

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

Before Sh. Amit Shukla, Judicial Member

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

ITA No. 5748/Del/2018 : Asstt. Year : 2008-09

S. N. Arora/Sapra, H-1481, 1 st Floor, C.R. Park, New Delhi-110019	Vs	Income Tax Officer, Ward-23(2), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. ARQPS5550E		

Assessee by : Sh. R. S. Singhvi, CA

Revenue by : Sh. Ratan Singh, Sr. DR

Date of Hearing: 21.10.2021

Date of Pronouncement: 27.10.2021

ORDER

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

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-31, New Delhi dated 31.07.2018.

2. Following grounds have been raised by the assessee:

"1(i). That on the facts and circumstances of the case and under the law, the Assessing Officer has wrongly assumed jurisdiction u/s. 148 without proper appreciation of facts, recording of satisfaction and requisite approval in terms of provisions of sec. 151 of the Act.

(ii) That there is no case of any income escaping assessment and whole basis of reassessment is illegal and without jurisdiction.

2(i) That on the facts and circumstances of the case, the CIT(A) was not justified in confirming addition of

Rs. 56 lakhs as unexplained investment in terms of provisions of sec. 69 of I.T. Act, 1961.

(ii) That there is no case of any unexplained investment and finding and conclusion of the CIT(A) is without proper appreciation of facts, application of mind and opportunity to the appellant.

(iii) That addition of Rs. 56 lakhs is highly arbitrary and unjustified.

3(i) That CIT(A) is also not justified in confirming addition of Rs. 55,03,285/- as unexplained cash deposit in terms of provisions of sec. 68 of the I.T. Act, 1961.

(ii) That there is no factual or legal basis for alleged cash deposit of Rs. 55,03,285/- and Assessing Officer has considered the same in arbitrary manner without any reference to bank account or any other material."

3. The reasons recorded for reopening u/s 148 are as under:

"Reasons recorded for initiating proceedings u/s. 148 of the IT Act, 1961 in the case of Sh. S N Arora/Sapra (AROPS5550E, ASEPS5018G) for the A.Y. 2008-09 {Paper Book page no. 31]

The Addl. Director Income Tax (inv.), Unit-V, New Delhi vide his letter F.No.Addl. DIT(Inv.)/U-V/2011-12/251, dated 16.03.2012 had sent a report in the case of Sh. S N Arora / Sapra.

As per the investigations made, the assessee had deposited unaccounted cash in his Bank account and also made large investment in assets. The details are as follows:-

<i>1. Unexplained cash deposit:</i>	
<i>A.Y. 2008-09</i>	<i>Rs. 55,03,285/-</i>
<i>2. Unexplained investments:</i>	
<i>Total</i>	<i>Rs. 56,00,000/-</i>
	<i>Rs. 1,11,03,285/-</i>

As per the above facts, the unexplained cash deposits and unexplained investments are liable to tax u/s. 68 & 69 of the Income Tax Act, 1961. The income has escaped assessment in the case of Sh. S N Arora/Sapra for A.Y. 2008-09 to the extent of Rs. 1,1,03,285/-, as per the provisions of the Income Tax Act, 1961.

In view of the above mentioned facts, I have reason to belief that income to the tune of Rs. 1,11,03,285/- has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961. Accordingly, necessary permission/approval under section 151(2) of the Income Tax Act, 1961 may kindly be accorded for issuance of notice u/s. 148 of the Income Tax Act, 1961 for A.Y. 2008-09.

Annexure – C {Paper Book Page No. 32}

Note: The Assessing Officer is requested to go through the bank statement and other documents forwarded herewith to arrive at the income escaping assessment before issuing notice u/s 148."

4. The first issue pertains to deposit of cash in the bank. The Assessing Officer reopened the case holding that the assessee had cash deposits to the tune of Rs.55,03,285/-. On going through the bank account mentioned by the Assessing Officer it is undisputedly proved that there were no such cash deposits as alleged by the Revenue in the reasons recorded for reopening.

5. We have gone through the bank statement and submissions and find that the reasons recorded by the Assessing Officer while reopening the case have been grossly erroneous as at the first instance there were no such cash deposits of Rs.55,03,285/- in the bank account. Further, an amount of Rs. 37,96,000/- has been deposited through cheques which pertain to regular course of business of the assessee. Hence, in view of the erroneous reasons recorded on account of unexplained cash deposits by the Assessing Officer, the addition made on this account cannot be upheld.

6. The second issue pertains to receipt of Rs.56,00,000/- **received by the assessee vide agreement dated 10.04.2007 with one Sh. Nilamber Rudrapal for property No. 1481, C.R. Park, New Delhi.** This same transaction has been treated as unexplained investment in the A.Y. 2006-07 based on the

collaboration agreement entered in the A.Y. 2006-07. The payments made on various dates amounting to Rs.46,00,000/- has been assessed in the A.Y. 2006-07 and no fresh payment has been made in the instant year. The said Assessment **Order is as under:**

"Return declaring taxable income of Rs 292643/- was manually filed on 04.01.2007. This was assessed u/s 143(1) of I.T Act. The case was re-opened u/s 148 of I.T. Act on the basis of information received from Addl. Director Income Tax(Inv.), Unit-V, New Delhi vide his letter F.No.Addl.DIT(Inv.)/U-V/2011-12/251 and after obtaining necessary approval from Addl. CIT Range-23, New Delhi. Accordingly, notice u/s 148 of I.T was issued on 26.03.2013. Subsequent notice u/s 143(2) of I.T Act was issued on 28.01.2014 fixing the case for hearing on 30.01.2014. Further notice u/s 142(1) of I.T Act along with questionnaire was issued on 19.02.2014 fixing the case for 25.02.2014. In compliance to these notices Shri S.N. Arora/Sapra and Shri Vinod Bansal, CA/A.R's of assessee attended the scrutiny proceeding on 28.01.2014, 10.02.2014 and 24.02.2014 and furnished part details as called for which were examined and placed on record. Shri Avinash Kumar Alok, C.A filed his power of attorney on 11.03.2014 and filed copy of an FIR stating that the relevant documents have been stolen and he need further time to submit the same. As regards to entries in pass book he expressed his inability to explain anything. The change of A.R at this stage is nothing but a delaying tactic adopted by the assessee.

2. *During the year under consideration, the assessee claimed to have derived income from business and profession only.*

3. *As per the information received from Addl. Director Income Tax(Inv.), Unit.-V New Delhi vide his letter F.No.Addl.DIT(Inv.)/U-V/2011-12/251 dated 16-03-2012 that the assessee had deposited*

unaccounted cash in his bank account amounting to Rs. 28270090/- during the financial year 2005-06 and had made investments amounting to Rs.9400000/- from unexplained sources, the case was reopened u/s 148 of the I.T. Act 1961 and notice u/s 148 of the I.T. Act, 1961 was issued to the assessee on 26.03.2013. In response to which vide order sheet entry dated 28-01-2014, it has been informed by the AR of the assessee that the originally filed return may be treated as return filed in response to notice u/s 148 of the I.T. Act, 1961.

A notice u/s 143(2) of the I.T. Act, 1961 was issued fixing the case for hearing on 30-01-2014. Shri Vinod Bansal, CA and AR of the assessee attended on 10-02-14 and filed incomplete details. A questionnaire alongwith notice u/s 142(1) of the I.T. Act was issued to assessee on 19-02-2014 fixing the case for hearing on 25-02-2014 but the same also remained un-complied with. Since the case was getting barred by limitation, a final show cause notice was issued on 06.03.2014 making it very clear that if no reply is received from his side on or before 11.03.2014 the case will be decided on the basis of information available on records. The assessee, however failed to avail the final opportunity given to him since the new AR appointed by him asked for further time in view of his taking the case recently, as a result of which his income has been computed on the basis of information available on records.

On the basis of the copies of the pass books placed on record and information received from investigation wing there is cash deposits of Rs.28270090/- for which no explanation has been provided by the assessee. As such an amount of Rs. 28270090/- is added to the income of the assessee u/s 68 of the I.T. Act, 1961. Penalty proceeding u/s 271(1)(c) of I.T Act for concealment of income of filing inaccurate particulars of such income within the meaning of

explanation 1 to sub-section 1 of section 271 (1)(c) of I.T Act is initiated in this case.

4. *It is also pertinent to mention that the source of the following investments amounting to Rs.9400000/- made by the assessee during the relevant period have remained unexplained, as such the same is also added back to the income of the assessee u/s 69 of the Income Tax Act, 1961.*

S.No.	Description of Investment	Amount
1.	<i>Agreement dated 08.06.2005 with Shri Gurdev Singh for property No. 493, E-Block, Greater Kailash-II, New Delhi</i>	<i>Rs 4800000/-</i>
2.	<i>Agreement dated 13.09.2005 with Shri Nilamber Rudrapal for property No. 1481, C.R. Park, New Delhi</i>	<i>Rs.4600000/-</i>
	Total	Rs.9400000

Penalty proceeding u/s 271(1)(c) of I.T Act for concealment of income of filing inaccurate particulars of such income within the meaning of explanation 1 to sub-section 1 of section 271(1)(c) of I.T Act is initiated in this case.

5. *In the light of the above, his taxable income is recomputed as under:*

	<i>Income returned as per ITR</i>	<i>Rs.292643/-</i>
<i>Add:</i>	<i>Unexplained cash credit u/s 68 as discussed In para 3 above</i>	<i>Rs.28270090/-</i>
<i>1.</i>		
<i>2.</i>	<i>Unexplained investment u/s 69 as discussed in Para 4 above</i>	<i>Rs.9400000/-</i>
	<i>Total taxable income</i>	<i>Rs.37962733</i>
	<i>Rounded off u/s 288A</i>	<i>Rs.37962730</i>

7. We have perused the Assessment Order dated 19.03.2014 wherein the property has been taken as unexplained investment u/s 69 to the tune of Rs.56,00,000/-. Since, the amount stands

assessed in the hands of the assessee for the A.Y. 2006-07, the property involved is the same and there was no evidence of payment of Rs.10,00,000/- by the assessee, we hold that no further addition is required to be made in the instant assessment year. In view of these facts, the order of the Id. CIT(A) cannot be sustained.

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

Order Pronounced in the Open Court on 27/10/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 27/10/2021

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

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

ASSISTANT REGISTRAR