

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 2314/Del/2018
(Assessment Year: 2011-12)

Hari Ganga Fincap Pvt. Ltd, Raj Kumar & Associates, CA, L- 7A, (LGF), South Extn. Part-II, New Delhi PAN: AAACH6775J (Appellant)	Vs.	ITO, Ward-11(1), New Delhi (Respondent)
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Assessee by :	Shir Raj Kumar, CA Shri Sachin Jain, CA
Revenue by:	Ms. Anima Barnwal, Sr. DR
Date of Hearing	13/09/2021
Date of pronouncement	13/09/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order passed by the 1d Commissioner of Income Tax (Appeals)-35, New Delhi dated 23.01.2018 for assessment year 2011-12 wherein, the appeal filed by the assessee against the order passed u/s 143(3) of the Income Tax, 1961 (the Act) dated 31st March 2016 made by the 1d Income Tax Officer, Ward 11(1), New Delhi (the learned Assessing Officer) was dismissed. In the present case, the assessee challenges the reopening of the assessment as well as the addition on the merits of the case raising following grounds of appeal:-

“1. That under the facts and circumstances, initiation of proceedings U/s. 147 / 148 is without jurisdiction, mechanical, without application of mind, illegal and un - sustainable in law as well as on merits.

2. *That in the absence of issuance of notice U/s. 143 (2) within statutory time period, the asstt. proceedings are without jurisdiction, illegal and un - sustainable in law.*
3. *That in the absence of disposing of all the objection against reassessment proceedings and as per law, the impugned asstt. is un - sustainable.*
4. *That under the facts and circumstances, the ld AO grossly erred in law as well as on merits in making the following additions U s. 68 as alleged accommodation entries from following patties*

<i>S. no.</i>	<i>Party Name</i>	<i>Amount (Rs.)</i>
<i>1.</i>	<i>Lunar Gold International P Ltd</i>	<i>15,00,000/-</i>
<i>2.</i>	<i>Yuvraj Exports (P) Ltd</i>	<i>25,00,000/-</i>
	<i>Total</i>	<i>40,00,000/-</i>

- 4.1, *That without prejudice, in the absence of providing the adverse material for rebuttal as well as in the absence of providing for cross - examining the persons whose statements have been taken on the back of the assessee which have been adversely used and which were specifically asked for, no adverse view of such material and statements etc. can be taken and all such material needs to be ignored for taking a view for framing the Asstt.*
 5. *That under the facts and circumstances and in the absence of any material whatsoever on records, the Ld. AO committed grave error of law and facts in imagining 1.6% as commission element on alleged accommodation entry of Rs. 40 lacs, consequently he erred in making an addition of Rs.64,000/- U/s. 69 C as un - explained expenditure.*
 6. *That under the facts and circumstances, there is absolutely no legality and justification on merits in making addition of Rs. 1,50,000/- U/s. 68 for the amount received from Ms. Madhu Mudgal.*
 7. *That under the facts and circumstances, there is absolutely no legality and justification on merits in making addition of Rs.2,00,000/- U/s. 68 for the amount received from Brij Mohan Goel (HUF).”*
2. The briefly stated the facts of the case shows that the assessee filed its return of income on 29/09/2010 declaring total income of ₹ 36,217/-. The above return was processed u/s 143(1) of the Act on 10/01/2012. Subsequently, notice u/s 148 of the Income Tax Act was issued on 14/11/2014 and served on the assessee. In response to the above notice assessee submitted a letter dated

17/04/2015 stating that the return of income filed u/s 139 of the act on 29/09/2011 be treated as compliance to the notice u/s 148 of the Income Tax Act. Subsequently, the learned Assessing Officer noted that as per the information received from the office of the Director of Income Tax, New Delhi dated 12th March, 2013 that assessee has obtained an accommodation entry from the accommodation entry providers. Accordingly the assessment u/s 143 (3) read with Section 147 of the Income Tax Act was passed.

3. The assessee preferred an appeal before the Id CIT(A) and stated that in absence of issuance of notice u/s 143(2) within the statutory time period the assessment proceedings are without jurisdiction, illegal and unsustainable of law.
4. The Id CIT(A) in para 4.2 of his order along with other objections to the reopening of the assessment held that they are without any basis and rejected the same. Therefore, the jurisdictional issue of reopening of the assessment was decided against the assessee. On the merits of the case with respect to the addition of Rs. 43,50,000/- u/s 68 of the Act, he upheld the finding of the Id AO that the assessee has failed to prove the creditworthiness and identification of the investors. With respect to the unexplained expenditure u/s 69C for obtaining accommodation entry of Rs. 64,00,000/- same was also confirmed. With respect to the taxation of interest income of Rs. 12,09,252/- as income from other sources against the sum offered by the assessee as under the head “business income” he agreed with the contention of the assessee. With respect to the disallowances of the expenditure of Rs. 10,69,434/- he partly allowed the claim of the a and ssessee. Therefore, the assessee is aggrieved with the order of the Id CIT(A) has preferred an appeal before us.
5. The Id AR referred to the ground No. 2 of the appeal stated that there is no issuance notice u/s 143(2) of the Act within the statutory time period. He submitted that the assessment is framed u/s 147 read with section 143(3) of the Act. He submitted that the mandatory notice should have been issued by the Id AO u/s 143(2) of the Act before framing of the assessment order. He submitted that there is no mention in the assessment order of issuance of such notice.

Further, when the assessee has raised before the Id CIT(A) this issue specifically he did not adjudicate the same. Despite there be a specific ground in the appeal memo no evidence is produced by the revenue either before the Id CIT(A) or before us, therefore he submitted that the whole proceedings are without jurisdiction. He referred to the decision of the Hon'ble Delhi High Court on that issue in case of DCIT Vs. Silverline 283 CTR 148 (Del).

6. As this is the jurisdictional issue the Id DR was questioned whether there were any notice u/s 143(2) of the Act. He submitted that the Id CIT(A) has specifically rejected this ground of the assessee. He relied on the order of the lower authorities.
7. We have carefully considered the rival contention of the parties and perused the orders of the lower authorities. The facts shows that the assessee filed its return of income on 29.09.2010 declaring income of Rs. 36,217/-. Specifically notice u/s 148 was issued on 14.11.2014. In response to that assessee submitted a letter dated 17.04.2015 with the return of income filed u/s 139 of the Act may be considered as return of income filed by the assessee u/s 139(1) of the Act On 29.09.2010 may be considered as return filed and response to the notice u/s 148 of the Act. Apparently, thereafter no reference of any notice u/s 143(2) of the Act is found in the assessment order. The assessee has raised this issue before the Id CIT(A) as per para 4.2 of the order at page No. 5 of the order of the Id CIT(A). Assessee submitted this argument raising that the assessment order is liable to be quashed in absence of any notice u/s 143(2) of the Act and supported the argument with almost 15 judicial pronouncement including decision of the Hon'ble Delhi High Court. The Id CIT(A) rejected the same holding that the objection of the assessee are without basis. We find that in absence of any notice u/s 143(2) of the Act when the assessee has specifically filed return of income in response to the notice u/s 148 the reassessment order passed by the lower authorities cannot be upheld. The Hon'ble Delhi High Court in case of DCIT Vs. Silverline Ltd in 65 Taxmann 137, 383 ITR 455 (Del) has categorically held that because the assessee participated in

reassessment proceedings in pursuance to the notice u/s 148, it would not obviate mandatory requirement of the Id AO to issue the assessee a statutory notice u/s 143(2) of the Act before finalizing the order of the reassessment. Before us the statutory notice issued u/s 143(2) of the Act was not made available and therefore, respectfully following the decision of the Hon'ble Delhi High Court we hold that reassessment order in question is legally unsustainable. Accordingly, ground No. 2 of the appeal of the assessee is allowed.

8. In view of our decision in ground No. 2 of the appeal of the assessee the all other grounds on the merits of the addition are not required to be adjudicated.
9. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 13/09/2021.

-Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:13/09/2021
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi