12 of the Act. While going through the Income and Expenditure account, for the year under consideration it reveals that the assessee has claimed expenses on account of 'Donation' amounting to Rs.53,55,708/-. Further, the assessee has claimed capital expenditure of Rs.4,13,678/- in its computation of income. Since, the assessee is not eligible for benefits of section 11 and 12 of the Act, this has resulted in claim of excessive expenditure which is required to be added back to the total income of the assessee.

In view of the above, I have reason to believe that amounts to the extent mentioned above chargeable to tax has escaped assessment within the meaning of provision of section 147 of the Act for the assessment year 2008-09.

Therefore, notice u/s 148 of the Income Tax Act, 1961 dated 30.03.2014 issued for assessment year 2008-09."

*Sd/-
DDIT (E),
Trust Circle-IV, New Delhi*

5. We find that except the claim of capital expenditure and donation, the verbatim of notice is the same for both the years.

6. Heard the arguments of both the parties and perused the material available on record.

7. Regarding the grounds in relation to issue of notice u/s 148 of the Income Tax Act, 1961, the Id. CIT (A) dismissed the plea of the assessee holding that the assessee is not registered u/s 12AA and filed belated returns and since the assessee has not taken any objection to the notice u/s 148 during the assessment proceedings, the notice issued is valid.

8. We have gone through the reasons recorded by the revenue and find that the assessment year 2007-08 and for the assessment year 2008-09 the assessee has filed return on 24.06.2011. The notice u/s 148 has been issued on 30.03.2014 much after the date of expiry to issue notice u/s 143(2) in the regular course of assessment proceedings. The *sine qua non* for issue of notice u/s 148 for reassessment of escaped income is that the Assessing Officer should have reasons to believe that the income chargeable to tax has escaped assessment. The revenue authorities having lost the opportunity to issue notice u/s 143(2) have resorted to issue of notice u/s 148 in the absence of any other tangible material other than the return filed by the assessee before them. Filing of a belated return and non-registration of the entity u/s 12AA cannot be held to be valid reasons good enough to issue notice u/s 148.

9. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 08/01/2021.

Sd/-

(H. S. Sidhu)
Judicial Member

Dated: 08/01/2021

Subodh

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member