

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.3015/Del/2015
(Assessment Year : 2007-08)

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| Bharat Singh S/o. Shri Mangtu, Village Jonawas (Dungarwas), Distt. Rewari Haryana PAN No. ACBPS 3109 D (APPELLANT) | Vs. | ITO Ward – 2 Rewari (RESPONDENT) |
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| Assessee by | Shri Amit Goel, C.A. Shri Nipun Mittal, C.A. |
| Revenue by | Shri Rajinder Jha, Sr. D.R. |

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| Date of hearing: | 28.04.2022 |
| Date of Pronouncement: | 23.05.2022 |

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 23.03.2015 passed by the Commissioner of Income Tax (Appeals) – Rohtak relating to Assessment Year 2007-08.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is an individual. AO has noted on the basis of the AIR information, it was noted that assessee had sold an immovable property of Rs.92,86,250/- on 14.02.2007. Accordingly, notice u/s 148 of the Act was issued on 21.03.2012 and served on the assessee. In response to the aforesaid notice, assessee filed his return of income declaring total income at Rs.2,18,477/- on 14.05.2012. Thereafter case was taken up for scrutiny and consequently assessment was framed u/s 143(3) r.w.s 147 of the Act by order dated 11.03.2013 and the total income was determined at Rs.65,18,480/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 23.03.2015 in Appeal No.118/2013-14 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds:

1. *“On the facts and circumstances of the case and in law, the notice issued u/s 148 in this case is bad-in-law, illegal and without jurisdiction and therefore the assessment order passed on the foundation of such notice is liable to be quashed.*
2. *On the facts and circumstances of the case and in law, the Commissioner of Income Tax (A) erred in confirming addition of Rs.6300000/- made by the assessing officer as alleged unexplained income from unexplained sources.*
3. *On the facts and circumstances of the case and in law, the addition of Rs.6300000/- made by the assessing officer is erroneous and Commissioner of Income Tax (Appeal) should have deleted the same.*
4. *On the facts and circumstances of the case and in law, the addition of Rs.6300000/- made by the assessing officer is beyond the scope of provisions of section 147/148 of Income Tax Act, 1961 and the CIT(A) ought to have deleted the same.*

The appellant craves leave to add, alter, modify or delete one or more ground of appeal before or at the time of hearing of appeal.

The aforesaid ground of appeal are without prejudice to each other.”

4. Assessee thereafter has filed an application for admission of additional ground which reads as under:

“1. On the facts and circumstances of the case and in law, the notice issued u/s 148 in this case is bad-in-law, illegal and without jurisdiction and therefore the assessment order passed on the foundation of such notice is liable to be quashed.

2. On the facts and circumstances of the case and in law, the addition of Rs.63,00,000/- made by the assessing officer is beyond the scope of provisions of section 147/148 of Income Tax Act, 1961 and the CIT(A) ought to have deleted the same.”

5. With respect to the admission of additional grounds, Learned AR submitted that in the additional ground, the assessee is challenging the validity of the assessment framed u/s 143(3) r.w.s 147 of the Act, which is a legal issue and goes to the root of the matter. Ld AR submitted that since all the material facts relevant to the legal issue are already on record and the issue as to scope of additions that can be made in an assessment u/s 143(3) r.w.s. 148 of the Act, being a purely legal issue it can be raised at any time before the Tribunal. In support of the aforesaid contention, he placed reliance on the decision in the case of **National Thermal Power Co. Ltd. vs. CIT reported in 229 ITR 383** and **M/s Jute Corporation of India Ltd. vs. CIT** reported in

187 ITR 688 (SC). He therefore submitted that the additional grounds of appeal be admitted and appropriate order be passed in the interest of rendering substantial justice.

6. On the issue of the admissibility of additional ground of appeal, Learned DR strongly objected to the plea for admission of additional ground. He submitted that this ground was never raised by the assessee before the lower authorities. He further submitted that the ratio of decision in the case of Jute Corporation of India Ltd. (*supra*) would not be applicable to the facts of the present case because ratio of the decision is that the additional ground could be raised only if it could not have been raised at the stage when the return was filed or when the assessment order was made and the ground became available on account of change of circumstances or law. He submitted that no change of circumstances of law has been pointed out by the Learned AR and therefore the ratio of the decision in the case of **M/s. Jute Corporation of India Ltd. (*supra*)** could not apply in the present facts of the case.

7. Having heard the rival submissions and on perusing the materials available on record, we find that facts which are necessary for adjudication of legal issue raised by the assessee by way of additional grounds of appeals are already on record and no new material or evidence is relied upon to challenge the legal issue. We find that the Hon'ble Apex Court in the case of National

Thermal Power Co. Ltd. (supra) after considering the decision in the case of Jute Corporation of India Ltd. (supra) has observed that the Tribunal has jurisdiction to examine the question of law which arise from the facts as found from the authorities below and having bearing the tax liability of the assessee. It has further held that there is no reason to restrict the power of Tribunal u/s 254 of the Act only to decide the grounds which arise from the order of the Commissioner of Income Tax (Appeals) and that both the assessee and Department have a right to file an appeal/cross objections before the Tribunal and the Tribunal should not be prevented from considering questions of law arising in assessment proceedings although not raised earlier. It has further held that the view that tribunal is confined only to issues arising out of the appeal before CIT(A) is too narrow a view to take of the powers of the tribunal. We therefore following the aforesaid decision rendered by Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. (supra) admit the additional ground and proceed to dispose of the appeal.

8. Before us, with respect to additional ground, Learned AR submitted that assessment proceedings initiated u/s 147 of the Act and the impugned assessment order passed u/s 147 r.w.s 143(3) of the Act is without jurisdiction, illegal and bad in law. Learned AR thereafter pointed to the copy of the reasons recorded by the AO dated 21.03.2012 which is placed at Page 1 of the paper book. He submitted that the reasons that was recorded by

the AO for reopening of the assessment was that assessee had sold an immovable property at Village Jonawas which is situated within 5 K.M. from the municipality's limit of Rewari/Dharuhera Municipality and thus was covered in the definition of Capital Assets. He pointed that AO noted that since assessee had not disclosed the Long Term Capital Gain, AO was of the view that income had escaped assessment within the meaning of Section 147 of the Act. Learned AR thereafter pointed to the assessment order framed u/s 143(3) r.w.s 147 of the Act dated 11.03.2013 and submitted that no addition has been made by the AO on the issue of Long Term Capital Gain but AO has proceeded to make the addition of Rs.63,00,000/- u/s 68 of the Act. He therefore submitted that the addition has been made by the AO on the different ground than that was recorded in the reasons for reopening the assessment. He thereafter submitted that on the issues on which the additions have been made in the order passed u/s 143(3) r.w.s. 147 of the Act, no fresh notice u/s 148 of the Act was issued by the AO. He therefore relying on the decision of Hon'ble Bombay High Court in the case of **CIT vs. Jet Airways (I) Ltd. (2011) (331 ITR 236) (Bom)** and the decision of Hon'ble Delhi High Court in the case of **Ranbaxy Laboratories Ltd. vs. CIT (2011) 12 taxmann.com 74 (Delhi)** submitted that it is not open to AO to assess or reassess independently any other income which does not form the subject matter of the notice. He therefore submitted that in the present case, since no addition has been made on the issue with respect to which the reasons

which were recorded and for which reopening was made, the order for re-assessment was void and therefore the order be set aside.

9. Ld. D.R. on the other hand, supported the order of lower authorities and submitted that AO can make additions even on the ground on which reassessment notice might not have been issued but he arrives at a conclusion that such other income has escaped assessment which comes to his notice during the course of proceedings for reassessment.

10. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to re-opening of assessment and the framing of the order u/s 143(3) r.w.s. 147 of the Act. The perusal of the reasons recorded for re-opening the assessment as intimated to assessee vide reasons dated 21.03.2012 reveals that the reopening was initiated for the reason that assessee had sold an immovable property value at Rs.92,86,250/- in Village Jonawas which is situated within the 5 K.M. from the municipality's limit and thus was a Capital Asset and therefore the assessee should have offered the Capital gains to tax. The assessment order framed u/s 143(3) r.w.s 147 of the Act dated 11.03.2013 reveals that no addition has been made on account of Long Term Capital Gain by the AO and which was the reason that was recorded for reopening the assessment. The assessment order further reveals that the

additions has been made on a different ground, being addition u/s 68 of the Act on account of unexplained deposits in the Bank. We find that Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd. (supra) has held that if upon the issuance of notice u/s 148 of the Act, the AO does not assess or reassess the income which was the basis of the notice, it would not be open to assess income under some other issue independently. It has further held that if AO intends to assess some other income, which did not initially formed part of the reason to believe that income has escaped assessment, then a fresh notice u/s 148 of the Act would be necessary. In the present case, it is Ld. A.R.'s contention that no new notice u/s 148 of the Act was issued for the issues on which the additions that have been made in the assessment framed u/s 143(3) r.w.s. 147 of the Act. The aforesaid submissions of the Ld. A.R. has not been controverted by Revenue.

11. We further find that Hon'ble Gujarat High Court in the case of **CIT vs. Mohmed Juned Dadani** reported in **(2013) 355 ITR 172 (Guj.)** after considering the effect of explanation 3 to Section 147 of the Act has held that if the assessing officer does not make any addition with respect to the ground on the basis of which the notice u/s 148 of the Act was issued, then he cannot make addition on other issues which did not found part on the reasons recorded. Before us, Revenue has not placed any contrary binding decision in its support. In such a situation, we respectfully

following the decision of Hon'ble High Courts in the case of Jet Airways (I) Ltd. (supra) and Mohmed Junded Dadani (supra) are of the view that in the present case, assessment framed by the AO is on other issues which is not part of the reasons recorded for reopening the assessment. In such a situation, the assessment order is not sustainable in the eye of law. We accordingly set aside the assessment. Since the entire assessment is quashed, we find no reason to adjudicate the appeal on other grounds. **Thus, the ground of assessee is allowed.**

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 23.05.2022

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 23.05.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI