

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

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.2995/Del/2019
Assessment Year: 2010-11

Magan Veer,
C/o Sanjeev Anand & Associates,
77, Navyug Market,
Ghaziabad.

Vs. ITO,
Ward-1(4),
Ghaziabad.

PAN: AZAPV5055H

(Appellant)

(Respondent)

Assessee by : Shri Somil Agarwal &
Shri Deepesh Garg, Advocates
Revenue by : Shri Mithalesh Kr. Pandey, Sr. DR
Date of Hearing : 12.09.2022
Date of Pronouncement : 16.09.2022

ORDER

This appeal filed by the assessee is directed against the order dated 31.01.2019 of the CIT(A), Ghaziabad, relating to Assessment Year 2010-11.

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

“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 u/s 147/144 and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.

2. That in any case and in any view of the matter, action of Ld. CIT (A) in confirming the action of Ld. AO in framing the impugned

reassessment order u/s 147/144, 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 addition of Rs. 48,40,685/- allegedly on the ground that the cash deposits in the bank account are unexplained and that too by recording incorrect facts and findings and without observing the principles of natural justice.

4. That in any case and in any view of the matter, action of Ld. CIT (A) in confirming the addition of Rs. 48,40,685/- allegedly on the ground that assessee has failed to explain the cash deposit, received out of sale of agricultural land in the earlier years and cash withdrawals from own bank account, is bad in law and against the facts and circumstances of the case.

5. That the appellant craves the 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 Id. Counsel of the assessee submitted that the Id.CIT(A) has erred in law and on facts in framing the impugned reassessment order u/s 147/144 of the Act (for short, ‘the Act’) that too without assuming jurisdiction and without complying with the mandatory conditions u/s 147 to 151 of the Act as envisaged under the Income Tax Act, 1961. The Id. Counsel also submitted that the Ld. CIT (A) has grossly erred in confirming the action of Ld. AO in framing the impugned reassessment order u/s 147/144 of the Act which is bad in law and against the facts and circumstances of the case. The Id. Counsel first of all drew our attention towards page No.1 and 2 of the assessee’s paper book and submitted that the AO has initiated reassessment proceedings u/s 147 of the Act by observing that the assessee had not filed

its return of income for AY 2010-11 whereas the assessee did file the return of income for this year copy of which was filed before the authorities below. The ld. Counsel also submitted that the reasons recorded by the AO for initiating reassessment proceedings and issuing notice u/s 148 of the Act are not sufficient to have reason to believe that the income chargeable to tax has escaped assessment for AY 2010-11. The ld. Counsel submitted that the AO had not issued notice u/s 148 of the Act to the assessee and, therefore, the AO had not assumed valid jurisdiction to initiate reassessment proceedings u/s 147 of the Act. The ld. Counsel has placed reliance on various judgements including the following:-

- (i) Bir Bahadur Singh Sijwali vs. ITO (2015) 68 SOT 197, ITAT Delhi Bench.
- (ii) Gurdish Kaur Khullar vs. ACIT, ITA No. 121/CHD/2020 dated 22.07.2021, ITAT Chandigarh Bench.
- (iii) Smt. Charanjit Kaur vs. ITO, ITA No. 193/CHD/2020 dated 15.03.2021, ITAT Chandigarh Bench.
- (iv) Amrik S. Singh vs. ITO, ITA 630/Asr/2015 dated 11.5.2016, ITAT Amritsar Bench.

4. Replying to the above, the ld. Sr. DR strongly opposed the contentions of the assessee and submitted that the AO was having AIR information in his hands before initiating reassessment proceedings and recording reasons for

AY 2010-11. The ld. AR submitted that to examine the transactions, six query letters were issued to the assessee and served through registered post, but, the assessee neither attended before the AO nor filed any reply till completion of the proceedings, therefore, the AO was compelled to pass reassessment order u/s 147 r.w. section 144 of the Act. The ld. Sr. DR also submitted that the notice u/s 148 was issued on 30.03.2017 and served on the assessee through speed post, therefore, there is no laps on the part of the AO in assuming jurisdiction to pass reassessment order and the ld.CIT(A) was right in upholding the same.

5. Placing rejoinder to the above, the ld. Counsel submitted that ITAT, Amritsar Bench in the case of *Amrik S. Singh* (supra) has categorically held that the enquiry letters of the AO has no sanctity and the AO has to assume valid jurisdiction by way of recording satisfaction as per the requirement of section 147 of the Act and as per the order of ITAT, Chandigarh SMC Bench dated 22.07.2021 in ITA No.121/Chd/2020 for AY 2011-12 in the case of *Gurdish Kaur Kullar* (supra). Therefore, the legal grounds of the assessee may kindly be allowed and the impugned reassessment order u/s 147/144 of the Act dated 15.12.2017 may kindly be quashed.

6. On careful consideration of the rival submissions, first of all, I may point out that the AO has initiated reassessment proceedings u/s 147 of the Act by recording the following reasons:-

“The assessee is an individual. As per record of this office, assessee had not filed return of income for the A.Y. 2010-11. In this case AIR information had been received that the assessee had deposited cash amounting to Rs.48,40,685/- in his saving bank account during the F.Y.2009-10 relevant to A.Y. 2010-11. To examine the transactions, query letters were issued to the assessee. on 19/05/2015, 14/07/2015, 25/01/2016, 05/05/2016, 09/09/2016 and 07/10/2016 which were served on the assessee through registered speed post as well as served through notice server of this office.

In response of query letters assessee neither attends this office nor filed any reply till date. However, it seems that assessee have nothing to say in this matter. Thus the source of this cash deposit in saving bank account during the year under consideration is still remaining unexplained.

In view of the above, I have reasons to believe that the cash deposit of Rs.48,40,685/- in the saving bank account of the assessee, chargeable to tax for A.Y.-2010-10 has escaped assessment within the meaning of section 147 of the Act.”

7. In view of the above, first of all, I observe that in para 8, the AO noted that the assessee has filed voluntary return and in remarks column, ‘Yes’ has been noted whereas in the first para of reasons, the AO noted, “as per record of this office, assessee had not filed his return of income for AY 2010-11.” Thus, it is clear that the AO himself has noted contradictory facts in the reasons recorded in the prescribed format and reasons recorded regarding filing of return for AY 2010-11. From a careful reading of the reasons recorded by the AO (supra), it is clear that in the first para, AO noted the factum of AIR information received. Thereafter, he noted that six query letters were issued to the assessee and in second para, he noted that in response to the said query letters, the assessee neither attended his office nor filed any reply till date and he presumed that the assessee

have nothing to say in this matter. Thereafter, the AO noted that the source of cash deposit in savings bank account during the year under consideration is still remaining unexplained. In the third para, the AO directly jumped to the conclusion that he has reason to believe that the impugned cash deposit in the saving bank account of the assessee chargeable to tax for AY 2010-11 has escaped assessment within the meaning of section 147 of the Act. In the identical facts and circumstances, the ITAT, Chandigarh SMC Bench in the case of *Gurdish Kaur Khullar* (supra) has held as follows:-

“9. I have considered the submissions of both the parties and perused the material available on the record. In the present case, it is not in dispute that the assessee an NRI is residing in Surrey, Canada. In the present case, the A.O. reopened the assessment by recording the reason that as per the information available with the department cash amounting to Rs. 35,01,000/- was deposited in the bank account of the assessee and the assessee had not filed the return of income, he, therefore had reason to believe that income of Rs. 35,01,000/- chargeable to tax had escaped assessment for the year under consideration which clearly shows that only on the basis of the information the A.O presumed that the total amount deposited in the bank account as escaped income of the assessee.

9.1 On a similar issue the ITAT, Chandigarh Bench 'B' in the case of Smt. Charanjit Kaur Vs. ITO (supra) held as under:

“16. So far as, the application of mind by A.O. is concerned, the reasons recorded by A.O. for reopening of the case prima facie indicate that he has not applied his mind and proceeded on assumption that the bank deposit constitutes unexplained income of the assessee. As pointed out by the learned counsel, the Delhi Bench of the Tribunal in the case of Bir Bahadur Singh Sijwali Vs. ITO (supra) has set aside the action of A.O. in reopening the case of the assessee initiated on fallacious assumption that bank deposits constitute undisclosed income of the assessee, overlooking the fact that source of deposit need not necessarily be income of the assessee. We further notice that in the present case, the learned Principal CIT

has accorded sanction for issuing notice under [s. 148](#) of the Act, without ensuring that the A.O. has recorded the reasons after due application of mind."

9.2 In the present case also the A.O. without applying his mind proceeded on assumption that the total bank deposit of the assessee constitutes unexplained income of the assessee and overlooked this fact that source of deposit need not necessarily be the income of the assessee.

9.3 On a similar issue the ITAT, Amritsar Bench in the case of Amrik Singh Vs. ITO (supra) held as under:

"When the assessment proceedings u/s 147 are initiated on the fallacious assumption that the bank deposits constituted undisclosed income, over-looking the fact that the source of the deposits need not necessarily be the income of the assessee, the proceedings is neither countenanced, nor sustainable in law. "

9.4 Similarly the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Smt. Paramjit Kaur (supra) while relying the judgment of the Hon'ble Apex Court in the case of ITO & Ors Vs. Lakhmani Mewal Das (1976) reported in 103 ITR 437 (SC) held as under:

" that the Assessing Officer had not examined the information received from the survey circle before recording his own satisfaction of escaped income and initiated reassessment proceedings. The Assessing Officer had thus acted only on the basis of suspicion and it could not be said that it was based on belief that the income chargeable to tax had escaped income. The Assessing Officer had to act on the basis of "reasons to believe" and not on "reasons to suspect". The Tribunal rightly concluded that the Assessing Officer had failed to incorporate the material and his satisfaction for reopening the assessment and therefore the issuance of notice under [section 148](#) of the Act for reassessment proceedings was not valid."

9.5 In the present case also the A.O. in the reasons recorded clearly stated that on the basis of information that the assessee deposited cash of Rs. 35,01,000/- in the bank account formed the opinion that the said deposit was the income of the assessee which escaped the assessment, while doing so he did not apply his own mind and initiated the reassessment proceedings. Thus the A.O. acted only on

the basis of suspicion, so it cannot be said that it was based on belief that the income chargeable to tax had escaped assessment.

Therefore, by considering the totality of the facts and by respectfully following the ratio laid down in the aforesaid referred to judicial pronouncements, I am of the view that the reassessment proceedings, initiated by the A.O. on the basis of suspicion were not valid and the Ld. CIT(A) was not justified in sustaining the same. Accordingly the same is quashed.”

8. In view of the above, when we evaluate the reasons recorded by the AO in the present case, it is amply clear that the sole basis was AIR information that the assessee has deposited cash of Rs.48,40,685/- in his savings bank account and the AO framed an opinion that the said deposit were the income of the assessee which escaped assessment. While doing so, he did not apply his own mind and initiated reassessment proceedings. Thus, I safely presume that the AO has acted only on the basis of suspicion, so it cannot be said that it was based on the belief that income chargeable to tax has escaped assessment. In the case of *Smt.Charanjit Kaur vs. ITO (supra)*, ITAT Chandigarh Bench has categorically held that when the reasons recorded by the AO for reopening of the case *prima facie* indicates that he has not applied his mind and proceeded on the assumption that the bank deposit constitutes unexplained income of the assessee, then, as pointed out by the ld. Counsel of the assessee, the ITAT Delhi Bench in the case of *Bir bahadur Singh Sijwali vs. ITO (supra)* has set aside the action of the AO in reopening the case of the assessee initiated on fallacious assumption that bank deposits constitute undisclosed income of the assessee, overlooking the fact that source of deposit need not necessarily be income of the assessee.’ Therefore, the

said order of ITAT Chandigarh Bench also supports the conclusion drawn by me. I may also pointed out that the AO had noted contradictory facts in the prescribed form and reasons recorded regarding filing of return by the assessee for AY 2010-11 which also supports the contention of the ld. Counsel that initiation of reassessment proceedings has been done without application of mind. Therefore, considering the totality of the facts and circumstances of the case and respectfully following the ratio laid down by various pronouncements including the order of ITAT Chandigarh Bench in the case of Gurdish Kaur Khullar (supra), I am of the view that the reassessment proceedings initiated by the AO on the basis of suspicion without having valid reason and on the basis of prima facie belief that income has escaped assessment for AY 2010-11 are not valid and, thus, the ld.CIT(A) was not justified in sustaining the same. Accordingly, grounds No.1 and 2 of the assessee are allowed and the impugned reassessment order passed u/s 147/144 of the Act dated 15.12.2017 and all consequent proceedings and orders are hereby quashed.

9. Since I have allowed the legal grounds of the assessee by the earlier part of the order, I am not adjudicating on the merits of the case.

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

Order pronounced in the open court on 16.09.2022.

Sd/-
(C.M. GARG)
JUDICIAL MEMBER

Dated: September, 2022.

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi