

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC" : DELHI  
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.2454/Del./2019  
Assessment Year 2010-2011

Mr. Karamvir Singh, C-222, Badarpur Village, Main Market, South Delhi, Delhi – 110 044. PAN AMPPS3117D	vs.	The Income Tax Officer, Ward – 32 (2), Room No.1108, 11 <sup>th</sup> Floor, E-2 Block, Civic Centre, Minto Road, New Delhi - 110002.
(Appellant)		(Respondent)

For Assessee :	Shri Ajay Wadhwa, Advocate.
For Revenue :	Shri R.K. Gupta, Sr. DR

Date of Hearing :	03.08.2021
Date of Pronouncement :	30.09.2021

**ORDER**

This appeal filed by the Assessee is directed against the Order dated 15.01.2019 of the Ld. CIT(A)-11, New Delhi, relating to the A.Y. 2010-2011.

2. The grounds raised by the assessee are as under :

- “1. That having regard to the facts and circumstances of the case Ld. CIT(A) has erred in not upholding the assessment order passed by A.O. as invalid.
2. That having regard to the facts and circumstances of the case Ld. CIT(A) has erred in giving a perverse finding that A.O. ward 32(2) has the jurisdiction over the matter when A.O. ward 28(5) has the valid jurisdiction over the matter.
3. That having regard to the facts and circumstances of the case Ld. CIT(A) has erred in giving a finding that notice u/s 148 was served on the appellant by AO ward 32(2), New Delhi.
4. That having regard to the facts and circumstances of the case Ld. CIT(A) has erred in not adjudicating the additional grounds of appeal raised by appellant before her vide application dated 10/01/2019.
5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in confirming the action of Ld. A.O. in treating the loan of Rs.30,00,000/- taken by the appellant as unexplained cash credit when the identity and creditworthiness of the lender was duly proved.

6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in adding sum of Rs.30,00,000/- in the assessable income of the appellant on purchase of car when source of investment in car was duly explained by the appellant.*
7. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not considering the loan confirmation of Mrs Bhagwati of advancing loan of Rs.30,00,000/- to the appellant.*
8. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in upholding the validity of assessment order passed by AO ward 32(2) when already assessment order for the same year has already been passed by A.O. ward 28(5) New Delhi.*
9. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law in enhancing the assessable income of the appellant by Rs 2,00,000/-.*
10. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law two assessments of appellant for the same year.*
11. *That the above grounds are mutually exclusive and are without prejudice to each other.*

12. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

3. Facts of the case, in brief, are that AIR Information was available with the Department in this case that the assessee had deposited cash of Rs.15,02,250/- in his savings bank account and purchased a Car amounting to Rs.28,00,000/- during the F.Y. 2009-2010 pertaining to A.Y. 2010-2011. Since the assessee had not filed his return of income for the A.Y. 2010-2011, the A.O. was of the opinion that the assessee had failed to disclose the source of amount paid for purchase of Car amounting to Rs.28,00,000/- and cash deposits of Rs.15,02,250/-. Since the above transactions remained unaccounted for in the hands of the assessee, the A.O. after recording reasons under section 147 of the I.T. Act, 1961 issued notice under section 148 dated 29.03.2017 asking the assessee to file return of income for the A.Y. 2010-2011 within 30 days of service of such notice. However, the same remained

uncomplined with. Subsequently, notices issued under section 142(1) were also remained uncomplined with. Since there was non-compliance from the side of the assessee, the A.O. completed the assessment under section 147/144 of the I.T. Act, 1961 determining the total income of the assessee at Rs.43,02,250/- by making addition of Rs.15,02,250/- under section 68 of the I.T. Act, 1961 being the unaccounted cash deposit and Rs.28 lakhs being the cost of motor car purchased.

4. Before the Ld. CIT(A), the assessee apart from challenging the additions on merit, challenged the validity of the re-assessment proceedings. It was submitted that assessee is an individual and engaged in the agricultural activities and, therefore, he did not file any return of income. The assessee had also received one notice under section 147/148 from the ITO, Ward-28(5), New Delhi at Shop No.5, Mohan Cooperative Industrial Area, Mathura Road, Badarpur, New Delhi vide PAN AMPPS3117D. It was argued that the A.O. after considering the submissions of the assessee passed the order accepting the returned

income of Rs.2,04,005/-. It was submitted that the assessee was not aware about the notices issued by the second A.O. i.e., ITO, Ward-32(2) as they were being sent to assessee's brother's address who did not pass-on the message relating to receipt of any notice because of bad relationship with his brother due to some family property dispute. It was argued that there cannot be two assessments by two different A.Os. for the same assessee for the same assessment year.

4.1. So far as the merits of the case is concerned, it was argued that the cash deposited in the bank account was out of sale proceeds of agricultural land which was purchased by the father of the assessee who expired before the sale of the said land. The assessee enclosed copies of Purchase/Sale of the said agricultural land.

4.2. So far as the addition of Rs.28 lakhs on account of purchase of motor car is concerned, it was submitted that an amount of Rs.30 lakhs was received by the assessee from Mrs. Bhagwati Devi as advance for purchase of some agricultural land for her, but, the deal could not be materialized and as per the understanding with Mrs.

Bhagwati Devi a car was purchased by the assessee for Rs.28,25,000/- and Rs.1,75,000/- was incurred on insurance, road tax and accessories for the motor car. The bank account of the assessee was filed to substantiate the source of money from Mrs. Bhagwati Devi along with copy of her bank statement, income tax return, copy of acknowledgment of return and computation of income.

4.3. However, the Ld. CIT(A) was not satisfied with the arguments advanced by the assessee. After obtaining a remand report from the A.O. and considering the rejoinder of the assessee to such remand report, the Ld. CIT(A) upheld the action of the A.O.

4.4. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

5. Learned Counsel for the Assessee strongly challenged the order of the Ld. CIT(A) in confirming the action of the A.O. in reopening of the assessment as well as the addition on merit. Referring to the copy of the reasons recorded by the ITO, Ward-28(5), copy of which is placed at

Page Nos. 6 and 7 of the PB Learned Counsel for the Assessee submitted that the case of the assessee was reopened precisely for the purpose of verification of cash deposit of Rs.15,02,250/- in the bank account. Referring to Page Nos.8 and 9 of the PB, Learned Counsel for the Assessee drew the attention of the Bench to the order passed under section 143(3) dated 04.12.2017 wherein the A.O. had completed the assessment accepting the returned income of Rs.2,04,005/- under section 147/143(3) of the I.T. Act, 1961. He submitted that there cannot be two separate assessment orders by two different A.Os. for the same assessee for the same assessment year. Relying on various decisions, he submitted that the action of the A.O. in assuming jurisdiction and making the assessment is incorrect and the Ld. CIT(A) is equally wrong in disregarding the fact that assessment has already taken place under sections 147/143(3) of the I.T. Act, 1961.

5.1. So far as the merits of the case is concerned, he submitted that assessee had already explained that deposit in the bank account is out of sale of agricultural land and

the source of purchase motor car is the amount received from Mrs. Bhagwati Devi towards some advance for sale of land which was utilised for purchase of the car. Assessee had already filed the bank statement and copy of the income tax return along with computation of Smt. Bhagwati Devi from whom the assessee has received the advance. He accordingly submitted that both legally and factually the order passed by the A.O. which is upheld by the Ld. CIT(A) is not sustainable.

6. The Ld. D.R. on the other hand relied on the orders of the A.O. and the Ld. CIT(A).

7. I have considered the rival arguments made by both the sides and perused the record. It is a peculiar case of reopening of the assessment on account of cash deposit of Rs.15,02,250/- in the bank account by two different Assessing Officers for the same assessee for the same assessment year. I find in the instant case, the case of the assessee was reopened by ITO, Ward-28(5), New Delhi on 30.03.2017 by recording the following reasons :

Annexure-A

<b>Name &amp; Address of the assessee:</b>	<b>Sh. Karamvir Singh,</b>
	<b>Shop No 5, Mohan Co-op Industrial</b>
	<b>Estate Mathura Road, New Delhi.</b>
PAN :	AMPPS3117D
A.Y. :	2010-11

**REASONS FOR REOPENING OF ASSESSMENT FOR A.Y. 2010-11**

In this case, AIR information is available with the department, wherein the assessee has made cash deposit of Rs. 15,02,250/- in bank account during the F.Y. 2009-10 pertaining to assessment year 2010-11.

2. On physical verification as well as from the ITD database it is gathered that no return has been filed by the assessee for A.Y. 2010-11. A letter was issued / sent to the assessee to furnish his/her response; however, no reply has been filed by the assessee in response of the said letter. This shows that the assessee has no explanation to offer the source of cash deposit.

3. In view of the above facts i.e. non filing of ITR return and non submission of any explanation by the assessee despite providing of adequate opportunity of being heard, the undersigned has reason to believe that the cash deposits made by the assessee are from unexplained sources and hence deemed to be a case where income chargeable to tax has escaped assessment as per the provisions stipulated in Explanation 2 (a) to Section 147 of the Act which is reproduced below-

*"(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;"*

4. It is also in accordance with the judicial principles laid down by the Hon'ble supreme court in the case of ACIT Vs Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) 291 ITR 500 (SC)(BCAJ) wherein issuance of notice u/s 148 has been validated under similar circumstances "As per our considered view, at the time of issue of notice. It is sufficient that prima-facie reasons and material should be with Assessing Officer that there is escapement of some income. At the time of issue of notice the Assessing Officer is not required to conclusively establish that there is escapement of income is sufficient for issue of notice u/s 148".

In present case, the undersigned has information as well as sufficient reason to believe that the income for A.Y. 2010-11 has escaped assessment as the assessee has not filed Income Tax Return, but deposited cash to the tune of Rs. 15,02,250/- in the bank account. Further, despite being given ample opportunity of being heard or file response, the assessee has failed to submit any written explanation with regard to the cash deposits.

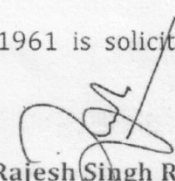
5. Furthermore, in the case of **Jyoti Goyal vs ITO** (ITA No. 1259/Del/2010), the **Hon'ble ITAT Delhi** held that:

*"As regards the other contentions of the assessee that the reopening was done in a mechanical manner without application of mind, we find there is nothing on record to support such a contention. There is a live link between the information which was available with the Assessing Officer and his formation of belief that income has escaped assessment. Sufficiency of such information cannot be gone into while deciding the issue of validity or reopening. The Assessing Officer can also not make enquiries as no proceedings were pending before him for the relevant assessment year. In the above view of the matter, we are in agreement with the finding of the Ld. CIT (A) that the reopening of assessment u/s 147 of the Act was valid."*


6. In view of the above case laws and the material available on record, it is evident that there is a "Live Link" between the material available on record and the escaped income, as mentioned in the above case laws.

7. Considering the factual matrix, statutory provisions and legal principles, the undersigned has reasons to believe that there has been an escapement of income to the tune of Rs. 15,02,250/- or more chargeable to tax for the A.Y. 2010-11 and hence it is a fit case for initiation of proceedings in terms of section 147 of the I.T. Act, 1961. In order to assess the above income or any other income which comes to notice subsequently in the course of proceedings u/s 147, issue of notice u/s 148 of the Income-tax Act, 1961 is necessary in this case.

8. Accordingly, necessary approval u/s 151 of the I.T. Act, 1961 is solicited for issuance of notice u/s 148 of the I.T. Act, 1961 for A.Y. 2010-11.

  
(Rajesh Singh Rawat)  
Income Tax Officer,  
Ward-28(5), New Delhi

7.1. I find the A.O. completed the assessment on 04.12.2017 accepting the returned income of Rs.2,04,005/- in the order passed under section 143(3) of the I.T. Act, 1961 which is reproduced as under :

  
 सत्यमेव जयते

INCOME TAX DEPARTMENT	
1	Name of the Assessee : Sh. Karamvir Singh S/o Shri Suraj Bhan
2	Address : House No. 644, Baans Mohalla, Village Ghitorni, New Delhi-110030
3	P.A.N : AMPPS3117D
4	Ward/Circle/Range : Ward-28(5) , New Delhi
5	Status : Individual
6	Assessment Year : 2010-11
7	Whether resident/Resident but not ordinarily resident/Non-resident : Resident
8	Date of order : 4-12-17
9	Section and sub-section under which the assessment is made : U/s. 143(3) of the Income-tax Act, 1961.

**ASSESSMENT ORDER**

In this case an information was received through AIR information that during the F.Y. 2009-10 the assessee has deposited cash of Rs. 15,02,250/- in his bank account maintained with the Delhi State Co-operative Bank Limited. From the verification of office record it was found that ITR for the AY 2010-11 was not filed by the assessee. The assessee, vide this office letter 10.03.2017 was asked to explain the source of cash deposit. The assessee has not complied with the said letter. Since the ITR was not filed by the assessee and the transaction of cash deposit was also not verifiable it was brought out by the AO that the said amount of Rs. 15,02,250/- was income of the assessee which has escaped assessment. The statutory notice u/s 148 was accordingly issued on 30.03.2017 after recording the reasons and obtaining prior necessary approval of the Competent Authority and sent through the speed post on the last known address of the assessee. The assessee has not complied with the statutory notices issued on 05.09.2017 and 19.09.2017 although as per Speed Post Tracking System the same were received by him

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2. During the course of assessment proceedings, notice u/s 133(6) of the Act was issued to the Bank for providing statements of all the bank accounts held by the assessee with the Bank alongwith the copy of KYC documents. The bank, in compliance to the notice vide letter dated 16.06.2017 has intimated that the assessee is maintaining one SB A/c bearing No. 007005004499 with its Badarpur Branch and provided copy of account statement along with copy of KYC documents. The bank account statement provided by the bank has been carefully perused. As per the said statement the assessee has deposited cash of Rs. 15,02,250/- in his bank account on various dates during the FY 2009-10 relevant to the AY 2010-11.

3. However, the assessee in response to the notice issued u/s 148 of the Act has filed his ITR for the AY 2010-11 on 13.11.2017 at a total income of Rs. 2,04,005/-. The assessee has authorized Shri Vinod Mittal CA to represent his case. The assessee has submitted that the said cash deposit of Rs. 15,02,250/- was sale consideration of his Agricultural Land situated at Village Sehatpur, Faridabad. The assessee has also submitted that he has further purchased agricultural land for the same amount situated at Village Agwanpur, Faridabad. The assessee has provided relevant sale and purchase deed. The documents provided by the assessee has been perused and found to be in order.

4. With these remarks and after discussion with the AR, the returned income of Rs. 2,04,005/- is accepted u/s 147/143(3) of the Act. The penalty proceedings u/s 271(1)(c) of the for concealment of income is hereby initiated separately. The credits of prepaid taxes are allowed. Necessary forms in the context are issued.

(Laxmikant Tulsian)  
Income Tax Officer,  
Ward-28(5),  
New Delhi

Copy to the assessee:-

L. Tulsian  
Income Tax Officer,  
Ward-28(5),  
New Delhi

DCR No 74  
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7.2. It is pertinent to mention here that the name of the assessee with PAN AMPPS3117D is same in the first 143(3)/147 order and the second 147/144 order. I am, therefore, unable to understand when the above fact was

brought to the notice of the Ld. CIT(A), how she could ignore the same. For the sake of convenience, the submissions of the assessee before the Ld. CIT(A) which has been reproduced by her in Pages 2 and 3 of the impugned appellate order reads as under :

*“Background*

1. *That the appellant is an individual engaged in the agricultural activities, therefore he did not file any return for any year.*
  
2. *The Appellant had already received one notice u/s 147/ 148 from ward 28(5), New Delhi at Shop No 5 , Mohan Co-operative Industrial Estate, Mathura Road New Delhi (Present address of the appellant) for same A.Y. and for same issue. The Appellant duly complied with all the notices received from A.O. Ward 28(5), New Delhi through his authorized signatory and after due verification of all the documents, the Assessment order was passed*

*vide order dated 04.12.2017 by the ITO Ward 28(5) New Delhi.*

3. *The Appellant was not aware about the notices sent by the second Assessing officer i.e., impugned ITO ward 32(2) as they were being sent to the brother's address who did not pass the message relating to receipt of any notice as the appellant did not had any good terms with the brother due to family property dispute. The appellant has not been residing at that address and had shifted in 2009 to Faridabad & later on to Mohan Co-operative Industrial Estate, Mathura Road, New Delhi. Hence, the assessee wishes to submit that he has not received any opportunity of being heard.*
  
4. *Nevertheless, how is it possible to have two assessments of same assessment year. Since the appellant has already been assessed once on same matter for same AY by ward 28(5), how another notice for assessment or another 148*

*assessment for same Assessment year by different officer can hold justice. Hence, the second notice and assessment by ward 32(2) should be treated as null and void.*

5. *Further, the appellant is in possession of all documents related to cash deposited of Rs.15,02,250 and purchase of Car for Rs.28,00,000 and there is no mala fide intention of evade taxes.”*

7.3. Therefore, once the A.O. has already made an assessment in the order under section 147/143(3) in the case of the assessee for the same assessment year for the reason that assessee has made cash deposit of Rs.15,02,250/- in his bank account, therefore, in my opinion it is not permissible by another A.O. to reopen the assessment on the very same issue and pass the order under section 147/144 of the I.T. Act, 1961. When the PAN was available with the Department and an order had already been passed under section 147/143(3) for the same assessment year for the same reason, therefore, the second

order passed by the A.O. dated 07.12.2017 in my opinion does not stand in the eyes of Law unless and until the first order is withdrawn. In this view of the matter, I am of the considered opinion that the second order passed by the ITO, Ward-32(2) in the instant case does not survive since there cannot be two different assessment orders for the same assessee for the same assessment year with the same PAN by two different A.Os. The grounds raised by the assessee are accordingly allowed.

8. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court on 30.09.2021.

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

Delhi, Dated 30<sup>th</sup> September, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.