

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Shri Aby.T.Varkey, Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 344/Kol/2017
Assessment Year : 2011-12

Shri Manash Nandi (PAN: AGUPN 2701 R)	Vs.	ITO, Ward-24(2), Hooghly
Appellant		Respondent

Date of Hearing	15.02.2022
Date of Pronouncement	10.05.2022
For the Appellant	Shri Somnath Ghosh, Advocate
For the Respondent	Shri Sudipta Guha, CITDR

ORDER

Per Shri Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Commissioner of Income Tax(Appeals)-6, Kolkata [hereinafter referred to as ‘CIT(A)’] dated 03.11.2016 for the assessment year 2011-12.

2. The assessee has challenged the order of Ld. CIT(A) on merit in the various grounds assailing the confirmation of addition of Rs. 7,03,75,500/- as made by the AO on account of unexplained investment u/s 69 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

3. The assessee has also raised an additional ground before the Tribunal challenging the jurisdiction of AO to reopen the assessment on the ground that there is no application of mind while recording reasons u/s 148(2) of the Act and this ground was admittedly taken for the first time before the tribunal is reproduced as under:

“For that the Ld. Commissioner of Income Tax (Appeals)-6, Kolkata failed to appreciate that none of the conditions precedent existed and/or have been complied with and/or fulfilled by the Ld. Income Tax Officer, Ward-24(2), Hooghly for his assumption of jurisdiction u/s 147 of the Income Tax Act, 1961 and the alleged assessment order dated 27.03.2015 passed u/s 143(3)/147 of

the Act in pursuance to the impugned notice dated 29.05.2013 issued u/s 148 of the Act is therefore ab-initio void, ultra vires and null in law.”

4. Having heard the rival contentions and perusing the materials before us on the issue of admission of additional ground we find that issue raised is purely legal issue and therefore the assessee is at liberty to raise the issue at any stage in the appellate proceedings. We note that the issue raised by the assessee is purely legal and does not require any further verification of facts. We are ,therefore, inclined to admit the same for adjudication by following the decision of the apex court in the National Thermal Power Co Ltd. Vs CIT (1998)229 ITR 383(SC).

5. The facts in brief are that the assessee filed his return of income on 16.08.2011 declaring total income of Rs. 1,60,970/-. The case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act which was complied with by the assessee by submitting that the return of income originally filed and may kindly be treated as return filed in response to notice u/s 148 of the Act. The reason recorded u/s 148(2) of the Act are extracted as under:

“In the matter of Shri Manas Nandi having PAN-AGUPN 2701 R whereas the information has come to the notice that there is huge bank transaction through bank account vide No. 0146201003587 held with Canara Bank, Rabindra Sarani Branch, Kolkata and also the same has been transferred two companies to (i) West Well Tieup Pvt. Ltd. & (ii) Well Plan Tieup Pvt. Ltd. which is found ambiguous hence there exists escapement of income and evasion of tax. Hence, the matter is taken up u/s 147 of the Act for reopening the completed assessment for the AY 2011-12.”

5. In the apparent from the above, the AO reopened the assessment to verify the deposits of cash in bank account of the assessee aggregating to Rs. 7,03,75,500/- against which several cheques were issued to various parties. The assessee submitted before the AO that he is just an employee working with B.D. Agarwal Company and drawing monthly salary of Rs. 4,500/-. The assessee submitted before the AO that the employer is the only person who has deposited money in his bank account and also issued cheques from the said bank without his knowledge and thus in no way he should be held responsible for huge cash transactions which are beyond his capacity and imagination. The AO however rejected the contentions of the assessee without

doing any further verification and finally the assessment was framed u/s 143(3) read with Section 147 of the Act vide order dated 27.03.2015 making an addition of Rs. 7,03,75,500/- to the income of assessee.

6. The Ld. CIT(A) confirmed the order of AO on the ground that there is huge cash transactions made in bank account of the assessee and thus dismissed the appeal without dealing with the various contentions as raised by the assessee such as the operation of the bank account by the employer as the assessee is a very small employee earning a meager income of Rs. 4,500/- per month. The assessee has not raised a legal issue of reopening of assessment by the AO before the Id CIT(A).

7. The Ld. A.R. submitted before the Bench that the reopening of the assessment is invalid without any application of mind by the AO to the information received qua the assessee's huge bank transactions and AO has merely stated in the reasons recorded that there were huge transactions in the bank account of the assessee which was further transferred to two companies namely West Well Tieup Pvt. Ltd. and Well Plan Tieup Pvt. Ltd. which are of ambiguous in nature and there exists escapement of income and evasion of tax. The Id. A.R. submitted that there is no application of mind by the AO whether there has been any escapement of income by depositing huge cash into the bank account of the assessee. The Id AR submitted that he has not applied his mind to the information received and cursorily stated that there existed escapement of income and evasion of tax. The Ld. A.R. submitted that in view of these facts, the reopening of assessment may kindly be quashed. Alternatively on merits, the Id AR stated the neither AO nor Id CIT(A) has dealt with the submission of the assessee that he is small employee and person behind is his employer. The Id AR argued that the AO has simply made the addition without doing any verification to dig out the factual position. The Id AR therefore prayed the case may be restored to the file of the AO to make examine the issue afresh and deciding after ascertaining as to who is the real person doing all these transactions.

8. The Ld. D.R. on the other hand relied on the order of Ld. CIT(A) and also prayed before the Bench that the jurisdictional issue of reopening has been taken up for the first time and if at all the same may kindly be restored to the file of Ld. CIT(A). On merits, the Ld. Dr. stated that it is the bank account of the assessee into which huge deposits were made and therefore the addition was rightly done by the AO in the hands of the assessee and rightly confirmed by the Ld. CIT(A).

9. Having heard the rival submissions and perusing the material on record, we find that the AO has recorded the reasons u/s 148 of the Act in a very casual manner. We find that the AO has only reproduced in the reasons recorded the information received and hurriedly came to the conclusion that there exists escapement of income and evasion of tax without any application of mind and further stated that hence this matter is taken up u/s 147 of the Act. In our considered opinion the reopening of assessment cannot be made in a casual and whimsical manner. The AO has to apply his mind to the information if received by the AO. Moreover, the balance of equity is also in favour of the assessee who is a marginal labour/ employee of meager means drawing salary of Rs. 4,500/- per month. How the person of such scarce resources can deposit more than seven crores in cash in his bank account. The AO has completely failed to examine and verify as to who is the real person behind all this and thus has made the addition in a very casual manner. The Ld. Counsel of the assessee also brought to our notice that a complaint lodged before the Posta Police Station in Kolkata on 20.09.2014 informing the police that the assessee is a marginal labour and his bank account was misused by his employer and his friend Shri Narendra Aggarwal narrating the entire facts. Under these circumstances and facts we are of the view that ends of justice could be made if the issue is examined in detail by the AO by affording a reasonable opportunity to the assessee and assess the income in accordance with law. Accordingly we set aside the order of the Ld. CIT(A) and restore the issue back to the file of the AO with the direction to examine the matter again and get to the truth and decide the issue afresh.

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

Order is pronounced in the open court on 10th May, 2022

Sd/-

(Aby. T.Varkey)
Judicial Member

Sd/-

(Rajesh Kumar)
Accountant Member

Dated: 10th May, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shri Manas Nandi, Paschim Sikta, P.O. –Makalpur, PS-Dadpur, Dist-Hooghly-712305
2. Respondent – ITO, Ward-24(2), Hooghly
3. The CIT(A)- 6, Kolkata (Sent through e-mail)
4. Pr. CIT- Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata