

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-2": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA No. 2880/Del/2019
Asstt. Year 2009-10

Late Shri Ganpat Singh, L/H Sh. Bikram Singh Village -Berli Kalan (310), Musepur, Rewari Haryana Pin 123401 PAN CZVPS8887H	Vs.	ITO Ward-1 Rewari
(Appellant)		(Respondent)

Assessee by:	Shri Gautam Jain, Advocate Shri Lalit Mohan, CA
Department by :	Shri Frat Khan, Sr. DR
Date of Hearing	17/02/2021
Date of pronouncement	03 /03/2021

ORDER

PER R.K. PANDA, AM

This appeal filed by the assessee is directed against the order dated 21.1.2018 of the Ld. CIT(A) Rohtak relating to assessment year 2009-10.

2. Facts of the case, in brief, are that assessee is an individual . On the basis of information received that assessee has made cash deposit of Rs. 36,98,000/- during the financial year 2008-09 relevant to the assessment year 2009-10, the AO reopened the case of the assessee after recording the following reasons :-

“As AIR information for F.Y. 2008-09 received in this office, the assessee has made cash deposits of Rs. 36,98,000/- during the F.Y. 2008-09 relevant to the assessment year 2009-10 in his bank account with Gurgaon Gramin Bank, V Berli Kalan, Rewari. The PAN of the assessee is lying with this office. As per records of this office the assessee has not filed his/her return of income for the above mentioned assessment year.

I, therefore, have reasons to believe that the assessee has deposited cash in his bank account out of his income from unexplained sources. Accordingly income to the extent of Rs. 36,98,000/- chargeable to tax and any other income which subsequently comes to the notice of the assessing officer has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961 issue notice u/s 148 of the I.T. Act, 1961 for the assessment year 2009-10.

sd/-

*(R.D. Sharma)
Income Tax Officer
Ward-1, Rewari*

3. Accordingly, notice u/s 148 of the Act was issued on 23.3.2016. The assessee vide letter dated 2nd May, 2016 stated that he is not supposed to file income tax return for the asstt. year 2009-10 since his income was below the taxable limit. The AO subsequently issued notice u/s 142(1) of the I.T. Act calling for the return of income. Subsequently various other letters were issued and the assessee stated that it has filed the return of income on 8th July 2016 declaring income of Rs. 91,730 + agricultural income of Rs. 2,10,000/-. The AO issued notice u/s 143(2) and 142(1) alongwith with questionnaire asking the assessee to explain the cash deposit of Rs. 36,98,000/- in his saving bank account during the period. Subsequently, the AO obtained the bank statement of the assessee from Sarv Haryana Gramin Bank and asked the assessee to explain the reasons of cash withdrawals and deposits. The assessee replied that he is a retired person and a farmer and his income is from sale of

agriculture produce and agriculture activities. The assessee also filed a cash flow statement alongwith the bank statement.

4. From the bank statement so furnished by the assessee as well as obtained from the bank, the AO noted that the assessee has deposited cash of Rs. 16,98,000/- only and not Rs. 36,98,000/-. The assessee explained the deposits in the bank account as out of earlier withdrawals. However, the AO was not satisfied with the explanation given by the assessee. Rejecting the various explanations given by the assessee and following the decision of Hon'ble Supreme Court in the case of Sumati Dayal vs. Commissioner of Income Tax reported in (1995) 214 ITR 801, Kale Khan Mohammad Hanif vs. CIT reported in 1963 50 ITR 1 and various other decisions, the AO finally made addition of Rs. 8,90,000/- being the peak balance of Rs. 8,90,000/- on 17.04.2008.

4. Before the Ld. CIT(A) the assessee apart from challenging the validity of reassessment proceedings challenged the addition on merit. However, the Ld. CIT(A) dismissed both the grounds. So far as the validity of reassessment proceedings are concerned, the Ld. CIT(A) upheld the validity of reassessment proceedings by observing as under :-

I have carefully considered the facts of the case, assessee's "submissions, assessment order and find that:

Reopening of assessment :

4.1 In the assessment order, the A.O. has made addition of Rs.8,90,000/- on account of unexplained cash u/s 68 of the IT Act, 1961 by stating that 'the assessee had failed to furnish the source of above cash deposits of Rs.36,98,000/- with documentary evidence, despite several opportunities afforded vide notices u/s 142(1) of the IT Act.' The assessee's explanation regarding the cash deposits was rejected and addition of peak balance of Rs 8,90,000/- was made as his undisclosed income.

4.2 The assessee has taken a plea that in view of the decision of *ITAT Delhi bench, in the case Sir Bahadur Singh Sijwali vs. ITO in ITA No.3814/ Del/11*, the reopening of the case is not valid as cash deposits in bank cannot be said to be escaped income for reopening the case. In the case law cited by the assessee of *Bir Bahadur Singh Sijwali vs. ITO* it is held that the reasons recorded for reopening the assessment are to be examined on a stand alone basis. At the stage of recording the reasons for reopening the assessment what is necessary is formation of prima facie belief that an income has escaped assessment and it is not necessary that fact of income having escaped assessment is proved to the hilt. What is necessary is that there must be something which indicate even if not establishes escapement of income. The material must indicate income escaping assessment rather than desirability of further probe in the matter.

4.3 *In the instant case, the reasons were duly recorded before issuing the notice u/s 148 of the Act. The A.O. was of the belief that the assessee has not disclosed his correct income as there were heavy cash deposits in the bank account during the F.Y. 2008-09. The assessee had not filed his return of income for this financial year as ascertained by the AO and this further became the basis of AO's prima facie belief that income has escaped assessment in the case of the assessee. The reasons recorded show that there was prima facie belief that income has escaped assessment as the AO has mentioned 'I therefore, have reason to believe that assessee has deposited * cash in his account out of his income from unexplained sources. It is not a case where the AO has written in the reasons recorded that he suspects or he has to investigate the cash deposits. Thus the case laws cited by assessee does not come to his rescue and is not squarely applicable in his case.*

4.4 *In the case of S, Narayanappa vs. CIT 63 ITR 219 Hon'ble Supreme Court has held that "The sufficiency of the grounds which induced the ITO to act is not a justifiable issue. It is of course open for the assessee to contend that the ITO did not hold the belief that there had been*

such non-disclosure. In other words, the existence of the belief can be challenged by the assessee but *not* the sufficiency of the *reasons* for the belief.” *In the instance case the AO not only had sufficient reason but prima facie belief that income had escaped assessment.*

4.5 *In view of the above discussion in paras 4.1 to 4.4. the assessee’s plea that the reopening of assessemtn was invalid, is rejected and **this ground of appeal is dismissed.**”*

5. So far as the merit of the case is concerned, she held that assessee could not produce any documentary evidence to support his contention of the opening balance of Rs.5,50,000/- and agricultural income of Rs. 2,10,000/- declared in the return of income.

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

Ground No.	Grounds of Appeal
1	That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the initiation of proceedings under section 147 of the Act and, completion of assessment under section 147/143(3) of the Act without appreciating that the same were without jurisdiction and hence deserved to be quashed as such.
1.1	That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was no specific relevant, reliable and tangible material on record to form a “reason to believe” that income of the appellant had escaped assessment and in view thereof the proceedings initiated are illegal, untenable and therefore unsustainable.
1.2	That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that reasons recorded mechanically without application of mind do not constitute valid reasons to believe for assumption of jurisdiction u/s 147 of the Act
1.3	That in absence of any valid approval obtained under section 151 of the Act, initiation of proceedings u/s 147 of the Act and assessment framed u/s 147/143(3) of the Act are invalid and deserve to be quashed as such.

1.4	That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that mere cash deposit alone could not be basis to invoke section 148 of the Act.
2	That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding an addition of Rs. 8,90,000/- representing alleged unexplained cash deposits in the bank account of the appellant and brought to tax under section 69 of the Act.
2.1	That while making the addition, the learned Commissioner of Income Tax (Appeals) has overlooked relevant evidence placed on record and, drawn factually incorrect and legally unsustainable inferences based on irrelevant and extraneous considerations and thus, addition sustained is wholly unwarranted and not in accordance with law.
2.2	That the learned Commissioner of Income Tax (Appeals) while upholding the aforesaid addition in perfunctory manner and by recording vague, misconceived and erroneous conclusions which are contrary to facts and therefore, untenable.
Prayer	It is therefore, prayed that, it be held that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) deserves to be quashed as such. It be further held that addition made and sustained by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the appellant company be allowed.

6. I have considered the rival arguments made by both sides, perused the orders of the AO and Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. The reasons recorded by the AO while reopening of the case has already been reproduced in the preceding paragraphs. A perusal of the same shows that the AO reopened the assessment on the ground that assessee made cash deposit of Rs.36,98,000/- during the financial year 2008-09. However, when the AO obtained the bank statement from the bank as well as the copy of the same produced by the assessee, he noted that the cash so deposited in fact is Rs. 16,98,000/- and

not Rs. 36,98,000/- as stated in the reasons. The relevant observation of the AO in the assessment order reads as under :-

“The bank statement supplied by the assessee as well as obtained from bank reveals that in fact the assessee has deposited cash of Rs. 16,98,000/- during the year.”

7. From the above it is seen that the basis of recording of the reasons and reopening of the assessment was solely on the basis of AIR information and there is no independent application of mind by the AO to form the reason to believe that there is escapement of income. The AO has not made any independent inquiry to find out the veracity of the AIR information that in fact so much cash was deposited in the bank account. I, therefore, find merit in the arguments of the Ld. Counsel for the assessee that the reopening of the assessment on wrong and incorrect facts makes the reopening null and void.

8. The Hon'ble Delhi High Court in the case of PCIT vs. Meenakshi Overseas (P) Ltd. reported in 395 ITR 677 (Delhi) has held that *where reassessment was resorted to on basis of information from DIT (Investigation) that assessee had received accommodation entry but there was no independent application of mind by Assessing Officer to tangible material and reasons failed*

to demonstrate link between tangible material and formation of reason to believe that income had escaped assessment, reassessment was not justified.

9. I find the coordinate bench of the Tribunal in the case of SBC Realtors Pvt. Ltd. vs ITO in ITA No. 7791/Del/2018 order dated 1st April, 2019 has also quashed the reassessment proceedings based on the information provided by the investigation wing without any independent application of mind by the AO. The various other decisions relied on by the Ld. Counsel for the assessee also supports his case to the proposition that the reassessment proceedings initiated on wrong facts is not in accordance with law and has to be annulled. Since in the instant case the reopening of the assessment has been made on the basis of AIR information which is not based on correct facts and the AO has not made independent application of his mind before recording reasons for reopening of the assessment and has simply proceeded on the basis of AIR information, therefore, the reassessment proceedings initiated by the AO being not in accordance with law has to be quashed. In this view of the matter, I set aside the order of the Ld. CIT(A) on the issue of validity of reassessment proceedings. Since the assessee succeeds on this

legal ground, the grounds raised by the assessee on merit become academic in nature and, therefore, the same are not being adjudicated.

10. The appeal filed by the assessee is accordingly allowed.

Order pronounced in the open court on 3rd March, 2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 03 /03/2021

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi