

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

**SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.176/Del/2021  
Assessment Year : 2009-10**

Sh. Jasbinder Singh, Village Khanpur, Tehsil- Indri, District, Karnal Haryana-132001	vs	Income Tax Officer, Ward-2, Karnal
<b>PAN-ASTPS9891C</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	Sh. Suresh Gupta, CA
<b>Respondent by</b>	Sh. Sanjay Kumar, Sr. DR
<b>Date of Hearing</b>	23.06.2022
<b>Date of Pronouncement</b>	23.06.2022

**ORDER**

The present appeal has been preferred by the assessee against the order dated 23.10.2018 of the Ld. Commissioner of Income Tax (Appeals)-Karnal [in short 'the ld. CIT(A)'], pertaining to AY 2009-10.

2. The assessee in this appeal has taken following grounds of appeal:-

*"1. The Ld. CIT(A) on the facts and circumstances of the case has erred in upholding the validity of the reassessment proceedings and the consequential reassessment order ignoring the fact that no notice u/s 148 was ever served on the appellant and therefore in*

*absence of service of jurisdictional notice, consequential reassessment proceedings are illegal and need be quashed.*

*2. The Ld. CIT(A) has erred both in law and circumstances of the case in upholding the reassessment proceedings u/s 147 of the IT Act without independent application of mind on the information received. In view of the above defects in the compliances the resultant reassessment proceedings are required to be set aside.*

*3. The Ld. CIT(A) has erred both in law and in facts of the case in upholding the impugned reassessment proceedings ignoring the fact that the sanction provided with the copy of the reason recorded show the mechanical satisfaction of the authorities granting approval under section 151 the Act.*

*4. The Ld. CIT(A) has erred both in law and circumstances of the case in upholding the reassessment proceedings u/s 147 of the IT Act which is not properly initiated and therefore need be quashed as the appellant's case is covered by proviso to section 147 of the IT Act and that being the case the AO failed to attribute failure to the appellant to disclose fully and truly all material facts during original proceedings and in the absence of any such failure of the appellant, the initiation of reassessment proceedings and the impugned assessment order both are bad in law because such proceedings are as a result of change of mind by the successor incumbent on the same set of facts.*

*5. The impugned assessment is invalid and without jurisdiction as the said assessment is completed without complying with legal requirements of the provisions of section 147/148 of the Income Tax Act therefore such assessment is void ab initio and liable to be quashed.*

*6. The Ld. CIT(A) has erred both in law and circumstances of the cases in upholding action of the AO, in computing capital gain of Rs.35,07,330/- without*

*allowing deduction u/s 54F of IT Act of the house property purchased by the appellant.”*

3. A perusal of the above grounds of appeal reveals that the assessee inter alia has contested the validity of reopening of the assessee u/s 147 of the Act.

4. At the outset, the Ld. Counsel for the assessee has invited my attention to the reasons recorded by the Assessing officer (AO) to submit that only information that was available to the AO was that the assessee had sold immovable property of Rs.50 lakhs. There was not any other information available to the AO to form the belief that income of the assessee for the assessment year under consideration has escaped assessment. There was no information available to the Assessing Officer as to whether the said property was agricultural property or not and whether the said sale proceeds would be liable to capital gains tax or not. It has been mentioned by the AO in the reasons recorded that a verification letter was issued to the assessee but that was returned back to the AO with the remarks ‘incomplete address’. This shows that the assessee did not ever receive any letter from the AO so as to reply to the AO of real facts. Even otherwise, there is no mention that the said verification letter was issued by the

AO after taking necessary permission from the competent authority as envisaged in 2<sup>nd</sup> proviso of section 133(6) of the Income Tax Act.

The ld. counsel for the assessee, therefore, has submitted that the AO did not have any valid reasons to believe that the income has escaped assessment. The ld. counsel for the assessee has further invited my attention to paper book page-1 which is from for recording the reasons to point out the various discrepancies.

6. A perusal of the case file shows that the assessee on the earlier hearing i.e. on 05.04.2022 has also pointed out about the various discrepancies in the reasons recorded as well as it was also pointed that the reasons were allegedly recorded on 03.03.2016 and the satisfaction of PCIT has been given on 17.03.2016, whereas the notice u/s 148 of the Act was issued prior to the said date i.e. on 16.03.2016, which itself makes the reassessment invalid. The Tribunal after noting the aforesaid contentions which had pointed out the aforesaid discrepancies to the Ld. DR, however, the Ld. DR sought time to clarify the facts from the assessment records. The order sheet dated 05.04.2022 of the Tribunal, for the sake of ready

reference is reproduced hereunder:-

<p>ITA 176/DEL/2021 (Assessment Year: 2009-10)</p>	
<p>In the case of <b>JASBINDER SINGH</b> vs. <b>ITO WARD-2</b></p>	
<p>Bench: SMC</p> <p style="text-align: center;">3 <u>05-Apr-2022</u> (Tuesday)</p>	<p>Assessee represented by: Sh.Suresh Kumar Gupta,CAS Department represented by: Smt.Radha KatyaL Narang, Sr.DR</p> <hr/> <p>05.04.2022 Bench 'SMC'</p> <p>In the aforesaid appeal, the appellant has challenged the validity of reopening u/s 147 and the proceedings u/s 148 on the ground that, firstly, in the Form of 'reasons recorded', AO has erroneously mentioned that no return of income has been filed, whereas the return of income was already filed and originally, the assessment was completed u/s 144 vide order dated 15.12.2011 by the AO. Second objection has been raised that in Col. 7 of the prescribed form, AO has mentioned that the provisions of section 147(a) is applicable, whereas this provision has been amended/ omitted from the statute w.e.f. 01.04.1989, therefore, there is no application of mind.</p> <p>Apart from above, we observe that reasons have been recorded on 03.03.2016, whereas, satisfaction of the Pr.CIT on the 'reasons recorded' has been given on 17.03.2016, which is evident from page 1 of the paper book filed by the assessee. However, from the perusal of the assessment order, we find that notice has been issued u/s 148 on 16.03.2016 by ITO, Ward 5, Karnal, whereas original assessment order was passed by ITO, Ward 4, Karnal; and how the approval has been given by the Pr.CIT on 17.03.2016, when notice u/s 148 is dated 16.03.2016.</p> <p>All these discrepancies were pointed out before the ld. DR, who submitted that in order to get the clarity of the facts; either report from the AO or assessment record is required to be perused in order examine the aforesaid contentions as notice u/s 148 is not available in paper book of assessee. Thus, acceding to the request of the ld. DR, I am adjourning the matter to 23.06.2022. Ld. DR is directed either to get the report from the AO or get the clarification on the aforesaid points from the assessment record. A copy of the order sheet will be provided as Dasti.</p>

7. Today, the ld. DR could not rebut to any of the discrepancies as recorded above by the Tribunal. In view of the above discussion, firstly it does not come pout from the reasons recorded that that the

AO had any valid reason to form the belief that income of the assessee had escaped assessment; secondly, as pointed above, the notice u/s 148 of the Act had been issued even prior to the grant/sanction by the PCIT for reopening of the assessment; thirdly, there are various discrepancies in the format for reopening of assessment viz. the permission has been sought for reopening of the assessment u/s 147(a), whereas the said provisions did not exist in the statute since 01.04.1989. In view of this, it is held that the reopening of assessment in this case is bad in law. Therefore, the reassessment order framed by the AO is hereby quashed and consequential addition made by the AO stands deleted.

8. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open Court on 23.06.2022.

**Sd/-**  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**

**Delhi;**

Dated: 23/06/2022.

*Shikhar*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI