

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
(Through Video Conferencing)

आ.अ.सं./I.T.A No.2772/Del/2018
निर्धारणवर्ष/Assessment Year: 2011-12

Shri Vikas Paruthi, Akhilesh Kumar, Advocate, Chamber No. 206 - 207, Ansal Satyam, RDC Raj Nagar, Ghaziabad.	बनाम Vs.	Income Tax Officer, Ward : 2 (1), Ghaziabad.
PAN No. AMGPP9379M		
अपीलार्थी /Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by :	Shri Akhilesh Kumar, Adv.; & Shri Pushkar Pandey, Advocate.
राजस्वकीओरसे /Revenue by :	Shri Mrinal Kumar Das, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	20/01/2022
उद्घोषणाकीतारीख/Pronouncement on :	31/03/2022

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the order of the ld. Commissioner of Income Tax (Appeals), Ghaziabad [hereinafter referred to CIT (Appeals)] dated 28.02.2018 for assessment year 2011-12.

2. The assessee, Shri Vikas Paruthi, Prop. M/s. Madhuban Vikas, has raised the following grounds:-

“1. Because, notice u/s 148 is void, being issued without any proper ‘reason to believe’ in the absence of any satisfaction/application of mind in as much as very basis is wrong/ non-existent and the same is sheerly to conduct roving enquiries, hence is beyond jurisdiction in view of ration of cases reported in **395ITR 255(Del)**. **383ITR 361 (DEL) etc.**

2. Because, without prejudice to above and only in alternative, in any case as ‘reason’ became non-existent and Ld. AO has made no addition of the investment of Rs. 45.40 which was the sole reason for issuance of notice u/s 148, hence subsequent proceedings/other additions are illegal in view of ration of Oriental bank of commerce - **49 taxmann.com 485 etc.**

3. Because, without prejudice to above and only in alternative, ld. CIT(A) grossly erred in not adjudicating the additional grounds, being the jurisdictional grounds challenging the validity of notice u/s 148, in as much as said grounds are not even considered, hence non-adjudicating legal grounds are illegal in view of **NTPC V CIT 229 ITR 383(SC)**.

4. Because, ld. CIT(A) further erred in not accepting the additional evidences duly filed with a wrong finding that there is no reason at all for non-filing of evidences before AO even after accepting that evidences are vital for case while AO himself had held in penalty proceedings that assessee was prevented with sufficient cause for non-appearance on last day of hearing.

5. Because, without prejudice to above and only as an alternative on merits, Ld. C1T(A) grossly erred in sustaining following addition, being against the material on record, without any enquiry in case of doubt on any issue and against the settled law:

a) Disallowance of intt. On housing loan	1,50,000/-
b) Investment in stamp duty/Regn charges etc.	3,28,000/-
c) Creditors outstanding balance	20,43,973/-
d) Outstanding bal. of bank loan	3,63,478/-
e) Credits of customers advances	9,30,316/-
f) Claim u/s 54	19,12,289/-

Therefore, in terms of above grounds, it is hereby respectfully prayed that the notice u/s 148 may kindly be declared void and

consequent order quashed. Without prejudice to above but only in alternative, it is hereby alternatively prayed that the additions of Rs. 57,28,060/- made may kindly be quashed in TOTO.”

3. The ld. Counsel for the assessee, at the outset, submits that assessee raised additional grounds of appeal before the ld. CIT (Appeals) questioning the jurisdiction and the validity of notice issued under Section 148 of the Income Tax Act, 1961 (the Act) and the ld. CIT (Appeals) did not adjudicate legal grounds raised by the assessee. The ld. Counsel for the assessee also submits that the additional evidences furnished by the assessee were not admitted by the ld. CIT (Appeals) and decided the grounds raised by the assessee on merits. The ld. Counsel for the assessee submits that there is no reason to believe income had escaped assessment and the reason for which the assessment was re-opened was not the addition made by the Assessing Officer in the assessment order making the re-assessment bad in law. Reliance was placed on the decision of the Hon’ble Delhi High Court in the case of Oriental Bank of Commerce and the decision of the Hon’ble Bombay High Court in the case of Jet Airlines.

4. Heard rival contentions and perused the orders of the authorities below. On perusal of the record placed before us by the assessee, we notice that assessee has raised the following additional grounds before the ld. CIT (Appeals):-

“1 (A) That the ld. AO failed to seek approval in terms of u/s 151(1) of the Act hence, the very issuance of notice u/s 148 of the Act is beyond the jurisdiction and all the proceedings are void ab initio.”

“1 (B) That the ld. AO had no “reason to believe” for the issuance of the notice u/s 148 and hence, the same is beyond jurisdiction and all the proceedings are void ab initio.”

“1 (C) That the ld. AO issued notice u/s 148 of the Act, solely to verify the alleged unexplained investment of Rs.45.4 lacs in the immovable property though neither the said amount was found as unexplained nor any addition is made for the said reason hence, consideration and addition of other issues is beyond the jurisdiction of AO hence, proceedings for other issues is void ab initio and the additions are illegal.”

5. We also observe that in the written submissions filed by the assessee before the ld. CIT (Appeals) which were also extracted in the order of the ld. CIT (Appeals) at page 7 that the assessee made his elaborate submissions on additional grounds filed before the ld. CIT (Appeals). However, on perusal of the order of the ld. CIT (Appeals) we find that these legal grouhnds have not been disposed of by the ld. CIT (Appeals). Since the additional grounds are legal grounds and goes to the root of the matter, the CIT (Appeals) ought to have decided the grounds raised by the assessee. Therefore, as the CIT (Appeals) inadvertently failed to dispose of the additional grounds raised by the assessee, we are of the view that this appeal should go back to the ld. CIT (Appeals) for adjudication of the additional grounds raised by the assessee. Thus, we restore this appeal to the file of the ld. CIT (Appeals) for adjudication of the additional grounds in accordance with law. As the decision on the additional grounds has bearing on the grounds raised by the assessee on merits, we feel it appropriate to restore the grounds raised by the assessee on merits also to the file of the ld. CIT (Appeals) for de novo adjudication. We are not expressing any opinion on merits of the grounds taken by the assessee. Thus, we set aside the order of the ld. CIT (Appeals) and restore this appeal to the file of the ld. CIT (Appeals) for adjudication of additional grounds as well as the grounds on merits in accordance

with law, after providing adequate opportunity of being heard to the assessee.

6. In the result, the appeal of the assessee is allowed, for statistical purposes.

Order pronounced in the open court on : 31/03/2022.

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 31/03/2022.

MEHTA

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	29.03.2022
Date on which the typed draft is placed before the dictating member	30.03.2022
Date on which the typed draft is placed before the other member	31.03.2022
Date on which the approved draft comes to the Sr. PS/ PS	31.03.2022
Date on which the fair order is placed before the dictating member for pronouncement	31.03.2022
Date on which the fair order comes back to the Sr. PS/ PS	31.03.2022
Date on which the final order is uploaded on the website of ITAT	31.03.2022
Date on which the file goes to the Bench Clerk	31.03.2022

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	