

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

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.6545/Del/2019  
Assessment Year: 2011-12

Bhavmeet Singh Bhatia,  
C/o RRA TAXINDIA,  
D-28, South Extn. Part-I,  
New Delhi.

Vs. ACIT,  
Circle-43(1),  
New Delhi.

PAN: AMYPB7621A

(Appellant)

(Respondent)

|                       |   |  |
|-----------------------|---|--|
| Assessee by           | : | Shri Somil Agarwal &<br>Shri Deepesh Garg, Advocates |
| Revenue by            | : | Shri Mithalesh Kr. Pandey, Sr. DR                    |
| Date of Hearing       | : | 12.09.2022   |
| Date of Pronouncement | : | 21.09.2022   |

ORDER

This appeal filed by the assessee is directed against the order dated 14.06.2019 of the CIT(A)-15, Delhi, relating to Assessment Year 2011-12.

2. The grounds raised by the assessee read as under:-

*“1. That having regard to the facts and circumstances of the case, assumption of jurisdiction in reopening the impugned assessment and passing the impugned order u/s 147/143(3), is bad in law and against the facts and circumstances of the case and more so when statutory conditions as stipulated u/s 147 to 151 have not been complied with.*

*2. That in any case and in any view of the matter, assumption of jurisdiction in reopening the assessment u/s 147, is bad in law and against the facts and circumstances of the case.*

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 making addition of Rs. 12,04,700/- on account of cash deposit in bank account of assessee u/s 68 by treating it as alleged income of assessee and that too by recording incorrect facts and findings and in violation of principles of natural justice.*

4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 12,04,700/- on account of cash deposit in bank account of assessee u/s 68, is bad in law and against the facts and circumstances of the case.*

5. *That the appellant craves for leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

3. The ld. Counsel of the assessee submitted that the assumption of jurisdiction in reopening the impugned assessment order u/s 147 r.w. section 143(3) is bad in law and against the facts and circumstances of the case as the AO has not complied with the statutory conditions as stipulated u/ss 147 to 151 of the act. The ld. Counsel also submitted that the assumption of jurisdiction in initiating reassessment proceedings u/s 147, is bad in law as the AO in the reasons noted that the assessee has not filed any return of income for AY 2011-12 whereas from the copy of the return filed which is placed at 1-5 of the assessee's paper book, it is clearly discernible that the assessee has filed the return for AY 2011-12 on 31.03.2012. Therefore, in view of various judgements and orders of the Hon'ble High Court and recent order of ITAT Delhi, SMC Bench in the case of *Ajendra Pal Singh vs. ITO in ITA No.4013/Del/2018, order dated 10.06.2022,*

the impugned reassessment order passed u/s 147 r.w. section 143(3) of the Act is not sustainable being bad in law, therefore, the same should be quashed.

4. Replying to the above, the Id. Sr. DR strongly supported the assessment as well as the first appellate order and submitted that as per the Board's pilot projects for non-filers of income-tax return, it was noticed that the assessee has deposited a sum of Rs.12,04,700/- in cash with the savings bank account held with Canara Bank, Vikas Puri Branch, New Delhi, and the AO was unable to find the return of income filed by the assessee for AY 2011-12. Therefore, he had reason to believe that income had escaped assessment for AY 2011-12.

5. In the rejoinder, the Id. Counsel also submitted that in the proforma for obtaining approval of PCIT u/s 151 of the Act at para 8(a), the AO noted that no return has been filed by the assessee. The said reasons were recorded on 23.03.2018 whereas the assessee had filed his return of income for AY 2011-12 much earlier than 23.03.2018. Therefore, initiation of reassessment proceedings has been done without application of mind and the sole premise for initiating the reassessment proceedings itself is baseless and wrong. Therefore, the reassessment proceedings and impugned reassessment order may kindly be quashed. The Id. Counsel also placed reliance on the judgement of the jurisdiction High Court of Delhi in the case of *Northern Exim (P) Ltd. vs. DCIT (2013) 357 ITR 586 (Del)* and submitted that no income chargeable to tax had escaped assessment when the reasons recorded for issue of notice u/s 148 of the

Act were factually incorrect. The Id. Counsel had also placed reliance on the decision of the ITAT Delhi in the case of *Bir Bahadur Singh Sijwali vs. ITO* reported in (2015) 68 SOT 197 (Del) to submit that the reasons recorded by the AO for reopening of the assessment are to be examined on stand-alone basis and nothing can be added to the reasons so recorded nor anything can be deleted from the reasons recorded. Therefore, when the AO has proceeded to initiate the reassessment proceedings on factual and incorrect basis, then, the same has to be quashed.

6. On careful consideration of the above submissions, I clearly observe that from the reasons recorded by the AO available at page 7 of the assessee's paper book, it is amply clear that the AO noted that the assessee has not filed the return of income for AY 2011-12 whereas the copy of the return of income available at pages 1-5 of the assessee's paper book clearly reveals that the assessee did file the return of income for AY 2011-12 on 31.03.2012. It is also clearly discernible that in the proforma for obtaining approval u/s 151 of the Act, in column 8(a), the AO noted that the assessee has not filed any return of income. Therefore, I safely presume that the AO has proceeded to initiate reassessment proceedings u/s 147 of the Act and issued notice u/s 148 on incorrect facts without application of mind. The similar issue was placed before the ITAT Delhi, SMC Bench in the case of *Ajendra Pal Singh* (supra) (which was authored by me) and the same was adjudicated as follows:-

“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.

7. In view of the above, I am compelled to hold that the reassessment proceedings u/s 147 of the Act and notice u/s 148 of the Act has been issued without application of mind by the AO on the basis of incomplete information without any verification of the facts and without complying with the mandatory requirement of section 147 and 148 of the Act. Consequently, the impugned reassessment order passed u/s 147 r.w.s 143(3) of the Act is not sustainable being bad in law and, thus, the same is quashed. Accordingly, the legal grounds of the assessee are allowed.

8. Since, by the earlier part of this order, the appeal of the assessee has been allowed on legal grounds, therefore, other grounds of the assessee on merits are not being adjudicated.

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

The decision was pronounced in the open court on 21.09.2022.

Sd/-

(C.M. GARG)  
JUDICIAL MEMBER

Dated: 21<sup>st</sup> September, 2022.

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi