

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA.No.598/Del./2020  
Assessment Year 2010-2011

|   |     |   |
|---|-----|---|
| Shri Prem Singh<br>S/o. Sh. Todar Mal, Near<br>Shiva Mandir, Village-Liwan<br>Po-Rathdana, Sonapat,<br>Haryana – 131 029.<br>PAN BYQPS8735P | vs. | The ITO,<br>Ward 3,<br>Sonapat.<br>Haryana.<br>PIN – 131 001. |
| (Appellant)   |     | (Respondent)  |

|                |  |
|----------------|--|
| For Assessee : | Shri Rano Jain, Advocate &<br>Ms. Mansi Jain, C.A. |
| For Revenue :  | Sh. Om Prakash, Sr. DR                             |

|                         |            |
|-------------------------|------------|
| Date of Hearing :       | 09.06.2022 |
| Date of Pronouncement : | 22.06.2022 |

**ORDER**

This appeal by Assessee has been directed against the Order of the Learned Commissioner of Income Tax, Rohtak, ["CIT(A)" for short], dated 05.11.2019, for the A.Y. 2010-2011.

2. Briefly, the facts of the case are that the assessee is a Farmer and sold his agricultural land for a

consideration of Rs.38 lakhs through cheque. Out of the amount received against the sale of land, the assessee withdrawn cash from time to time and deposited the same in his Bank A/c maintained with Oriental Bank of Commerce. On the basis of the information available with the Department that the assessee has deposited a cash deposit of Rs.35,90,000/-, the case of the assessee was reopened under section 148 of the I.T. Act, 1961 after recording reasons in writing and getting necessary approval from the Pr. Commissioner of Income Tax, Rohtak and the A.O. issued notice under section 148 of the I.T. Act, 1961 dated 30.03.2017 which was duly served upon the assessee. Since the assessee failed to comply with the notice issued under section 148 of the I.T. Act, 1961 within the stipulated time, therefore, notice under section 142(1) of the I.T. Act, 1961 calling the assessee to explain the source of cash deposits of Rs.35,90,000/-. Several notices were issued under section 142(1) of the I.T. Act, 1961, but, since, there were no compliance from the side of the assessee, the A.O. passed the ex-parte assessment order under section

144/147 of the I.T. Act, 1961 by working out the peak credit entries of his Bank A/c at Rs.42,75,483/- and treated the said amount as total taxable income of the assessee from his undisclosed sources as the assessee has not filed any return of income. The A.O. also initiated penalty proceedings separately. Aggrieved by the order of the A.O, the assessee preferred an appeal before the Ld. CIT(A) and the Ld. CIT(A) granted part relief to the assessee.

3. Now the moot question before me is, as to whether the addition made by the A.O. and partly confirmed by the Ld. CIT(A) pertaining to Bank A/c.No.xxxxx2891 amounting to Rs.21,65,483/- is sustainable when no addition has been made by the A.O. on account of cash deposits to Bank A/c.xxxxx6990 which was picked-up for initiation of re-assessment proceedings under section 147 of the I.T. Act, 1961 and issuing notice under section 148 of the I.T. Act, 1961 to the assessee.

4. During the course of hearing, the Learned Counsel for the Assessee pressing into service the decision

rendered by Hon'ble jurisdictional Delhi High Court in the case of Rambaxy Laboratories Ltd., vs., CIT [2011] 336 ITR 136 (Del.) and Judgment of Hon'ble Bombay High Court in the case of CIT vs., Jet Airways (I) Ltd., [2011] 331 ITR 236 (Bom.) submitted that when the A.O. has picked-up one Bank A/c.No.xxxxx6990 for initiation of re-assessment proceedings and has not made any addition pertaining to cash deposits through this Bank A/c, then, no addition on the strength of cash deposits to another Bank A/c.No.xxxxx2891 is not sustainable in view of the aforesaid Judgments.

5. Reply to the above, the Ld. D.R. supported the assessment order as well as first appellate order and submitted that the Ld. CIT(A) has considered the remand report of A.O. in right perspective and, therefore, made addition pertaining to Bank A/c. of assessee i.e., xxxxx2891 and did not made any addition on account of cash deposit to another Bank A/c.xxxxx6990 and the A.O. is very well empowered to make impugned addition. He submitted that considering the totality of the facts and circumstances of

the case, the addition made by the A.O. and partly confirmed by the Ld. CIT(A) may kindly be upheld.

6. Placing rejoinder to the above, Learned Counsel for the Assessee drew my attention towards copy of the reasons recorded by the A.O. for initiation of re-assessment proceedings and issuing notice under section 148 of the I.T. Act, 1961 and submitted that the A.O. has only picked-up Bank A/c.xxxxxx6990 of assessee and no issue has been raised therein. She further drew my attention towards remand report of the A.O. reproduced by the Ld. CIT(A) in para-5 of first appellate order and submitted that in the last paragraph at page-20 it is clearly discernible that the A.O. has not made any adverse comments or remarks against the cash deposits to the Bank A/c.No.xxxxxx6990 of the assessee and clearly reported that the cash deposits made to this Bank A/c are from cash withdrawals from the same Bank A/c which appears to be reasonable. The Learned Counsel for the Assessee further submitted that in second para at page-20 the A.O. stated that on perusal of Bank A/c.xxxxxx2891 shows transfer credit entry of

Rs.21,90,000/- on 26.12.2009 has been transferred from assessee's Bank A/c.xxxxx6990, therefore, assessee is entitled for a relief out of total addition of Rs.42,75,483/-.

The Learned Counsel for the Assessee further explained that keeping in view these paras of remand report the Ld. CIT(A) has only restricted the addition to Rs.21,65,483/- pertaining to the cash deposits to another Bank A/c xxxxx2891 and no addition has been made or confirmed pertaining to impugned Bank A/c.xxxxx6990. The Learned Counsel for the Assessee vehemently pointed-out to these factual position which is amply clear that there is no addition or disallowance in the hands of assessee pertaining to the issue alleged by the A.O. in the reasons recorded, but, addition has been made on other Bank A/c which was not subject matter of reasons recorded by the A.O. before issuing notice under section 148 of the I.T. Act, 1961. She lastly drew my attention to paragraphs-18 and 19 of Judgment of Hon'ble jurisdictional High Court in the case of Ranbaxy Laboratories Ltd., vs., CIT (supra).

7. On careful consideration of above rival submissions, I am of the considered view that undisputedly the Ld. CIT(A) has only confirmed addition of Rs.21,65,483/- on account of cash deposits by the assessee to Bank A/c.No.xxxxxx2891 and no addition has been made or confirmed in the hands of assessee pertaining to the cash deposits made by the assessee to another Bank A/c.xxxxxx6990 which was picked-up by the A.O. for reopening of the assessment.

7.1. The Hon'ble jurisdictional Delhi High Court in the case of Ranbaxy Laboratories Ltd., vs., CIT (supra) in operative paras-18 and 19 held as under :

*"8. We are in complete agreement with the reasoning of the Division Bench of Bombay High Court in the case of Jaganmohan Rao (supra). We may also note that the heading of Section 147 is "income escaping assessment" and that of Section 148 "issue of notice where income escaped assessment". Sections 148 is supplementary and complimentary to Section 147. Sub-*

section (2) of [Section 148](#) mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or recompute escaped income. [Section 147](#) mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per explanation (3) if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under [Section 147](#) regarding assessment or reassessment of escaped

*income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under [Section 148](#).*

*19. In the present case, as is noted above, the Assessing Officer was satisfied with the justifications given by the assessee regarding the items viz., club fees, gifts and presents and provision for leave encashment, but, however, during the assessment proceedings, he found the deduction under Section 80 HH and 80-I as claimed by the assessee to be not admissible. He consequently while not making additions on those items of club fees, gifts and presents, etc., proceeded to make deductions under [Section](#)*

*80HH and 80-I and accordingly reduced the claim on these accounts.”*

7.2. In view of the above, I respectfully hold that the issue is squarely covered in favour of the assessee by the Judgment of Hon’ble jurisdictional High Court in the case of Ranbaxy Laboratories Ltd., vs., CIT (supra) and Judgment of Hon’ble Bombay High Court in the case of CIT vs., Jet Airways (I) Ltd., (supra) as in the present case also there is no addition in the hands of the assessee pertaining to the issue alleged by the A.O. in the reasons recorded for reopening of the assessment. At the same time, I clearly observe that the Ld. CIT(A) has confirmed the part addition in the hands of assessee pertaining to the cash deposits to another Bank A/c.xxxxxx2891, which was not the subject matter of reasons recorded by the A.O. for reopening of the assessment, therefore, the addition partly confirmed by the Ld. CIT(A) does not survive in view of the proposition rendered by Hon’ble jurisdictional High Court in the case of Ranbaxy Laboratories Ltd., vs., CIT (supra). Respectfully following the same, I allow the ground of assessee and direct

the A.O. to delete the addition made and part confirmation of addition by the Ld. CIT(A).

8. Since in the earlier part of this order I have granted relief to the assessee on the strength of proposition of Hon'ble jurisdictional High Court in the case of Ranbaxy Laboratories Ltd., vs., CIT (supra), therefore, the other grounds of assessee have become academic and infructuous and thus, the same are not being adjudicated upon. Accordingly, the appeal of the assessee is allowed.

9. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court on 22.06.2022.

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Delhi, Dated 22<sup>nd</sup> June, 2022

VBP/-

Copy to

|    |                              |
|----|------------------------------|
| 1. | The appellant                |
| 2. | The respondent               |
| 3. | CIT(A) concerned             |
| 4. | CIT concerned                |
| 5. | D.R. ITAT 'SMC' Bench, Delhi |
| 6. | Guard File.                  |

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.