

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

BEFORE SH. CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.4013/Del/2018
(Assessment Year : 2009-10)

Ajendra Pal Singh C/o. Sanjeev Anand and Associates, 77, Navyug Market, Ghaziabad UP PAN : BAHPS 3364 R (APPELLANT)	Vs	ITO Ward -1(5), Ghaziabad (RESPONDENT)
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Assessee by	Shri Somil Agrawal and Shri Shrey Jain, Adv.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	06.06.2022
Date of Pronouncement:	10.06.2022

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals) - 2, Noida, dated 20.03.2018 for Assessment Year 2009-10.

2. **Application of assessee for admission of additional grounds:** First of all, the Learned Counsel of the assessee

pressed into service application vide dated 06.09.2019 of assessee seeking admission of following additional ground of appeal:

1. *“That having regard to the facts and circumstances of the case, Ld CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order and that too without assuming jurisdiction as per law and without complying with mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.*
2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in reopening of the assessment of assessee and that too without recording valid reasons as envisaged under the law and erred in passing the impugned reassessment order without obtaining valid sanction approval given by Ld PCIT u/s 151 are not valid in the eye of law.*
3. *That having regard to the facts and circumstances of the case, Ld CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned reassessment order u/s 147/144 even though no notice u/s 148 has been served on the latest available address of the assessee within the statutory allowable period as per law which is bad in law.”*

3. The Learned Counsel submitted that in view of judgment of Hon’ble Supreme Court in the case of **NTPC Ltd. reported in 229 ITR 383 (SC)**, the additional ground of assessee may kindly be admitted for consideration and objection. Learned Sr. Departmental Representative strongly opposed to the admission of additional grounds, however, Learned Sr. DR did not controvert the fact that above noted additional grounds are purely legal in nature that goes to the root of the matter and can be decided on the basis of material already available on record.

4. On careful consideration of submissions, I am of the considered opinion that the grounds sought to be raised by assessee as additional ground are purely legal in nature and contention goes to the root of the matter challenging the assumption of jurisdiction for initiating reassessment proceedings u/s 147 of the Act and issuing notice u/s 143 of the Act. Therefore, additional ground sought to be raised by assessee are admitted for consideration and adjudication in view of the propositions rendered by Hon'ble Supreme Court in the case of NTPC Ltd. (supra).

5. Learned Counsel of the assessee, on the legal grounds submitted that the Learned CIT(A) has erred in law and on facts in confirming the action of AO in framing reassessment order without assuming valid jurisdiction as per requirement of Section 147 of the Act and without complying with mandatory conditions envisaged u/s 147 to 151 of the Act. The Learned Counsel vehemently pointed out that the Assessing Officer has passed impugned reassessment order without obtaining valid Sections/approval by Learned PCIT as per requirement of Section 151 of the Act. The Learned Counsel lastly pointed out that the Learned CIT(A) has grossly erred in law and on facts in confirming the action of the AO in passing the impugned reassessment order u/s 147/144 of the Act even though no notice u/s 148 has been served on the latest available address of the assessee within

statutory allowable period as per law. Therefore, reassessment order being bad in law may kindly be quashed.

6. Learned Sr. DR submitted that the Assessing Officer has rightly taken action in initiating reassessment proceedings u/s 147 of the Act by recording reasons on 15.02.2016 and he has taken valid approval from Learned ACIT, Range – 1, Ghaziabad as well as Learned PCIT, Ghaziabad in this regard. Therefore, legal ground of assessee may kindly be dismissed.

7. Placing rejoinder to the above, Leaned Counsel of the assessee drawn our attention towards page 4 of assessee's paper book submitted that while recording reasons, the Assessing Officer stated that as no compliance / explanation was offered by the assessee and no ITR has been found to have been filed by him, Learned Counsel drew our attention towards page 1 & 2 of assessee's paper book and submitted that for relevant A.Y. 2009-10, assessee filed return of income on 18.02.2010 with Assessing Officer, Ward-1(1), Ghaziabad, therefore the initiation of reassessment proceedings has been done by AO without application of mind and without considering the relevant assessment filed by assessee therefore, reassessment order u/s 147 r.w. Section 143(3) of the Act and all consequent order may kindly be quashed. Learned Counsel has placed reliance on number of judgments including order of ITAT, Delhi Benches

dated 04.09.2018 in the case of Shri Jagat Singh vs. ITO in ITA No.2749/Del/2018.

8. On careful consideration of the rival submissions, I am of the considered view that from the copy of the reasons recorded placed before me clearly reveals that the Assessing Officer started reassessment proceedings on the basis of PAN/AIR information that the assessee has sold immovable property during F.Y. 2008-09. In the last para of reasons AO mentioned that no ITR has been found to have been filed by the assessee. During the arguments, Learned Counsel drew our attention towards page 3 of assessee's paper book i.e. proforma for recording the reasons for initiating the proceedings u/s 148 of the Act wherein Column Serial No.2, the AO states permanent account number of the assessee is not available and in Column Serial No.8, the AO wrote that no return has been filed by assessee.

9. Per contra, from the copy of the return filed by assessee on 18.02.2010, I clearly observe that assessee has filed return of income for A.Y. 2009-10 with Assessing Officer, Ward-1(1), Ghaziabad. These glaring facts have not been controverted by the Learned DR except submitting that the assessee did response to the letter issued by the AO. Therefore, these facts cannot be taken for consideration in respect of legal grounds of assessee.

10. On careful consideration of rival submissions, I am of the considered opinion that assessee has successfully demonstrate that PAN No. BAHPS3364R and filed return of income for A.Y. 2009-10 on 18.02.2010 whereas the Assessing Officer in the reasons recorded for reopening the assessment stated that no return has been filed by assessee. This shows casual approach of Assessing Officer in initiating reassessment proceedings on the basis of incomplete details regarding filing of ITR by assessee for A.Y. 2009-10. In this situation and in view of proposition rendered by ITAT, Delhi in the case of Shri Jagat Singh (supra), I am compelled to hold that reassessment proceedings u/s 147 of the Act and notice u/s 148 of the Act is issued without application of mind by AO on the basis of incomplete information without any verification of the facts then it amounts to omission on the part of AO in complying with the mandatory requirement of Section 147 & 148 of the Act. Consequently, reassessment order and of consequent proceedings and orders become bad in law. In view of foregoing discussion, I reach to the contention the impugned assessment order dated 29.09.2016 passed u/s 147/144 of the Act is not sustainable being bad in law thus the same is quashed. Accordingly, the legal ground No.1 and 2 of assessee are allowed.

11. The Learned Counsel has not placed any argument on legal ground No. 3, therefore, the same is dismissed as not expressly pressed.

12. Since the appeal of the assessee has been allowed in the earlier part of this order, on legal ground no.1 & 2, therefore other grounds of assessee on merits are not being adjudicated as having become infructuous.

13. In the result, appeal of the assessee is allowed on legal ground.

Order pronounced in the open court on 10.06.2022

**Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

Date:- 10.06.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI