

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "SMC": NEW DELHI]**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER AS S.M.C.
(Through Video Conferencing)**

ITA. No. 9125/Del/2019
(Assessment Year : 2011-12)

Shri Amrik Singh, C/o. M. K. Bhatt & Co., C.As., 302 – Triveni Complex, E-10/12, Jawahar Park, Laxmi Nagar, Delhi – 110 092. PAN: AZHPS2134D (Appellant)	Vs.	Income Tax Officer, Ward : 34 (1), New Delhi. (Respondent)
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Assessee by :	N o n e;
Department by :	Shri Sanjiv Mahajan, Sr. D.R.;
Date of Hearing :	25/01/2022
Date of pronouncement :	25/02/2022

ORDER

01. This appeal by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-23, New Delhi [hereinafter referred to as CIT (Appeals)] pertaining to the assessment year 2011-12.
02. The assessee has raised the following grounds of appeal:-

“1. The learned CIT (Appeal) has erred in law and on the facts, while confirming the order of the assessment passed under section 147/143(3) of the Act, without appreciating the following grounds raised by the appellant:

- a. That basis of reasons recorded under section 148 is AIR (Annually Information Return) information deposit of cash Rs. 35,18,155/- in his savings bank account and received Rs. 1,30,748/- from M/s Cadila health care Limited over which the tax was deducted at sources amounting to Rs. 2,948/- during the previous year relevant

to the assessment year 2011-12, as income from unexplained sources coupled with the fact that no response was given by assessee to query put.

- b. That mere AIR is made as the basis in the reasons without describing the contents of the information, when was the same received, bank account details, and most importantly the copy of the bank account which is made as basis of reopening was never gone through by the AO while recording the purported reasons to believe. Without going to the contents of the entries in the bank account concerned merely deposits cannot be treated as income escaping assessment within the meaning of section 147/148 of the income tax act, 1961.
- c. That reasons recorded in present case at best can be treated to be reason to suspect which is not sufficient for reopening the case under section 148 of the income tax act, 1961. While recording the reasons to believe merely relying upon financial information cannot be treated as good enough to reopen the case. There can be number of sources of cash deposits by the assessee in the bank account.

Unless and until it is brought out in the reasons to believe as to how the cash deposits represent income from undisclosed sources same cannot give justification to reopen the case under section 147/148 of income tax act. The requirement of application of mind is missing in the present case on the face of it in the reasons recorded. It is cardinal principle of taxation that all receipts are not income and all income are not taxable income applies squarely to present facts.

- d. That initial version of the AO while recording the reason "On physical verification as well as from the ITD data base, it is gathered that no return has been filed by the assessee for the assessment year 2011-12." is absolutely wrong and action has been taken merely on suspicion without any verification as the return was original filed on dated 29.3.2013.
- e. That at the time of recording the reasons, the contents mentioned therein pertains to the period more than four (4) years, thus AO is duty bound to record the escapement of income more than Rs. 1,00,000/-.
- f. That while communicating the reasons for reopening the assessment, the copy of the standard form should be used by the AO for obtaining the approval of the Superior Officer, and should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the AO to the

Assessee that's too without having any date and approval from the higher authority as required under section 151 of the act makes the reopening of the assessment bad in law.

- g. That where the reasons make a reference to another document, whether as a letter or report, such document and/ or relevant portions of such report should be enclosed along with the reasons.
- h. That the order of assessment by making an addition in the income amounting to Rs. 35,18,155/- without mentioning the specific section, under which the additions has been made and drawn the hypothetical presumption by treat the appellant as dishonest, which is not curable under section 292B as the same pertains to the return of income etc. not to be invalid on certain grounds.
- i. That the appellant was not made available the copy of the any inquiry conducted under the act with in conformity of the reasons so recorded. Thus the principle of natural justice has been violated.

2. The learned CIT (Appeal) has erred in law and on the facts, while confirming the order of the assessment passed under section 147/143(3) of the act, without appreciating the following vital facts already submitted by the appellant during the course of the assessment and appeal:

a. The appellant is in the part time business of supply of various injections and medicines as per the demand from the doctors and hospital accordingly income under the head Business and Profession has been computed on the presumptive basis on the turnover of Rs. 31,18,155/-, amounting to Rs. 2,49,452/- equal to 8%.

b. On the same facts and circumstances, the assessment for the assessment year 2011-12 (Immediately preceeding previous year) was opened under section 147, by recording the same reasons, and AO accepted the return of the appellant without making any additions. “

03. At the time of hearing no one appeared on behalf of the assessee. Notices issued on the address furnished in Form No. 36 are returned back by the Postal Authorities giving remark “Left”. The assessee has not provided any other address to the Registry. Therefore, the appeal

was taken up for hearing in the absence of the assessee and being disposed of on the basis of the material available on record.

04. Ground Nos. 1 (a) to (i) are being illegally re-opening of the assessment. The facts giving rise to these grounds are that the Assessing Officer had an information that the assessee has deposited cash in his bank account. Therefore, the case of the assessee was re-opened under Section 147 of the Income Tax Act, 1961 (hereinafter referred to as the Act). Statutory notices under Section 148 of the Act was issued and during the course of proceedings the Assessing Officer issued a notice under Section 271(1)(b) of the Act calling upon the assessee as to why penalty should not be levied for non-attending the proceedings. However, the assessee attended the proceedings before the authorities below on 12.12.2018 and submitted Income Tax Return for assessment year 2011-12. The assessee was asked to furnish statement of bank account where the money has been transferred from the bank account of the assessee. However, this information was not furnished and further the assessee did not attend the proceedings. Therefore, the Assessing Officer treated the amount deposited in the bank account as income from undisclosed sources. Further the Assessing Officer disallowed the claim of assessee regarding the business income under Section 44AD of the act amounting to Rs.2,49,452/-. Hence, the Assessing Officer computed the taxable income at Rs.37,55,543/- against the income declared at Rs.4,86,840/-. Aggrieved the assessee preferred appeal before the ld. CIT (Appeals). Before the ld. CIT (Appeals) there was no representation on behalf of the assessee despite various opportunities, hence the ld. CIT (Appeals) confirmed the addition and action of the Assessing Officer regarding re-opening of the assessment.

05. Aggrieved against this the assessee is in appeal before the Tribunal. Statement of facts stated that the notice under Section 142(1) of the Act were issued on 19.07.2018, 31.08.2018, 28.09.2018, 28.10.2018 and 12.11.2018, but the notices were not received by the assessee. It is stated by the assessee that Assessing Officer has not mentioned under what Section of the Act the income was computed. Further it is contended in the grounds of appeal that mere information cannot be the basis of re-opening of an assessment. It is further contended that unless it was brought out in the reasons to believe as to how an income deposited by the assessee cannot be the justification for re-opening the case under Section 147/148 of the Act.
06. The ld. DR opposed the submissions and supported the orders of the authorities below. He contended that assessee has not given any justification regarding deposit of amount in the bank account. Even the amount was not disclosed in the return of income. Therefore, the Assessing Officer was justified in re-opening the assessment.
07. I have heard the ld. DR and perused the material available on record. I do not find any reason to interfere in the order of the Assessing Officer regarding re-opening of the assessment. It was incumbent upon the assessee to disclose the source of deposit of the amount in the bank account. Therefore, the grounds raised are de void of any merit. Ground Nos. 1 (a) to (i) are dismissed.
08. Regarding Ground No. 2(a) and (b) on the merits, I find that before the lower authorities, there was no representation by the assessee. No material was placed before him to substantiate its claim. Furthermore before the Assessing Officer no evidence was furnished in support of the amount deposited in the bank account. On all these facts the

authorities below were justified in making the addition, hence the same are dismissed.

09. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on : 25/02/2022.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

Dated : 25/02/2022.

MEHTA

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	17.02.2022
Date on which the typed draft is placed before the dictating member	17/23.2.022
Date on which the typed draft is placed before the other member	25.02.2022
Date on which the approved draft comes to the Sr. PS/ PS	25.02.2022
Date on which the fair order is placed before the dictating member for pronouncement	25.02.2022

Date on which the fair order comes back to the Sr. PS/ PS	25.02.2022
Date on which the final order is uploaded on the website of ITAT	25.02.2022
Date on which the file goes to the Bench Clerk	25.02.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	