

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-3 : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.8871/Del/2019
Assessment Year: 2011-12

Harish Chander,
A-8, Kewal Park Extn.,
Azad Pur,
New Delhi.

Vs. ITO,
Ward-50(1),
New Delhi.

PAN: AHUPC4227C

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Om Prakash, Sr. DR
Date of Hearing	:	04.05.2022
Date of Pronouncement	:	18.05.2022

ORDER

This appeal filed by the assessee is directed against the order dated 16.08.2019 of the CIT(A)-42, New Delhi, relating to Assessment Year 2011-12.

2. A notice through speed post acknowledgement due was sent to the appellant on 07.02.2022, which has been returned un-served with a remark 'no such person'. Notice has been issued to the appellant/assessee on the address A-8, Kewal Park Extn., Azad Pur, New Delhi – 110 033 and the same address has been mentioned in Form 36 by the assessee in the column of 'complete address for sending notices'. As per judgment of Hon'ble Supreme Court in the case of

PCIT vs. M/s. I Ven Interactive Ltd. dated 18.10.2019 in Civil Appeal No. 8132 of 2019, in absence of any specific information to the Assessing Officer with respect to change of address and/or change of the name of assessee, Assessing Officer would be justified in sending the notices at the available address mentioned in the PAN database of the assessee. Respectfully following the same, I hold that when the assessee has filed return mentioning a particular address as per his PAN database, which has also been noted by the Assessing Officer as well as by the assessee himself in Form No. 36 as complete address for sending the notices and the assessee is not found available on-the same address and no information about change of address to the Assessing Officer by the assessee, then we safely presume that all possible efforts have been made regarding service of notice on the assessee on the address given in PAN data by assessee and assessee is not available, then we have no alternate but to proceed ex parte qua assessee to decide this appeal after hearing the submissions of Id. Sr. Departmental Representative (DR).

3. Facts of the case, in brief, is that the assessee is engaged in the business of trading of second-hand cars and related services and had been filing his income tax return for the last many years wherein the income was offered under presumptive basis. Assessment proceedings in this case was reopened under NMS cycle that the assessee had not filed the return of income for AY 2011-12. As per the details appeared in the AIR against PAN No.AHUPC4227C for the

financial year under consideration, it was shown that the assessee had deposited the cash amounting to Rs.11,28,100/-. The AO, therefore, issued notice u/s 148 of the IT Act, 1961 dated 23.03.2018. Various notices u/s 142(1) of the Act were also issued and served upon the assessee. None attended the assessment proceedings on behalf of the assessee. A notice u/s 133(6) of the Act was issued by the AO to the bank and information was gathered. The bank statement showed that the assessee had deposited the cash amounting to Rs.11,28,100/- during the FY under consideration. Since the assessee has not substantiated the source of the said cash deposit despite numerous opportunities, the AO made an addition of Rs.11,28,100/- to the income of the assessee.

4. Against the order of the AO, the assessee went in appeal before the CIT(A). By the time the matter travelled to the CIT(A), the assessee had filed his return of income on 16.12.2018 which was at Rs.1,21,290/- and the assessment was also completed by processing the same u/s 148, again, making an addition of Rs.11,28,100/- on account of cash deposited in the bank account, vide order dated 15.12.2018. The ld. CIT(A) dismissed the appeal on the ground that the assessee could not furnish any documentary evidence to corroborate the cash deposit with the transaction in the business of trading of second hand cars.

5. Aggrieved with the order of the CIT(A), the assessee is in appeal before the Tribunal raising various ground, *inter alia*, the legal grounds that the reasons for reopening of the assessment u/s 147 of the Act were not recorded and

provided to the assessee and that the approval u/s 151 of the IT Act had not been obtained by the AO from the competent authority for reopening of the assessment.

6. On the directions of the Bench, during earlier hearing, the ld. Sr. DR placed relevant assessment records before me. After perusing the entire record vigilantly and hearing the submissions of ld. Sr. DR, I clearly observe that in this case, the AO has not recorded reasons for reopening of the assessment u/s 147 of the Act and thus copy of the same was not provided to the assessee. I also find that mandatory approval u/s 151 from the competent authority also has not been obtained by the AO before issuing notice u/s 148 of the Act. In view of this I am of the considered opinion that the reassessment order made by the AO is not sustainable being bad in law and, therefore, liable to be quashed. I hold and direct accordingly. Since the assessee succeeds on legal grounds, I am not adjudicating on the grounds on merit which have become infructuous.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 18.05.2022.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 18th May, 2022.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi