

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.4763/Del/2018
Assessment Year: 2010-11

Umesh,
C/o P. Singh & Co.,
A-107/108, Meerut Mall,
Delhi Road,
Meerut.

Vs. ITO,
Ward-2(4),
Meerut.

PAN: ABVPU9243M

(Appellant)

(Respondent)

Assessee by	:	Shri Satish Aggarwal, CA
Revenue by	:	Shri Om Parkash, Sr. DR
Date of Hearing	:	02.02.2022
Date of Pronouncement	:	18.02.2022

ORDER

This appeal filed by the assessee is directed against the order dated 3rd May, 2018 of the CIT(A), Meerut, relating to Assessment Year 2010-11.

2. This appeal was earlier dismissed by the Tribunal for non-appearance. Subsequently, the Tribunal, vide MA No.574/Del/2019, order dated 19th August, 2021, recalled its earlier order. Hence, this is a recalled matter.

3. Facts of the case, in brief, are that the assessee is an individual and has not filed the return of income. In this case, information was obtained by the AO that

the assessee has deposited cash of Rs.27 lakhs in Oriental Bank of Commerce, Meerut. He, therefore, after recording the reasons, reopened the case u/s 147 of the Act and issued notice u/s 148 of the Act. During the course of assessment, the AO asked the assessee to explain the source of deposit of cash of Rs.27 lakhs in the said bank account. After considering the various submissions made by the assessee, the AO accepted an amount of Rs.16,46,338/- as explained and made an addition of Rs.10,53,662/- to the total income of the assessee.

4. Before the CIT(A), the assessee challenged the validity of the reassessment proceedings as well as the addition on merit. However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee and dismissed the appeal. So far as the grounds challenging the validity of the reassessment is concerned, he dismissed the same by observing as under:-

“3. Decision and Reasons:

I have perused the facts of the case, considered the assessment order and submissions of the Id. AR.

The first, ground challenges the validity of proceedings of the proceedings u/s 147/148 of the IT Act, 1961. The Id. AR has argued alongwith case laws that proceedings have been started in 'suspicious' and there was no reason to believe.

The facts as they exist in ground show that AO on receipt of information issued a query letter to the assessee fact which is admitted by the assessee. It is also admitted that no reply was furnished in response to the query letter. It is pertinent to note that from the assessment record it becomes clear that query letter dt.29.12.2016 issued by the AO clearly mentioned last opportunity, which implies that there were other query letters issued by the AO for verification of the impugned transactions to which the appellant did not respond.

It is further noticed from the perusal of assessment record that the AO has done further due diligence , in so far, that he has labored to call for the bank statements of the assessee for which he had received information.

It is a matter of record that vide letter dt.12.01.2017, i.e. prior to issuance of notice u/s 148 of the IT Act, 1961. The AO has obtained the KYC form and copy of the Bank Statement on 18.01.2017 which he has considered before the issuance of Notice u/s 148 after taking statutory Approval on 09.03.2017.

Thus, the Ld. AR's contention that the AO had no material before him is a totally misplaced argument.

The facts on record clearly prove that AO travelled beyond mere information and gathered material before issuance of Notice u/s 148 and the material was sufficient for belief formation u/s 147 of the IT Act, 1961. Thus there truly existed 'reason to believe' before issue of notice u/s 148 of the IT Act, 1961.

Accordingly this ground of Appeal is hereby dismissed.”

4.1 Similarly, he also dismissed the ground challenging the addition on merit by observing as under:-

“On merits the Ld. AR has produced the same evidence and reproduced the same arguments given before the AO.

I therefore see no reason to interfere in the findings of the AO, as he had information regarding deposit of Rs. 27,00,000/- and after considering the evidence, he has added only the peak amount of Rs.10,53,662/-. He has therefore accounted for the nature of transactions in the Bank A/c which are evidenced by frequent deposit and withdrawal. Thus there is no reason to interfere in the findings of the AO.”

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

“1. That notice u/s 148 has not been served upon the assessee hence assessment proceedings are illegal and void-ab initio.

2. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in not quashing the reopening action of Ld AO whereas apparent from page 2 of impugned assessment order, it is glaring

that reopening is made on mere cash deposits which is not "tangible material" providing 'live nexus' with income escapement on just borrowed satisfaction without independent application of mind. (Covered by Delhi ITAT bench order in case of Bir Bahadur Singh sijwali case ITA no 3814/DEL/2011 dated 20.1.2015);

3. That addition of Rs.1053667/- on a/c of peak credit is totally unjustified and unwarranted on the fact & circumstances of case.

4. That proper opportunity of hearing was not allowed hence assessment proceedings are against the principle of natural justice hence deserve to be quashed.

5. That assessment has been made u/s 148/143(3) whereas the assessment order has been made ex parte hence assessment order was to be framed u/s 144. Hence assessment order is Null & void.

6. That assessee craves the leave to add ,delete, modify or amend any of ground or grounds of appeal before the hearing or at the time of hearing.”

6. The assessee has also raised an additional ground. However, since the Id. Counsel for the assessee did not press the additional ground, I am not deciding the same and the additional ground is dismissed as ‘not pressed.’ Similarly, the Id. Counsel did not press the grounds challenging the validity of the reassessment. Therefore, these grounds are dismissed.

7. So far as the grounds challenging the addition on merit is concerned, the Id. Counsel submitted that the assessee is trading in milk and was not required to maintain books of account and had filed return of income declaring receipt of Rs.28,50,000/- from sale of milk u/s 44AF of the Act. He submitted that the provisions of section 44AF were subsumed in section 44AD w.e.f. 01.04.2011 i.e., from AY 2011-12. He submitted that the assessee is trading in milk is

established on record. The copies of assessment order passed subsequent to two assessment years, i.e., AYs 2011-12 and 2012-13 are placed on paper book pages 14-17 where the AO has himself assessed the income u/s 147/143(3) of the Act. He submitted that after going through the assessment orders for the AYs 2011-12 and 2012-13, the AO reopened the case of the assessee for the impugned assessment year due to the cash deposit in the bank account. Since the cash deposit was held to be explained as the turnover of the assessee in the preceding two assessment years, therefore, he has no objection if the matter is restored to the file of the AO for adjudication of the issue afresh. He submitted that in the assessment years 2013-14, 2014-15 and 2015-16 also the AO has accepted the return filed u/s 44AD of the IT Act. Relying on various decisions, he submitted that the addition made by the AO and sustained by the CIT(A) is not justified. He, however, submitted that he has no objection if the matter is restored to the file of the AO for adjudication of the issue afresh in the light of the orders passed for the preceding and subsequent years.

8. The ld. DR, on the other hand, while supporting the orders of the AO and the CIT(A) submitted that he has no objection if the matter is restored to the file of the AO for adjudication of the issue afresh.

9. I have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find, the AO, in the

instant case, reopened the case of the assessee u/s 147 of the Act on the ground that the assessee has deposited cash of Rs.27 lakhs in the bank account maintained by the assessee with Oriental Bank of Commerce. Since the assessee during the course of assessment proceedings could not substantiate the source of cash deposit in the said bank account, the AO, after accepting an amount of Rs.16,46,338/- as explained, made an addition of Rs.10,53,662/- to the total income of the assessee. I find, the Id.CIT(A) sustained the addition, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Id. Counsel for the assessee that the assessee is a trader in milk and his returns for AYs 2011-12 and 2012-13 were accepted by the AO in the orders passed u/s 147/143 (3) wherein the AO has accepted the provisions of section 44AD in the case of the assessee. It is also his submission that in the AYs 2013-14 to 2015-16, the returns were filed by applying the provisions of section 44AD and the AO has accepted the same without disturbing the return. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the AO with a direction to adjudicate the issue afresh in the light of the orders passed by him for AYs 2011-12 and 2012-13 wherein the AO has completed the assessment u/s 147/143(3) of the Act. He shall also keep in mind the return filed by the assessee in the subsequent years which have been accepted by the AO. Needless to say, the AO shall decide the issue as per fact and law after giving due opportunity of being

heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee are allowed for statistical purpose.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 18.02.2022.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 18th February, 2022

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi